

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 83 OF 2011

(Against the Order dated 15/12/2010 in Complaint No. 301/1998 of the State Commission Gujarat)

1. LEELAVAN DINESHKUMAR JAIN & ORS.Appellant(s)

Versus

1. RAJASTHAN HOSPITAL

The Gujarat Research & Medical Institute, Address: Camp Road,
Shahibaug,

Ahmedabad-380 004

Gujarat

2. NEW INDIA ASSURANCE CO. LTD.

-

3. Dr. Gauri Panjabi, Anaesthetist,

Address: C/201, Nil Complex, Nr. Bhavsar Hostel, Nava Vadaj,

Ahmedabad

Gujarat

4. The New India Assurance Co. Ltd,

Address: Neptune House, Mithakhali, Navrangpura,

Ahmedabad-380 009,

Gujarat.

.....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 Appellants : Mr. Braj K. Mishra, Advocate

For the Respondent : Appeared at the time of arguments

For the Respondents : Mr. K. P. Toms, Advocate for R-1/Hospital

Mr. Rohan Swarup, R-2/Anaesthetist

Mr. Atishay K. Prasad, Advocate for

Dr. Sushil Kumar Gupta, Advocate for R-3/NIAC

Dated : 09 Jun 2022

ORDER

Pronounced on: 9th June 2022

ORDER

DR. S. M. KANTIKAR, MEMBER

1. The instant Appeal filed under section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as the "Act"), against the Order dated 15.12.2010 passed by the State Consumer Disputes Redressal Commission, Gujarat, Ahmedabad (hereinafter referred to as the "State Commission") in Consumer Complaint No. 301 of 1998, wherein the State Commission, dismissed the Complaint filed by the Complainants.

2. Brief facts that Dineshkumar Jain (since diseased- hereinafter referred to as the 'Patient') had some indigestion problem and therefore, on 21.12.97 he went to Dr. H.B. Jain, who prescribed some medicines and

referred to Dr. Luv Dalal. On 22.12.1997, he got admitted in Rajasthan Hospital (hereinafter referred to as the 'Opposite Party No. 1') and after various blood tests, x-ray and electro cardiograph [ECG] he was discharged on 26.12.1997. Thereafter he was again admitted on 2/1/1998 and operated for intestinal obstruction on 5/1/1998 at 2.30 p.m., but after the operation, while transferring the patient around 4.10 p.m. suffered sudden cardio- respiratory arrest and at about 7.45 p.m., he suffered 2nd arrest and at about 8.15 p.m. the patient was declared dead. The complainants alleged that the patient was young 32 years, good general condition and fit for surgery as per normal ECG and other reports. Therefore, it was alleged that his death during the operation was due to negligence and carelessness or over dose of anesthesia. Being aggrieved, the deceased patient's wife and legal heirs filed the Consumer Complaint No. 301 of 1998 and prayed compensation of Rs.10,00,000/- and Rs.25,000/- towards litigation cost.

3. The Opposite Parties denied any negligence during treatment of the patient. It was submitted that the operation was uneventful, but while transferring the patient from operation theatre the patient suffered cardiac arrest, which was managed as per the standards.

4. After hearing both the parties, the State Commission dismissed the Complaint, the relevant observation is that:

"13. That the complainant failed to prove the negligence of the opponent no. 1 to 3 as to how the negligency occurred and who is responsible for the same. As per the settled law, it is the duty of the complainant to prove the negligency of the opponents by documentary expert evidence.

Dr. Gauri Punjabi had stated in her introgation that full details about the condition of the patient and the treatment given to him. There were so many reasons for death of Dinesh Kumar. We have full sympathy with the family.

14. In the above circumstance, the complainants have failed to prove the case by the cogent evidence of medical negligence against opponent no. 1 & 3 we therefore pass following order.

ORDER

- a) The complaint no. 301/98 is hereby dismissed.
- b) The parties have to bear their own costs."

5. Being unsatisfied by the impugned Order the Appellants have filed the instant Appeal.

6. We have heard the learned Counsel for the Parties. Perused the record.

7. The learned Counsel for Complainants argued that the State Commission dismissed the Complaint without considering the evidence on record. Though the patient was normal, but due to negligence during surgery and by anesthetist, the patient suffered three cardiac arrests. The hospital did not take precautionary measures, but the dead body was brought out from the operation theatre. Thus, it was a clear case of "*Res Ipsa Loquitor*". The post mortem is necessary in case of unnatural death but it was not performed. The State Commission grossly erred to consider an expert report of Forensic Medicine Department of B.J. Medical College which speaks about negligence, of the hospital. The deposition of expert in examination in chief and cross examination was not considered properly and the Complaint was dismissed.

