NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

FIRST APPEAL NO. 2365 OF 2019

(Against the Order dated 14/05/2019 in Complaint No. 1860/2017 of the State Commission Delhi)

1. SAFDARJUNG HOSPITAL & VMMC & 2 ORS.
THROUGH ITS MEDICAL SUPERINTENDENT,
NEW DELHI-110029
2. HEAD OF DEPT.OF CARDIOLOGY
DEPT OF CARDIOLOGY, SAFDARJUNG HOSPITAL, VMMC,
NEW DELHI-110029
3. DR S. AHMED
SR RESIDENT CARDIOLOGIST, DEPT OF CARDIOLOGY, SAFDARJUNG HOSPITAL, VMMC,
NEW DELHI-110029 .....Appellant(s)

Versus

1. ASHA GOYAL
W/O LATE SHRI MAHINDER KUMAR, R/O RFZ 263, RAJ NAGAR-II, PALAM COLONY
NEW DELHI-110077 .....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER

FOR THE APPELLANT :

Dated : 12 April 2024

ORDER

For the Appellants Mr Vikrant N Goyal, Advocate

For the Respondent Mr Mohit Jolly, Advocate for Mr Pankaj Mendiratta, Advocate and Mr Suryadev Kaushik, Advocate

ORDER

1. This appeal under Section 19 of the Consumer Protection Act, 1986 (in short, 'the Act') is directed against the order dated 14.05.2019 in CC no. 1860 of 2017 of the Delhi State Consumer Disputes Redressal Commission, Delhi (in short, the State Commission') allowing the complaint and directing the respondent herein to pay Rs.25 lakh as compensation with Rs.50,000/- as litigation cost.

2. The impugned order is challenged on the grounds that the State Commission has erred in arriving at the finding of medical negligence on the part of the appellant without obtaining an independent/ expert opinion in the absence of any proof to establish that the treatment provided was contrary to the medical protocol. It has also been challenged on the ground that the past medical history of the patient had not been produced by the respondent before the State Commission. It is contended that the respondent's husband (the deceased patient) was suffering from COPD, Lower Respiratory tract infection, cardiomyopathy with a very poor heart function with leaking heart valves at the time of admission in the hospital of the appellant no.1 on 12.01.2017 vide Registration no. 7766. According to the appellant the deceased patient was admitted in the CCU Unit II under the supervision of appellant nos.1 and 3 and was diagnosed as a case of CAD, COPD, Global LV Hypokinesia, moderate Mitral/ Tricuspid regurgitation, EF 15-20 with left ventricular failure. The patient is stated to have been brought to the appellant's hospital after treatment of 7 days in a private hospital for pneumonia and was a known case of dilated Cardiomyopathy who had eluded all treatment against doctor's advice for the past two years. Tests, including 2D Echo, were done in the hospital and the family members were apprised of the seriousness of the illness. HRCT Chest finding suggested severely damaged lungs. The Appellant submits that the deceased patient's heart was working at only $1/6^{th}$ capacity and that his Ejection Fraction (EF) was 15%, and in view of the leaking valve, the effective ejection fraction was less than 10%. According to the appellant, the patient was treated as per the standard guidelines and the proof of the same was improvement in condition as also admitted by the respondent in the complaint before the State Commission. However, the patient became unconscious due to cardiac arrest as a result of Ventricular Tachycardia with hemodynamic collapse which, according to the appellant, is a common cause of sudden death in patients with dilated cardiomyopathy with severe left ventricular systolic dysfunction. It is stated that the doctor on duty provided cardiopulmonary resuscitation and certain injections. However, the patient could not be reviewed.

3. The respondent has alleged medical negligence on part of the appellants approached the State Commission with the prayer to:

i. Direct the opposite parties jointly and severally to pay Rs.35,00,000/- towards compensation for committing medical negligence, mental pain, trauma and mental injury to the complainant and his three married daughters and son, for causing loss of consortium to the complainant and loss of love and affection to the three married daughters and son;
ii. Award cost of litigation;
iii. Pass such other further order (s) which this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case, interest of justice, equity and good conscience.

