NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 82 OF 2007

1. SHRI GOPAL PRASAD DOKANIA
S/O. LATE SH. LAXMI NARAYAN DOKANIA
GATHER OF DECEASED- SHRI VIVEK DOKANIA
HAVING HIS OFFICE AT 303, BENTINCK
CHAMBERS 37-A, BENTINCK STREET,
KOLKATA - 700 069
WEST BENGAL .....Complainant(s)

Versus

1. APOLLO HOSPITAL ENTERPRISES LIMITED
AND ORS
THROUGH ITS MANAGING DIRECTOR, 21,
GREAMS LANE, OFF GREAMS ROAD
CHENNAI - 600006.
TAMIL NADU
2. Dr. Pratap C. Reddy
Founder Chairman Apollo Hospitals Enterprises Limited
21, Greams Lane, Off Greams Road,
Chennai - 600 006
Tamil Nadu.
3. Dr. Preeta Reddy
Managing Director, Apollo Hospitals Enterprises Limited,
21, Greams Lane, Off Greams Road,
Chennai -600 006.
Tamil Nadu
4. Dr. N. Satyabhama
Director, Medical Services Apollo Hospitals Enterprises
Limited 21, Greams Lane, Off Greams Road,
Chennai - 600 006.
Tamil Nadu
5. Dr. Radha Ram Murthy
Apollo Hospitals Enterprises Limited, 21, Greams Lane,
Off Greams Road
Chennai - 600 006.
Tamil Nadu
6. Dr. Anant Subramanian
Apollo Hospitals Enterprises Limited 21, Greams Lane,
Off Greams Road,

Chennai -600 006
Tamil Nadu
7. DR. N. RAMKRISHNAN
APOLLO HOSPITALS ENTERPRISES LIMITED, 21,
GREAMS LANE, OFF GREAMS ROAD,
CEHNNAI
TAMIL NADU - 600 006.
8. DR. BABU IBRAHAM
APOLLO HOSPITALS ENTERPRISES LIMITED,21,
GREAMS LANE, OFF GREAMS ROAD
CHENNAI
TAMIL NADU - 600 006.
9. DR. SRIDHAR
APOLLO HOSPITALS ENTERPRISES LIMITED, 21,
GREAMS LANE, OFF GREAMS ROAD,
CHENNAI
TAMIL NADU - 600 006. .....Opp.Party(s)

BEFORE:

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

For the Complainant :
For the Opp.Party :

Dated : 22 Mar 2022

ORDER

Appeared at the time of arguments

For the Complainants : Mr. Gopal Prasad Dokania, in person

For the Opposite Parties : Mr. Dileep Poolakkot, Advocate

Pronounced on: 22 nd March 2022

ORDER

DR. S. M. KANTIKAR, MEMBER

1. This was the Complaint filed under Section 21(a)(i) of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act 1986") by the Complainant – Mr. Gopal Prasad Dokania against the Apollo Hospital Enterprises Ltd. and the team of treating doctors therein for alleged medical negligence, causing death of his son Vivek during the treatment.

