

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, MALDAH
Satya Chowdhury Indoor Stadium, DSA Complex.

PO. Dist.- Maldah

Web site - confonet.nic.in

Phone Number - 03512-223582

Complaint Case No. CC/30/2018
(Date of Filing : 31 Aug 2018)

1. Pratima Das

D/o Lt.Nripendranath Das, C/o Momota Das, No.-02
Govt. Colony, PO.-Mokdumpur, PS.-English Bazar,
Malda
West Bengal

.....Complainant(s)

Versus

1. Dr.Subrata Pal Chowdhury

Netaji Subhas Road, PO.-Malda, PS.-English Bazar,
Malda
West Bengal

.....Opp.Party(s)

BEFORE:

HON'BLE MR. Swapan Kumar Datta PRESIDENT
HON'BLE MRS. Syeda Shahnur Ali MEMBER
HON'BLE MR. Manas Banik MEMBER

PRESENT: Dibyendu Banerjee, Advocate for the Complainant 1

Rajdeep Ojha , Nilkanta Kundu, Advocate for the Opp. Party 1

Dated : 28 Jan 2021

Final Order / Judgement

JUDGEMENT

The instant case was instituted on the basis of a petition of complaint filed by one Pratima Das D/o. Late Nipendranath Das at present residing near 2 Govt. Colony near Working Ladies Hostel, P.O. Mokdumpur, Dist. Malda. u/s 12 of the Consumer Protection Act, 1986 and the said petition was registered before this Forum now Commission and the petition was registered before this Forum now Commission as Complaint Case No. 30/2018.

The fact of the case as revealed from the petition of complaint as well as from the evidence is that on 03/05/2016 complainant went to the O.P., Dr. Subra Pal Chowdhury a Homeopathy Doctor for her treatment as there was a small 'fuskuri' in the right breast of the complainant. The O.P. Dr. Subrata Pal Chowdhury after examining her advised for ultrasound. On 01/06/2016 the complainant again visited the Chamber of Dr. Subrata Pal Chowdhury and meet him along with ultra sound report and plate and the said Dr. Pal Chowdhury after examining of the report stated

that nothing to be worried and it will be cured after taking medicine and medicine was given from the Chamber of the doctor.

It has been further stated in the petition of complaint that on the basis of such assurance as given by the Dr. Pal Chowdhury the complainant took the medicines as given by Dr. Pal Chowdhury and she had faith upon the treatment of Dr. Pal Chowdhury but after one month of such treatment that 'fuskuri' became converted into an ulcer and at that time he prescribed medicines and the complainant regularly took the medicines. In such way the complainant took medicines keeping faith upon the treatment of the said Dr. Pal Chowdhury but the ulcer was not healing. Thereafter she was treated by Dr. ManojJha. Dr. ManojJha advised her for FNAC. On 07/03/2017. She received the report and on perusal of the report it is found that she is suffering from carcinoma. After such detection of carcinoma the complainant, without killing any time t rushed to Mumbai Tata Memorial Centre and her treatment started.

It has been further stated that due to the negligent treatment Dr. Pal Chowdhury, the complainant has been suffering for which she has prayed for Rs. 20,000,000/- (Rupees Twenty Lakhs Only)

The petition has been contested by the O.P. Dr. Subrata Pal Chowdhury by filing written version denying all the material allegations as leveled against him contending inter alia that the instant case is not maintainable in law and facts. There is no cause of action to file the suit. The case is filed as a speculative case.

The definite defense case is that the complainant was treated by him and his Chamber situated at Netaji Shbhas More on 30/05/2016. After interrogation with the complainant the O.P. came to know that she had a problem of small lump on the supra areolar surface on the right breast and this problem was existed for last six months in her body and she did not seek any medical consultation before going to the Chamber of O.P. After examination the doctor prescribed homeopathic medicine and advised ultra- sonography test and on 03/06/2016 the complainant came to his Chamber on 03/06/2016 along with ultrasonography report where it is found that there was Sebaceous Cyst and on the basis of such report the O.P. doctor prescribed medicine for seven days. On 18.06.2016 after seven days delay the complainant came to his Chamber. At that time the complainant did not state any additional problem regarding the original one. Thereafter, the complainant came to his Chamber on different dates. On 03/01/2017 the complainant came to the Chamber of the O.P. and on examination a new additional problem was found. At that time the O.P. referred the case to Dr. ManojJha, Surgeon, M.S. Calcutta for his better opinion.