4. On contest the State Commission has held that:

> 23. ……..The OPs have not denied in answer to para-4 of the complaint that they did not conduct any test before jumping to unlogical, unauthentic and astonishing conclusion that the patient has been suffering from alleged disease. This is per se negligence.
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> 24. The second important factor is that **OPs have not denied that initially they proposed to administer Nirmin injection. They have admitted that they gave injection IV Albumin. Now the only controversy is whether the injection was given simultaneously or Albumin was given in place of Nirmin. The OPs have not denied that administrating both the injections simultaneously is not permissible or is not medical negligence**. So the contention of the complainant that two other Senior Cardiologist advised her that it was a case of medical negligence, is strengthened.
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> 25. Now coming to the probability of two injections being administrated simultaneously, it may be observed that advice regarding injection Nirmin is admitted. The same is mentioned on case sheet copy of which is at page 32 of the bunch of written statement. It does not end with the advise of starting injection Nirmin. Rather it records that injection was started at 3:00 p.m.
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> 26. **The theory of injection Nirmin being not available in the hospital and advising of IV Albumin in lieu thereof does not find place in the case sheet filed by the OP**. Had any such thing happened, the same should have been and would have been mentioned in the case sheet. Thus the only legitimate inference which can be drawn is that plea of the OP is an after thought to escape the consequences of negligence.
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> 27. It is shocking that injection Nirmin was not available in a big hospital like Safdarjung Hospital in Delhi. There is no reason why said injection was not available in the hospital. There is nothing to show that since when the said injection was not available in the hospital and what efforts were done by the hospital to procure that injection.
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> 28. Assuming for a movement and for the sake of argument that injection Nirmin was not available in the hospital, the OPs could have and should have asked the complainant to arrange the said injection from market. It is not the case of the OPs that

they asked the complainant to bring the same from open market or that the complainant expressed her inability for the same.

35. To sum, up there is no escape from the conclusion that the OPs were negligent in providing treatment to the husband of the complainant. The husband of the complainant was aged about 58 years only and had long span to live. His death has caused vacuum in the life of complainant, her three married daughters and one married son. Keeping in view the facts and circumstances of the case I feel that grant of compensation of Rs.25 lakhs would meet the ends of justice. In addition the OPs must pay litigation cost of Rs.50,000/- also. Accordingly the OP are directed to pay Rs.25 lakh as compensation within one month from the date of receipt of copy of this order failing which they would be liable to pay interest @ 9% per annum from the date of death till the date of payment. They would also pay the cost as mentioned above.

5. I have heard the learned counsel for the parties and have given thoughtful consideration to the material on record.

6. On behalf of the appellant nos. 1 to 3 it was submitted by the learned counsel that no evidence has been produced to establish negligence on the part of the appellant resulting in the death of the husband of the appellant. It is also submitted that no independent/ expert opinion had been taken. The patient had been shifted to the appellant hospital only when his condition became hopeless and had become a medical emergency due to breathlessness for 16 days and nasal bleeding for two days. He was also admitted in a private hospital for 7 days prior to admission in the appellant's hospital. It was contended that the deceased patient was treated as per the standard guidelines and that the complainant had admitted in the complaint that the patient's condition had started improving. It is submitted that the State Commission failed to consider that a substitute medicine can be administered to a patient and that this alone does not result in harm or casualty. According to the appellant there was no record to show that the death was due to overdose of medicine as has been argued by the complainant. The patient became unconscious due to cardiac arrest as a result of Ventricular Tachycardia with Hemodynamic collapse which is a common cause of sudden death in patients with dilated cardiomyopathy with severe left ventricular systolic dysfunction. Arrhythmia is stated to be a common cause of death in stable patients. It is submitted that only 50% of treated patients survive five years with death typically resulting from heart failure or ventricular arrhythmias manifesting as sudden cardiac death. In the present case it is contended that the patient had a very severe heart failure and ventricular tachycardia precipitated his death despite the best efforts of the doctors including cardiopulmonary resuscitation given by the doctor on duty. According to the appellant, the order of the State Commission was in contradiction to the evidence on record and without appreciating the pleadings based on inferences and suppositions which is against settled law.

7. The appellant has contended that onus to prove medical negligence lies largely on the claimant and that this onus can be discharged by leading cogent evidence and not a mere averment which is denied by other side. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in the case ***Jacob Mathew vs State of Punjab*** 2005, 6 SCC 1 dated 05.08.2005 to contend that

> "a physician would not assure the patient of full recovery in every case…….. The only assurance which such a professional can give or can be understood to have given by implication is that he possesses the requisite skills in that branch of profession which he is practicing and while undertaking the performance of the task entrusted to him he would be exercising his skill with reasonable competence. Judged by this standard, a professional may be held liable for negligence on one of two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The Standard to be applied for judging whether the person charged has been negligence or not, would be that of an ordinary competent person exercising ordinary skill in that profession".

