NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 2424 OF 2017

(Against the Order dated 31/05/2017 in Appeal No. 1093/2013 of the State Commission Delhi)

1. SHREE JEEWAN HOSPITAL
THROUGH ITS CHAIRMAN DR. VIJAY SABHARWAL,
67/1, NEW ROHTAK ROAD,
NEW DELHI-110005 .....Petitioner(s)

Versus

1. RUBINA
W/O. SHRI MOHD. TAMKEEN R/O. T-424, FOURTH FLOOR, AHATA KIDARA GALI PAHAR WALI IDGAH ROAD, SADAR BAZAR
DELHI-110006 .....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER

FOR THE PETITIONER : MR SUKUMAR PATTJOSHI, SR ADVOCATE WITH MS MEENAKSHI MIDHA, , MR GARV SINGH, AND MR RAM KRISHNA RAO, ADVOCATE

FOR THE RESPONDENT : MR H S ARORA, ADVOCATE

Dated : 19 October 2023

ORDER

1. This revision petition under section 21 of the Consumer Protection Act, 1986 (in short, the "Act') assails the order dated 31.05.2017 in First Appeal No. 1093 of 2013 of the State Consumer Disputes Redressal Commission, Delhi (in short, the 'State Commission') dismissing the appeal of the petitioner against order dated 25.09.2013 of the District Consumer Disputes Redressal Forum (Central), Kashmere Gate, Delhi (in short, the 'District Forum') in Consumer Complaint no. 501 of 2009. As per the impugned order, the appeal against order of the District Forum was dismissed, the order of the District Forum upheld and punitive costs imposed.

2. The facts as per the petitioner are that the respondent/complainant was admitted in the petitioner's hospital on 15.09.2009 for delivery and in the night around 11.15 pm she delivered a female child. However, during the course of delivery while undertaking stitching, the doctors left a needle in the uterus which resulted in profuse bleeding during the night and pain and trauma. On 16.09.2009 evening an x-ray revealed that a needle had been left in the uterus which was removed through surgery under general anesthesia by one Dr Akash the same day. On 24.11.2009 the respondent/complainant underwent an ultrasound of the abdomen which revealed that the uterus had retroflexed and the medical opinion was that she would not be able to conceive again. Alleging negligence, respondent/complainant filed a complaint before the District Forum claiming Rs 10,00,000/-. The District Forum's order, following a report from the Delhi Medical Council based upon a reference by the Dy.

Commissioner of Police (DCP) in pursuance of an FIR odged by the respondent, opining that breaking of needle does happen during stitching of wounds and that the retroflexing of the uterus was not related to this incident, held the petitioner guilty of medical negligence and awarded Rs 3,00,000/- as compensation for harassment, pain and mental agony and litigation costs of Rs 10,000/-. First Appeal before the State Commission by the petitioner came to be dismissed with costs of Rs 30,00,000/- for negligence and deficiency in service to be deposited in the State Consumer Welfare Fund within two months or thereafter with interest @ 12% after considering the facts, including an expert opinion of Lady Hardinge Medical College, New Delhi. The instant revision petition impugns this order.

3. I have heard the learned counsel for the parties and carefully considered the material on record.

4. The finding of the District Forum is as under:

"The hospital cannot take shelter under the opinion of Delhi Medical Council. We have already observed that the needle, which was left in the body caused pain, mental agony and contributed in the excess bleeding. If the concerned doctors of the hospital, would have been more vigilant then the trauma of the complainant could have been avoided.

So far, the allegation of the complainant that due to the needle her uterus was retroflexed has got no valid evidence. The report of Banwari Lal Charitable Imagine Centre, dated 24.11.2009 about the retroflexed of uterus, has not connected leaving of the needle in the body of the complainant after the delivery of the baby. There could be so many other reasons for such retroflex of the uterus.

The complainant has not placed on the file any expert opinion except her own statement of the injury to the uterus by leaving the needle into her body. The opinion of the complainant is that of a layman and cannot be given due importance.

Considering the act of medical negligence which caused harassment, pain and mental agony to the complainant, the complaint is maintainable for compensation inspite of the fact that the hospital might not have charged any extra money from the complainant. We allow the complaint with the following directions to Shree Jeewan Hospital to comply with".

5. The State Commission's findings as per the impugned order reads as under:

25. Instead of employing a qualified doctor who draws a salary around Rs.2.00 lakh, appellant hospital is getting the job done by a pharmacist. How many such episiotomy wounds have been stitched by Dr Raheen is anybody's guess.

26. No material has been placed on record by the appellant hospital suggesting that Dr Raheen recorded any clinical notes to the effect that she had left the needle while carrying out the stitches. Page 30 of exhibit C 2 allegedly are the clinical notes written immediately after the delivery and at 11.45 p m on 15.09.2009. The said notes are not in the handwriting of Dr Raheen. Dr Anita and nurse Chonchon are shown to have written the notes. Notes at page 28 are the copy of notes at page 27 except that

addition, cutting etc., do not appear at page 28. Be that as it may, it is clear that Dr Anita had not effected the delivery. It is supported by the statement of Dr Anita made to the police.

27. There is nothing on record to show that the hospital authorities told the patient or her attendants after the delivery that the needle had been left in the body of the patient. There is no record to the effect that in view of the oedema and blood, x-ray was planned to be done in the morning of the next day. Patient was admittedly not referred for x-ray in the morning of the next day. Patient was transferred to the word after stitching the episiotomy. She was not sent to the ICU. Appellant hospital has not placed on record any medical literature to show that it was not advisable to locate the needle by way of x-ray immediately after discovering the same having been left in the body. There is no literature to show that allowing the needle to remain in the body would not cause any damage to the body.

