NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 339 OF 2014

1. Smt. DEVARAKONDA SURYA SESHA MANI,
W/o late Shri Devarakonda Raja Ram Mohan, Flat No. 102,
Beach Royal Apartments, Sector-11, MVP Colony,
VISAKHAPATNAM. .....Complainant(s)

Versus

1. CARE HOSPITALS INSTITUTE OF MEDICAL SCIENCES & 2 ORS.,
Through its Managinmg Director, Opp. Governor's Bunglow,
Waltair Main Road,
VISAKHAPATNAM.
2. Dr. G.S.R. Murthy, Sr. Consultant Cardio Problems,
Deptt. of Cardiology, Care Hospital, Waltair Main Road,
Ramnagar,
VISAKHAPATNAM.
3. Dr. MRS. Swaroopa Rani
W/O. MR. SRIDHAR PENTAPATI, BUILDING C-71, P-343,
FLAT# 204, MUSAFFAH, SHAABIYA.10,
ABODABI,
UAE
4. DR. MRS. SWAROOPA RANI
D/O. M. JAGANNATHA RAO, HOME NO.58-13-17/19,B- 503,
VASAVI TOWERS, GAURI NAGAR, NAD JUNCTION,
VISHAKHA PATNAM-9,A.P. .....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 : 24 Mar 2021

ORDER

Appeared at the time of arguments through Video Conferencing

For the Complainants : Mr. Aburi Srinivasa Rao, Advocate

For the Opposite Parties : Mr. M. Srinivas R. Rao, Advocate
Mr. Abid Ali Beeran, Advocate

Pronounced on: 24th March 2021

ORDER

PER DR. S. M. KANTIKAR, MEMBER

1. The instant Complaint was filed under Section 21(a)(i) of the Consumer Protection Act 1986 by Smt. Devarakonda Surya Sesha Mani for the alleged medical negligence and deficiency in service against the Opposite Parties during treatment of her husband – Mr. Raja Ram Mohan (hereinafter referred to as the 'patient'), who lost his life. Her husband was working as an Instrumentation Engineer in Kuwait and was earning KD 1200 per month. On 12.06.2014, he came to his home town at Vishakhapatnam for 10 days to spend time with the family and he was supposed to return on 20.06.2014. His health was good. On 18.06.2014 at 9.45 p.m., he had vomiting and was taken to Care Hospital (hereinafter referred to as the Opposite Party No. 1). The patient walked from the main gate to the casualty of the hospital. The General Physician - Dr. D. Swaroop (hereinafter referred to as the 'Opposite Party No. 3') examined the patient in the casualty and kept him there for three hours. The hospital authorities collected Rs. 5,000/- at the time of admission. In the casualty, the patient again vomited and for the first time complained about breathlessness. The patient and his wife requested for Oxygen mask but the Opposite Party No. 3 did not pay heed to the request. The Opposite Party No. 3 roughly told the Complainant and the attendants to stay away from casualty ward and also instructed the hospital staff to close the doors of casualty. Therefore, they were observing the patient through glass window from outside. The Opposite Party No. 3 gave one injection to the patient upon which the patient immediately developed convulsions and cramps and he became unconscious. The Complainant and relatives shouted and cried to save the life of the patient. It was alleged that at 10.20 p.m., one assisting doctor came outside the casualty and informed that due to 70% of blockage of arteries of heart, the patient became unconscious. It was further alleged that the Opposite Party No. 3 demanded medicines worth Rs. 40,000/- and the Complainant paid the same on the spot. The Complainant repeatedly requested the hospital staff to call the Cardiologist, Dr. G.S.R. Murthy (the Opposite Party No. 2), but no avail. At 12' O clock midnight, the Opposite Party No. 2 attended the patient and patient was shifted to ICU, however, the patient expired at 1.06 a.m. on 19.06.2014. On inquiry, the Opposite Party No. 2 did not give proper explanation for cause of death of her husband and simply walked away. The Complainant alleged that the precious time was wasted in casualty for non-administration of initial injection, non-supply of the oxygen mask and not shifting the patient to the ICU. It was further alleged that despite requests for entire medical record, the hospital supplied only three documents. The Complainant also requested to provide CCTV Camera recording for 19.06.2014 but it was not provided. The Opposite Parties treated the patient casually. Being aggrieved, the Complainant filed the Complaint for alleged medical negligence and deficiency in service during treatment of the patient by the Opposite Parties. As her husband was drawing salary of KD1200 per month i.e. equivalent to Rs. 2,61,000/-, she prayed for compensation of Rs. 7 crores with 18% interest and Rs. 3 crores for mental agony from the Opposite Parties.

