NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 33 OF 2007

1. DR. J.C.MUDGAL
Senior Consultant Physician, Mudgal nursing Home, Teacher's Colony,
Bulandshahr. .....Complainant(s)

Versus

1. DR. A.K.SINGH AND ORS.
Director, Neuro Sciences, Fortis Hospital, B-22, Sector 62,
Noida
U.P.
2. Anesthetist
Neurosurgical Unit. 1, Fortis Hospital, B-22 Sector 62,
Noida
U.P.
3. Fortis Hospital
Through Director (ADM), B-22 Sector - 62,
Noida
U.P. .....Opp.Party(s)

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

For the Complainant :
For the Opp.Party :

Dated : 01 Dec 2022

ORDER

APPEARED AT THE TIME OF ARGUMENTS

For Complainants	:	Mr. A.K. Kaushal, Advocate
		Mr. Sanjeev Puri, Sr. Advocate
For Opposite Parties	:	Mr. Rohit Puri, Advocate
		Mr. Rohan Ganpathy, Advocate

Pronounced on: 01st December 2022

ORDER

DR. S. M. KANTIKAR, PRESIDING MEMBER

1. This is the Complaint filed by Dr. J.C. Mudgal against the Fortis Hospital and two doctors for the alleged medical negligence.

2. The relevant facts are that, on 07.02.2005 the Complainant, Dr. J.C. Mudgal (hereinafter referred to as 'the patient'), about 54 years of age, a medical doctor consulted Dr. A. K. Singh, the OP-1 for his complaints of back pain. On the next visit on 23.03.2005, the OP-1 advised surgical intervention by Spinal decompression and fusion with screws and rods.

3. Accordingly, on 30.03.2005, the Complainant was admitted in Fortis Hospital (OP-3), but it was alleged that no consultant visited him till the next day evening. Thereafter OP-2 examined him, advised investigation and the operation was planned in the morning on 01.04.2005. The patient was put on nil by mouth (NBM) from the night of 31.03.2005 after 11pm. It was alleged that on the day of operation there was casual approach of opposite parties, they did not verify the investigations. The patient was continuously kept on the stretcher for 7 hours from 8.30 am to 3.30 pm. The OP-1 came leisurely and told that the delay was due to one priority emergency operation. The OPs did not care for the severe discomfort and stress of patient for 7 hours .Thus it was serious deficiency in service of the OPs that the postponement of surgery could have been informed in the morning itself.

4. Thereafter, on 02.04.2005 at 8 am, OP-1 operated the patient and shifted to Room no. 1316B at 8 pm. It was alleged that at around 10 pm the patient became very restless and in executing pain radiating up to the leg, but no one attended him, despite even the wound started to bleed. At about 2 am, he suffered two heart attacks, however, no Cardiologist or the OP-2 attended him. The OP-1 had gone to Haridwar, who returned on 04.04.2005 evening at 4:30 pm.

5. Therefore for further cardiac care, the patient was shifted to Kailash Heart Institute, Noida. The condition of patient was brought under control on 05.04.2005. On the next day 06.04.2005, the patient was referred to Escorts Heart Institute for Coronary Artery Bye-pass Grafting (CABG) surgery. After stabilisation, on 11.04.2005CABG was successfully performed and the patient was discharged on 25.04.2005 with follow-up advise for 3 months of bed rest, medications, exercise regime and other precautions.

6. The Complainant alleged that the OPs, to gain more money, ignored the abnormal ECG. The medical record – OT notes, post –operative notes and the details of status of patient during 6 hour surgery were not made by OP-1. The known complication could have been effectively handled. The clinical notes entered by Dr. Ashish Gupta, who had attended to the patient during complications were missing from the record. At the time of incident neither RMO nor any consultant was available. After the procedure the Complainant suffered two heart attacks which were not correctly managed, no Cardiologist was called to attend to the patient which led to almost life threatening situation complainant leading to permanent damage to the heart. The team of attending doctors were totally clueless and devoid of any internal co-ordination. The OP-1 immediately after the surgical procedure, on 02.04.2007 left for a pleasure trip to Haridwar without arranging any other competent doctor to look after the post-operative care. The OP-1 returned on 04.04.2005 and at about 4 pm visited Neuro ICU, and the Complainant was shifted to Kailash Hospital, wherein Cardiologists treated the patient and saved him within 40 minutes, but for 40 hours, OPs failed to do. The OP-1 instead of attending first the serious cardiac condition of the patient, proceeded to operate for the spinal decompression which resulted into the chain of complications and further permanent impairment to the extent of 50% damage to the patient's heart. The OPs also caused billing irregularities, charged excessively when consultants were not even available, over charged the implants which were never used. The hospital caused infection at the time of operation because of unethically handling the case with gross deficiencies.

7. The patient, being a qualified doctor himself submitted that the principle of '*Res Ipsa Loquitor*" is applicable to the case. Being aggrieved, the Complainant/Patient filed the Consumer Compliant under section 21 of the Consumer Protection Act, 1986 before this Commission against the OPs for negligence in pre and postoperative care, the Complainant suffered two consecutive heart attacks i.e. acute inferior wall infraction and acute anterior wall infraction. The Complainants prayed for recovery of compensation to the tune of Rs. 1,22,16,627/- & Fee Rs. 5,000/- from the Opposite Parties.

