

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 229 OF 2017

(Against the Order dated 19/09/2016 in Complaint No. 188/2003 of the State Commission Maharashtra)

1. DR. RAMESH IYER & ANR.

16TH FLOOR, FLAT NO. 1601, VIDHARBA MAHESH,
SOCIETY, CORAL HEIGHTS COMPOUND, WAGHBILL,
GHODBUNDER ROAD,
THANE WEST-400615

2. Dr.SUNITA AROLE, DR. LYER'S MAT. AND PAEDIATIC
NURSING HOMES

16TH FLOOR, FLAT NO. 1601, VIDHARBA MAHESH
SOCIETY, CORAL HEIGHTS COMPOUND, WAGHBILL
GHODBUNDER ROAD,
THANE WEST, 400615

.....Appellant(s)

Versus

1. UMA S. BHAT

501 E WING, KALPA NAGAR, BAL RAJESHWAR ROAD,
MULUND (W),
MUMBAI-400080
MAHARASHTRA

.....Respondent(s)

BEFORE:

**HON'BLE DR. S.M. KANTIKAR,PRESIDING MEMBER
HON'BLE MR. BINOY KUMAR,MEMBER**

For the Appellant :

For the Respondent :

Dated : 31 Mar 2023

ORDER

Appeared at the time of arguments:

For the Appellant : Mr. G. N. Shenoy, Advocate

For the Respondents : Ms. Kokila Kalra, Advocate

Pronounced on: 31st March 2023

ORDER

Dr. S. M. KANTIKAR, PRESIDING MEMBER

1. The Appellants have filed the instant Appeal under section 19 of the Consumer Protection Act, 1986 (in short "the Act"), against the Order dated 19.09.2016 passed by the State Consumer Disputes Redressal Commission, Maharashtra (hereinafter referred to as the "State Commission") in Consumer Complaint No. 188 of 2003, wherein the State Commission, allowed the Complaint filed by the Complainant (Respondent herein) and awarded compensation of Rs.10,00,000/-.

2. Brief facts are that on 23.03.2003, the Complainant's daughter Shalvi Bhat, 2 ½ years of age suddenly developed body rashes and then suffered high grade fever on the next day night. Their family doctor, Dr. Ganesh Godiyar examined the baby on 25.03.2003 and referred her to Dr. Ramesh Iyer's Hospital - the OPs for treatment. On 25.03.2003 the baby Salvi (for short, 'the patient') was admitted to the OP-2 Hospital and treated for 5 days till 29.03.2003. It was alleged that the patient's condition deteriorated further and due to lack of ICU and emergency treatment facilities, the Complainant was compelled to take the child to Nanavati Hospital. On 30.03.2003, the child was taken immediately to the Nanavati Hospital, but unfortunately the child expired at 01.45pm.

3. The Complainant Uma Bhat lodged a Police complaint on 11.04.2003 for the medical negligence causing death of her baby. The police referred the matter for opinion to Directorate of Health services, Govt. of Maharashtra. The Committee of Doctors found that Dr. Iyer had not properly recorded the medical treatment given to the child and the Committee held that the case paper prepared might be an afterthought and Dr. Iyer did not follow the normal procedure.

4. The OPs in their replies denied the allegation of negligence. The OPs denied their negligence during the treatment and the baby was treated as per the accepted norms. It was submitted that the Complaint was barred by limitation.

5. After hearing averments from both sides, the State Commission partly allowed the complaint and awarded compensation of Rs.10,00,000/- together with interest of @6% p.a. along with litigation cost of Rs.25,000. The State Commission observed as under:-

There was negligence in medical treatment constituting deficiency in service due to casualness of approach by Opposite party, want of necessary care and precautions on the part of Dr. Ramesh Iyer while he was treating the child patient who was unable to disclose her ailment. Despite renovation of the hospital work going on, Dr. Ramesh Iyer ventured to treat Baby Shaivi Bhat aged 2½ years, a pneumonia patient at his own Hospital despite dust and allergens present there due to renovation work in progress as admitted. In addition, Dr. Iyer is blameworthy for professional medical negligence based on sound observations made by the Committee of Government Doctors in the facts and circumstances of the case. Dr. Iyer is answerable to the Mother and close relatives of patient Baby Shaivi Bhat aged only 2½ years for causing her serious medical condition to develop which led to her untimely death and Dr. Ramesh Iyer; must therefore compensate for loss the complainant justly and reasonably.

