
Raj Kumar Garg Vs Chander Prakash Sharma

None

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: Feb. 14, 2012

Citation: 2012 0 NCDRC 258

Hon'ble Judges: ASHOK BHAN , VINEETA RAI J.

Advocate: ARUN MONGA , S.K.MISHRA , D.K.MONGA , SALIL PAUL

Judgement

1. THESE two revision petitions have been filed by Dr.Raj Kumar Garg & another (R.P.No.3536/2007) and Dr.Harsh Sharma & others

(R.P.No.3464/2007) (hereinafter referred to as the "Petitioners") being aggrieved by the order of the State Consumer Disputes Redressal

Commission, Haryana (hereinafter referred to as the "State Commission") in F.Appeals No.1725 and 1750 of 2006 wherein Chander Parkash

Sharma and other were Respondents.

2. SINCE the facts and the cause of action in both revision petitions are similar and they were disposed of by a single order of the State

Commission, we also propose to dispose of these by one common order by taking the facts from R.P. No.3536/2007.

3. RESPONDENT/complainant in his complaint before the District Forum has stated that his wife, Smt.Pushpa Rani (hereinafter referred to as the

"patient") had been suffering from abdominal pain and after diagnostic and clinical/laboratory tests she was advised to undergo Hysterectomy for

which she contacted Petitioner No.1 (Dr.Raj Kumar Garg) and on his assurance to provide the best medical services got herself admitted in the

Petitioner's hospital on 01.06.2003. She was operated on 02.06.2003 and was told that the uterus has been successfully removed and she was

charged Rs.30,000/- for the medical services provided. However, after the operation, the patient complained of unbearable pain, uneasiness,

weakness, nausea and loss of appetite which was brought to the notice of the Petitioner/doctor who assured that these are normal post-operative

symptoms and there was no cause for worry. However, after 5 days, the situation worsened and patient started vomiting black liquid and also

discharged "black rotten blood" from the vagina. On 13.06.2003, Petitioner No.1 informed the RESPONDENT that another abdominal operation

was required which was performed at 4.30 pm after arrangement of blood and further payments and other doctors were also associated with the

second operation which according to the RESPONDENT was conducted to rectify the mistake in the first operation when the abdomen was not

stitched properly because of which the intestine had been affected and internal bleeding had started. Even after the second operation, the patient"s

condition became critical and on 14.06.2003, Petitioner No.1 quietly referred her to PGI Hospital/Government Medical College, Chandigarh for

further treatment. According to the RESPONDENT, the doctors at Government Medical College, Chandigarh scolded Petitioner No.1 for

performing a negligent operation because of which the patient had developed Septicemia and Renal failure and she passed away on 23.06.2003.

Alleging medical negligence because of the faulty surgery resulting in internal bleeding, intestinal damage and renal failure, RESPONDENT sent a

legal notice to Petitioners seeking compensation of Rs.20 lakhs. Since there was no response from Petitioners, RESPONDENT filed a complaint

on grounds of medical negligence and deficiency in service before the District Forum and sought a compensation of Rs.20 lakhs for the expenses

incurred and for the suffering and mental agony etc. along with litigation costs.

4. THE Petitioners while admitting that after examining the patient and conducting the necessary tests the patient was admitted in the hospital for

Hysterectomy since she was suffering from Uterus Fibroids and bleeding, denied the allegations of medical negligence. According to Petitioners,

the operation was successfully conducted after a thorough pre -operative medical check -up(both clinical and diagnostic) when she was found fit to

undergo surgery and Respondent was charged Rs.16,930/- for this operation for which a formal receipt was also issued. THE patient was

recovering satisfactorily except for intermittent post -operative vomiting when Respondent requested that Dr.P.K.Garg who was patient"s personal

physician may also be called for consultation and therefore, Dr.Garg was requested to examine the patient. To the surprise and shock of Petitioner

No.1, Dr.P.K. Garg disclosed that the patient had a history of Ischaemic Heart Disease (IHD) and Coronary Artery Disease for which she was

under his treatment for the last about two years and she had also undergone tests like Angiography etc. at Escorts Heart Institute, Delhi. This

problem had however not been noticed in the pre -operative diagnostic tests (ECG etc.). She was, therefore, advised additional medication for the

heart problem in addition to post -operative medicines. Another Surgeon, Dr.Harsh Sharma, was also consulted who after examining the patient

with the consent of the Respondent advised a fresh ultrasound examination of the abdomen. THEREfore, on 08.06.2003, Dr.Vipin Goyal, MD,

