

**IN THE STATE CONSUMER DISPUTES REDRESSAL COMMISSION
ODISHA, CUTTACK**

First Appeal No. A/314/2013

(Date of Filing : 26 Jul 2013)

(Arisen out of Order Dated 28/05/2013 in Case No. CC/162/2007 of District Dhenkanal)

1. Rashmi Ranjan Padhi

S/o- Sri Sarat Chandra Padhi, R/o- Vill- Danda Road,
Kanchan Bazar, Ps/Town/Dist- Dhenkanal.

.....Appellant(s)

Versus

1. Dr. Prasanta Kumar Samal,

S/o- Sri Raghunath Samal, Gynecologist in Kalyani Poly
Clinic, At- Jayagopal Sahi, Dhenkanal, Ps-Town,
Po/Dist- Dhenkanal.

2. M/s. Kalyani Poly Clinic

At- Jayagopal Sahi, Dhenkanal Town, Po/Dist-
Dhenkanal, represented by its Proprietor Dr. Benudhar
Nayak.

3. The New India Assurance Company Ltd.,

Cuttack Division Office No.1, Kathajodi Road,
Badambadi, Cuttack-753012, represented by its
Divisional Manager.

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE Dr. D.P. Choudhury PRESIDENT

PRESENT: M/s. A.K. Samal & Associates., Advocate for the Appellant 1

M/s. P.C. Mishra & Assoc., Advocate for the Respondent 1

M/s. R.K. Pattnaik & Associates., Advocate for the Respondent 1

Dated : 08 Jun 2021

Final Order / Judgement

Heard learned counsel for both sides.

2. Here is an appeal filed u/s 15 of the erstwhile Consumer Protection Act, 1986 (hereinafter called the 'Act'). Parties to this appeal shall be referred to with reference to their respective status before the District Forum.

3. The factual matrix leading to the case of the complainant is that complainant No.1 married to Sharmistha Mishra. After marriage, the wife of complainant No. 1 became pregnant and remained under the treatment of Dr.Abodh Kumar Mohapatra, Gynaecologist who fixed the expected date of delivery on 24.5.2007. It is alleged *inter alia* that on 21.5.2007 at about 9 PM the concerned woman got labour pain and by that time Dr Mohapatra was not in town. Complainant alleged that they took her to the Nursing Home of OP No.2 where Op No.1 was working as Gynecologist.

Complainant further alleged that soon after admission, OP No.1 conducted episiotomy method of delivery and a female child was born who is complainant No.2 in this case at 11.25 PM. On the same night at 12 PM, the attendant noticed bleeding in the said vagina of the said woman Sharmistha.

4. It is alleged that after calling an anesthetist at 1 PM, the episiotomy wound was stitched. Since the bleeding did not stop Sharmistha was referred to S.C.B.Medical College and Hospital, Cuttack without referring to the District Headquarters Hospital, Dhenkanal. However, after reaching S.C.B.Medical College and Hospital, she was immediately given the medical aid but unfortunately, the said woman died at 6.30 AM.

5. Complainant further alleged that due to wrong method of episiotomy which is not prevalent at that time, the usual procedure of delivery was not adopted by OP No.1 and OP No.2 having no facility for such surgery could not provide the blood. Therefore, the complainant lodged FIR in the Town Police Station, Dhenkanal and at the same time, filed consumer complaint before the learned District Forum alleging negligence of OP No.1 and deficiency of service on the part of OP No.2.

