NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 1369 OF 2016

(Against the Order dated 27/08/2014 in Appeal No. 275/2011 of the State Commission Tamil Nadu)

1. DR. P. ASHOK KUMAR
44, 18TH CROSS, KRISHANANDANGARA,
MALAGALA, VISWANEEDOM POST,
BANGALORE-560091 .....Petitioner(s)

Versus

1. EZHILARASI
REPRESENTED BY HER FATHTER/NEXT FRIEND,
MR. SHANMUGA SUNDARAM, ESALAM,
BRAMMADESAM POST, VILLUPURAM
TALUK-605203 .....Respondent(s)

BEFORE:
HON'BLE MR. JUSTICE R.K. AGRAWAL,PRESIDENT
HON'BLE DR. S.M. KANTIKAR,MEMBER
HON'BLE MR. BINOY KUMAR,MEMBER

For the Petitioner :
For the Respondent :

Dated : 15 Dec 2021

ORDER

Appeared at the time of arguments through video conferencing

For the Petitioner : Ms. Pritha Srikumar, Advocate
Mr. Anirudh Gotety, Advocate

For the Respondent : Ms. Surekha Raman, Amicus Curiae

Pronounced on: 15th December 2021
ORDER
PER DR. S. M. KANTIKAR, MEMBER

1. The present Revision Petition has been filed under Section 21 (b) of the Consumer Protection Act, 1986 (hereinafter referred to as the "Act") against the impugned Order dated 27.08.2014, passed by the Tamil Nadu State Consumer Disputes Redressal Commission, Chennai (hereinafter referred to as the "State Commission") in Appeal No. 275/2011, whereby the Appeal filed by the Respondent was allowed and the Order of District Consumer Disputes Redressal Forum, Villupuram (hereinafter referred to as the "District Forum") was set aside, directing the Petitioner to pay a compensation of Rs. 4,00,000/- and costs of Rs.10,000/- to the Respondent.

2. The brief facts are that on 24.08.2000, Ms. Ezhilarasi, the Respondent herein (hereinafter referred to as the "patient") was taken by her father to Dr. P. Ashok Kumar (hereinafter referred to as the "Opposite Party") with complaint of high grade fever. It was alleged that the Opposite Party administered one injection on her left buttock at a wrong site involving nerve. Therefore, immediately after that the patient experienced severe pain and developed swelling. She was unable to stand or walk. The Opposite Party assured the Complainant that the pain would subside in sometime. However, when the pain and swelling persisted, the Complainant, on 20.09.2000, took his daughter to the Opposite Party's clinic, who prescribed some medicines and advised to consult Neurosurgeon. On the next day i.e. 21.09.2000, the Complainant consulted Dr. Venkatesan, the Neurosurgeon but to no avail. On 13.10.2000, the Complainant took the patient to JIPMER Hospital, Pondicherry and consulted another Neurologist Dr. S. Paranjothi. The X-ray of the patient was taken and medicines were prescribed. Having no relief from the pain, the patient took treatment at Children's Hospital, Chennai as an Inpatient and an Outpatient from 27.10.2000 to 29.11.2000. Thereafter, on 10.07.2001, the Complainant consulted Ortho Surgeon named Dr. Sriram, who advised MRI scan, but due to financial constraints, the Complainant could not get MRI scan done and further treatment of his daughter and he, ultimately, returned to Villupuram. It was alleged that despite contacting the Opposite Party several times, no help was offered by him. Being aggrieved by the medical negligence of the Opposite Party during treatment of the patient (minor daughter), the Complainant filed a Consumer Complaint No. 44/2002 in the District Forum.

3. The Opposite Party filed its Written Version and submitted that the patient (minor girl) visited him on 24.08.2000 with complaint of high fever and she was administered intra muscular injection Fevastin in the left gluteal region by disposal syringe. At that time she had not experienced any pain or discomfort at the injected area. On 20.09.2000, she again visited the Opposite Party with the complaint of pain in the buttock as she had fallen on ground, for which the Opposite Party prescribed anti-inflammatory drugs and referred the patient to a surgeon named Dr. P. Venkateswaran. He did not charge any fee for that day. The Opposite Party submitted that the patient's complaint had no relevance to the administration of injection by him. The Opposite Party also denied knowing about any kind of treatment given at JIPMER Hospital or by Dr. Paranjothi or at Children's Hospital. On perusal of the discharge summary and reports of other doctors, the patient had been advised for MRI scan and CT Mylogram for suspected Spinal Cord problem and it was the submission of the Opposite Party that the said tests were not meant for the alleged nerve damage.