The further defense case is that the complainant did not follow the advice of the O.P. as an emergency matter and neglected herself and kill the time. Thus the O.P. was not negligent in this case in discharge of his duties.

The further defense case is that the sebaceous cyst is very common and benign in nature.

The further defense case is that the O.P. rendered his treatment with his full knowledge and efficiency and he discharged his duties to his best knowledge and skill and there was no intention to neglect or harass the complainant. So considering such facts and circumstances the instant case is liable to be dismissed with cost.

In this case it is to be mentioned that the complainant personally filed the case. Thereafter, on her prayer a lawyer from the legal aid was appointed.

In order to prove the case the complainant was herself examined as P.W.-1 and cross-examined in the form of questionnaires. During trial she proved and marked the documents as Ext.1 to Ext.-10 series. No other witness was examined on behalf of the complainant

On the other hand, Dr. Subrata Pal Chowdhury was examined as O.P.W.-1 and he was not cross-examined as no questionnaires was filed by the complainant though a gulf of opportunity was given to her.

No document was exhibited on behalf of O.P.

Now the point for determination:-Whether the complainant is entitled to get any relief as prayed for ?

:: DECISION WITH REASONS ::

At the time of argument the Ld.Lawyer of the O.P. Dr. Subrata Pal Chowdhury submits that the sebaceous cyst is benign in nature and he further argued that by the treatment of Dr. Pal Chowdhury who is a O.P. in this case the sebaceous cyst was removed. He further submits that there was no laches or negligence on the part of the O.P.

He further argued that Dr. Pal Chowdhury treated the patient with his utmost skill and care with due diligence according to his ability. It is to be mentioned that the O.P. submitted a written argument through his lawyer on 13/01/2021.

On the other hand the Ld.Lawyer of the complainant argued that the complainant was treated by the O.P. for several times ultimately the doctor advised her to consult Dr. ManojJha on 03/01/2017. According to the argument as advanced by the Ld.Lawyer of the complainant is that if the doctor treated with his utmost skill and care why the doctor advised to consult Dr. Manoj Kumar Jha. According to the argument as advanced by the Ld.Lawyer of the complainant is that sebaceous cyst may be benign in nature but there may be a chance of carcinoma. According to his argument due to the longtime of such treatment the complainant suffered Ductal Carcinoma in right breast .

The Ld.Lawyer of the complainant submits that first he was treated on 30/05/2016 thereafter on 03/06/2016, 18/06/2016, 26/06/2016 and other dates.

He further argued that in the written version the O.P. stated that she was referred to Dr. ManojJha M.S. CAL for better opinion on 03/11/2017. But the prescription indicates that the complainant was advised to consult Dr. Manoj Kumar Jha for better opinion. So the statement made in the written version that she was referred to is not at all believable as because as per Ext.-4 it appears that the doctor O.P. advised to Dr. Manoj Kumar Jha.

The O.P. in his written argument has mentioned that probability of carcinogenic sebaceous cyst is negligible and its range is for .01 to .045 percentage. So from the written argument it appears that

in the carcinogenic sebaceous cyst the rate of percentage is .01 to .045. It indicates that the Dr. O.P. had the knowledge that the sebaceous cyst may be converted into carcinoma and its range is very low. It is not understood why the doctor did not advise for F N.A.C. when he had the knowledge that the sebaceous cyst may be converted into carcinoma though the range is very low. Though he advised for U.S.G.

Definitely it is a lapses and the negligence on the part of the doctor who treated the patient complainant for long time from 30/05/2016 to 03/01/2017. If the doctor advised for F N A.C. or advised the patient to consult any expert doctor such unhappy incident would not occur. The O.P. treated the patient for a long time.