4. Per contra, OP No.1 filed written version stating that the case is not maintainable as there is no cause of action against him. Moreover, he challenged the complaint case being bad for non-joinder of necessary party i.e. Dr Abodh Kumar Mohapatra. OP No.1 admitted to have attended the delivery of Sharmistha and it is the case of OP No.1 that as per the usual procedure of episiotomy, he conducted the delivery of the woman concerned. Necessary steps were taken from the beginning till the end for smooth delivery of the wife of complainant No.1. 5. It is stated in the written version that (i) the patient was kept under electronic foetal monitor throughout the labour for the safe guard of the baby, (ii) after the bleeding the patient was kept under cardiac monitor which measures second to second BP, pulse rate and oxygen saturation of the body,(iii) Anesthesia Specialist Dr. P.Panda was called for immediately at 11.40 PM, who also arrived at the Nursing Home at 12th midnight, (iv) blood requisition was also given immediately to the attendants of the patient after noticing profuse bleeding. According to OP No.1 when the bleeding did not stop, he referred the patient at 12.25 AM to SCB Medical College and Hospital, Cuttack for better treatment.

6. It is stated in written version that in spite of all steps taken by him, the concerned woman died at SCB Medical College and Hospital, Cuttack. It is specific plea of OP No.1 that the bleeding was from the stitched episiotomy wound but from the other wall of the vagina, nostril and pricking point and the pregnant woman had never collapsed. It is stated that the bleeding from the vagina and uterus after delivery of the placenta followed by bleeding from the nostrils and from the needle pricking point suggest the symptoms of DIC i.e., Disseminated intravascular coagulation. Also it is stated that the concerned woman did not expire immediately after admission at SCB Medical College and Hospital, Cuttack but after few hours, she expired. However, he has denied his negligence and deficiency of service on his part.

7. OP No.2 filed written version stating that there is no cause of action to file the complaint case. It is stated that OP No.2 has got all facilities for delivery of the gynecological patient. It is admitted that Dr.Abodh Kumar Mohapatra was actually treating physician of Sharmishta but in his absence, OP No.1 was engaged to cause delivery of the said woman. He denied about any negligence on the part of OP No.2. On the whole, he submitted that all the steps have been taken to refer the concerned woman to SCB Medical College and Hospital, Cuttack for better treatment

and on the next morning, she expired. The allegations made against the concerned Nursing Home has been denied by OP No.2.

8. OP No.3 has also filed written version stating that the consumer complaint is not maintainable and the case is bad for non-joinder of necessary parties and there is no cause of action to file the case. He further submitted that the complainants do not come under the category of 'consumers' under the Act. The allegations are entirely refuted by them. On the other hand, they have washed their hands out of the entire allegations.

9. After hearing both parties, learned District Forum by majority order of two Members namely President and Lady Member dismissed the complaint whereas the third Member allowed the complaint.

10. Learned counsel for the appellant who is complainant No.1 in this case has submitted that the learned District Forum has erred in law by not going through the evidence adduced by the complainant. According to him, he has examined the three witnesses but they have not been discussed on proper manner. He also submitted that learned District Forum has committed error in law by not understanding the concept of episiotomy. Apart from this, he submitted that learned District Forum erred in law by not following the proper judicial norms because complainants have asked to cross examine Prof of Gynaecology of SCB Medical College and Hospital, Cuttack who has given expert opinion but that proposal remained in the record without any order being passed. He further submitted that the learned District Forum has put the onus on the complainant.

11. However, it is submitted by learned counsel for the appellant that when Doctor has not been cross examined, the report of the Doctor cannot be relied upon to come to a conclusion. Further, he submitted that at 11.30 PM when the placenta did not come out and the bleeding continued, no care was taken by OP Nos. 1 and 2 to arrange the blood transfusion or to send the concerned woman immediately to the District Headquarters Hospital, Dhenkanal or SCB Medical College and Hospital, Cuttack. However, she was only sent at 2 AM on the next day for better treatment Therefore, he submitted that every minute delay caused by OP Nos. 1 and 2 in the case of concerned woman has made her body collapsed and finally when she was admitted at SCB Medical College and Hospital, Cuttack, she was not taken proper care to get her life survived. He submitted that this aspect has not been discussed by the learned District Forum while passing the majority order by dismissing the complaint. So, he submitted to allow the complaint as per the prayer made in the complaint.

