

(1996) 06 NCDRC CK 0046

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

ALOK KUMAR CHAKRABORTY

APPELLANT

Vs

GAUTAM BISWAS

RESPONDENT

Date of Decision: June 4, 1996

Citation: 1996 2 CPJ 368 : 1996 3 CPR 149

Hon'ble Judges: A.K.Bhattacharyya , Sunil Kanti Kar , S.Dutta J.

Final Decision: Complaint dismissed with costs

Judgement

1. THIS is a complaint case so preferred by one Alok Chakraborty on the alleged negligence of the opposite parties causing untimely death of his wife Shankari Chakraborty.

2. THE facts in short as alleged by the complainant is that the petitioner-Alok Chakraborty's wife Shankari Chakraborty since deceased on 29.10.93 had an attack of fever with loose motion, stomach pain and cold and coughing of blood, etc. and the petitioner at that point of time consulted Dr. N.G. Chakraborty who prescribed certain medicines and further advised for few pathological tests and X-ray, Subsequently the complainant/petitioner contacted Dr. A.K. Sil, the opposite party No. 2 on 27.10.93 and as per the advice of Dr. Sil the said Shankari Chakraborty was taken to Ecstasy Nursing Home and Diagnostic Services for all pathological tests. After the said pathological tests when it appeared that the said Shankari Chakraborty had some breathing trouble due to cough and cold, to give her best medical treatment as per advice of Dr. A.K. Sil she was admitted in the said Ecstasy Nursing Home and Diagnostic Services as Dr. Sil diagnosed Pneumonitis provisionally.

That on 28th October, 1993 as per the advice of Dr.A.K. Sil another specialist Dr. Kaushik Mitra was called for and after examining the patient while ratifying the treatment so adopted by Dr. Sil to the patient he added few more advice such as steam inhalation thrice daily together with moist O2 inhalation and also advised Amikacin injection and other medicines as would appear from the prescription so given by him.

On 28th October, 1993 opposite party No. 2 Dr. Sil personally visited Shankari Chakraborty at 10.00 p.m. and expressed his satisfaction to the better condition of the patient. That unfortunately on 29th October, 1992 at 5.00 a.m. upon receipt of a call from the said Nursing Home, Dr. Sil reached the nursing home and upon examining the patient he found that the condition of the patient had deteriorated very rapidly due to Septicaemia and ultimately inspite of their best efforts the said Shankari Chakraborty seems to be expired at 5.30 a.m. and subsequently the said death was confirmed at 9.00 a.m. by the said Nursing Home and accordingly Death Certificate was issued by opposite party No. 2.

3. THAT in the said complaint/petition, complainant alleged gross negligence on the part of the opposite parties.

That upon receipt of Notice to show cause both opposite party Nos. 1 and 2 entered appearance and filed their written objection categorically denying not only their liability but also the allegations so levelled against them and in particular in the written objection of O.P. No. 2 it has been categorically stated that he, being the school friend of the complainant, used to be consulted by the complainant and the members of his family and other relatives in their hour of need and as a good friend he never accepted any money on any occasion and at the time of treating the complainant's wife too on 27th October, and 28th October, 1993 he did not take and fees from the complainant/petitioner, the question of claiming compensation for alleged deficiency in service on the part of the opposite party No. 2 did ever does now or can at all arise.

4. THE learned Advocate appearing on behalf of the complainant/petitioner at the time of arguing the case submitted that -

(a) No proper diagnosis was made by the opposite party No. 2 while treating the deceased Shankari Chakraborty; (b) That the said Shankari Chakraborty was not under Oxygen on 28th October, 1993 at 10.00 p.m. which caused the rapid deterioration of her health condition; (c) Septicaemia developed for the reasons best known to the doctors; (d) THE patient was not properly attended by the said nursing home and as such the opposite party No. 1 cannot escape his liability and in support of his arguments he cited the decision as reported in A.I.R. 1969 S.C. at page 128 and also referred Winfield on Tort.

The learned Advocate on behalf of the opposite party No. 1 while denying the complainant's case submitted before this learned Commission that there was no negligence on the part of the nursing home as it would be crystal clear from the documents so placed before this Hon"ble Commission alongwith the affidavit on behalf of the opposite party No. 1 sworn by Dr. Gautam Biswas and from Annexures "B" and "C attached thereto would support the fact that there was no negligence on the part of the Opposite party No. 1.

The learned Advocate herein on behalf of the opposite party No. 2 argued that to sustain a case against the doctor and nursing home on the allegation of negligence on the part of the Opposite parties the complainant will have to satisfy three facts :

(i) That he is a consumer in view of his hiring the service of doctor on payment; (ii) That the treatment so made by the doctor was not proper i.e. he has not taken reasonable care while treating the patient and the death of the patient was caused due to a wrong treatment; (iii) That the treatment so given to the patient either by the visiting doctor and/or by the nursing home was not proper as per Expert Doctor's opinion.

