NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

FIRST APPEAL NO. 1107 OF 2018

(Against the Order dated 16/05/2018 in Complaint No. 81/2013 of the State Commission Uttar Pradesh)

1. DR. MANISHA AGRAWAL & ANR.
R/O. 74/2, RAM NAGAR, KIRAN MANDI,
GHAZIABAD
UTTAR PRADESH
2. MANISHA HOSPITAL
THROUGH DR. MANISHA AGARWAL, R/O. 74/2,
RAM NAGAR, KIRAN MANDI,
GHAZIABAD
UTTAR PRADESH .....Appellant(s)

Versus

1. KAPIL BAJAJ & ANR.
R/O. H NO 535, TURAB NAGAR, GALI GOPAL MANDIR
GHAZIABAD
UTTAR PRADESH
2. DR. VINIT AGARWAL
R/O. 74/2, RAM NAGAR, KIRAN MANDI
GHAZIABAD
UTTAR PRADESH .....Respondent(s)

BEFORE:
HON'BLE MR. JUSTICE R.K. AGRAWAL,PRESIDENT
HON'BLE DR. S.M. KANTIKAR,MEMBER

For the Appellant :
For the Respondent :

Dated : 18 Jun 2020

ORDER

APPEARED AT THE TIME OF ARGUMENTS

Mr. Anant Agarwal, Advocate

For the Appellants : Ms. Ritika Khanna, Advocate

For the Respondent No. 1 : Mr. Anil Kr. Sharma, Advocate

For the Respondent No. 2 : NEMO

Pronounced on: 18 th June 2020

ORDER

PER DR. S. M. KANTIKAR, MEMBER

The blame of tragic misfortune for unexpected, unavoidable, unpredictable, unpreventable Amniotic Fluid Embolism (AFE), most of the times the obstetrician is a scapegoat. Unfortunately in some cases, despite the doctor's best intentions, patients suffer injury or die, and the clinicians involved often become the secondary victims.

1. The instant appeal is preferred by the Appellant No.1/ OP-1 (Dr. Manisha Agarwal) & Appellant No.2/ OP-3 (Manisha Hospital) under section 19 of the Consumer Protection Act 1986 against the impugned Order dated 16.05.2018, passed by the U.P. State Consumer Disputes Redressal Commission, Lucknow (for short, 'the State Commission'), whereby held the appellants liable for medical negligence and allowed the complaint.

2. Brief facts are that the complaint's wife Parul Bajaj (for short 'the patient') was pregnant and for 2-3 months before the due date she was under treatment of Dr. Manisha Agarwal (OP-1). On 04.11.2012, she developed labour pain and for delivery got admitted in Manisha Hospital (OP-3). She was in good health at the time of admission and the OP-1 assured delivery of baby will be normal. It was alleged that the OP-1 treated the patient casually and did not advise the required investigations as per standard norm. During the labour one injection was administered by OP-1, which stopped the pain for some time, and then OP-1 and 2 created situation such that the complainant was compelled to give consent for lower segment cesarean section (hereinafter referred as 'LSCS'). It was further alleged that without proper facilities and staff, the OP-1 negligently and carelessly performed the LSCS. The anesthetist (Dr. Neelam) was not present and she did not give anesthesia on the date of unfortunate incident (04.11.2012). The time of 4-5 hours

was wasted in the operation theatre (OT) and the OP-1 without disclosing the condition of patient suggested for shifting the patient to any other super hospital. It was alleged that, till date the patient is under coma and unable to recognize anyone. Being aggrieved by the alleged negligence and deficiency in service from the OPs, the complainant filed a complaint before U.P. State Commission seeking compensation of Rs. 99 lakh from the OPs. The complainant also filed another complaint before the UP Medical Council.