Radiology carried out an ultrasound as well as an X -ray of the abdomen and the reports were found to be normal. On 11.6.2003, the

Hysterectomy stitches were removed wherein the wound was found healthy and the patient's condition was also improving and she was being

given oral fluids which she digested well. Respondent brought one Dr.Avinash Jain who was the Chief Medical Officer in the place where he was

working and he also examined the patient and found the condition and treatment of the patient to be satisfactory. On 13.06.2003, the patient

complained of foul discharge from her vagina and she was again examined because there was a suspicion of perforation of hollow viscus and

Dr.Harsh Sharma was also called for consultation after which it was decided that a second operation was necessary to ascertain the cause of the

vaginal discharge. After taking all precautions, the second operation was conducted on 13.06.2003 and it was found that the patient was suffering

from Superior Mesenteric Arterial Occlusion as a result of previous Ischaemic Heart Disease which had led to gangrene of the intestine.

Petitioner/doctor denied that the second operation was conducted in a hurry to cover the mistakes of the first operation. It was necessary to save

the patient's life and after intensive post -operative treatment when the condition of the patient improved and she was fully conscious on

14.06.2003, it was decided mutually by the Petitioners and Respondent to refer her either to the Post -Graduate Institute (PGI) or Government

Medical College Hospital, Chandigarh for further medical treatment. Petitioner/doctor also accompanied the patient to Chandigarh where she was

admitted to Government Medical College Hospital, Chandigarh. Petitioner/doctor denied that the patient was referred to Chandigarh without

consulting the Respondent or that the doctors at Government Medical College, Chandigarh scolded Petitioner/doctor for a negligent surgery. THE

patient died after 9 days of treatment in Chandigarh. Petitioner/doctor further stated that he had replied to the legal notice issued by the

Respondent that there was no negligence in the treatment of the patient and the patient was treated to the best of their professional ability and

competence by Petitioner and other doctors. THE entire problem occurred because it was the Respondent who did not reveal that the patient

suffered from Ischaemic Heart Disease which resulted in Superior Mesenteric Arterial Occlusion which caused her death.

5. THE District Forum after hearing both parties held Petitioners No.1, 2 and 5 (Dr.Raj Kumar Garg, Dr.P.K.Garg and Dr.Harsh Sharma

respectively) guilty of medical negligence and directed them to pay Rs.9,25,448/ - along with interest @ 12% per annum according to the Motor

Accident Claim Tribunal Schedule and Rs.1 lakh being the amount spent on medical and conveyance charges. Dr.Raj Kumar Garg along with his

hospital was directed to pay 70% of the awarded amount and Dr.P.K.Garg and Dr.Harsh Sharma were directed to pay 15% each of the awarded

amount within one month.

6. AGGRIEVED by this order, Petitioners filed two separate appeals (First Appeal No.1725/2006 filed by Dr.Raj Kumar Garg and First Appeal

No.1750/2006 filed by Dr.Harsh Sharma and Dr.P.K.Garg) before the State Commission.

7. THE State Commission confirmed the order of the District Forum including the compensation awarded to Respondents. However, it set aside

the part of the order pertaining to the award of Rs.9,500/- as consortium for which there was no justification. THE State Commission also

dismissed the appeal filed by proforma Petitioners Dr.Harsh Sharma and Dr.P.K.Garg who had appealed on the grounds that that District Forum

had wrongly determined their liability to pay 15% of the awarded amount since as proforma Petitioners no relief was sought from them by the

Respondent/Complainant. In its detailed order, the State Commission confirmed the finding of medical negligence on the grounds that the

Petitioners were not able to file any credible evidence that the patient had been suffering from IHD which resulted in her subsequent death. THE

State Commission also noted that if indeed the patient had suffered from heart disease, there was no reason either for her or the Respondent to

withhold such vital information before undertaking such a surgery. THE contention of the patient's family physician Dr.P.K.Garg, that the patient

was treated at Escorts Hospital, Delhi had not been proved through any documents to confirm this fact. On the other hand, during cross -

examination, Dr.P.K.Garg had admitted that in the Angiography of the patient all the three vessels of the heart were found normal and nothing

abnormal was detected. THE State Commission also held the Petitioners guilty of negligence by concluding that the second operation on

13.06.2006 should not have been conducted since the Petitioners did not have the necessary skills for the surgery nor the infrastructure required

for follow -up treatment. In this context, State Commission cited the judgment of the Hon"ble Supreme Court in Dr.Laxman Balkrishna Joshi Vs.