4. The District Forum dismissed the Complaint. The Complainant filed an Appeal before the State Commission. The State Commission held the Opposite Party negligent and allowed the Appeal. It was directed to the Opposite Party to pay the Complainant Rs.4,00,000/- as compensation and cost of Rs.10,000/-. Being aggrieved, the Opposite Party – Doctor filed this Revision Petition.

5. This Revision Petition involves the question whether the alleged injection to the patient was wrongly administered by the Petitioner and it constitutes medical negligence.

6. We have heard the learned Counsel of both the sides and perused the Medical Record. The learned Counsel for the Petitioner submitted that there was no expert medical opinion to establish the medical negligence to prove the nerve injury was due to wrong administration of injection. There was history of fall from stool. It was further submitted that the patient was treated by few other doctors and the pain was due to Spinal Cord problems.

7. The learned Counsel for the Complainant reiterated the facts and evidence filed before the District Forum.

8. We have perused the Order of the State Commission, the relevant observations are reproduced as below:

"14. We have to further note that in Ex.A2, which is the prescription dated 20.09.2008, of the opposite party's clinic on the second visit, it is conspicuously written at the top of the prescription

within a square, NO INJECTION, and therefore it is clear that only since there was complication in the injection at the 1st visit of the patient on 24.08.2000, during the second visit, when the girl went to the clinic complaining of pain and swelling in the injected area, and inability to walk, the opposite party has acted with precaution to cover his negligent act and has voluntarily mentioned in the prescription that no injection was administered that day.

15. Further we find that the root cause of all the problems is the opposite party's negligence in pricking the injection needle at the wrong site inflicting damage to the nerve / nerves. In consequence of which, the girl suffered severe pain and could not walk using the left lower limb, which is diagnosed as Poly radiculopathy left lower limb. In Ex. A4, A8, A9, A10, A12, and A13, in all these, there is reference to the injection administered by the opposite party in her left buttock / gluteal muscle and the consequent problems.

16. There are no materials either in favour of the complainant's daughter or in favour of the opposite party in the evidence of the witness Dr. P. Rajaraman. We find that the problem is not due to any other cause, and there is no other intervening cause and all other causes are ruled out by way of exclusion through various tests such as MRI."

9. We note the patient approached different doctors/specialist in Pondicherry, Chennai and Villupuram. We have carefully perused the prescriptions: issued by the few doctors. We note that initially patient had no neurological problem but after injection progressively she suffered poly-radiculopathy

10. It is relevant to go through the prescription dated 20.09.2000 issued by the Petitioner. At places some correction/interpolation are evident. We also note one entry on the left corner of the prescription (in the rectangular box) mentioned as but the purpose behind it is not clear. Such inscription on the prescription casts a shadow on the act of the Petitioner.

11. We have further perused the Medical Record of JIPMER and noted the relevant findings. On 13.10.2000, the patient approached Ortho, OPD at JIPMER. The doctor recorded as below:

"h/o fall from stool – 1 mth back
Pain in left thigh – unable to walk
? injection at left gluteal region
Following which dev – abscess & treated"

After the investigation, initially, the patient was diagnosed as left sided sacroilitis and kept under treatment and follow up. On 22.12.2000, the CT Scan of LS spine was advised and Dr. Kataria opined that "? Sacralala Crack # at S2 level". The patient was advised absolute bed rest and analgesic. The patient's psychological evaluation was done. The hip examination did not show any clinical abnormality and the patient was advised for re-view after if pain recurs.

12. The patient consulted one Dr. K. Sriram, the Orthopedic Surgeon at Chennai on 10.07.2001. The X-ray pelvis and SI joint were normal and he advised CT mylogram or MRI of the spine. The patient was advised anti-inflammatory drugs. It is evident from record that the patient was treated at Govt. Hospital Pondicherry between 17.06.2003 to 03.07.2003 and finally it was diagnosed as Polyradiculopathy. The MRI LS spine and MRI Dorsal spine were normal.

13. Considering the entirety of this case, we are of the opinion that the final diagnosis Polyradiculopathy made at the institute cannot be faulted. Since September 2000, the patient was continuously suffering progressive pain in her left lower limb after the intramuscular injection in the left gluteal region. Thereafter, the patient took regular consultation with the Specialist in Orthopedic, Neurology etc. She approached JIPMER, the Department of Medicine, General Hospital at Pondicherry on 17.06.2003 and the diagnosis Polyradiculopathy was made, which is an uncommon peripheral nervous system syndrome manifested by symmetric / asymmetric distal and proximal weakness with varying sensory loss.