2. The facts of the case are that on 30.06.2005, the Complainant's son, Mr. Vivek Dokania, (since deceased, hereinafter referred to as the patient) aged about 23 years, a Chartered Accountant by profession was taken to Apollo Hospital at Chennai (hereinafter referred to as the 'Hospital / Opposite Party No. 1'). He was examined by Dr. G. Anant Subramaniam, the General Physician (hereinafter referred to as the 'Opposite Party No. 6'), along with Dr. Sridhar, one junior doctor (Opposite Party No.9). On the same day various tests were performed. On 03.07.2005, the reports were shown to Opposite Party No. 6, who diagnosed it as a case of 'PUO, high Bilirubin and deranged liver function test (LFT)'. It was alleged that the Opposite Party No. 6 started treatment on his own instead of referring the patient to the liver or gastro specialists. The patient did not get any relief. At 8.00 pm for acute abdominal pain, he was taken to hospital. He was treated in emergency ward till 11.00 pm. On the next day i.e. 04.07.2005, the Opposite Party No. 6 referred the patient to the Gastroenterologist, Dr. Radha Ram Murthy (Opposite Party No. 5), who diagnosed it as a case of 'Hepatitis-E infection'. The patient was treated on OPD basis and told nothing to worry, within 4-5 days everything will be alright and advised some dietary restrictions. The doctor prescribed Duphalac 30 ml, it was alleged high dose which caused loose motions (13 times), therefore he got admitted to hospital in the next night. On 07.07.2005, the Nephrologist, Dr. M. K. Mani and the Haematologist, Dr. Bhardwaj examined the patient in general ward. The patient's blood urea was 90 mg and Creatinine was 3.6 mg. The total WBC count ws 20100/cm and platelet count was reduced from 1,30,000 to 80,000. However, the patient was not shifted to CCU till his condition deteriorated. It was further alleged that on 30.06.2005 itself, the Opposite Party No. 6 advised several tests, but failed to advise malaria test. Later on, Malaria tests were advised for three days i.e. 07.07.2005, 22.07.2005 and 24.07.2005; reported as negative. Such repeated testing was with intention to gain money. The Complainant further alleged that the hospital premise was in shabby condition and not free from mosquitoes. The Complainant further alleged that just after admission, in general ward, the patient was transfused two units of fresh frozen plasma (FFP) in general ward and thereafter, when the condition of the patient deteriorated due to infection. It was further alleged that on 07.07.2005, the patient started irrelevant talks and in the night, the Complainant contacted Dr. Radha Rammurthy on her mobile, requested her to attend the patient immediately but she refused and told that she will be visiting the hospital only on next day morning at 9 a.m. It was further stated that on 21.07.2005 one Dr. Babu Ibraham of CCU told the elder brother of the Complainant that as the patient was fit to transfer in general ward on Friday i.e. 22.07.2005, but Dr. Ramkrishnan refused to do so. In the ward, adjacent to the bed of the Complainant's son, one very serious patient (in bed no. 43) was admitted, which was disturbing due to frequent visits of doctors and 4-5 nurses to that patient. There was no partition/curtain between beds, thus the serious patient was visible, therefore, the Complainant's son became nervous and under fear passed motion in the bed itself. In spite of several requests, the serious patient was not shifted to other room. The learned Counsel for the Complainant relied upon Wikipedia to establish that no specific treatment exists for acute Hepatitis -E infection apart from supporting care, but the hospital was treating the patient for commercial illegal gains. The administration of several medicines caused adverse effect and death of his son. Being aggrieved, the Complainant filed the Consumer Complaint and prayed total compensation of about Rs. 5.83 crores.

3. The Opposite Parties filed their respective Written Versions through Dr. Venkata Salam, the Joint Director of Medical Services and Dr. N. Satya Bhama. They denied the allegations of medical negligence. Dr. Pritha C. Reddy (Opposite party No. 3) clarified that she was not a medical doctor and not treated the patient at all.

4. The Opposite Parties in their reply submitted that the patient took treatment from various hospitals but did not get cure and as a last resort, he got admitted in Opposite Party No. 1 hospital. He was admitted under care of Opposite Party No. 6, Dr. Ananthasubramaniam and at the time of admission, his condition was critical. He was diagnosed as a case of Viral Hepatitis E infection. The consultants including the Residents and para medical staff were attending him on round the clock duty. The shifting of patient to ICU / CCU depends upon bed availability. As the Patient showed symptoms of Liver Failure – Disorientation and Confusion, he was shifted to the Critical Care Unit (CCU) under the care of Critical Care Group. The CCU is a specialized unit for critically ill patients and the doctors are competent to treat and monitor round a clock. It was further submitted that the hospital regularly holds the CCU staff meeting with the relatives of seriously ill patients. Similarly, in the instant case, the Complainant / attendants were updated time to time daily.