8. *Per contra*, learned counsel for the respondent contended that the appellant hospital, despite the directions of the State Commission, has failed to produce the original medical records of the respondent's husband which itself is an act of negligence on the part of the appellant. It was also contended that the State Commission had noted manipulation and interpolation of records by the appellant which, as per settled law, amounts to negligence and deficiency in service. The respondent contends that as per the Medical Council of India Regulations, 2002 proper maintenance of records of the treatment and failure to hand over such records to the patient or to his authorised attendants/ legal authorities within 72 hours is violation of the Regulations and is therefore, also deficiency in service under the Consumer Protection Act, 1986. It is the contention of the respondent that the appellant hospital was negligent on account of non-availability of Nirmin injection and that such a lack of availability of essential drug also amounted to negligent and deficient service.

9. It is argued by the respondent that the contention of the appellant that there was no expert opinion produced by her is stated to be without basis in the facts and circumstances of the instant case where negligence and deficiency is apparent on record as it was evident that the appellants had failed to bring on record the original medical and treatment documents which would have been necessary for any medical opinion.

10. Respondent also contends that the allegation of the appellant that the deceased was suffering from CAD, COPD, LV Hypokinesia etc., is not supported by any evidence on record. It is argued that in the absence of any test to establish the same, the conclusion of the appellant could not be accepted. As per medical record provided under the RTI Act by the appellant to the son of the respondent/ complainant, it was argued that the appellant had adopted a totally wrong and illegal line of medical treatment which has been rightly observed by the State Commission.

11. The respondent contends that the appellant had distorted the facts of the deceased's past medical history and previous hospitalisation without producing any documents to establish either the treatment of the previous two years or even the name of the private hospital where the patient had allegedly been admitted for a week prior to admission in the hospital on 12.01.2017. It is submitted that the patient's financial situation did not permit obtaining treatment in a private hospital. It is, therefore, argued that the appeal be dismissed as without merit.

12. The respondent submits that the deceased patient was administered injection Albumin on 15.0.2017 at 02.50 p m which continued till 05.15 p m without informing the attendant / family members of the deceased. It is also submitted that as per the medical record of 15.01.2017 itself, appellant no.3 acting on the advice of appellant no.2 administered the injection Albumin at 02.50 p m of 200 ml @ 50 ml per hour at 03.00 p m when patient's pulse rate was 67 and BP 110/78. This injection was administered as an alternative since injection Nirmin was not available. Consequently, at 05.15 pm suddenly the patient became unconscious. No medical records were supplied by the appellant to prove that injection Nirmin was not available in the hospital on 15.01.2017 and therefore injection Albumin was administered. It was contended that both 'injection' Nirmin and Albumin were administered as held by the State Commission. It is argued that no admissible medical evidence had been brought on record to suggest that the appellants had adopted a standard of care which was expected from them in the medical profession or that they had applied a reasonable degree of skill or knowledge. The xeroxed copy of the medical records produced were manipulated documents which had over writing as has been observed by the State Commission. It is also contended that before administering the injection on 15.01.2017, no written or oral consent of the attendant or family members of the deceased patient was taken. The case of the appellant is that written consent was not obtained since this was an implied consent and the standard practice in medical science is that before starting any medical treatment which involves risk of life of the patient, such written consent has to be obtained. Failure of the doctor and the hospital to carry out the obligation of obtaining the written consent constitutes a tortious liability according to the respondent. It is submitted by the respondent that even considering the appellant's argument that in view of non-availability of injection Nirmin, injection Albumin had to be administered after procuring the same from the Burns and Plastic Ward, there was adequate time for such consent to be taken.

13. Admittedly, the standard of care and medical protocol required the administering of Inj. Nirmin which was not available in the Hospital. The State Commission's finding that this amounted to negligence is based on its view that an essential injection such as this was to have been available in a hospital such as the appellant hospital. There is no evidence led to prove that the alternative of Inj. Albumin was the alternative prescribed under the protocol for treatment. No medical records as mandated under the Medical Council of India Regulations (MCI) 2002 were also made available. Regulation 1.3 of MCI Regulations, 2002 reads as under:

> 1.3 **Maintenance of medical records:**
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> 1.3.2 If any request is made for medical records either by the patients/ authorised attendant or legal authorities involved, the same may be duly acknowledged and documents shall be issued with the period of 72 hours.

14. In the instant case, the respondent has averred that the medical records of the patients were not made available despite being asked for. No details of tests at the time of admission of the deceased patient have been brought on record by the appellant in support of its contentions that he was suffering from multiple medical issues. It has been specifically contended by the respondent that no tests were conducted. In the absence of these records, the conclusion of the State Commission cannot be faulted.

15. In view of the foregoing discussion, we are unable to find reasons to interfere with the findings and order of the State Commission. The order is liable to be upheld. Accordingly, the appeal is dismissed.

16. Pending IAs also stand disposed with this order.

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SUBHASH CHANDRA
PRESIDING MEMBER