2. The Opposite Parties filed their written version through Dr. Thotamohan, the whole time Director of the Care Hospital and denied all the allegations of medical negligence. He submitted that the Consumer Complaint has to be dismissed as it was frivolous. The Complaint is defective for misjoinder of parties because there is no doctor by name Dr. D. Swaroop working in the hospital. The patient and his wife at the time of admission suppressed that the deceased was suffering from diabetes for the last 20 years. He further submitted that the patient was brought to the Opposite Party No. 1 hospital on 18.06.2014 to the casualty at 9.45 p.m. with the complaints of severe back pain and vomiting. The doctors had been informed that he was DM Type-II for the last 20 years on insulin injections. The patient was given injection Zofar commonly used for nausea and vomiting and Pantocid injection for acidity. The ECG was taken at about 10 p.m. showed showing subtle changes. The pulse oximeter showed that the Oxygen (O_2) saturation was normal. One cardiology resident Dr. Swarupa Rani, who was on duty, examined the ECG and immediately informed the Cardiologist – Dr. G.S.R. Murthy (the Opposite Party No. 2). As the patient's relatives were creating unruly behaviour, therefore, they were asked to leave the casualty. As the patient developed severe breathlessness followed by respiratory arrest, Code Blue was announced and immediately, as per ACLS (algorithms for Advanced Cardiac Life Support)

guidelines, CPR was started with Ambuventilation. The patient was given injections of Adrenaline and Inotropes. The Cardiologist came to the hospital and took control of the situation. After 20 minutes of CPR, the patient regained rhythm and the second ECG was taken at around 10.20 p.m., which showed the patient had suffered massive heart-attack. The relatives were informed. Immediately, the patient was intubated and connected to mechanical ventilator. The cardiac monitor showed ventricular fibrillation, therefore immediately defibrillated with 360 Joules shock. At the same time, the relatives of the patient were informed by the Opposite Party No. 2 for the need of dissolving blood clot to stabilise the patient. Thus, Tenecteplase 40 mg IV bolus was given which was worth Rs. 40,000/-. The patient immediately shifted to ICCU under the directions of the Opposite Party No. 2 and the injection Cordarone, the anti arrethmetic drug was given to the patient. Also injection Vasopresin was administered @ 4 ml per hour. Thus under the supervision of the Opposite Party No. 2, the entire cardiology and critical care team treated the patient from 9.45 pm. However, the patient could not be revived and died at 1:06 am on 19.06.2014.

3. Heard the arguments and perused the entire medical record and relevant medical literature on the subject.

4. The learned Counsel for the Complainants reiterated the facts and affidavit of evidence. He vehemently submitted that the patient was hale and hearty but due to negligence during treatment he expired.

5. The learned Counsel for the Opposite Parties vehemently argued that the Complainants approached this Commission with unclean hands and with malafide intention. His first limb of argument was that the patient as shown in the employment letter dated 10.09.2013 (Annexure C-2) does not match with the photo in the Medical Report dated 04.11.2013 (Annexure C-5) issued by Hyderabad Diagnostic Centre. He further submitted that the photograph in the Police Clearance Certificate issued by the Government of India on 22.11.2013 also does not match with the photographs in Annexure C-2 & C-5. Thus, it clearly proves the fraudulent intention of the Complainant. He denied that any hospital staff has ever promised to give CCTV camera footage.

6. The duty doctor in Casualty evaluated the patient immediately when the patient was brought to the hospital. As the patient had back pain and vomiting, therefore he was administered injection Zofer (commonly used to control Nausea and vomiting) and Pantocid injection (antacid). At that time the patient was not breathless and Oxygen saturation was normal. ECG was taken immediately which was showing subtle changes. The duty doctor called Dr. Swaroopa Rani the cardiology resident doctor on duty. She immediately examined the ECG which revealed minute changes. It was informed to the Senior Consultant (Opposite Party No. 2) and the patient's relatives. Thereafter, the patient developed serious breathlessness, followed by respiratory arrest. Therefore, Code Blue was announced. Immediately CPR was started with ambu-ventillation. The patient was immediately intubated with ETT No. 8 and connected to mechanical ventilator. The cardiac monitor showed ventricular fibrillation, therefore, 360 joules shock was given. The cardiac massage was also started; the patient was given Bolous dose of injection Adrenaline at every three minutes. However recurrent ventricular fibrillation continued and showed cardiac asystole. After all the efforts by the doctors under supervision of the Opposite Party No. 2, the patient could not be revived and declared dead at 1:06 hours on 19.06.2014. The cause of death was cardiogenic shock and acute extensive anterolateral STEMI. The Administrative Officer of Care Hospital issued all the necessary documents to the patient's wife as she required to submit to SBI and LIC. Thereafter, on 30.07.2014, the Complainant issued a legal notice with false allegations and demanded a compensation of Rs. 96 lakh. However she filed a Consumer Complaint before this Commission with inflated claim to the tune of Rs. 10 Crores.