3. The OPs filed their common written version and denied all the allegations. The OP-1 submitted that during labour no injection of any nature was given to the patient either by herself or any member of the team. The labour pains were increasing, but there was no visible progress in cervical dilatation. As the fetal distress was noticed, the OP-1 explained the patient and her husband about the risk to the baby and suggested LSCS delivery. However from the patient side, there was no response or consent for LSCS. The OP-1 was constrained due to non-cooperation from the patient side and emphatically warned the attendants including the patient either to consent for caesarean section or to take the patient to any other hospital. Thereafter, complainant gave the consent voluntarily informed consent. The consent was not at all obtained under coercion or pressure. The spinal anesthesia was given by an anesthetist Dr. Neelam. The LSCS was performed by OP-1 with experienced team of doctors. The OT was well equipped and LSCS was performed with utmost skills and reasonable standards. A female healthy baby was delivered at 1.20 PM. After delivery the patient suddenly developed cardiorespiratory arrest. Amniotic Fluid Embolism (AFE) was suspected and immediately Dr. Neelam started resuscitation. The patient was intubated and started positive pressure respiration. The patient showed signs of partial revival and the LSCS was completed by the OP-1 and the surgeon Dr. Anil Gupta. The relatives were informed about the sudden happenings and the serious condition of patient. It was denied by the OP-1 that the patient was unnecessarily detained in OP-3 hospital. Thereafter, the patient was shifted in ambulance to the nearest tertiary care centre at Yashoda Hospital with the positive pressure respiration. In the ambulance OP-1 accompanied the patient. The patient was put on ventilatory support in Yashodha Hospital. Thus there was no breach of duty of care or any compromise with professional ethics while treating the patient. The complaint was filed without any justification with ulterior motive to claim huge compensation.

4. Heard the arguments from both the sides and perused the medical record from OP-3 hospital, Yashoda Hospital and *inter alia* the original record of the case and order of the State Commission. Both the sides have filed some medical literatures on the subject (AFE).

5. The learned counsel for the complainant submitted that the OPs have falsely made their case. The learned counsel reiterated the affidavit of evidence. As the patient suffered the cardiac arrest, the doctors unnecessarily wasted crucial time inside the operation theater which later on worsened the condition of the patient. The counsel further submitted that one male person (non-doctor) was present in the OT with the doctors till the shifting of the patient to Yashodha Hospital. The OP-3 hospital has no facilities up to the mark. It was failure in the duty of care from the OPs. The counsel brought our attention to the order passed by U.P. Medical Council which observed that the facilities available in the OP-3 hospital were not up to the mark.

6. Learned counsel for OPs submitted that the OP-1 is qualified as MD (Obst. & Gynae) having 17 years' experience and performed many complicated deliveries and LSCS operations. The complainant failed to prove that the conduct of the OP-1 in her specialty fell below the standard of reasonable practice. The complainant has not produced any expert opinion to establish the medical negligence committed by the OP-1.

7. We gave our thoughtful consideration to the submissions advanced from both the sides. The main question here is – whether there was any negligence and any deficiency in service while performing LSCS by the OP-1.

8. On perusal of the medical record of OP-3 hospital, it is apparent that on 04.11.2012 at 12.15 pm, OP-1 examined the patient and noted the cervix was closed and the head of fetus was high. The FHS was 170/minute, regular. The patient and her attendants were informed and advised for LSCS. The indication for LSCS mentioned as "non-progress of labour with fetal distress". The decision taken by OP-1 to do emergency LSCS cannot be faulted. The attendant gave the consent at 12.45 PM and then the patient was shifted to OT. As per the anesthetist note, the blood investigation like Hb%, TC, DC, the blood sugar, urea and creatinine were normal. The surgery was performed by the OP-1, it was assisted by Dr. Anil Gupta (OP-2), the anesthetist, Dr. Neelam Gupta. The pediatrician, Dr. Pallav Gupta was also present in OT. The LSCS was performed under spinal anesthesia; a full term female baby was delivered at 1.14 pm. The Injection Synto – 10 units in drip started and injection Prostodin 1 ampule (250 microgram).

