NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

FIRST APPEAL NO. 222 OF 2012

(Against the Order dated 19/11/2011 in Complaint No. 38/2008 of the State Commission Andhra Pradesh)

1. T.A. SUBRAMANIAN (DIED) THROUGH LRs.
Smt. T. Vijaya Lakshmi Subramanian, W/o. Late Sh. T.A. Subramanian, R/o. 87, Vahibi Nagar, Road No. 2, Sikh Road
Secunderabad
A.P ....Appellant(s)

Versus

1. DR. SOMASEKHAR REDDY & 4 ORS.
C/o Appolo Hospitals, Vikrampuri Branch, Karkhana
Secunderabad
A.P
2. DR. NAVEEN REDDY
C/o Appolo Hospitals, Vikrampuri Branch, Karkhana
Secunderabad
A.P
3. M/S. APPOLO HOSPITALS,
Rep. by its Chairman, Jubilees Hills,
Hyderabad
A.P
4. NEW INDIA INSURANCE COMPANY LTD.,
Rep. by its General Manager, Park Lane,
Secundrabad
A.P.
5. ICICI LOMBARD GENERAL INSURANCE COMPANY LTD.
G.S. Man, Plaza, H No. 6-3-352, Road No. 1, Banjara Hills,
Hyderabad
A.P ....Respondent(s)

BEFORE:
HON'BLE DR. S.M. KANTIKAR,PRESIDING MEMBER

For the Appellant :
For the Respondent :

Dated : 28 Jan 2022

ORDER

Appeared at the time of arguments

For the Appellant : Mr. D. Bharat Kumar, Advocate

For the Respondent no. 1 – 3 : Ms. K. Radha, Advocate

For the Respondent no.-4 : Mr. Navdeep Singh, Advocate

For the Respondent no.-5 : Mr. Yogesh Malhotra, Advocate

Pronounced on: 28 th January, 2022

ORDER

Patients undergoing surgery for a hip fracture have a higher risk of mortality and major complications compared with patients undergoing an elective total hip replacement (THR) operation. The effect of older age and comorbidities associated with hip fracture on this increased perioperative risk is unknown [1] .

2. Brief facts relevant to dispose of this appeal are that:

The Complainant is a retired IPS Officer, about 75 years age (hereinafter referred to as the 'Patient') on the intervening night of 15/16.5.2006 at about 3.30 a.m. fell in his residence and sustained fracture of the hip bone. He was immediately admitted in M/S Apollo Hospital (OP3-hospital). Dr. Somashekhar Reddy, an Orthopaedic Surgeon (OP-1) examined the patient, the X-ray revealed fracture of left Acetabulum.It was alleged that, the OP-1 opined that no need of surgery and advised only skeletal traction for eight weeks. The patient was discharged on 23.5.2006. It was further alleged that the skeletal traction resulted in retention of urine, therefore patient was put on Foley's Catheterization till August, 2006. The patient could not get any relief;

the pain in hip joint was persisted. On 18.7.2006 patient suffered chest pain and swelling in left leg. He was unable to walk. The Cardiologist and OP-1 after examination diagnosed the condition as Deep Vein Thrombosis (DVT) and the patient was treated for three weeks and discharged on 9.8.2005. Again on 19.8.2006 OP-1 reviewed the patient for the complaints of unable to walk, but he was not admitted. However, at the behest of Dr. Shiv Kumar, Cardiologist the patient was admitted initially for three days and then it extended to three weeks. The patient's condition further deteriorated. It was alleged that even after 4 months, the excruciating pain in his left hip did not subside, it was continuous on walking and he has to depend completely on a walker. On 4.12.2006, the OP-1 examined the patient, the X-ray revealed Osteoporosis and Avascular necrosis of the head of left femur and the neck of femur became smaller and irregular with adjacent cystic changes. Therefore, at that time OP-1 advisedto undergo immediate surgery for total replacement of hip (THR) failing which he would be completely crippled and bed-ridden.