Dr.Tirimbak Pabu Godbole & Anr. " AIR 1969 SC 128 wherein it was ruled that it is the duty of a doctor when consulted by a patient to decide

whether to undertake the case and deciding the treatment and also a duty in the administration of that treatment. Breach of any of these duties

amounts to medical negligence. THE State Commission also reached a finding that prior to the second surgery, no consent of the Respondent or

any other relative was taken. Finally, the State Commission relied on the Death Certificate which clearly indicated the cause of death as being

Anastomosis, post -operative hysterectomy as well as septicemia since no mention was made of Ischaemic Heart Disease. THE State Commission

observed that the perforation of the intestine could perhaps have occurred during the first surgery further strengthening the case of medical

negligence against the Petitioners. Hence, the present revision petitions.

8. COUNSEL for both parties made oral submissions, essentially reiterating the facts as stated by them before the Fora below. COUNSEL for

Petitioner stated that the learned Fora below gravely erred in concluding that there was medical negligence in the treatment and post-operative

care of the patient whereas as discussed earlier and taken note of by the Fora below, it is an undisputed fact that prior to the first surgery, patient

was subjected to extensive clinical and diagnostic tests and only after nothing abnormal was found, Hysterectomy was conducted by a qualified

Surgeon. The X-ray and ultrasonography conducted on 08.06.2003 on the patient also confirmed that there was no evidence of any perforation

and nothing abnormal was detected in these two tests. The Hysterectomy wound had healed and the stitches were therefore satisfactorily removed

on 11.06.2003. COUNSEL for Petitioner stated that patient's personal doctor, Dr.P.K.Garg, who was consulted at the request of the

Respondent had confirmed that the patient was a known case of IHD with Cardiac Artery diseases and it is well settled in medical literature that

there is nexus between cardiac diseases and Superior Mesenteric Arterial Occlusion [Source: Principles of Surgery (3rd Edition) " Seymour

I.Schwartz, MD, Professor of Surgery, University of Rochester School of Medicine Dentistry, G.Tom Shires, MD, Professor and Chairman,

Department of Surgery, Cornell University Medical College, Frank C.Spencer, MD, Professor and Director, Department of Surgery, New York

University School of Medicine, Edward H.Stroter, MD, Professor of Surgery, Yale University School of Medicine). Regarding the second

surgery, following the foul smelling vaginal discharge, a surgical intervention in the form of an explorative laparotomy was conducted in the interest

of the patient's life because if left untreated, the medical condition could further aggravate involving muscular layers of the intestine and leading to

peritonitis. It is also on record that this surgery was carefully conducted and the diagnosis confirmed that the small intestine was perforated since

there were leakages at multiple places and it had also turned gangrenous. Therefore, the gangrenous part of the intestine was excised, an

anastomosis was done with the remaining ends and the abdomen was closed after putting in drainage tubes. The patient was also stabilized after

the surgery and it is only after she regained consciousness that a decision was taken to shift her to a super-specialty hospital either PGI Hospital,

Chandigarh or Government Medical College Hospital, Chandigarh and she patient was taken to the Government Medical College Hospital,

Chandigarh under the personal supervision of the Petitioner. Thus, the Petitioners dealt with the Respondent's case right from the time of admission

till 14.06.2012 with utmost professional care and diligence as per accepted standard medical practice and procedures in such cases but

unfortunately patient died because she had herself suppressed the fact that she had IHD. COUNSEL for Petitioner contended that the Respondent

on whom there was onus to do so has not produced any medical expert evidence to prove the allegations of medical negligence; no affidavits or

records from the Escorts Hospital, Delhi confirming that the Angiography was normal had been produced and usually a patient is not advised an

Angiography unless there is a positive indication of cardiac problems in preliminary diagnostic procedures. The doctor who referred the patient to

Escorts Hospital and had examined her, had clearly stated that the patient suffered from IHD and, therefore, despite the best medical care and

treatment including the consultations with the Cardiologist during the second surgery, patient passed away after a few days in Government Medical

College Hospital, Chandigarh.

