

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 3145 OF 2008

(Against the Order dated 28/05/2008 in Appeal No. 206/1998 of the State Commission Uttar Pradesh)

1. DR. ANIL KUMAR MITTAL

S/o Shri Brij Bhushan Lal, R/o Prakash Bhawan,
Narayanpuri,

Distt. Saharanpur

UTTAR PRADESH

.....Petitioner(s)

Versus

1. SMT. NEELAM GUPTA & ORS.

W/o Shri Rakesh Gupta, R/o Gill Colony (Raj Vihar), S.D.
Garden School, Paper Mill Road,

Distt. Saharanpur

UTTAR PRADESH

2. DR. CHANDRA V.

Arpit Dignostics, Opp. Civil Hospital,

Distt. Saharanpur

UTTAR PRADESH

3. DR. V.C. GUPTA,

Pathologist, Civil Hospital,

Distt. Saharanpur

UTTAR PRADESH

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE J.M. MALIK, PRESIDING MEMBER

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

For the Petitioner : : Mr. Anzar Husains, Advocate

For the Respondent : For the Respondent No. 1 : Mr. Zaryab J, Rizvi
Advocate

For the Respondent No. 2&3 : NEMO

Dated : 07 Jul 2015

ORDER

PER DR. S.M. KANTIKAR, MEMBER

1. Parties are placed at the same position as in the complaint.
2. Brief facts relevant in this revision petition are that, the complainant Smt. Neelam Gupta (hereinafter referred to as "patient") gave birth to a male child on 04.12.1988 in SBD Hospital, Saharanpur, U.P. After delivery, due to anemic condition of the patient, Dr. Sandhya Pradhan (OP-13) advised for blood transfusion. The OP-1/petitioner herein, tested patient's blood previously on 15.09.1988 as B Rh Positive (in short B +ve). Therefore, one bottle of B +ve blood was issued from SBD hospital blood bank and transfused to the patient. Thereafter, till 1994, she became pregnant for four times, but every pregnancy resulted into fetal loss (death). In year 1994, during her 5th pregnancy, the patient got her blood group tested from OP-1 on 05.11.1994. Again, it was reported as B +ve. Same was reconfirmed by Dr. Chandra at Arpit Diagnostic Laboratory as O +ve. Due to such disparity, the then Dr. Sareen, advised blood group from Dr. Vijay Laxmi Taneja, who reported it as B Negative on 15.11.1994. It was again reconfirmed by Dr. A.K. Jain on 16.11.1994 as B Neg.
3. Hence, alleging negligence against Dr. A. K. Mittal, OP-1 and other 19 OPs, the complainant filed a complaint before the District Forum, Saharanpur.
4. The District Forum directed the OP -1, Dr. Mittal and OP-11, Dr. Chandra B., to pay a sum of Rs.2,000/- each to the complainant.
5. Aggrieved by the order of District Forum, OP preferred first appeal before the State Commission (First Appeal No. 499 of 1998) whereas the complainant, Neelam Gupta filed first appeal No. 206 of 1998 for enhancement of compensation. The State Commission dismissed the appeal of Dr. A. K. Mittal/petitioner herein, whereas the complainant's appeal was allowed and directed Dr. A. K. Mittal to pay Rs.2 lakhs with 12% interest p.a. from the date of complaint.
6. Therefore, aggrieved by the order of State Commission, the OP 1/petitioner filed this revision petition.
7. We have heard both the parties. Dr. A.K. Mittal, (OP-1) was also present. He submitted that he had performed patient's blood group and reported it as B +ve in year 1988 (15/9/1988). He has neither cross matched the blood nor issued that blood to the patient, but the blood was issued from the blood bank of SBD Hospital and transfused there only. Therefore, it was the duty of blood bank before giving the blood, to do **Compatibility Test** like grouping and cross matching. Therefore, the petitioner/OP-1 prayed that, he was not responsible for the wrong issuance of blood and the damage occurred to the patient after the blood transfusion.
8. The counsel for complainant vehemently argued that, due to wrong blood group report given by the petitioner, the SBD Hospital transfused the same blood group. Therefore, Dr. A.K. Mittal OP-1 is liable entirely.
9. This is a very peculiar case of medical blunder a "Gross Negligence" at a Govt. Hospital. Initially, private clinic (Dr. A. K. Mittal) reported blood group of the patient as "B +ve" and just on its basis, the blood bank at SBD Hospital issued blood of the same group to the patient. As per worldwide standard blood bank procedures, the blood should be issued after proper **Compatibility Testing** (matching of blood of patient and donor). Even as per the Drug and Cosmetic Act, the licensing authority; it is mandatory to perform all screening tests. Therefore, we are of view that, the blood bank staff at SBD Hospital have either wrongly performed Compatibility tests or negligent in their duties. Hence, the blood bank and SBD Hospital, Saharanpur are responsible in this instant case.
10. Therefore, notices for 27.05.2015 were served to the Medical Superintendent, SBD Hospital, Saharanpur (OP-17) and Officer In-charge of its blood bank (OP-16) for their appearance and explanation. On 27.05.2015, Dr. Ajay Kumar Shukla from OP blood bank

was present and submitted that, he has been posted in the hospital since year 2014 and the record in the hospital prior to year 1998 has been destroyed. He did not work at the SBD Hospital during the said episode (1988). He explained that, the mandatory compatibility test (cross matching) should be done prior to issuing any blood for transfusion.

