

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 1282 OF 2015

1. KANCHAN SINGH

VILLAGE- HAKEEM PATTI, POST SAIDABAD ,
ALLAHABAD(U.P.)

.....Complainant(s)

Versus

1. MAA SHARDA HOSPITAL & ANR.

(THROUGH ITS DIRECTOR/MANAGER) 84/70, NEW
BAIRAHANA, IN FRONT OF POLICE CHOWKI, BEHIND
SUNDRAM GUEST HOUSE,
ALLAHABAD

2. DR. R.K. AGRAWAL (M.S.)

MAA SHARDA HOOSPITAL, 84/70, NEW BAIRAHANA, IN
FRONT OF POLICE CHOWKI, BEHIND SUNDRAM GUEST
HOUSE,
ALLAHBAD

.....Opp.Party(s)

BEFORE:

HON'BLE MR. JUSTICE R.K. AGRAWAL,PRESIDENT

HON'BLE DR. S.M. KANTIKAR,MEMBER

HON'BLE MR. BINOY KUMAR,MEMBER

For the Complainant :

For the Opp.Party :

Dated : 23 Jan 2023

ORDER

Appeared at the time of arguments

For the Complainant : Mr. Devendra Gupta, Advocate

Mr. R. P. Mishra, Advocate

For the Opp. Parties : Mr. S. D. Kautilya, Advocate

Pronounced on: 23rd January 2023

ORDER

DR. S. M. KANTIKAR, MEMBER

1. This Complaint has been filed under Section 21(A)(i) of the Consumer Protection Act, 1986 (for short “the Act”) by Smt. Kanchan Singh (hereinafter to be referred as the ‘Complainant’ or ‘Patient’) against Maa Sharda Hospital (hereinafter to be referred as the ‘Opposite Party No. 1’) & Dr. R. K. Agrawal (M.S.) (hereinafter to be referred as the ‘Opposite Party No. 2’) claiming compensation of Rs. 2 Crores along with 9% interest for the alleged medical negligence.

2. The Complainant Smt. Kanchan Singh – patient during her pregnancy was under observation of Dr. Rekha Singh. On 04.09.2014, Dr. Rekha Singh examined her and called for delivery after 4-5 days. The patient went to Dr. Rekha Singh on 08.09.2014, but she was not available, therefore, on the same day, the patient with her husband approached Dr. R. K. Agrawal (Opposite Party No. 2) and got admitted to Maa Sharda Hospital (Opposite Party No. 1). Before that she also went to Primary Health Centre Saidabad. It was alleged that on the same day, the Opposite Party No. 2, the Director of the Hospital, himself administered anesthesia and performed caesarian delivery. A male baby was delivered at 8.57 pm. Thereafter, the patient went into deep coma, allegedly due to wrong anesthesia and surgery. The same was informed to her husband at the time of shifting from OT to private room. The patient was given electric shock in order to bring her memory back, but to no avail. On next day (09.09.2014), the Complainant paid the hospital charges, but the patient was forcibly discharged by the Opposite Party No. 2 under the garb of referral to higher centres.

3. The Opposite Party No. 2 suggested three hospitals in Lucknow namely S.G.P.G.I, K.G.M.C. and Sahara Hospital, but on 09.09.2014, the patient was hospitalized in Preeti Hospital at Allahabad under supervision of Dr. Kartikeya Sharma. There was no improvement in the comatose condition of the patient and she was discharged on 19.10.2014. After the discharge, the patient’s husband hired a permanent attendant for her care. It was alleged that the Complainant incurred heavy expenses amounting to Rs. 20 lakh towards her treatment.

4. Being aggrieved, initially the Complainant registered an FIR on 22.11.2014 and also thereafter, he filed the instant Complaint before this Commission on 19.10.2015 for alleged gross medical negligence on the part of the Opposite Parties to claim Rs. 2 crore as compensation.