6. Being aggrieved by the Order of the State Commission, the OPs filed the instant First Appeal.

7. We have heard the learned Counsel for the parties. The learned Counsel on both the sides have reiterated their respective evidence.

8. The learned Counsel for the Complainant argued that the medical record in several places are blank, certain entries of clinical findings were missing. There were discrepancies in the recordings of clinical notes and nursing notes like Temperature, Pulse and the medication. Moreover, the nursing home has no mandatory basic treatment facilities.

9. The learned Counsel for the Complainant relied upon the opinion dated 02.12.2003 from J.J. Hospital to prove that death of daughter Shalvi was on account of the medical negligence of Dr. Iyer, who did not act on the advice of Dr. Arole.

10. The learned counsel for OP heavily relied upon one alleged voluntary endorsement given by the Complainant that " I am very grateful to Dr. Iyer and staff for taking care of my child and for kind cooperation" The baby was taken from Dr. Iyer's Hospital against medical advice, though her condition was not fit for discharge. The mother (complainant) gave written endorsement that "I am taking my child to my home at my own risk, against medical advice." He further submitted that the opinion dated 14.05.2003 given by Civil Surgeon, Thane that there was no deficiency and medical negligence on the part of Dr. Iyer.

The Complainant's husband was an astrologer prevented ICD , for the child Shaivi till 6.04.2003 as presumption that there were high chances that the child would die.

11. It is pertinent to note that on 30.03.2003 at 8 a.m. Dr. Iyer made clinical notes “No cyanosis, No RDS, Breath rate 22/min and pulse 70/min, No respiratory distress and about medicines ct. all. Patient was stable”. However, it is evident that Dr. Sunita Arole, who examined the child on 29.03.2003 and had mentioned pneumonitis and air in the cavity, therefore, advised ICD insertion, but it was not done by OP. It is evident that Dr. Arole made her observations on separate sheet. She did not mention the time of examination. Her clinical notes revealed Rub on right side of the chest and she advised ICD insertion under General Anaesthesia (GA). However, in the case sheet, it was noted that the mother took her child for X-ray on her own responsibility at 2.00 pm, but at the same time, X-ray report was mentioned in the case sheet. Dr. Arole has not mentioned about the extent of pneumothorax, though she was Specialist and expected not to write cryptic notes.

12. It is evident that the baby became serious and was taken suddenly to Nanavati Hospital. Thus, we agree with the findings of the Committee, which held that the OP was casual in his approach. Moreover, the Committee of JJ Hospital found that notes made by Dr. Iyer were inconsistent as to changes made in prescriptions of medicines, X ray examination was required twice. The temperature was not recorded properly.

13. It is pertinent to note that initially the Naupada Police Station sent the medical record for opinion to the Civil Surgeon at Thane who gave clean chit to the OP-1. The Complainant took second opinion from J.J.Hospital, Mumbai, the report dated 02.12.2003 held the negligence committed by the OP-1 and treatment should have been given to the deceased child. The OP nursing home did not possess mandatory facilities as required under the Bombay Nursing Act. The junior doctors were not available throughout the day and adequate Oxygen therapy was not available.

14. What constitutes medical negligence and the liability of doctor/hospital is discussed in various judgments of Hon’ble Supreme Court and this commission. In the case of **Spring Meadows Hospital v Harjot Ahluwalia**^[1], it was observed as below:

“Very often in a claim for compensation arising out of medical negligence a plea is taken that it is a case of bona fide mistake which under certain circumstances may be excusable, but a mistake which would tantamount to negligence cannot be pardoned. In the former case a court can accept that ordinary human fallibility precludes the liability while in the latter the conduct of the defendant is considered to have gone beyond the bounds of what is expected of the skill of a reasonably competent doctor...”

15. In the instant case, in our considered view, it was not bonafide mistake of OP-1, but was a casual approach towards the patient. The OP doctor failed in his duty of care despite the advice of the Specialist – Dr. Sunita Arole did not insert ICD. The medical record is not consistent with the treatment given and it was not maintained properly. It should be borne in mind that “**good medical record is good defense, poor medical record is poor defense**”. The child was deprived of proper treatment at OP’s hospital. Thus it was the act of omission, accordingly we hold liable for negligence.

16. Based on the foregoing discussion, we find no need to interfere in the Order of State Commission and the same is affirmed.

The instant First Appeal is dismissed.

The Parties to bear their own costs.

^[1] (1998) 4 SCC 39

PRESIDING MEMBER
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BINOY KUMAR
MEMBER