12. Learned counsel for OP No.1 submitted that the cardinal principle of this type of case requires more emphasis on the expert opinion. According to him, the complainant has not adduced any expert opinion evidence to prove that episiotomy is an old method of delivery which should not have been adopted at the relevant time. He also submitted that the opinion of the Professor of Gynaecology and Obstetrics is clear to show that episiotomy is usual method of delivery of patient and in the instant case, the concerned Professor has given clean chit to OP No.1. Therefore, there is no illegality on the part of the learned District Forum to accept his opinion. He also submitted that the case is also bad for non-joinder of necessary party because Dr.Abodh Kuamr Mohapatra was the treating physician of the concerned woman and he was examined by complainant but he was not made a party to the consumer complaint. He submitted that the learned District Forum after thread bare discussion has rightly dismissed the complaint.

13. Learned counsel for OP No.2 submitted that there is no cause of action against them because the complainant has not paid any consideration for admission in the Nursing Home. The consumer complaint against OP No.2 is not permissible under law. Further, he submitted that the Doctor - OP No.1 being engaged by OP No.2 has taken all possible steps for smooth delivery of the woman and it was well organized. They have all facilities of delivery of woman concerned. There is no latches on their part. Learned District Forum in their majority order has rightly relied on the report of the Medical Board of the C.D.M.O. where they have clearly observed that there is every facility available in the Nursing Home for easy delivery of the concerned woman. So the learned District Forum rightly exonerated him from the liability.

14. Considered the submission of learned counsel for respective parties and perused the DFR including the impugned order.

15. Learned District Forum in their majority order has gone detail and discussed the materials on record. Since it is an appellate forum, it is again to find out whether the appreciation is correct or not to dispose of the complaint.

16. It is well settled that the complainant has to prove the negligence and deficiency of service on the part of the OPs.

17. In this case, the complainant has lodged FIR and at the same time, filed consumer complaint for necessary compensation. Complainant in order to discharge the onus has examined three witnesses which are perused. It is admitted fact that the concerned woman Sharmistha was under the treatment of Dr.Abodh Kumar Mohapatra. It is not in dispute that she was being admitted on 21.5.2007 in the Nursing Home of OP No.2 and it is also an admitted fact that OP No.1 was asked to attend the wife of complainant No.1 to conduct the delivery. It is also admitted fact that he applied the method of episiotomy to get delivery of the woman concerned. So far negligence is concerned, certain witnesses were examined by complainant. In this regard, the evidence of PW 1 should be gone through.

18. PW 1 who is mother in law of Sharmistha revealed that she had been with her to labour room but doctor arrived labour room after delivery of child and cut the vagina of concerned woman to which she objected but OP No.1 abused her. In cross examination, she revealed that she was unaware about Dr Samal (OP No.1). She has stated further in cross examination that Dr Samal went away after admitting Sharmistha and giving her saline drip. Again said that while they went to labour room no doctor was there. Her statement is thus not clear and cogent as to her presence during delivery conducted in the labour room. On the other hand, if her testimony is relied on, negligence of OP No.1 in conducting delivery of child does not arise because as per her statement, he came to labour room after delivery of child. So at any rate her testimony is exaggerated to lead support to complainant.

19. So far the evidence of PW 2 is concerned, he happens to be the brother of complainant No.1. PW 2 has categorically stated that except following up to the labour room, he has not gone to the labour room. PW 3 being concerned Dr Abodh Kumar Mohapatra, clearly stated that he was not present at the time of delivery. Therefore, the evidence of PW 1, 2 and 3 are not positive, clear and consistent to prove the negligence on the part of OP No.1 or OP No.2. Apart from this, there is no other evidence adduced by the complainant to prove the negligence of the doctor - OP No.1 concerned.

20. Mr Samal, learned counsel for the appellant/complainant submitted that they have lodged FIR alleging about negligence of the doctor and police has made investigation and for that investigation the concerned doctor Professor of Gynaecology Department, SCB Medical College and Hospital, Cuttack has submitted the report. Since the report is not in favour of the complainant, latter wanted to cross examine Professor. Mr Samal drew attention of the Commission to the order dated 1.6.2009 of the learned District Forum. On perusal of the same, it appears that in fact the complainant has asked to summon Professor to cross examine but the learned District Forum called for a report without issuing notice to the Professor for examination. But on the next date, the document was produced but the learned District Forum closed the case without insisting for cross examination of the concerned doctor.