5. The Opposite Parties filed its written versions and denied any negligence while treating the patient. The Opposite Party No. 2 submitted that he is a qualified as MS and had expertise in complicated surgery. The patient was brought from about 40 kms away to his hospital in very pathetic condition on 08.09.2014. The Complainant never produced her previous ANC record with Dr. Rekha Singh. He immediately examined the patient and found that it was full term pregnancy and immediate operation was required to save the baby in the womb. The outcome of the operation was informed to her husband. As the Anesthetist was not available, the Opposite Party No. 2 was not inclined to perform the operation, but on the request of the patient’s husband and considering the emergency, he performed the caesarian operation. He further submitted that during operation, the patient was suffering from Pre-Eclampsia Toxemia (PET), which was not informed by the patient’s husband. After completion of the operation, while putting the stitches and dressing, the patient started convulsions on the operation table itself. Inj. Epsilon was given immediately and the patient was shifted to ward. Due to serious condition of the patient, he advised to shift the patient to the higher centre. There was no negligence on his part.

6. We have heard the arguments from the learned Counsel for both the sides. The learned Counsel on both the sides reiterated their evidence. The learned Counsel for the Opposite Parties argued that the patient did not disclose past history. On 08.09.2014, before coming to Maa Sharda Hospital, she was examined at Primary Health Centre, Saidabad. There was no evidence of wrong administration of medicines. It was emergency and to save the life of baby, he operated the patient under local Anesthesia.

7. We have perused the entire medical record and the proceedings held before the health authorities. The husband of Complainant filed an application before the Chief Medical Officer, Allahabad whereupon the District Magistrate, Allahabad vide Order dated 05.11.2014 requested the CMO to get the matter enquired. Thereafter, CMO, Allahabad constituted a Committee of 3 experts under President Dr. J.L.M. Khushwaha with the members R.C. Pandey (Anesthesia Expert), Dr. Anil Kumar (Physician), Dr. P.S. Chaturvedi (Surgeon), who were working as Additional CMOs and Deputy CMO respectively. The report of the Committee dated 17.08.2015 clearly observed that “Dr. R.K. Agrawal, Director of Maa Sharda Hospital performed caesarian operation himself without assistance and advice of any other expert doctor like Anesthetist, Physician and Obst.

and Gynecologist prior, during and after Operation and Dr. R.K. Agrawal (who is not Anesthetist) administered anesthesia. Due to medicines provided during caesarian section, hypotension leading to Cerebral Hypoxia was caused and in default of immediate treatment of same, the patient went under coma who is continuously in the same condition till now. Accordingly, Dr. Agrawal neglected in performing the operation without Anesthetist.”

8. The Allahabad Medical Association protested against the Board's opinion and made a representation to the District Magistrate for re-examination of the case. The Association raised objection that Dr. J. L. M. Kushwaha, President of the previous Medical Board acted very irresponsibly, and gave wrong opinion. Therefore, another Medical Board was constituted with the direction of District Magistrate under the Chairmanship of Dr. R. K. Agrawal, Surgeon of Community Health Center Soraon, Allahabad consisting three Members. The Board thoroughly examined the matter and came to the conclusion that:

1. Kanchan Devi was effected by Pre Eclampsia Toxaemia (PET) in her full term pregnancy (FTP) with increased blood pressure 170/94 in serious condition was admitted in Maa Sharda Hospital on 8.9.14 at 7.55 evening.
2. Pre-Eclampsia is a serious condition wherein danger to life remains to mother and baby in womb and there are danger for coming of attacks.
3. It also held that Dr. Raj Kishore Agrawal is a qualified Surgeon (MS) had clear talks with relatives at 8.45 p.m. after taking consent, he conducted emergency operation under local anaesthesia without delay, because of non-availability of anaesthetist at that time. He acted with intention to save the life of mother and baby.
4. As per medical record, proper medicines were prescribed. The patient with Pre-Eclampsia suffer convulsion attacks prior to operation, during operation and post-operatively, and due to repeated attacks the patient may go in coma.
5. According to the above reference book, a patient suffering from Eclampsia has aspiration pneumonia, cerebral hemorrhage, kidney failure, and cardiac arrest. Complications like IUD (Intra Uterine Death) Still birth, Maternal death, DIC, Brain Oedema, and patient going into a coma can happen, but both the mother and child are alive with proper treatment given to the doctor in time.
6. After the patient Mrs. Kanchan Devi wife of Mr. Jai Singh went into unconscious state, therefore, Ryle's Tube insertion was correct line of treatment and the Tracheostomy for Ventilator done to save her life.
7. The cause of coma appears to be Hypoxic brain injury due to repeated shocks to the patient.
9. All the members of the Medical Board unanimously concluded that the patient was affected by PET followed by Eclampsia & Full Term Pregnancy. The patient further suffered few complications. However, despite proper treatment, the patient may go into coma. Thus, the previous Board failed to consider pre-eclampsia and its effects in the instant case as a cause of coma.
10. We have perused the entire medical record. It is evident that on 08.09.2014, at about 8.00 pm, the patient was admitted in the hospital. The patient was restless, the pulse was 78/min and BP 170/94 and there was meconium discharge present. The Opposite Party No. 2 did Foley's urinary catheterization. The decision of emergency Lower Segment Caesarian Section (LSCS) was taken and IV fluids with antibiotics were started. As per the operative notes, LSCS was performed at 8.45 pm under local anesthesia, a male baby soaked with meconium was extracted at 8.57 pm. The baby was 2.75 kg wt., the uterus was closed in layers with proper hemostasis. Post-operatively, inj. Metrogyl and other medicines were given. After putting sutures at 9.55pm, the patient developed seizure with cardiac arrest. Immediately CPR was started, ETT intubation was done and the patient was shifted to ICU. The heart beat returned within 3 minutes. Stat the patient was given inj. Encorate 1000mg in 100ml normal saline, then 500mg in 50ml normal saline. Also inj. Levipil was also given. The pulse and BP were recorded continuously, however, the patient got seizure again at 11pm, 12.30am and 2.00am,

therefore, appropriate medicines inj. MgSO₄, methyl prednisolone and inj. Midazolam was given. Thereafter, same treatment was continued.

11. Based on foregoing discussion, in our considered view, it was an emergency and the Opposite Party No. 2, though he was a Surgeon, performed LSCS under local anesthesia to save the mother and baby, which does not amount to medical negligence. The reference letter on record also mentioned about the details of the treatment and he gave three reference letters for Neurology opinion from SGPGI Lucknow, K.G.M.C. Lucknow and Sahara Hospital. The opinion dated 17.08.2015 headed by Dr. J. L. M. Kushwaha failed to consider the issue of PET of pregnancy, which the patient suffered, was the cause of hypoxic event and coma. The Opposite Party No. 1 acted as per reasonable standard of practice during the emergency situation. We do not find any negligence while conducting the operation, which was done to save the life of the baby. The patient was referred to proper higher centre at appropriate time, but the patient was taken to Preeti Nursing home for further management. We do not consider any fault of the patient at this stage.

12. Simply because a patient has not favorably responded to a treatment given by a physician or a surgery has failed, the doctor cannot be held liable, as was held by the Hon'ble Supreme Court in **Jacob Mathew vs. State of Punjab & Anr.**^[1]. It further observed that:

“A mere deviation from normal professional practice is not necessarily evidence of negligence. Let it also be noted that a mere accident is not evidence of negligence. So also an error of judgment on the part of a professional is not negligence per se. Higher the acuteness in emergency and higher the complication, more are the chances of error of judgment. **At times, the professional is confronted with making a choice between the devil and the deep sea and he has to choose the lesser evil. The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure.**

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So long as it can be found that the procedure which was in fact adopted was one which was acceptable to medical science as on that date, the medical practitioner cannot be held negligent merely because he chose to follow one procedure and not another and the result was a failure.

No sensible professional would intentionally commit an act or omission which would result in loss or injury to the patient as the professional reputation of the person is at stake. A single failure may cost him dear in his career.

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13. Based on the foregoing discussion, we do not find merit in the instant Complaint. The same stands dismissed. There shall be no Order as to costs.

^[1] (2005) 6 SCC 1

.....J
R.K. AGRAWAL
PRESIDENT

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DR. S.M. KANTIKAR
MEMBER

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BINOY KUMAR
MEMBER