8. The learned Counsel for the Opposite Parties vehemently argued that there was no negligence during operation. The patient suffered twice Cardio-respiratory arrests and same were treated as per standard resuscitative protocol.

9. On careful perusal of medical record, we note the patient was admitted in the hospital on 02.01.1998 with the complaint of recurrent pain in the whole of the abdomen since 15 days, acute pain since about 7 days and vomiting which clinically was suggestive of obstruction. The barium meal test confirmed obstruction in small intestine at multiple sites. Therefore, intestinal resection anastomosis, the Opposite Party No. 2 has carried out the operation without any complication. The operation was carried out with the surgical team work under vital monitors. There was no excess blood loss during the operation and the blood which was kept ready, but was not required. Thereafter when the patient was being shifted from the operation theatre, he had suffered cardiac arrest at 4.10 pm detected immediately with cardiac monitoring and pulse oximeter. Immediately cardio-pulmonary resuscitation (CPR) was started, given all the necessary treatment including endotracheal intubation

and cardiac massage to the patient. This treatment was given by the team of expert doctors attached to the Opposite Party No. 1 hospital including a Senior Anaesthetist Dr. S. T. Multani, Dr. Rupalben and Dr. Punjabi. The patient responded to the treatment came out of the first crisis. His ECG was taken and that showed IHD. A physician Dr. Khimesara and the cardiologist Dr. Sharad Dave were immediately apprised of the treatment given to the patient. However, at 7 pm patient had a BP fall and the heart stopped. Again the CPR resuscitation was performed in the operation theatre and the heart started functioning. Dr. Sharad Dave immediately attended to the patient and advised to continue the same line of the treatment. At about 7.45 pm the patient again developed cardiac arrest, but in spite of all the efforts he could not be he succumbed to the arrest at 20.15 hrs.

10. The Complainant filed a criminal complaint u/s 304 A. Investigating officer has referred the case to Forensic Medical Department of B.J. Medical College, Ahmadabad, along with the application and whole treatment case papers, including the death certificate. The Assistant Professor Dr. Ganesh Govekar and Dr. V. R. Patil, Tutor in Forensic Medicine B.J. Medical College, jointly gave their opinion. The relevant findings of their opinion are as below:

- 1) Death in this case is an un-natural death and can be due to surgical operation and/or anesthesia because all analysis report done before operation was normal.
- 2) The possibility of defective Anesthetic procedure cannot be ruled out.
- 3) The possibility of committing some negligence by operating surgeon can not be ruled out.
- 4) The patient after operation, pointed towards his abdomen but what was his intention & what could be the interpretation that can not be made out medically but the relating attending him can be asked why the pt pointed towards abdomen.

11. We would like to rely upon the **Jacob Mathew's case**[\[1\]](#), in which Hon'ble Supreme Court clearly laid down certain guidelines to govern the future prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying Bolam's test to the facts collected in the investigation. Therefore, in the instant case the duty of Forensic Expert Dr. Patil was to find out or certify the cause of death from the Post Mortem findings. Dr. Patil was not a subject specialist to judge whether it was negligence or not. But, he opined the death was occurred possibly due to surgical operation and / or Anesthesia; because all investigation reports done before operation were normal. In our view, such vague opinion without performing Post Mortem leads the commission nowhere. His opinion to be considered as a presumptive but not any evidentiary value to prove the case of medical negligence against the Opposite Party No. 1 or the anesthetist (Opposite Party No. 2).

12. We further note that, apart from filing the consumer complaint, the Complainant/ Appellant No. 1 had also filed a Criminal case [Criminal Inquiry No. 11 of 1998] under Sections 304 [1], 338, 202 and 114 of IPC. By order dated 16-9-2013, the Additional Chief Metropolitan Magistrate took cognizance against the accused persons i.e. the respondents in the present case. Those are separate Criminal proceedings, and thus we refrain ourselves to make any observations on criminal liability.

13. Simply because the patient died after a surgery is not a conclusive proof of alleged negligence. In our considered view the Opposite Parties had taken all necessary precautions before performing the surgery. The operative notes clearly show that there was no complication during the surgery. The CPR was performed as per the standard protocol. Therefore, the allegation of medical negligence against the Opposite Parties is not sustainable.

14. Based on the discussion above, we find neither negligence nor deficiency in service of the treating doctors or hospital in the instant case. Accordingly, the First Appeal stands dismissed. There shall be no orders as to costs.

[1] (2005) 6 SCC 1

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

.....
DR. S.M. KANTIKAR
MEMBER