

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 496 OF 2013

(Against the Order dated 08/03/2013 in Complaint No. 31/2004 of the State Commission Tamil Nadu)

1. SUGACHITRA

D/O. B.S.P.S. SATHIYAN, 36, MADAVARAM HIGH
ROAD, PERAMBUR
CHENNAI 600 011

.....Appellant(s)

Versus

1. DR. R. S. MURLIDHARAN

K.S. HOSPITAL, NO. 747, POONAMALLE HIGH
ROAD, KIPPAUK,
CHENNAI-10

.....Respondent(s)

BEFORE:

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

For the Appellant : Appeared at the time of arguments

For the Appellant : Ms. Panchajanya Batra Singh, Advocate

For the Respondent : Appeared at the time of arguments

For the Respondent : Ms. T. Archana and Mr. Ashish Rao, Advocates

Dated : 04 Apr 2022

ORDER

ORDER

DR. S.M. KANTIKAR, MEMBER

1. The instant Appeal was filed against the Order of the State Consumer Disputes Redressal Commission, Chennai (hereinafter referred to as the 'State Commission') in OP No. 31 of 2004, whereby the Complaint was dismissed on the ground that the Complainant failed to prove medical negligence or deficiency in service against the Opposite Party.

2. Brief facts are that the Complainant, Ms. Sugachitra (hereinafter referred to as the 'patient') during 18.09.2002 to 21.09.2002 took treatment from Dr. R. S. Murlidharan, the Opposite Party, at K. S. Hospital, Chennai for Pyrexia of unknown Origin (PUO)". It was alleged that due to administration of Sulfa drugs, the patient suffered severe allergic reaction and developed oral ulcers, swelling of lips with skin and eye complication. Thereafter, from 23.09.2002 to 21.10.2002, she took further treatment at the Apollo Hospital for the alleged allergic

complications. Thereafter, for her eye complications, she consulted at Sankara Netralaya and few eye specialists at Chennai. Being aggrieved due to alleged negligent treatment of the Opposite Party caused such complications and incurable sufferings; she filed the Consumer Complaint before the State Commission, Chennai.

3. The Opposite Party, Dr. K. S. Murlidharan, filed the written version and submitted that he was a consultant at K. S. Hospital and he treated the patient between 18.09.2002 to 21.09.2002. He denied any negligence during treatment. He further submitted that prior to the admission to K.S. Hospital, the patient was treated by her family doctor for her complaints of fever, dryness and ulcers in mouth. He suspected it as PUO with Herpes viral disease; and kept her under observation at K. S. Hospital. She was treated with antibiotics and other medicines, but not administered any Sulfa drugs. The injection OF 200 mg was not a Sulfa drug. She was discharged at her request on 21.09.2002 and called for follow up on 24.09.2002. However, the patient approached the Apollo Hospital and he was not aware of her further treatment. He further submitted that on 15.09.2003 after almost one year, the Complainant issued a legal notice, stating that due to negligence of the Opposite Party, she suffered Toxic Epidermal Necrolysis (TEN), though, no way the Opposite Party was responsible for the alleged medical negligence.

4. The State Commission, considering the averments of the Parties and the material on record, dismissed the Complaint. Being aggrieved, the Complainant filed the instant Appeal.

5. We have heard the learned Counsel for both sides. Perused the entire material on record, *inter alia*, the medical prescriptions and treatment records of various hospitals wherefrom the patient took the treatment.

6. There was a delay of 59 days in filing the instant Appeal. It is condoned for the reasons stated in the application for Condonation of Delay.

7. On merit, it is apparent from the Medical Record of K. S. Hospital that on 18.09.2002, the patient was admitted in K. S. Hospital for the complaint of fever, chills and rigor and burning micturition under care of the Opposite Party till 21.09.2002. The Complainant initially took treatment from family doctor before 18.09.2002 for the same complaints. The Ex-A1 Discharge Summary of K. S. Hospital revealed the diagnosis as "Pyrexia of unknown Origin (PUO)". The treatment was started with Injection Zofer 4 mg tds. Inj. Of 200 mg IV bd, Inj. Emol 2 mg od, T.Dolo 650 mg tds, T. Happi 20 mg bd, Syp. Sucrafil-O-gel tds; Sup Alerid 5 ml tds, Herperax ointment and she was called for review on 24.09.2002. In spite of advice for review, she got admitted at Apollo Hospital 23.09.2002. There is nothing on record as to which medicine the patient took from 21.09.2002 to 23.09.2002. Further, there is no evidence that any sulfa containing drug was administered at K.S. Hospital. Also, there is no expert evidence or proof to show that only because of the treatment of the Opposite Party, she suffered all the complications.

8. The patient took treatment at Apollo Hospital from 24.09.2002 for about more than 3 weeks for the Toxic epidermal necrolysis, Secondary hypomagnesemia, Sequelae: dry eye syndrome with Herpetic Kerotoconjunctives with mucosal scarring. The team of doctors treated her. She was discharged on 21.10.2002 with advice of normal blend diet with plenty of vegetarian and liquids. She thereafter from 22.10.2002 periodically took treatment at Sankara Nethralaya till 03.12.2002 for her eye complications. It was diagnosed as "Steven Johnson's Syndrome". The treating

doctors at either Apollo Hospital or Sankara Nethralaya Eye Hospital have not mentioned about the drug allergy to Ofloxacin and Amoxycillin. Therefore, considering the entirety of the case, medical negligence cannot be attributable to the treatment given by the Opposite Party.

9. The skill of medical practitioner differs from doctor to doctor. The Opposite party treated the patient for PUO. No Sulpha drug was used. We would like to rely upon the case **Achutrao Harbhau Khodwa Vs. State of Maharashtra** [1], the Hon'ble Supreme Court has held

“The skill of medical practitioner differs from doctor to doctor. The nature of the profession is such that there may be more than one course of treatment which may be advisable for treating a patient. Courts would indeed be slow in attributing negligence on the part of a doctor if he has performed his duties to the best of his ability and with due care and caution. Medical opinion may differ with regard to the course of action to be taken by a doctor treating a patient, but as long as a doctor acts in a manner which is acceptable to the medical profession and a court finds that he has attended on the patient with due care skill and diligence and if the patient still does not survive or suffers a permanent ailment, it would be difficult to hold the doctor to be guilty of negligence.

10. In another case **C.P. Sreekumar (Dr.) vs. S. Ramanujam** [2], the Hon'ble Supreme Court held that the Commission ought not to presume that the allegations in the complaint are inviolable truth even though they remained unsupported by any evidence. It was held as under:

“37. We find from a reading of the order of the Commission that it proceeded on the basis that whatever had been alleged in the complaint by the respondent was in fact the inviolable truth even though it remained unsupported by any evidence. As already observed in Jacob Mathew case [(2005) 6 SCC 1] the onus to prove medical negligence lies largely on the claimant and that this onus can be discharged by leading cogent evidence. A mere averment in a complaint which is denied by the other side can, by no stretch of imagination, be said to be evidence by which the case of the complainant can be said to be proved. It is the obligation of the complainant to provide the facta probanda as well as the facta probantia.”

Based on the discussion above, we affirm the Order of State Commission and dismiss the instant Appeal.

The Parties to bear their won costs.

[1] (1996) 2 SCC 634

[2] (2009) 7 SCC 130

.....J
R.K. AGRAWAL
PRESIDENT
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DR. S.M. KANTIKAR
MEMBER