It was alleged that, in fact though he was suffering from pain since May, 2006 and within 6 months his condition further deteriorated. Though, the Cardiologist expressed THR surgery at the earliest, the OP-1 without any reasons postponed the surgery. The patient approached Orthopedic department in NIMS, therein also suggested hip replacement surgery. Finally on 30.01.2007 patient approached Dr. Chandrasekhar Reddy, senior colleague of OP-1 but he expressed his inability help anything in view of absence of Acetabulum.Subsequently, on 6.3.2007 patient had got done the surgery at Krishna Institute of Medical Science (KIMS) by the hands of Dr. Guruva Reddy and discharged on 15.3.2007. The Complainant alleged that that the O.P. No.1 ought to have advised DVT prophylaxis and done total HIP replacement instead of conducting the skeletal traction. Due to such delay and the negligent treatment from OP-1, the Complainant suffered a lot - physically andincurred heavy expenses on treatment.Being aggrieved by the negligence of OPs, the Complainant filed the Consumer Complain and prayed compensation of Rs. 26 lakhs from OPs 1 to 3 with interest @ 12% p.a. and costs.

3. The OPs 1 to 3 resisted the complaint, denied any negligence in during treatment of the patient. It was submitted that the patient was suffering from multiple health aliments. The treatment plan was discussed with the wife of patient and as per standard practice initially suggested skeletal traction for 6-8 weeks and then to mobilize the patient. If no significant pain then it could be managed with occasional pain killers. In case if patient develops pain, then THR was suggested. The patient consented for the treatment plan and accordingly skeletal traction was done under general anaesthesia on 17.05.2006 and 8 weeks of skeletal traction was advised, but the patient preferred it at his home with proper hospital type bed. Accordingly, the Physiotherapist was sent to patient's house to assess the suitability for required traction treatment. The patient was discharged at his request on 23.5.2006, and called for review after six weeks. In the meantime, on 27.5.2006 patient suffered retention of urine and treated by Dr. R. Ramesh Chandra Reddy as an out-patient; Foley's Catheterization was done and prescribed few medicines. The patient was called for review after six weeks. Thereafter, on 18.7.2006 he suffered chest pain, breathlessness on exertion, and he was unable to walk because of swelling of left leg. Dr. Shiv Kumar, Cardiologist and Dr. Aftab, General Physician at OP-1 hospital diagnosed it as DVT. The X-ray of hip joint showed signs of healing and the skeletal pin was removed on 19.7.2006. The patient was mobilized with a walker. As he was showing good progress with mobilization, partial weight bearing was commenced from 8.8.2006 and patient was discharged on 9.8.2006. As the progress was satisfactory and patient was managing with a walking stick, therefore, THR was not needed at that stage, which could be done as an elective procedure.

4. The OPs further submitted that because of several co-morbidities, the emergency hip surgery was not advisable. The initial skeletal traction and medication made to heal together all

the acetabular bony pieces to form good bony bed for replacement of acetabulum cup. Initially, the elective THR was scheduled on 24.1.2007 and the Hip implant was ordered from M/s. Globe Surgicals. However, patient did not turn up for surgery.

5. On hearing the averments of both the sides, the State Commission concluded there was no negligence from the OPs during treatment and dismissed the Complaint.

6. Being aggrieved, the Complainant filed the instant appeal.

7. We have heard the Counsel on both the sides, perused the material on record, few medical literature on the subject of treatment of hip fractures and THR.

9. The arguments on behalf of the Complainant that the O.P. No.1 ought to have performed THR operation instead skeletal traction for few months. Even after 4 months of the treatment, there was excruciating pain in the left hip while walking or on moving in spite of heavy doses of pain killers. The doctors kept the Complainant in dark about the progress of the treatment. The X-rays revealed Osteoporosis and avascular necrosis of head of femur & adjacent cystic changes in the neck of femur; therefore, immediate THR was advised by OP-1.

10. The learned Counsel for the Complainant further submitted that the patient was 75 years old with history of Hypertension, Diabetes-II Coronary heart disease, and Thrombophlebitis, but in-spite of that, Skeletal Traction for 8 weeks was advised, but failed to advise DVT Prophylaxis. The patient's follow-up was not good and no repeat X-rays or CT scan study done, which could have prevented deterioration of bones. It was the displaced fracture and initial surgical intervention would have saved the patient from pain which he suffered for more than 10 months. Subsequently for the same, the patient was operated by Dr. Guruva Reddy at Krishna Institute of Medical Science (KIMS) on 6.3.2007 and was discharged on 15-3-2007.

i. Skeletal traction for 6-8 weeks.

ii. Then mobilize the complainant with no weight on his fractured side initially and then partial weight as he tolerates.

iii. Then full weight on the leg.

iv. If he has no significant pain then no further treatment apart from an occasional pain

killer.

v. If he develops pain then to go for a total hip replacement.

