(1985) 09 KL CK 0018

High Court Of Kerala

Case No: None

Usha		APPELLANT
	Vs	
G.P. Namboodiri and Another		RESPONDENT

Date of Decision: Sept. 11, 1985

Citation: (1986) 1 ACC 386 : (1986) ACJ 141

Hon'ble Judges: P.C. Balkrishna Menon, J; M.M. Pareed Pillay, J

Bench: Division Bench

Judgement

P.C. Balkrishna Menon, J.

The appellant, a girl aged about 12 years, the daughter of a driver in the service of the 2nd respondent, the Kerala State Electricity Board, at Idikki sustained injuries due to a fall from a moving bus at about 9.15 a.m. on 12-10-1970. She was immediately rushed to the Chief Engineer''s Colony Hospital, Idikki run by the 2nd respondent K.S.E. Board. The 1st respondent, the Medical Officer-in-charge of the Hospital, attended on the patient. His report Ext. B1(a) shows the nature of the injuries sustained by the appellant. She had a fracture on the left tibia besides other minor injuries. She was hospitalised and her injured leg was immobilised by a plastercast extending from mid-thigh to the ankle. Ext. B-2 dated 12-10-1970 shows the treatment given to the patient on her admission in the hospital. The wounds were sutured, a plastercast was put and she was given penicillin injection and glucose saline drip. On 14-10-1970 the patient complained of severe pain on the leg ; she was given sedatives. Since the pain did not abate, she was discharged from the hospital on 15-10-1970 referring her case to the General Hospital, Ernakulam. The appellant was brought to the Lissie Hospital at Ernakulam, on 15-10-1970. PW 4 the Doctor in charge of the Orthopaedic Section of the Lissie Hospital examined the patient and found that "the child was toxaemic and the leg was in plastercast and toes were swollen blue, immobile and anaesthetic." The plaster was removed immediately and it was found that there was no pulsation or any other evidence of blood supply to the foot and leg. The patient was discharged from the Lissie Hospital on 16-10-1970 referring her case for treatment at the C.M.C. Hospital,

Velloore. The appellant was admitted in the C.M.C. Hospital on 17-10-1970. She was under the treatment of PW 3, the Head of the Orthopaedic. Surgery Unit of the Hospital PW 3 found that gangrene had set in and to save the life of the patient, her left leg was amputated below the knee on 19-10-1970. A further amputation above the knee had to be performed on 2-11-1970 to give the patient a suitable amputation stump for wearing an artificial leg. The patient was discharged from the C.M.C. Hospital on 20-11-1970. PW 3 had diagnosed the case of posttraumatic gas gangrene.

2. The minor appellant represented by her father filed the suit for compensation Rs. 70,000/- for shortened expectation of life, pain and suffering, cost of treatment and the expenses for providing an artificial leg. The 1st defendant is the Medical Officer-in-charge of the Chief Engineer''s Colony Hospital at Idikki and the 2nd respondent, K.S.E. Board, is his employer sought to be made liable in damages vicariously for the negligence of the first defendant Doctor in treating the plaintiff-appellant. The court below found that the plaintiff has failed to prove negligence and the suit was dismissed with the observation that the 2nd defendant K.S.E. Board should take a lenient view and give full reimbursement of the expenses incurred in the treatment of the plaintiff at the Lissie Hospital and at the C.M.C. Hospital, Vellore. The plaintiff appeals against the decision of the trial court that she has failed to establish negligence on the part of the 1st defendant in treating her.

3. In the Scottish case in Hunter v. Hartley the Lord President (Lord Clyde) stated at p. 217:

In the realm of diagnosis and treatment there is ample scope for genuine difference of opinion, and one man clearly is not negligent merely because his conclusion differs from that of other professional men, nor because he has displayed loss skill or knowledge than others would have shown. The true test for establishing negligence in diagnosis or treatment on the part of a doctor is whether he has been proved to be guilty of such failure as no doctor of ordinary skill would be guilty of it acting with ordinary care.