5. THE learned Advocate appearing on behalf of the opposite party No. 2 in this connection submitted that opposite party No. 2 being a school friend of the complainant he never accepted any money whatsoever for rendering medical treatment to the complainant or his family members and so too in the case of wife of complainant he did not accept any money, as such question of hiring service on payment did not at all arise and in support of his argument he referred to an affidavit which was sworn by one Samir Kumar Banerjee who happens to be a close relative of the complainant and while high-lighting the treatment so adopted by the visiting doctor, the opposite party No. 2 to the patient he also referred to the prescription of Dr. Kaushik Mitra who as an expert, supported the diagnosis of Dr. Sil. THE learned Advocate further submitted that the complainant has miserably failed to substantiate his alleged claim against the doctor and nursing home by

producing any document or oral evidence in support of his statement that the course of treatment adopted by opposite party No. 2 and opposite party No. 1 was not at all proper. In this connection he referred one decision as reported in II (1994) CPJ page 90 wherein in paragraph 16 Peter Pain J. held in *Clark v. MacLenna* (1983) 1 All. ER 416 that "In an action in negligence the onus of proof normally rested on the Plaintiff, in a case where general duty of care arose and there was a failure to take a recognised precaution and that failure was followed by the very damage which that precaution was designed to prevent, burden of proof lay on the defendant to show, he was not in breach of any duty." But in this case no such complaint has been made out. He further referred to paragraph 17 of the said case wherein Lord Denning explained the law on the subject of negligence against the doctors and hospitals as reported in *Hatcher v. Black* (1954) Time 2nd July wherein it has been categorically stated "You must not therefore find him negligent simply because something happened to go wrong... You should only find him guilty of negligence when he falls short of the standard of a reasonable skillful medical man, in short when he is denying of censure for negligence in a medicalman is deserving of censure." He further argues that even if in the case of mistaken diagnosis it cannot be termed as negligent diagnosis. He also referred to Lord Nathan's *Medical Negligency* (1957 Edition) referring the observation of the Lord President Clyde in *Hunder v. Hanley* (1995 SIL 213) regarding the standard of care which the Law requires from a medical practitioner. He also cited other decisions reported in *Consumer Protection Reporter* and *Consumer Protection Judgment* to support the defence case that the complaint so made is not at all maintainable.

6. UPON hearing the learned Counsels at length this Hon"ble Commission directed the opposite party No. 2 Dr. Sil to explain how and in what circumstances the Septicaemia crept in while the patient was suffering with Pneumonitis inspite of given so many medicines. The Opposite party No. 2 Dr. Sil was good enough to clarify the entire circumstances with reference to the prescription so produced by the complainant in order to satisfy the Commission that the treatment so adopted by him not only got the support from the Expert Doctor but also from the Harrison's principles of Internal Medicines 13th Edn. Vol. 1 wherein Sepsis and Septic shock has been elaborately discussed. He also referred to the *Essentials of Forensic Medicine and Toxicology* by Dr. K.S. Narayan Reddy (11th Edn.) to show how the rapid death may be caused by various types of Pneumonitis in which foci of consolidation may not be found at autopsy. In this book also in page 125 he showed to us "how the Septicaemia cropped up and acute infection caused the rapid death in adults".

He also enlightened us that "Gram negative septicaemia may occur without a recognised tissue site of origin. However, more commonly it is secondary to infection in the urinary tract, lungs, peritoneal cavity..." as illustrated in Cecil's Essentials of Medicines page 540. Dr. Sil also explained to us by referring the Essentials of Forensic Medicine and Toxicology by Dr. K.S. Narayan Reddy (4th Edition) that the death is of two types (i) Somatic, or Clinical and (ii) Molecular or Cellular.

Somatic Death is the complete and irreversible stoppage of vital functions whereas Molecular death means the death of cells and tissues which occurs 3-4 hours after the clinical death.

7. UPON such clarification by Dr. Sil and after perusal of the entire records and considering the arguments so advanced by the learned Advocates of either sides it can be said that the treatment so made by the opposite party No. 2 and the steps taken by opposite party No. 1 to carry out the orders of opposite party No. 2 in treating the patient Shankari Chakraborty under the circumstances was proper.

In this connection, we may further mention that complainant has also not been able to substantiate his claim that he paid consideration to opposite party No. 2 by producing any documentary evidence.

8. IT is a settled Law that "if the complainant is not benefitted by the system, it is his misfortune. In any treatment it is never claimed by the medical profession that every person who receive the treatment must and should be benefitted by the same because the benefits of a particular type of system or operation or medicine depends upon number of factors ... Merely because the patient was not relieved from the pain, one cannot jump to the conclusion that the system is bad or that the doctor has not given proper treatment. If every one has to be benefitted by a particular medicine or operation then nobody will die by disease" as have been held in 1993 (2) CPR Page 496.

However, finding no concrete material to substantiate the complaint we hereby dismiss the aforesaid case with the observation that the Nursing Home authorities should have taken more care in their treatment of patients to avoid

mis-understanding and misgivings in the minds of the patients as well as their relatives. So, although the opposite parties are exonerated of the charges levelled by the complainant against them, we award the cost of Rs. 2,000/- to be paid by the opposite parties No. 1 to the complainant within 15 days from the communication of the order.

The case is accordingly disposed of. A.K. Bhattacharjee, President-I agree with the finding above and I also endorse the reasoning given in the order for coming to the finding. I am in agreement with the finding that the allegation of negligence and deficiency in service has not been proved in this case and that the Petitioner is not entitled to the reliefs claimed by him. In such circumstances, I think that the cost of Rs. 200/- awarded against opposite party 1 has not been proper. So, I endorse the above order subject to the modification that there should be no awarding of cost of Rs. 2,000/- (Rupees two thousand only) as proposed in the order. Complaint dismissed with costs.