7. We have perused the medical record of the Care Hospital and the other documents like copy of passport, copy of fitness certificate of Raja Ram Mohan, the air tickets and job offer letter. As per medical record, Raja Ram Mohan was about 47 years of age with weight 45 kg and known Diabetic (DM Type-2) since 20 years. He was alcoholic and tobacco chewer / snuffer. The senior Cardiologist examined the patient at 10.20 p.m. and injection Tenecteplese 40 mg IV Bolous was given which is used to prevent death from heart attack. It is an expensive medicine worth Rs. 40,000/-. The record revealed that the Cardiology resident doctor (Opposite Party No. 3) was present on duty and regularly briefing the relatives of the patient about the health status of the patient. We do not accept that the patient was not admitted in ICU till arrival of the Cardiologist or that Oxygen was not given and there was delay in the treatment of the patient.

It is apparent from the counter affidavit filed by the Opposite Parties Nos. 1 & 2 that CCTV camera was installed in the casualty but it does not have recording and storing facility. It was only for viewing the live pictures. In this regard the certification made by the supplier 'Arrow Communication' carries more value (Annexure R-3) which is reproduced as below:

> *"this is certify that we have installed CCTV Camera's in M/s. Visakha Hospitals and Diagnostics Ltd. (Care Hospital) located in Waltair Main Road, Ramnagar, Vishakapatnam. In the Hospital Casualty, ICCU and AMCU Areas cameras are for viewing purpose only. Only in some crucial area like security main gate and cellar are recorded. That records are only for 1 month. After one month automatically re-writed".*

8. It is pertinent to note that the ECG done at 10.15 p.m. revealed clear findings of myocardial infarction i.e. ST Elevation in V1 to V6 and aVL leads and ST depression in II, III and aVF. The 2D Echo reveals moderate LV dysfunction. Dr. G.S.R. Murthy diagnosed it as acute extensive anterolateral STEMI and very bad prognosis. The patient suffered cardiac arrest and the CPR was started as per ACLS guidelines. The record revealed that after thrombolysis, the patient suffered recurrent ventricular fibrillation. Therefore, injection Cordarone bolus was given and Adrenaline infusion was started; however, the patient could not survive.

9. The next question is whether the ground of impersonation taken by the Opposite Parties is valid. According to the Opposite Parties, there was an ample doubt that the person who went for the medical check-up at Hyderabad diagnostic centre before going to Kuwait and the person who actually went to Kuwait are not same. The Annexure C2 is an employment letter dated 10.09.2013, whereas Annexure C5 is medical report issued by Hyderabad Diagnostic Centre dated 04.11.2013. We have carefully perused photographs in Annexure C2 and C5 which showed marginal difference in appearance but not convinced that both are different person. However, in the instant case, it is irrelevant and we are not concerned and inclined to discuss on this issue.

10. It should be borne in mind that we are dealing with a case of alleged medical negligence and thus need to analyze whether the treating doctors or hospital failed in their reasonable duty of care. The medical record of the Care Hospital is a vital document to prove the medical negligence, if any. It is apparent from the record that the Annexure C5 - the medical report, issued on 04.11.2013 is a normal report. We note after nine months of that report the patient got admitted in serious condition in Care Hospital. There was past medical history of diabetes and the ECGs were confirmatory of acute MI (STEMI). Therefore, we cannot rule out the possibility that the patient developed cardiac problems during the nine months. We note that the doctors made all efforts to resuscitate the patient from the cardiac arrest but could not revive the patient. In our view, they performed their duty with reasonable standard of care. We do not find any deficiency either from the hospital or the treating doctors.

11. It should be borne in mind that simply proving the suffering of ailment by the patient does not amount to medical negligence. The Hon'ble Supreme Court has recently held in the case **S. K. Jhunjhunwala Vs. Dhanwati Kaur and Anr.,** (2019) 2 SCC 28 that a doctor or surgeon cannot assure that the outcome of any surgery would be beneficial. The court held that a professional might be held liable for negligence either if they do not possess the requisite skills that they claimed to have, or they don't exercise the skill which they have. While referring to the judgements, the court said that the human body is like a highly complex machine and a doctor could not assure full recovery of a patient. The only assurance that such a professional can give or can be understood to have given by implication is that he possessed the requisite skill in that branch of the profession which they are practising and while undertaking the performance of the task entrusted to them, they would be exercising their skill with reasonable competence, court added.

12. In other case **Achutrao Harbhau Khodwa Vs. State of Maharashtra,** (1996) 2 SCC 634 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 the 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."

13. Based on the forgoing discussion and the precedents (supra), in the instant case, the medical negligence is not conclusively established against the Opposite Parties.

The Complaint fails. It is dismissed.

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

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DR. S.M. KANTIKAR
MEMBER