

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 561 OF 2012

(Against the Order dated 18/04/2011 in Complaint No. 209/2001 of the State Commission Gujarat)

1. SARITA SHUKLA

wife of Deceased Umakant Shukla, C/o. V. S. Tripathi, J.M.S.
Staff Quarters, Block No. C/2/19, Sector-13
Gandhinagar
Gujarat

.....Appellant(s)

Versus

1. DR. ASHWIN K. GADHVI & ANR.

MD, Physician, Shivam Hospital, Nr. Fire Bridge, Comptipur,
Ahmedabad-
GUJARAT

2. CHIEF MEDICAL OFFICER

Sharda Hospital, Saraspur,
Ahmedabad
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 through video conferencing)
For Appellant : Mr. Akhil Dave, Advocate

For the Respondent : (appeared at the time of arguments through video conferencing)
For Respondent - 1 : Mr. Atishay Jain, Advocate
For Respondent – 2 : NEMO

Dated : 04 Jul 2022

ORDER

Pronounced on: 4th July 2022

ORDER

DR. S. M. KANTIKAR, MEMBER

1. The instant Appeal has been preferred by the Appellant/Complainant (Smt. Sarita Shukla) under Section 19 of the Consumer Protection Act 1986 against the Order of the Gujarat State Consumer Disputes Redressal Commission (hereinafter referred to as the “State Commission”) dated 18.04.2011 passed in Complaint No. 209/2001, wherein the Complaint was dismissed.

2. For the sake of convenience, the Parties are mentioned as in the Original Complaint.

3. Brief facts as stated in the Complaint are that the husband of the Complainant (hereinafter referred to as the “deceased”) was having difficulty of cough and cold and consulted Dr. Ashwin K Gadhvi (hereinafter

referred to as the 'Opposite Party-1' on 01.01.2001. Opposite Party-1 advised him X-Ray and sonography which was done by one, Dr. Paresh Mehta and within few hours Dr. Paresh Mehta gave the sonography and X-Ray report based on which the Opposite Party No. 1 advised the deceased to get admitted in the hospital for general check-up without assigning any reasons for the X-ray and sonography. In the morning of 04.01.2001, the deceased experienced stretching in his hand and his mother-in-law informed about the same to the nurse who administered one injection to the patient stating that Opposite Party-1 was not in the hospital. However, after giving the injection, the condition of the deceased had become more serious.

4. On request of mother-in-law of the deceased, Opposite Party-1 came to the hospital, examined the deceased and informed the mother-in-law of the deceased to shift him to Shardaben Hospital (hereinafter referred to as the 'Opposite Party No. 2') and also stated to write a Reference Note to Opposite Party-2. However, Opposite Party-1 did not write any Reference Note stating that he was accompanying them to the Opposite Party No. 2 Hospital. At that time, deceased was unconscious and water with foam was coming from his mouth and in such condition he was admitted to the hospital of the Opposite Party No. 2. After examining the deceased, the doctor at Opposite Party No. 2 Hospital declared him dead. The cause of death in the PM note was shown as septicemic shock due to liver abscess, but nowhere did the report of Opposite Party No. 1 mention liver abscess or abdominal pain or jaundice as the cause of his death. It was alleged by the Complainant that Opposite Party No. 1 had not accompanied them while shifting the deceased from one hospital to another. Also, at the time of admission, X-ray as well as sonography reports of the deceased were submitted at the hospital of Opposite Party No. 2 but the same were not returned.

5. Being aggrieved by the improper diagnosis and improper treatment of the deceased done by the Opposite Parties which ultimately resulted in his death, the Complainant filed a Consumer Complaint No. 209/2001 in the State Commission praying for the Opposite Parties to pay a compensation of Rs.15,00,000/- towards mental agony at 24% rate of interest per annum.

6. The Opposite Party No. 1 filed his written version and denied the allegations levelled. It was submitted that the deceased had come to Opposite Party No. 1 Hospital on 01.01.2001 with complaints of cold, bronchitis and respiratory problems. On being examined, it was found that he had pneumonia in his left lung and, therefore he was advised to get X-Ray Chest as also 2D Echo. It was seen that heart beatings of the deceased were fast and pericardial drub in the heart was also noticed. Relatives of the patient had informed the doctors that the patient was alcoholic. In this situation, it was essential to admit the patient and the same was done. The deceased was administered higher and broad spectrum antibiotics and was being continuously monitored. All necessary blood and urine test were also advised but any difficulty relating to jaundice or liver could not be detected. As per the defense of Opposite Party No. 1, no staff of the hospital had administered any injection without his knowledge. When the condition of the deceased deteriorated, he told the mother-in-law of the deceased to shift the patient in Opposite Party No. 2 Hospital, but as the ambulance was available after two hours, deceased was sent in rickshaw and Reference Note was also sent along with the staff; however, on examining the patient, doctor declared the deceased to be dead. It was also submitted that the death of deceased was not because of liver abscess but was caused because of pneumonia and septicemia.