9. COUNSEL for Respondent while admitting that Respondent did not lead any evidence including any expert medical evidence stated that it was

considered not necessary since in this case the "records speaks for itself" and therefore, Respondent relied on the documents filed by the

Petitioners to prove medical negligence. COUNSEL for Respondent specially highlighted the reliance placed on the following documents:

(i) The pre -operative diagnostic and clinical tests which clearly indicated that no abnormality of the heart or any other vital organ was detected,

and (ii) the affidavit of Dr.P.K. Garg who in his cross -examination admitted that the angiography conducted in the Escorts Hospital indicated that

there was no blockage of the artery and (iii) the death certificate which confirmed that the cause of death was post -operative Hysterectomy,

Anastomosis leak, Septicemia and Renal failure and nowhere was it stated that the cause of death was related to IHD as contended by Petitioners.

Further, even if the contention of the Petitioners is accepted that the patient did have a previous history of heart disease, it was negligent of them to

have conducted the second surgery since they did not have the necessary infrastructure and professional facilities in their 20 bedded hospital which

did not even have a resident Gynecologist or Physician. COUNSEL for Respondent further stated that consent of the Respondent or any other

relative of the patient was not taken prior to the second surgery and they were merely informed that it was necessary. The Fora below which are

courts of fact had after carefully considering the entire evidence on record rightly concluded that this was clearly a case of medical negligence as

per the settled law on the subject.

10. WE have heard learned Counsel for both parties at length and have carefully considered the evidence on record as well as the medical

literature on the subject. The fact that the Respondent's wife was advised Hysterectomy for which she was admitted in the Petitioners' hospital

and that she underwent Hysterectomy is not in dispute. It is also not in dispute that following two surgeries and her admission in Government

Medical College Hospital, Chandigarh, she passed away on 23.06.2003. Petitioners' constant contention has been that there was no medical

negligence in respect of the two surgeries and the death occurred because the patient was suffering from IHD which was suppressed by her but

confirmed by her personal doctor under whose treatment she had been for this ailment. As per medical literature on the subject cited earlier,

patients with IHD are more prone to develop Superior Mesenteric Arterial Occlusion as happened in the instant case. WE have carefully perused

the evidence on record in connection with the Petitioner's contention that the patient had a history of IHD. The ECG conducted prior to the

surgery did not indicate any abnormality of the heart and the patient's doctor who made a statement and also contended that she had undergone

Angiography, has not been able to produce any evidence from Escorts Hospital or any other document to confirm that the patient had any

coronary disease. On the other hand, we note that the same doctor in his cross -examination had admitted that the Angiography did not reveal any

abnormality and there was no evidence of any of the arteries being blocked. WE also find force in Respondent's contention that there was no

reason for the Respondent or the patient to have suppressed this vital information prior to the surgery. In view of the above facts and in the

absence of any credible evidence we are unable to conclude that the patient suffered from IHD and, therefore, conclude that her death was not

linked to this disease as contended by Petitioners.

11. THE contention of the Respondent before the Fora below and this Commission has been that there was medical negligence on the part of the

Petitioners in conducting the surgery and that perforation of the intestine in all likelihood occurred during the first surgery. THEREafter conducting

the second surgery without consent further contributed to the patient's death since Petitioners did not have the skills and expertise to deal with this

critical condition. We have carefully considered the evidence on record including the case history of the patient which was meticulously maintained

on day -to -day basis. From these documents, it is evident that the first surgery was only conducted after extensive pre -operative diagnostic and

clinical tests which confirmed that the patient was fit for surgery. Even after the surgery, apart from some post -operative symptoms like vomiting

and distension of the abdomen, nothing adverse was noticed till 13.06.2003. In fact, as per the ultrasonography and X -ray conducted on the

patient 6 days after the surgery, it was confirmed that there was no indication of any mishap like perforation of the intestine during the surgery. One

Dr.Avinash Jain who examined the patient at the instance of the Respondent also confirmed that there was no negligence in respect of this surgery

and nothing abnormal was detected till 13.06.2003 when the foul smelling vaginal discharge was reported by the patient. On the basis of these

records, we are unable to find any evidence that perforation of the intestine occurred during the first surgery. As stated above the ultrasonography

and X -ray clearly ruled this out. THE Respondent has not been able to counter any of the above evidence with facts to the contrary to prove

medical negligence or that the death of the patient was linked to the perforation of the intestine during the first surgery.