14. From the standard surgical text books, it is known that the iatrogenic nerve injury has long been recognized as a common complication of Intramuscular (IM) injection. The buttock is a

common injection site and the Sciatic nerve is the most commonly injured nerve following IM injection because of its large size. The sciatic nerve is located in the middle of the gluteal region and usually passes deep to the piriformis muscle. IM injection outside of the upper quadrant of the buttock (dorsogluteal region) is a major cause of SNII, with the sciatic nerve being more prone to damage when the injection site is more medial and/or inferior. Although the incidence of Sciatic nerve injection injury (SNII) is less but it remains a persistent world-wide problem. The presentations of SNIIs may range from minor transient pain to severe sensory disturbance and motor loss with poor recovery. The IM injection injury varies depending on both the injection site and the agent injected. An intra fascicular injection may result in severe nerve damage depending on both the agent used and the dosage. Many patients who experience such damage fail to make a full recovery, even with microsurgical repair. Affected patients typically experience immediate pain radiating down the limb, with weakness and numbness evolving more gradually and exacerbated by secondary scarring. Pain following injury to a nerve is remarkable in its severity, its intractability, and in the consistency of its features, all of which should lead directly to a diagnosis. SNII may result in excruciating and incapacitating pain that is resistant to analgesia. The SNII is a preventable complication of gluteal IM injection. While total avoidance of gluteal IM injection is desirable, if a gluteal injection is necessary, the use of an appropriate administrative technique is recommended. Attention must be paid to avoiding iatrogenic nerve injuries by IM injection. The chronic neuropathic pain from injury to the sciatic nerve caused by misplaced IM injection may occur.

15. The medical literature on 'Pathophysiology of injection injury to the nerve' revealed that:

SNII may occur with various therapeutics and agents. The most common IM injection agents that were injected into the nerve were a combination of analgesic and antiemetic drugs. Other agents include antibiotic and local anaesthetic medications, vitamin preparations, vaccines, and even steroid drugs. The postulated mechanisms of injury include direct needle trauma, secondary constriction by scar, and neurotoxicity of the agent injected. Direct intra-fascicular injection of the medications can result in varying degrees of axonal and myelin degeneration, depending on both the agent injected and dose of the drug used. However, the anatomical proximity of the injection to the nerve is considered to be the single most crucial factor in determining the degree of nerve damage, with injection directly into the nerve being the most destructive mechanism.

The clinical findings of SNII are characteristic. Typically, needle placement results in an immediate electric-like shock sensation down the extremity. Concomitantly, upon injection of the agent, the most frequent presentation included severe radicular pain and paresthesia, with almost immediate onset of variable motor and sensory deficits. The patient usually experienced a severe pain, described as the occurrence of burning, searing, electricity, or numbness along the course of the affected area. In about 10% of cases, a delayed onset of pain and paresthesia and/or progressive loss of motor function appeared minutes to hours following injection. This may be related to the placement of injection being either adjacent to the nerve or into the epineurium. Damage to the sciatic nerve can produce effects ranging from minor motor and sensory abnormalities to complete paralysis and an excruciating and incapacitating pain that is resistant to analgesic treatment. In the case of a complete lesion, the motor loss is usually greater than the sensory loss. Like other kinds of traumatic peripheral nerve injury, the differentiation of neuropraxia from neurotmesis and axonotmesis is crucial. Electro-diagnostic studies including nerve conduction studies and electromyography studies are invaluable in defining the location and grading the severity of injection injury and predicting recovery.

16. We would like to rely upon the decisions 0of Hon'ble Supreme Court in the case of Dr. Laxman Balakrishna Joshi vs. Dr. Trimbak Bapu Godbole & Anr , AIR 1969 SC 128 and A.S. Mittal vs. State of U.P., AIR 1989 SC 1570, it was laid down that when a Doctor is consulted by a patient, the former, namely, the Doctor owes to his patient certain duties which are (a) a duty of care in deciding whether to undertake the case; (b) a duty of care in deciding what treatment to

give; and (c) a duty of care in the administration of that treatment. A breach of any of the above duties may give a cause of action for negligence and the patient may on that basis recover damages from his Doctor.

17. In the case on hand, the Petitioner failed in his duty of care. The prescription dated 20.09.2000 creates doubt in our mind about the act of Petitioner. Based on the medical literature, the precedents and foregoing discussion, the negligence is determined against the Petitioner. In our considered view, the State Commission, after due consideration that the occurrence happened in 2000, awarded just and reasonable compensation of Rs.4,00,000/-. It is pertinent to note that we are now at the end of 2021, to meet the ends of justice, we deem it appropriate to direct the Petitioner to pay Rs.4,00,000/- with interest @ 6% per annum from 27.08.2014 i.e. from the pronouncement of the order of State Commission till its realization.

Accordingly, the Revision Petition is disposed of with the above direction.

We appreciate Ms. Surekha Raman, Amicus Curiae for her timely assistance to this Commission.

.....J
R.K. AGRAWAL
PRESIDENT

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DR. S.M. KANTIKAR
MEMBER

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BINOY KUMAR
MEMBER