11. It is very strange that, a young pregnant lady after her first delivery at SBD Hospital was transfused B +ve blood, whereas her blood group was B-Negative. As per medical text books on Transfusion Medicine by Dr.Makroo, the procedure manuals of American Association of Blood Banking (AABB), Institute of Immunohematology, KEM Mumbai, and National Aid Control Organisation(NACO) guidelines, it is clear that before transfusion of blood to any patient, compatibility testing is necessary. The compatibility test includes confirmation of blood group of the donor and recipient. The SBD blood bank just blindly issued the blood either without compatibility test/(cross matching) or wrongly and carelessly performed it. Thus, blood bank has not followed the standard procedure. It is very unfortunate that, at the first instance only, if the blood bank would have detected patient's blood group correctly as B Negative, the major mishap would have averted. The patient was transfused with B-Positive blood, which resulted into Rh-sensitization, i.e. development of anti Rh-antibodies in the patient's blood, which was the cause for destruction of fetus during subsequent pregnancies. Rh sensitization leads to death of fetus or development of abnormal fetus. Therefore, the SBD hospital is wholly liable for this medical negligence.
12. The principle of '**res ipso loquitur**' is applicable in the instant case. The principle has been discussed elaborately by the Hon'ble Apex Court in [V.Kishan Rao vs. Nikhil Super Speciality Hospital](#) [(2010) 5 SCC 513], and in **Spring Meadows Hospital**, wherein it has been held, as follows:

"43. (supra) this Court was dealing with the case of medical negligence and held that in cases of gross medical negligence, the principle of 'res ipsa loquitur' can be applied. In paragraph 10, this Court gave certain illustrations on medical negligence, 28 where the principle of res ipsa loquitur can be applied."

In the instant case the B Negative patient was transfused B Positive blood.

1. However, we cannot ignore about the wrong committed by Dr. A.K. Mittal, (OP-1) also. He performed the patient's blood group test twice, i.e. in 1988 and again in 1994, and twice reported it as B +ve. Some other lab also reported it as B+ve. Therefore, we hold the petitioner negligent to some extent who wrongly reported patient's group as B +ve. Therefore, we fix liability to the extent of Rs.10,000/- only, for wrong reporting blood group.
2. It is very pathetic that, the patient suffered continuous loss of pregnancy due to negligent act of the doctor and staff in blood bank at SBD Hospital in 1988. The patient now will have no chance throughout her rest of life to have a second child. Therefore, Govt hospitals should not be exonerated scot-free after such gross negligence; it was a mischievous play with the life of pregnant woman who had to suffer throughout her lifespan.
3. Day by day the Public Health is crippling in our country because of rampant unethical practices and negligence in the Govt hospitals. There is no accountability of negligence committed by the doctors working in Govt hospitals. The poor patients are victimized. The most of victims of negligence are unable to knock the door of court and very few patients (only tip of an ice berg) approach the Courts, but government doctors escape from clutches of Consumer Protection Act under principle of "Contract for service." Govt. hospitals are

not immune to such gross negligence. It was made clear from the landmark judgment of Hon'ble Supreme Court in **Indian Medical Association vs. V.P. Shantha** 3(1995) CPJ 1 SC, that the Govt hospitals are also liable under CP Act.

4. The Hon'ble Supreme Court on 1st July 2015, in it's recent landmark judgment in the case of **V. Krishnakumar vs. State of Tamil Nadu & Ors.**, Civil Appeal No. 8065 of 2009, the bench of Hon'ble Mr Justices Jagdish Singh Khehar and S.A.Bobde held, the State Govt and Govt Hospital liable for medical negligence and imposed compensation at the tune of Rs.1.38 Crores. Hon'ble Mr Justice Bobde observed in para 27 that;

“It is settled law that the hospital is vicariously liable for the acts of its doctors vide Savita Garg vs. National Heart Institute (2004) 8 SCC 56, also followed in Balram Prasad's case(supra). Similarly in Achutrao Haribhau Khodwa v. State of Maharashtra, (1996) 2 SCC 634 this Court unequivocally held that the state would be vicariously liable for the damages which may become payable on account of negligence of its doctors or other employees. By the same measure, it is not possible to absolve Respondent No. 1, the State of Tamil Nadu, which establishes and administers such hospitals through its Department of Health, from its liability.”

17. In the instant case the Petitioner is liable for some extent, but we hold the SBD Hospital entirely guilty of gross medical negligence of transfusing wrong blood to the patient, therefore we set aside the orders passed by the Fora below and pass the following order:

18. The petitioner Dr. A. K. Mittal is directed to pay Rs. 10,000/- only to the complainant, whereas the SBD Hospital shall pay Rs.4,95,000/- to the complainant with interest @ 18 % per annum from 15.09.1988. It was a case of Gross Negligence, thus we further impose cost of Rs.10,00,000/- (Rs. Ten Lacs) to be paid to the complainant. The OPs shall comply with entire order within 90 days from the date of receipt of this order; otherwise entire amount will carry further interest @ 9% p.a. till its realization. Copy of this order be sent to Hon'ble Minister, Ministry of Health and Family Welfare, New Delhi.

List for compliance on 1/11/2015.

.....J
J.M. MALIK
PRESIDING MEMBER
.....
DR. S.M. KANTIKAR
MEMBER