The decision was followed in Bolam v. Friern Hospital Committee (1957)2 All ER (QBD) 118 where McNair J. stated the law thus at p. 121:

....The test is the standard of the ordinary skilled man exercising and profession to have that special skill. A man need not possess the highest expert skill at the risk of being found negligent. It is well-established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art.

The decision in Bolam v. Friern Hospital Committee (supra) was followed by the Privy Council in Chin Keow v. Government of Malaysia (1967)1 WLR 813. In Charlesworth and Percy on Negligence, 17th Edn. it is stated at p. 544:

Standard of care. In order to satisfy the duty in tort, the standard of care and skill, to be attained, is that of the ordinary competent medical practitioner, who is exercising the ordinary degree of professional skill Although the standard is a high one, "a defendant charged with negligence can clear himself if he shows that he acted in accordance with general and approved practice." This means practice, which is approved at the date, when he is said to have been negligent, and not the practice, which has become approved at a later date. A surgeon was acquitted of a finding of negligence, when he made an incorrect diagnosis, as a result of his failure to use an instrument, which was very rate in England at the material date. Similarly, an anaesthetist was held not liable, when he administered an annaesthetic, which had been kept in a manner thought to be safe the time which later experience showed to be dangerous. A medical man "is not guilty of negligence if he has acted in accordance with practice accepted as proper by a responsible body of medical men skilled in that particular art...merely because there was a body of opinion who would take a contrary view." It is not required, in the discharge of his duty of care, that he should use the highest degrees of skill, since they may never be acquired.

In the present case negligence is attributed to the 1st defendant Medical Officer in the way he put the plaster cast on the fractured leg of the injured plaintiff which, according to her, resulted in the infection of the affected part, as a consequence of which traumatic gas gangrene had set in necessitating the amputation of the leg to save her life. In Cecil Text Book of Medicine, 17th Edn. it is stated at page 1574 that there is no effective means of active immunisation against clostridial myonecrosis or gas gangrene. In Dr. Laxman Balkrishna Joshi Vs. Dr. Trimbak Bapu Godbole and Another, it is stated that at page 131:

11. The duties which a doctor owes to his patient are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties, viz., a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient. The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires : (cf. Halsbury''s Laws of England, 3rd ed. vol. 26 p. 17). The doctor no doubt has a discretion in choosing treatment which he proposes to give to the patient and such discretion is relatively ampler in case of emergency.

4. The first defendant has denied negligence. Ext. 82 shows the treatment given to the plaintiff immediately on her admission in the hospital at Idikki. PW 3, the Head of the Department of Orthopaedics at the C.M.G. Hospital, Vellore, in his deposition states:

What is the primary treatment to be given when such a patient is brought ? Cleaning of the wound followed by antibiotics. If it is not heavily contaminated and within 6 hours it has to be sutured. ATS has to be given. Medicines for relieving pain has to be given. Ext. A-1 is shown to the witness. The child was given ATS, antibiotics were administered, glucose was given and sedatives were also given. Adequate treatment of the left foot at the time of injury or at the time of the accident.

PW 4, the doctor in charge of the Orthopaedics Section of the Lissie Hospital states in his deposition:

Was the plastering in this particular case done properly ? The cast was properly applied in terms of its extent and its effect in immobilising the fracture. But the cast seemed a little tight.

He has, however, in cross-examination stated that if there is swelling after the plaster is applied, the plaster will become tight. He had noticed that the patient had a swollen leg and it was anaesthetic at the time when he bad examined her. In the light of the evidence and the law discussed above, it is not possible to find negligence on the part of the 1st defendant in treating the patient.

5. We record the statement by counsel for the 2nd defendant that the K.S.E. Board is prepared to reimburse the plaintiff for the expenses incurred for her treatment and for fixing an artificial leg if a proper claim in that behalf is made to the 2nd defendant.

6. We confirm the decision of the court below and dismiss the appeal. There will, however, be no order as to costs.