9. Suddenly, patient showed fall in BP (90/60 mm of Hg), bradycardia, feeble pulse and fall in SPO2 level (90%). The patient became unconscious started with labored breathing. The patient was immediately intubated with ET number 7.5 and connected to boils trolly with circuit and IPPR done with 100 % oxygen. The doctors in OT also gave injection Atropine, Termine and Adrenaline. The cardiac massage was also done. At 1.20pm, the patient was revived from the arrest, the LSCS was completed, and placenta was delivered. She was unconscious and having slow respiration. The ambulance was called and at 1.35 pm the patient was shifted to higher center with ventilatory support. The patient was responding to long painful stimuli. Learned counsel for the OPs relied upon the literature on Amniotic Fluid Embolism. The counsel vehemently submitted that there was no negligence while performing LSCS and an occurrence of AFE was not due to negligence of doctor.

10. We have gone through the literature on Amniotic Fluid Embolism from the various published Articles the and medical text from William's Obstetrics (23 rd ed). It is stated therein that Amniotic fluid Embolism is a rare but often fatal complication of pregnancy and its onset can neither be predicted nor prevented. AFE is an infrequent, unpredictable, and the catastrophic complication of pregnancy in which amniotic fluid, fetal cells, hair, or other debris enters into the maternal pulmonary circulation, causing cardiovascular collapse. AFE is a syndrome typically occurs during labor, soon after vaginal or caesarean delivery, or during second-trimester dilation and evacuation procedures. It is virtually impossible to predict which patients are at risk for AFE. Diagnosis must be based on a spectrum of clinical signs and symptoms and by exclusion of other causes. Most cases of AFE are associated with dismal maternal and fetal outcomes, regardless of the quality of care rendered. Early recognition of AFE with prompt intervention is paramount to a successful outcome. Management is resuscitative, geared toward maintaining vital signs and treating hemodynamic and coagulopathy derangements as they occur. A team approach among obstetrician, anesthesiologist and intensivist is necessary for a successful outcome. Despite early intervention, maternal and fetal mortality remain high. Thus, owing to its uncertain etiology, varying symptoms, rapid onset, and high fatality rate the AFE is one of the most challenging obstetric emergencies leading to cardiac arrest.

11. The Cardiac arrest is a devastating event. Despite improving resuscitation practices, mortality is high with many survivors being left with severe neurological impairment. However, some do make a good recovery and return home to a meaningful quality of life. The

pathophysiology of hypoxic ischemic brain Injury encompasses a heterogeneous cascade that culminates in secondary brain injury and neuronal cell death. The long-term consequences will depend on the severity of the cerebral anoxia and on how much irreversible damage has occurred in the brain. If there has only been mild or short-lived anoxia, there may well be recovery back to a normal or near normal level of functioning. However, if the anoxic injury has been more marked the outcome is less certain and there are likely to be long-term effects. The nature of these problems will vary from person to person, depending on the severity of the injury and the brain areas affected. Accurately predicting those who will achieve a good neurological outcome in post-arrest comatose patients is difficult.

12. We have carefully perused the order of UP Medical Council, it is reproduced as below.

UTTAR PRADESH MEDICAL COUNCIL

5, Sarvapally, Mall Avenue Road, Lucknow- 226001

Phone: 0522-2238846, 2236600 Fax: 0522-2237800

Ref. No. ……. Date …….

Order

The Ethical Committee has noted the statement of Dr. Manisha that she has 2 beded hospital, with all facility in Operation theater. Spinal Anaesthesia given by Dr. Neelam and Dr. Pallav Rastogi Paeditrician both are on call consultant. No documents (O.T. Notes, PostOp, Delivery notes, PAC are not signed). As per Dr. Neelam (Anaesthetist) all infrastructure were present for Anaesthesia. Dr. Neelam gave spinal anesthesia and after delivery of baby (LSCS) patient had cardio respiratory arrest. After resuscitation cardiac activity returned but respiration did not recover. She kept the possibility of Amniotic Fluid Embolism for coma.