13) Except self-serving evidence of PW1-the very complainant, nothing is placed on record to hold that Op1 is guilty of medical negligence. Had the very same replacement been conducted by Op1 in the first instance the complainant would have found fault with Op1 stating that he could have conducted traction and un-necessarily he conducted the hip replacement obviously in order to make money. The perception of the complainant that traction ought not to have conducted is without any authority. We may state that he is

unable to prove the deficiency in service on the part of the doctor or placed any medical authority to state that Op1 ought not to have conducted traction in the first instance.

> 14) Though the complainant was a highly placed official except making allegations of medical negligence he could not establish by examining his own doctor who treated him which according to him cured the ailment. Except the complainant deducing medical negligence from the fact that total hip replacement surgery was conducted by one Dr. Guruva Reddy and as such the earlier treatment given by OP1 went in wrong line, no other evidence is placed. This is unfortunate. We do not agree with such sort of misconception. Absolutely, there is no evidence whatsoever to opine that Op1 was negligent in conducting the treatment. /There are no merits in the complaint.

14. I have gone through the text on Hip Fractures from standard book Campbell's Operative Orthopaedics and few articles on the subject. An emergent surgery has been shown to be a risk factor for perioperative complications. The elective hip surgeries are common procedures in the elderly individuals. However, in general, outcomes are worse for emergency or urgent hip surgery than for elective hip surgery. Multiple factors contribute, including differences in the baseline patient demographic, comorbidities, and the types of surgery required. Few studies suggest that patient's morbidity is greater with an unplanned hip arthroplasty (THR) and due to length of stay, morbidity, and costs, the unplanned THR lead to significant clinical and financial burden. Another study [2] shows higher risk from hip fracture surgery than hip replacement even after adjustment for age. The patients who undergo surgery for a hip fracture have a higher risk of mortality and of developing major complications than do patients who undergo an elective total hip replacement, even after adjustment for the fact that hip fracture patients are usually older and have more comorbidity, a large cohort study has found. Moreover, in another study [3] revealed the well-known risks of emergent hip fracture surgery i.e. for urgent, unplanned arthroplasties shown to be a risk factor for perioperative complications. It also includes length of stay, morbidity, and costs, which carry significant clinical and financial burdens to treating institutions.

15. Several principles are emerged from the judgments on medical negligence in our and other countries. In the case of **Achutrao Haribhao Khodwa & Others V State of Maharashtra & others** [4] , the Hon'ble Supreme Court noticed that:

> in the very nature of medical profession, skills differs from doctor to doctor and more than one alternative course of treatment are available, all admissible. Negligence cannot be attributed to a doctor so long as he is performing his duties to the best of his ability and with due care and caution. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.

16. In another case in **C. P. Sreekumar (Dr), MS (Ortho) v S. Ramanujam** [5] in which the respondent was hit by a motor-cycle while going on his by-cycle sustained a hairline fracture of the neck of the right femur. Pre-operative evaluation was made and the appellant Dr. Sreekumar, on considering the various options available, decided to perform a hemiarthroplasty instead of going in for the internal fixation procedure. The respondent consented for the choice of surgery after the various options have been explained to him. The surgery was performed the next day.

The respondent filed a complaint against the appellant for medical negligence for not opting internal fixation procedure. The Hon'ble Supreme court held that the appellant's decision for choosing hemiarthroplasty with respect to a patient of 42 years of age was not so palpably erroneous or unacceptable as to hold it as a case of professional negligence.

17. In the instant case, I note that the OP-1 treated the patient as per the standard of practice. Any hip fracture shall not be operated as on emergency basis. Initially the OP-1 adopted conservative management i.e. skeletal traction, it was correct the approach; it was neither deviation of treatment/procedure nor deficiency in service. Moreover, admittedly the patient had several co-morbid conditions which involve inherent operative risks.

18. In view of the foregoing reasons and the facts of the case, in my opinion, the treating doctors and hospital were not guilty of medical negligence. Resultantly the Appeal is dismissed.

The parties to bear their own costs.

---

[1] *JAMA.* 2015;314(11):1159-1166. doi:10.1001/jama.2015.10842

[2] BMJ 2015;351:h4929

[3] Kamath, Atul F et al. "Unplanned hip arthroplasty imposes clinical and cost burdens on treating institutions." *Clinical orthopaedics and related research* vol. 471,12 (2013): 4012-9

[4] (1996) 2 SCC 634

[5] (2009) 7 SCC 130

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