28. Dr Akash was on his routine visit when the patient Smt Rubina complained of severe pain to him on the next day in the evening. It was at that juncture that the patient was advised to go for x-ray. X-ray machine of the appellant was stated to be out o order. She was sent to the adjoining hospital named 'jeevan mala' for getting the x ray done. Complainant has placed on record a receipt for an amount of Rs.250/- issued by Jeevan Mala Hospital towards x-ray. It shows the timing of 4.30 pm and date as 16.09.2009. It clearly supports the case of the complainant that her x-ray was done in the evening of 16.09.2009 when she was operated upon for removal of the needle in the night of 16.09.2009.

29. Perusal of the x-ray film exhibit C1 shows that a complete needle with its sharp end and the other end with an eye is seen. It is a round type needle. Had it been a straight needle, it could have travelled to other parts of the body and caused serious problems. Act of the appellant hospital is thus highly negligent.

30. Appellant hospital has made an attempt to manipulate the records to cover up the fact that the delivery was effect by Dr Raheen who was not competent to do the same. Appellant hospital has gone to the extent of manipulating the records to make believe that it was Dr Anita and Nurse Chonchon who conducted the delivery.

31. Admittedly x ray machine of the appellant hospital was not in order when it was required immediately after the delivery to locate the needle. The patient should have been sent for x ray examination to a nearby hospital immediately after Dr Raheen discovered the factum of having left the needle in the body. Appellant hospital was again 'deficient in service' when it did not have the necessary equipment ready……."

6. Learned counsel for the respondent/complainant relied upon the judgment of the Hon'ble High Court of Delhi dated 08.04.20116 in Public Interest Litigation (PIL) in ***Delhi Medical Association Vs. Principal Secretary (Health) & Ors.,*** in WP (C) No. 7865/2010 which held that "a person who is engaged in the practice of modern scientific system of medicine and all its branches" should be qualified to practice the Allopathic system of medicine within the Indian Medical Council Act, 1956 read with Indian Medical Degrees

Act, 1916. It was argued that Dr Raheen who performed the surgery was a qualified Pharmacist but not a Medical Practitioner and therefore the petitioner had been negligent in service *qua* the respondent in allowing her to perform the surgery and suturing following the epistomy during the course of which the needle was left behind in the abdomen.

7. The moot issue in the matter is whether the act of leaving a needle in the abdomen of the respondent/complainant constituted an act of medical negligence and whether this was responsible for the uterus to get reflexed. It is also moot whether the hospital followed the correct protocol in permitting the surgery to be conducted by a doctor who was not qualified to undertake surgeries but was only a pharmacist.

8. Based on the report of the Delhi Medical Council and the expert opinion of Lady Hardinge Medical College, New Delhi it is evident that the needle was inadvertently left in the superficial layer of the muscle during the course of stitching the episiotomy wound post-delivery. There was no 'breakage' of the needle *per* se as the x-ray revealed that it was intact and only the 0.2 vicryl thread had separated or 'broken', resulting in the needle slipping into the folds of the muscles. Both opinions are clear that the needle was not left behind in the uterus and that the fact of the needle being in the muscle cannot be the reason for the uterus to get reflexed. However, it is clear, based upon the statement of Dr Anitha to the Police that the surgery was performed not by one Dr Anita as per the petitioner but by Dr Raheen, a pharmacist who was present at the time of the delivery.

9. In view of the fact that the needle was indeed left in the abdominal muscles of the respondent/complainant during the course of post delivery suturing of the episiotomy done by a person qualified not as a medical doctor but a pharmacist, medical negligence on part of the petitioner is established. This is also evident from the fact that the petitioner attempted to cover up the record through overwriting, as noted by the State Commission. Based on the reports of the Delhi Medical Council requisitioned by the DCP, as well as the Maulana Azad Medical College, New Delhi obtained by S I Pravesh Kaushik, it is manifest that the surgery was performed by an unqualified medical doctor (Dr Raheen). This itself is enough to establish medical negligence on part of the petitioner in the fact of the needle being left in the abdomen of the patient. It is also not disputed that the needle was left in the body of the respondent. There is nothing on the record to establish the fact of the leaving behind of the needle as the cause of the uterus reflex. The needle was also not located by the x-ray to be in the uterus. Therefore, the issue of the uterus getting reflexed due to the fact of the needle being left behind in the body needs to be answered in the negative. Hence, there can be no liability latched on the petitioner on this account.

10. The petitioner has argued that the imposition of punitive costs by the State Commission is not justified since there is no prayer for it. Reliance has been placed on the judgment of the Hon'ble Supreme Court in ***General Motors (India) Pvt. Ltd. Vs. Ashok Ramnik Lat Tolat,*** Civil Appeal Nos. 8072-8073 of 2009 dated 09.10.2014 which held that the National Commission went beyond its jurisdiction in awarding relief which was not sought in the complaint and set aside the punitive damages awarded. The State Commission considered an appeal against the order of the District Forum. Hence, there was no pleading for punitive costs. The order of the State Commission, however well intentioned, cannot be sustained in light of this position of law.

11. In view of the foregoing discussion and the facts and circumstances of the case, the petition is liable to succeed partly. As stated above, the order of the State Commission in respect of punitive charges does not sustain since there was no pleading for the same. Accordingly, the same is disallowed and set aside. However, the order of the District Forum does not merit any interference in view of the establishment of medical negligence on the basis of the expert opinion and the establishment of the fact that the surgery was performed by a person who was only a pharmacist and not a qualified medical practioner authorized to practice modern scientific system of medicine and all its branches. The order of, the District Forum is therefore affirmed subject to the setting aside of punitive charges awarded. Pending IAs, if any, stand disposed of with this order.

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SUBHASH CHANDRA
PRESIDING MEMBER