5. The Opposite Party No. 6, Dr. G. Ananthasubramaniam in his affidavit submitted that the patient already took treatment in different hospitals in the country. On 30.06.2005, he examined the patient in OPD, with history of fever more than 5 weeks. The blood investigations were done under Medipack Scheme revealed marginally elevated Serum Bilirubin and Liver enzymes. The patient had previously ENT problem, therefore his residual ENT disease was ruled out and then on 02.07.2005 referred to Medical Gastroenterologist. Dr. Radha Murthy, the Opposite Party No. 5. After doing viral markers studies, it was diagnosed as Hepatitis E viral infection. Duphalac is a laxative usually given to patients suffering from Viral Hepatitis and therefore, the conventional dose was prescribed. Initially on 05.07.2005, the patient was admitted in General Ward under his care as a primary consultant. On the next day, CT Scan of abdomen performed with consent. It revealed enlargement of Liver, Spleen and inflammation of Gall Bladder. The dietary instructions and care was taken by the dietician. The patient had fever and due to high incidence of Malaria in India, the blood tests for malarial parasite were advised. The patient was given 10 units FFP. Since the patient showed signs of early renal failure, opinion of Nephrologist was obtained. The patient showed early symptoms of Liver failure like slight disorientation and confusion, therefore he was shifted to ICU. Thereafter, the patient was shifted to CCU till 21.07.2005 as the kidney, liver function tests and coagulation profile were abnormal. Therefore, the patient was not transferred to the ward. The Opposite Party No. 7, Dr. N. Ramkrishnan denied that he refused to transfer the patient to the General Ward under pretext of Saturday and Sunday being holidays, also less number of doctors available in the hospital. He denied that he advised transfer on Monday i.e. 25.07.2005. It was further submitted that routinely masks are not required in the CCU, but used for the respiratory isolated patients. All these practices are according to the Hospital's infection control policy. The Complainant was not competent to comment on these aspects. The entire treatment was done with proper informed decisions. There was no negligence / wrong treatment or any intention for monetary gain. The Opposite Party No. 8 Dr. Babu Ibrahim the Consultant in Critical Care Services and sleep medicine in his affidavit stated that the care was given as per standards.

6. The Opposite Parties further stated that the family members were updated from time to time about the condition of patient. At 9 a.m. on 27.07.2005 the poor prognosis was explained to the patient's family members, but they were in a state of non-acceptance. The patient suffered severe

acute liver failure having unpredictable outcome. As per the hospital policy, at the beginning, it was clearly explained about the costs involved and available options to transfer out, if they wished. The family members of the patient expressed that financial constraints, but insisted to continue care at Apollo Hospitals.

7. We have heard the arguments from the learned Counsel for both the sides. Perused the material on record, *inter alia,* the medical record and gave our thoughtful consideration.

8. During arguments, the learned Counsel for the Complainant reiterated the facts and their evidence. He further argued that six units of FFP were brought in the emergency ward, it was transfused after 3 hours. There was no specific treatment available for Hepatitis E and when the USG report was available, the CT Scan was performed. Though, the patient was stable, he was unnecessary kept in the hospital with an ulterior motive. On 07.07.2005, the Nephrologist advised ICU management, but the patient was kept in the general ward for 24 hours and the condition of the patient deteriorated. Thus, the treatment was delayed. There was delay in consulting the hematologist on reduction of platelet count and the patient was not shifted to CCU.

9. He further argued that before admission to the Opposite Party No. 1, patient was consulted several the doctors at Delhi and Kolkata, at the Woodlands Hospital at Kolkata who did not find any such Viral infection. It is evident from the record that initially Dr. Radharam Murthy, Gastroenrologist – the Opposite Party No. 5 treated the patient as an 'outdoor patient' for the period 30.06.2005 to 04.07.2005; then from 5.7.2005 to 27.07.2005 in the General Ward and then in 'Critical Care Unit' in the hospital till his death. He further argued that a bare perusal of the aforesaid facts the principle of res-ipsa loquitor aptly applicable. The treating doctors and their staff have miserably failed to discharge their duties, they failed to inform the condition of patient and the risk involved in the treatment. He further submitted that the Opposite Parties flatly refused to provide any treatment details to the Complainant. It itself amounts to deficiency in service and intention to cover-up their wrong. Even, no action was taken by the Registrar, Tamil Nadu Medical Council against the Opposite Parties.

The learned Counsel placed reliance upon ***Harjol Ahluwalia Vs. Spring Meadows*** ***[1]*** , ***Charan Singh Vs. Healing Touch Hospital*** ***[2]*** and ***Lata Wadhwa Vs. State of Bihar*** ***[3]*** .