8. The OPs filed their Written Versions and denied the allegations of medical negligence. It was stated that the Complainant himself being a Doctor expected VIP treatment from the OPs. The OPs followed an established procedure in treating the Complainant which is followed in the normal course for treating similar patients which has resulted in the Complainant's ego being hurt. Further, the patient was discharged from OP-3 on 04.04.2005, the present Complaint filed by the Complainant on 10.4.2007 is barred by limitation.

9. The patient was properly examined by a Consultant Neurosurgeon (OP-1) and Anaesthetist (OP-2). He was properly investigated for surgery. All routine investigations were reviewed including chest X - ray and ECHO. ECG showed non-specific Q waves in Leads II, III and avF. (Findings in the EGG are considered normal if same are without any cardiac ailment as in case of Complainant) Chest X ray was normal. Premedication was ordered which included the morning dose of antihypertensive and Tab. Ativan (sedative) which he was taking regularly earlier. Except for history of borderline hypertension which was well controlled with medications (this included a beta blocker) and the fact that he was a smoker as per history given, there were no other risk factors for coronary artery disease. There was no history of asthma / COPD, diabetes mellitus or renal dysfunction. All these details have been corroborated by the initial notes of neurosurgery resident doctor. There was not history suggestive of any other systemic illness. He was a smoker (2-3 cigarettes per day). Previously the patient had undergone excision facial lipoma under General Anaesthesia without any major cardiac complication. He also underwent a knee replacement, a major surgery under spinal anaesthesia on 04.04.2004 without cardiac events.

10. Cardiological assessment of the Complaint was also done. The Anesthetist (OP-2) declared the patient fit (ASA grade II) for surgery. It was based on the American College of Cardiology / American Heart Association (ACC/AHA) guidelines for perioperative cardiac morbidity in patients undergoing non-cardiac surgery which is accepted all over the world. He was for an intermediate risk surgery as blood loss was expected to be more than 500 ml, and his functional status was good (>4 metabolic equivalents) (NYHA class I). Based on the above facts, he was cleared for surgery under ASA grade II (mild, well controlled systemic illness). Further Cardiac testing and cardiology evaluation was not considered necessary based on the ACC/AHA guidelines for perioperative cardiac morbidity in patients undergoing non-cardiac surgery.

11. Treating doctors took decision of surgery based on the currently accepted international medical guidelines and practices. The patient, being a practicing cardiologist, was in good health and in fairly good functional status. In view of the total clinical picture and his backache due to severe lumbar spondylosis, he was taken for the surgery after informed consent. It was informed high risk consent signed by the Complainant himself in addition to giving his normal consent.

12. Both the sides have filed their respective affidavits by way of evidence. The Complainant, in his support, filed affidavits of his wife Mrs. Saroj Mudgal, another attendant, and a friend, who was also admitted with the Complainant for treatment of hernia.

13. During arguments, the learned Counsel for both the sides reiterated their evidence. The learned Counsel for the Complainant submitted that the principle of *res ipsa loquitor* applies to this case. The learned Counsel for the Opposite Parties argued that it was an accepted medical practice. The Complainant/patient himself was a qualified medical professional and fully aware of any his underlying medical problem. Therefore, the OPs had no reason to suspect or doubt by history given by him particularly in view of the fact that he was physician /cardiologist.

14. We gave our thoughtful consideration, perused the entire medical record. The crux of the matter is that the OPs ignored to assess the cardiac problem before performing It is pertinent to note that the patient being

doctor himself was in good health and during his preanesthetic check-up denied any history of cardiac problem. The ECG did not reveal any signs of infarction. From the literature, the Cardiac evaluation depends upon 3 parameters, namely, (a) clinical predictors for developing perioperative cardiac morbidity (major intermediate and minor), (b) type of surgical procedure and (c) functional status. Thus, based on these criteria, the instant patient had no clinical minor cardiac signs /predictors for developing perioperative cardiac morbidity. As per Lee's modified cardiac risk index, the patient's overall good clinical condition still 0.4% risk remains to major peri-operative cardiac evet. Dr. Upender Kaul, an eminent cardiologist, after reviewing the entire medical record, held no negligence in treating the patient. The said opinion has neither been rebutted nor disapproved.

15. Most of patients, after spinal surgery, suffer back ache for 1st postoperative day and get relief by pain killer medication. Admittedly, the OP-1 had gone to Rishikesh due to some personal exigency, however the patient was constantly under observation of the doctors in the team of OP-1. Therefore, there was no deficiency in service. The patient post-operatively suffered cardiac complications, which were stabilised and shifted to Kailash Hospital. We do not find any lapses on the part of Fortis hospital.

16. Based on the discussion above, in our view, the Complainant failed to prove negligence of treating doctors OP-1 and OP-2 at Fortis Hospital. The Complaint is devoid of merits, it is dismissed.

There shall be no orders as to costs.

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DR. S.M. KANTIKAR
PRESIDING MEMBER

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BINOY KUMAR
MEMBER