21. Mr Samal, learned counsel submitted that the learned District Forum without going through the prayer of complainant properly has closed the case. Had there been any adverse order that could have been agitated in revision before this Commission but not doing so, the submission of the learned counsel for the complainant is a futile exercise.

22. It is reported in 1996 NCJ 1 (SC) **Indian Medial Association vrs. V.P.Shantha & Others** where the Lordships have clearly held that consumer complaint for negligence of doctor is maintainable. it is also settled in law that wherever there is negligence of the doctor, the expert opinion is required by the consumer fora to decide the case. Reliance can be made on the decision of **V.Kishan Rao vrs Nikhil Super Speciality Hospital and another 2010 AIR SCW 4252**. Since it is a case of medical negligence, the expert opinion is required in this case. However, whether it is out of FIR before police or it is out of consumer complaint but opinion of the expert cannot be changed under any circumstances. In this case, the expert's opinion has rendered by Professor of Gynaecology and Obstetrics, SCB Medical College and Hospital, Cuttack and same is available on record. This report has been submitted on 16.10.2007 and opinion is as follows:-

“xxx xxx xxx

Opinion

Dr.Prasanta Ku.Samal has adopted usual required procedures during a normal vaginal delivery and thereafter has taken all preventive measures to arrest primary post-partum halmorrhage. There has been no lapse or negligence in treatment of Sarmistha Mishra. Rather Dr Samal has taken adequate care in accompanying Mrs Mishra from place of delivery at Dkl to SCB Medical College & Hospital, Cuttack in the same ambulance carrying Mrs Mishra and continuously monitoring the treatment of Mrs Mishra during the course of transfer.”

23. The aforesaid opinion is clear to show that OP No.1 has adopted usual required procedure during the normal vaginal delivery. Not only this but also the concerned Professor has maintained that OP No.1 has taken maximum care to arrest bleeding and at the same time has accompanied the patient to the SCB Medical College and Hospital, Cuttack. The method episiotomy was a regular feature at that time may be occasional feature at the present time to cause delivery. Professor of Obstetrics and Gynaecology has also discussed about method of episiotomy adopted for delivery and has not denounced such method as adopted by OP No.1. When the Doctor - OP No.1 has taken usual procedure as per the expert opinion and has also accompanied the patient, the question of negligence and deficiency of service on his part is not proved by the complainant.

24. Bereft of above facts, the report of the Medical Board constituted under leadership of CDMO to find out the latches with the concerned OP No.2 Nursing Home is also be taken into consideration to find out the fault with OP No.2.

25. The above report available on the record has been submitted by the C.D.M.O., Dhenkanal along with other experts. They have opined that OP No.2 has got valid licence up to 28.2.2007 and also applied for further extension of same which has already been sent to DMET, Bhubaneswar for consideration. It is also revealed from the report that Nursing Home has all facilities for conducting normal delivery patient and of Obstetrics and Gynecology operation. This matter has also been discussed by the learned District Forum. Adding to above fact the evidence of OPW 1 who is concerned doctor is clear to show that he has taken alls steps under method of episiotomy for delivery of child. In cross examination nothing has been elicited to shake his testimony.

26. In view of aforesaid discussion, this Commission is of the view that complainant having failed to prove the deficiency of service or negligence on the part of OP Nos. 1 and 2, there is nothing to interfere with the impugned order passed by majority Members. The minority view needs no discussion. Therefore the appeal stands dismissed by confirming the impugned majority order passed by the learned District Forum. No cost.

DFR be sent back forthwith.

Supply free copy of this order to the respective parties.

[HON'BLE MR. JUSTICE Dr. D.P. Choudhury]
PRESIDENT