7. Opposite Party-2 also filed his written version and submitted that when the deceased was brought in the said hospital, Dr. Ashaben Solanki was present on duty and after examining the patient, she declared the deceased to be dead and told the relatives of the deceased to get the PM Examination performed in the Civil Hospital and therefore, there was no responsibility of theirs to pay any compensation to the Complainant for any medical negligence in administering improper treatment.

8. The State Commission after considering the evidence placed on record opined that there was no negligence on the part of the Opposite Parties either in diagnosing or in treating the patient and therefore, dismissed the complaint.

9. Aggrieved by the impugned Order of the State Commission, the Complainant has filed the instant Appeal before this Commission.

10. We have heard the learned Counsel for both the sides.

11. The learned Counsel for the Complainant reiterated the facts and relied upon the Post Mortem report for the cause of death of the patient shown as shock due to liver abscess and pneumonia. The contention of the Complainant was the Opposite Party No. 1 has not mentioned liver abscess or jaundice to the patient and not prescribed any test for it. Thus the Opposite Party No. 1 gave improper treatment to the patient.

12. The learned Counsel for the Opposite Party No. 1 vehemently argued that the patient was alcoholic. The learned Counsel further argued that the liver abscess is a slowly progressing disease which complicates to the rupture of liver in the lungs or abdomen. Under such circumstances, the patient becomes critical. Therefore, in the instant case, the death was not due to liver abscess, but due to septicemia because of pneumonia. As per the history given by the relatives of the patient, it was learnt that the deceased patient consumed heavy liquor on 31st December eve. The patient was prescribed number of tests, but due to financial constraints, it was suggested to take the patient to any Government hospital for further treatment. The patient was not obeying the orders of the doctor; the attenders were disturbing and quarreling with the staff. On 03.01.2001, no one was with the patient in the night and his mother-in-law went away leaving him on the trust of other patient.

13. It is pertinent to note that on the basis of X-ray chest and 2D ECHO report, the patient was immediately admitted. He was not merely suffering from cough and cold, but properly treated for pneumonia. It was confirmed by the opinion of expert - Dr. S. B. Aggarwal, Professor & Head (Medicines) at B.J. Medical College, Ahmedabad. In the opinion, it was stated that the proper treatment for Gram positive and Gram negative anaerobic organisms was given. We further note that the liver enzymes (SGOT & SGPT) were normal, the urinary bile salts and pigments were absent and USG findings were not suggestive of liver abscess. Therefore, the allegation of not giving the treatment for liver abscess is not sustainable.

14. We note that the patient was brought in the casualty of the Opposite Party No. 2 Hospital on 04.01.2001 at 8.20 a.m. The doctor on duty – Dr. Ashaben Solanki examined the patient, who was found to be dead. Therefore, the body was sent for Post-Mortem at Civil Hospital, Ahmedabad. As the patient did not bring any medical record, there was no question for the Opposite Party No. 2 to return any documents.

15. The Hon'ble Supreme Court in its several judgments laid down the law on medical negligence. In **Jacob Mathew's case**^[1], it was held as under:

"When a patient dies or suffers some mishap, there is a tendency to blame the doctor for this. Things have gone wrong and, therefore, somebody must be punished for it. However, it is well known that even the best professionals, what to say of the average professional, sometimes have failures. A lawyer cannot win every case in his professional career but surely he cannot be penalized for losing a case provided he appeared in it and made his submissions."

16. Recently, in the case of **Dr. (Mrs.) Chandarani Akhouri & Ors V Dr.M.A.Methusethupathi & Ors.**², the Hon'ble Supreme Court held in para (27) that:

27. It clearly emerges from the exposition of law that a medical practitioner is not to be held liable simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference to another. In the practice of medicine, there could be varying approaches of treatment. There could be a genuine difference of opinion. However, while adopting a course of treatment, the duty cast upon the medical practitioner is that he must ensure that the medical protocol being followed by him is to the best of his skill and with competence at his command. At the given time, medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.

17. Based on the discussion above and the precedents of the Hon'ble Supreme Court, we do not find any medical negligence from the treating doctor. Therefore, accordingly, the instant First Appeal is dismissed.

However, there shall be no Order as to costs.

[1] (2005) SSC (Crl) 1369

[2] 2022 LiveLaw (SC) 391

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

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DR. S.M. KANTIKAR
MEMBER