10. It is apparent from the record that the patient was suffering from few health ailments prior to admission to Apollo Hospita, but no one diagnosed it as a case of acute hepatitis. At the Opposite Party No. 1, after investigation, it was investigated and was diagnosed as Hepatitis E Viral infection. In the hospital, the patient was attended by number of Specialists. Initially ENT problem was ruled out from ENT Surgeon and thereafter he was referred to the Gastroenterologist Dr. Radha Ramamurthy, Opposite Party No. 5, who confirmed the diagnosis of Hepatitis E Viral infection. Accordingly, the patient was prescribed conventional dose of Duphalac. It is apparent from the record that as per the clinical signs and condition of the patient, a team of doctors shifted him to ICU/CCU for further management. The copies of all tests reports were handed over to the Complainant to facilitate for second opinion, but second opinion was not sought.

11. This Commission vide Order dated 21.05.2019 sought an expert medical board's opinion from AIIMS. The report is reproduced as below:

"dated 21.10.2019

The medical board has studied and examined the available medical records and serial charts during the period of hospital stay. The board is of the view that as per available medical records that the diagnosis was Sub Acute Liver Failure and the patient was managed appropriately."

12. In the instant case, the Complainant has not produced any expert opinion to support his case. In our considered view, that merely because the patient did not survive after the treatment is not a sufficient ground to hold doctor of hospital for deficiency in service or medical negligence. The treatment was as per the reasonable standard of care, therefore, no fault lies with them. The doctrine of Res-ipsa loquitor is not applicable in the instant case. Even, there were no infrastructural lapses in the hospital. Therefore, no liability to be fastened on any Opposite Party.

13. From medical literature, we have gathered information that Acute hepatic failure is characterized by hepatic encephalopathy, elevated aminotransferases (often with abnormal bilirubin and alkaline phosphatase levels), and impaired synthetic function (international normalized ratio 1.5). Acute hepatic failure carries a high mortality if intensive care support and liver transplantation are not available, resulting in an overall case fatality rate of 0.5 to 3 percent.

14. We would like to rely upon few precedents of the Hon'ble Supreme Court. In the case of **Jacob Mathew v State of Punjab** [4] , it was observed that:-

> *A mere deviation from normal professional practice is not necessarily evidence of negligence. Let it also be noted that a mere accident is not evidence of negligence. So also an error of judgment on the part of a professional is not negligence per se. Higher the acuteness in emergency and higher the complication, more are the chances of error of judgment. At times, the professional is confronted with making a choice between the devil and the deep sea and he has to choose the lesser evil. The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Which course is more appropriate to follow, would depend on the facts and circumstances of a given case. The usual practice prevalent nowadays is to obtain the consent of the patient or of the person incharge of the patient if the patient is not be in a position to give consent before adopting a given procedure. So long as it can be found that the procedure which was in fact adopted was one which was acceptable to medical science as on that date, the medical practitioner cannot be held negligent merely because he chose to follow one procedure and not another and the result was a failure.*

15. In **S. K. Jhunjhunwala vs. Dhanwanti Kaur and Another** [5] wherein the negligence alleged was of suffering ailment as a result of improper performance of surgery. It was held that there has to be direct nexus with these two factors to sue a doctor for negligence. It was further held that in every case where the treatment is not successful or the patient dies during surgery, it cannot be automatically assumed that the medical professional was negligent. To indicate negligence there should be material available on record or else appropriate medical evidence should be tendered. The negligence alleged should be so glaring, in which event the principle of res ipsa loquitur could be made applicable and not based on perception.

16. Based on foregoing discussion, it is difficult to attribute medical negligence against the Opposite Parties. The Complainant failed to prove medical negligence.

The Complaint is dismissed. There shall be no Order as to costs.

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[1] (1998) 4 SCC 39

[2] (2000) 7 SCC 668

[3] (2001) 8 SCC 197

[4] (2005) 6 SCC 1

[5] (2019) 2 SCC 282

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

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DR. S.M. KANTIKAR
MEMBER