In the written version in Para -23 the doctor has stated that he failed deep sorrow in viewing the F N A.C. report denoting it as a case of ductal carcinoma on right breast reported on 09/03/2017 but he did not prescribe any medicine as he already referred the patient. But on perusal of the prescription it is found that the complainant was not referred, she was advised to consult Dr. Manoj Kr. Jha on 03/01/2017. In the same para it has been stated that it was a duty of the referred doctor to treat and guide the complainant. But it is not understood why the doctor did not treat her. Perhaps the O.P. did not treat the patient as it is not possible for the doctor to treat a patient who is suffering carcinoma.

On perusal of para 23 of written version it is found that the O.P. had the knowledge that the complainant suffered Ductal Carcinoma in right breast. The homeopathic doctor in order to diagnose can investigate like allopathic investigation. But it is not understood why the doctor at the earlier stage when the complainant was treated for a long time was not advised for F N A C report. If such advice was given earlier such unhappy incident may not occur.

So in the opinion of this Forum now Commission this was the lapses and negligence on the part of the doctor advising for F N A C..When the doctor claims to be a doctor having a P.G. Degree in Homeopathic from Jaipur.

Next point argued by the Ld.Lawyer of the O.P. that the expert opinion is required as Jacob Mathews case.

According to his argument Dr. ManojJha should be examined as an expert but in the opinion of this Forum now Commission the examination of Dr. ManojJha is not at all required as and when the doctorJha opined on the basis of F & A.C. report that there was Ductal Carcinoma in her right breast.

On perusal of the record it is found that due to lack of care and reasonable skill the complainant suffered physically and mentally.

The duty of a medical practitioner arises from the fact that he does something to a human being which is likely to cause physical harm unless it is done with proper care and skill. For the instant case it is found that the Dr. O.P. did not perform his duty with standard care and professional skill. If the doctor performed his duty with highest degree of skill at the earlier stage of treatment such unhappy incident may not occur. So definitely it is one of the lapses on the part of the doctor.

In this case it is found that the doctor did not take any reasonable care for the treatment of the complainant. If the reasonable care was taken at the earlier stage so the unhappy incident may be avoided.

It is exhibited that the doctors who are belong to a learned profession and who are ordinarily expected to maintain high standard of professional conduct in dealing with their patients.

What should be the duty of a doctor a person who held himself ready to give medical advice or treatment impliedly indicates that he has best of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties i.e. like a duty of care in deciding whether to undertake the case, a duty of care for treatment is to be given or duty of care in administration of such treatment. A breach of any of these duties gives a right of action to the patient for negligence.

For the instant case when the doctor took the liability for treatment he should be careful in the administration of the treatment. It is not understood why at the earlier stage the patient was not advised for diagnostic stage like F & A.C. It is one of the breach of duty of the doctor and as such the cause of action or right of action, the patient accrues.

Moreover, when the treatment or advice has been given by the doctor who knows or ought to know that the patient condition was such for which for which he is not qualified to undertake any such case the doctor will be guilty of negligence.

For the instant case the doctor is not qualified for treatment like carcinoma. Though it is argued that the sebaceous cyst is benign in nature. But the doctor stated that the extent of carcinoma in respect of sebaceous cyst is very low. So he should not treat the patient on the ground that there may be a chance of conversion of sebaceous cyst into carcinoma as the O.P. is not a qualified doctor to treat a carcinoma patient. So it is a gross negligence on the part of doctor.

So considering such facts and circumstances the complainant has been able to prove the case.

C.F paid is correct.

Hence, ordered that

the case be and the same is hereby allowed on contest with cost.

The complainant gets Rs.50,000/- (Rupees Fifty Thousand Only) as compensation for mental pain and agony and the complainant is not entitled to get any litigation cost as the complainant got legal aid.

The O.P. is directed to pay the amount within 45 (Forty Five) from the date of order failing which it will carry interest @ 5% p.a. from the date of filing of the case and the complainant will be at liberty to put the decree in execution in the case of default of payment of the O.P.

Let a copy of the order be given to the parties free of cost on proper application.

[HON'BLE MR. Swapan Kumar Datta]
PRESIDENT

[HON'BLE MRS. Syeda Shahnur Ali]
MEMBER

[HON'BLE MR. Manas Banik]
MEMBER