The Ethical Committee is the opinion that Dr. Manisha Agarwal should be restricted to operate in such facilities which seems not upto the mark. Chief Medical Officer, Ghaziabad should be informed that Dr. Manisha Agarwal will not operate in this hospital unless the facilities are improved.

Registrar

For Ethical Committee

7335-37/13 Dt. 19/9/13

On bare perusal of the Order *(supra)* it is clear that the UP Medical Council has not held Dr. Manisha Agrawal for procedural lapses or negligence while performing LSCS. In our view, AFE is an unpredictable complication, and it was managed by the OP-1 efficiently and made timely

reference to the higher center for further management. Thus, any failure in duty of care from the treating doctor is not visible.

13. In order to succeed the claim in medical negligence case three requirements need to be met. One the accidental nature of the misconduct on the part doctor, second the existence of proven damage and third its direct relationship. The doctor shall put in place all necessary measures as to the current scientific knowledge. We note the OP-1 performed her duty with reasonable standards and as per accepted practice. The patient was appropriately referred to the higher centre.

14. We would like to rely upon the decision of Hon'ble Supreme Court in the case of **Achutrao Haribhau Khodwa and others versus State of Maharashtra and others** (1996) 2 SCC 634 where the Apex Court has observed as follows:

*"The skill of medical practitioners differs from doctor to doctor. The very nature of the profession is such that there may be more than one course of treatment which may be advisable for treating a patient. Courts would indeed be slow in attributing negligence on the part of a doctor if he has performed his duties to the best of his ability and with due care and caution. Medical opinion may differ with regard to the course of action to be taken by a doctor treating a patient, but as long as a doctor acts in a manner which is acceptable to the medical profession, and the Court finds that he has attended on the patient with due care skill and diligence and **if the patient still does not survive or suffers a permanent ailment,** it would be difficult to hold the doctor to be guilty of negligence."*

The Hon'ble Supreme Court in another case **Kusum Sharma & Others Vs. Batra Hospital & Medical Research Centre & Others** (2010) 3 SCC 480; while dismissing the complaint, held that:

"Consumer Protection Act (CPA) should not be a "halter round the neck" of doctors to make them fearful and apprehensive of taking professional decisions at crucial moments to explore possibility of reviving patients hanging between life and death." Also said that "Doctors in complicated cases have to take chance even if the rate of survival is low. A doctor faced with an emergency ordinarily tries his best to redeem the patient out of his suffering. He does not gain anything by acting with negligence or by omitting to do an act," It further observed as, "It is a matter of common knowledge that after some unfortunate event, there is a marked tendency to look for a human factor to blame for an untoward event, a tendency which is closely linked with the desire to punish,"

15. In the instant case the OP-1 is qualified as an obstetrician and experienced one. LSCS was performed as per standard procedure, but unfortunately, the patient suffered cardiac arrest due to unpredictable Amniotic Fluid Embolism (AFE). Though immediately resuscitative steps were performed by the doctors in OT, but the patient suffered cerebral hypoxia. It was not due to negligence or deficiency while conducting the LSCS or management of AFE. The State Commission has erred in law to hold it as a medical negligence.

16. Based on the foregoing discussion, the order of State Commission is set aside and the first appeal is allowed. Consequently the complaint is dismissed.

However the parties shall bear their own cost.

17. As the appeal preferred by the appellant, Dr. Manisha Agrawal, has been allowed, we direct the Registry to refund the amount of statutory deposit of Rs. 35,000/- alongwith accrued interest, if any, and any other amount, if any, deposited by the appellant alongwith accrued interest.

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R.K. AGRAWAL
PRESIDENT
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DR. S.M. KANTIKAR
MEMBER