12. REGARDING the second surgery which was a Laparotomy, we find force in the contention of the Petitioners that it was necessary to conduct

the same to ascertain the cause of the vaginal discharge, particularly, in view of the tentative diagnosis of Superior Mesenteric Arterial Occlusion

which has a very high fatality rate and which could only be confirmed through the laparotomy. We also find force in the contention of Petitioners

that in view of the emergency involved and before the situation could get further aggravated leading to peritonitis and other life threatening

developments, it was necessary to conduct this surgery. The State Commission has observed that the patient should have been referred to PGI

Hospital for this surgery. However, since it was conducted by qualified surgeons/doctors whose provisional diagnosis was confirmed during the

surgery, we are unable to accept Respondent's contention.

13. AS per medical literature available on the subject, Occlusion of the mesenteric vessels is regards as one of those conditions of which the

diagnosis is impossible, the prognosis hopeless, and the treatment almost useless [A.Cokkins, 1921 " Schein's Common Sense Emergency

Abdominal Surgery (2nd Edition), Moshe Schein & Paul N.Rogers]. While it is a fact that this life threatening condition is most likely to occur in

patients who have a previous history of IHD, it is also true that it can occur for other reasons [Source: Schein's Common Sense Emergency

Abdominal Surgery (2nd Edition), Moshe Schein & Paul N.Rogers]. Dr.Harsh Sharma who was consulted during the surgery had also in his cross

-examination stated that this condition can occur even in the best of hands and septecaemia and renal failure are natural consequences, further

confirming that it need not be necessarily linked to IHD as contended by the Petitioners, which appears to have unfortunately happened in the

instant case.

14. WHAT constitutes medical negligence is now well settled in view of a number of judgments of the Apex Court in this connection including in

Sanjay Hastir Vs. Shubham Surgical Centre and Nursing Home & Ors. " II(2005) CPJ 287, wherein it was held that the death of a patient is no

grounds to presume negligence because life and death and in the hands of God and unless deficiency of service of the doctor is proved, no

compensation can be awarded. In Mrs.Shantaben Muljibhai Patel & Ors. Vs. Beach Candy Hospital and Research Centre & Ors. " I(2005) CPJ

10(N.C.) the Hon"ble Supreme Court has observed that every surgical operation involves risks""Simply because a mishap had occurred, either

the hospital or the doctors cannot be made liable. A doctor is not guilty of negligence if he has acted in accordance with the practice accepted as

proper by a responsible body of medical men skilled in that particular art. Bolam's case (Bolam Vs. Friern Hospital Management Committee

(1957)1 WLR 582) of what constitutes medical negligence contains perhaps the most often quoted principles for determining medical negligence.

While adjudicating allegations of medical negligence on the part of a doctor on the touchstone of the Bolam's test, three questions are important: (i)

Whether the doctor in question possessed the medical skills expected of an ordinary skilled practitioner in the field at that point of time; (ii)

Whether the doctor adopted the practice (of clinical observation diagnosis " including diagnostic tests and treatment) in the case that would be

adopted by such a doctor of ordinary skill in accord with (at least) one of the responsible bodies of opinion of professional practitioners in the field

and (iii) whether the standards of skills/knowledge expected of the doctor, according to the said body of medical opinion, were of the time when

the events leading to the allegation of medical negligence occurred and not of the time when the dispute was being adjudicated.

15. APPLYING these principles in the instant case, we are of the view that so far as the in case of Petitioners/doctors are concerned the answer in

respect of all the above three questions would be in the affirmative. Admittedly, Petitioners were qualified doctors who possessed the necessary

medical skills required to treat the patient; they adopted the practice of clinical observation and diagnosis including diagnostic tests and treatment as

required in the instant case and had the standards of skills and knowledge expected of them at the time of the surgery. There is sufficient evidence

including documentary evidence in support of the same as discussed in the foregoing paragraphs. It is also a fact that the Respondent/complainant

on whom there was onus to produce evidence to prove negligence have not done so, e.g. Respondent did not produce any medical expert to

counter the Petitioners' contentions or to challenge credible documentary evidence on record. Respondent also failed to produce any medical

evidence including medical expert to support his contentions.

16. KEEPING in view the above facts and in the absence of any evidence to prove negligence as per the principles of medical jurisprudence laid

down by the Apex Court, we are unable to uphold the orders of the State Commission that the Petitioners were guilty of medical negligence and,

therefore, set aside the same. The revision petitions are, therefore, allowed with no order as to costs.