2004 1 CLT 131 : 2004 1 CPJ 307

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

PRABHA CHOUDHARY		APPELLANT
	Vs	
SHANTILAL JAIN		RESPONDENT

Date of Decision: Dec. 4, 2003

Citation: 2004 1 CLT 131 : 2004 1 CPJ 307

Hon'ble Judges: N.K.Jain , B.L.Khare , Pramila S.Kumar J.

Final Decision: Appeal allowed

Judgement

1. THIS is an appeal filed by the opposite party Dr. Smt. Prabha Choudhary of Ujjain against the order dated 3.4.2000 passed in Case No. 45/1999 by the District Consumer Disputes Redressal Forum, Ujjain (for short the ''District Forum'').

2. FACTS of the case in brief are that Smt. Nirmala Devi Jain, wife of respondent/complainant Shantilal Jain who was having some abdominal problem, consulted Dr. Smt. A. Parulekar who is a Gynaecologist at Ujjain. She advised for obtaining ultra-sonography report which was done on 11.7.1997 at Mehta Diagnostics Centre, Ujjain. This report gave a finding that "Large Mass in Left Adnexa and Anterior to Uterus measuring 63x96x51 mm could be due to left ovarian mass" and, therefore, suggested operation of uterus and ovary. On 5.8.1997, the complainant''s wife was admitted in the nursing home of the appellant No. 1 known as Shri Siddeshwar Memorial Maternity and Nursing Home and on the same day Abdominal Hysterectomy under spinal anaesthesia was done which showed that there was ovarian mass. The patient was discharged on 15.8.1997 and was advised to come for check-up after 15 days. The patient came on 1.9.1997, the Doctor prescribed some medicines and the treatment

continued but there was no relief in the abdominal pain. The appellant, therefore, again advised for ultra-sonography which was done on 6.10.1997 at Mehta Diagnostics Centre, Ujjain. This report again showed "Bulky Left Ovary with cyst measuring 30x26 mm". The patient remained in the treatment of the appellant and when she was advised for another operation then she consulted other Doctors of Indore, who treated the patient but all advised for another operation. The complainant alleges that the appellant Doctor has not performed the first operation with due care and has left some mass in the ovary which has resulted a physical and mental pain to the patient and she is still suffering. She, therefore, filed a complaint before the District Forum and claimed a compensation of Rs. 3,20,000/-. The District Forum found that the appellant has committed medical negligence by not romoving the left ovary at the time of performing hysterectomy operation and, therfore, awarded compensation of Rs. 40,000/- and Counsel fee of Rs. 150/-. It is against this order the appellant has preferred this appeal.

In her appeal, the appellant had submitted that she had performed operation with due skill and care and as per medical procedure prescribed in medical books. The so-called cyst which was removed earlier can subsequently develop in some of the patients. The medical literature is clear on this point and for a subsequent formation of cyst an operating surgeon cannot be held negligent. The District Forum based its findings on surmises and conjectures. Before the District Forum, the appellant had shown medical literature and produced expert opinion which was not controverted by the complainant. All this medical literature and medical expert opinion proved that cyst may develop after removal of mass/cyst. The District Forum did not consider these points and has erroneously held the appellant responsible for medical negligence. Therefore, the order of the District Forum should be set-aside.

We have perused the evidence adduced and documents filed by both the parties. There is no dispute that the first operation and removal of ovarian mass was performed on 5.8.1997. It has also come in the second ultra-sonography which was performed on 6.10.1997 that there is a thick walled cyst measuring 30x26 mm in the left ovary. The District Forum while analyzing the case has mentioned that the appellant should have removed the left ovary when she performed the first operation on 5.8.1997 and because that ovary has not been removed, cyst has again developed, therefore, the appellant is guilty of medical negligence. From the extracts of medical books which have been mentioned by the District Forum in the order, it is clear that appellant had submitted before the District Forum that while performing hysterectomy operation she has not removed ovary because in young woman if ovary is removed then menopausal symptoms as well as sterilization creat unnecessary trouble to that woman. Keeping this into consideration the appellant had not removed the ovary. The treating Doctor has to decide what to do or what not to do and if he has acted with due care, skill and as per medical norms and even if some complications developed, she cannot be held responsible for medical negligence. The appellant has submitted affidavit of an expert Dr. Vinod Kumar Dubey who is 67 years of age and has 37 years of surgical experience. In his affidavit,

the expert has expressly averred that in some patient, it is due to some bodily system that a cyst is formed at the place of operation. The District Forum has not considered this aspect on the ground that expert has not corroborated that removal of ovary was necessary or not. We do not agree with this view of the District Forum because there is no evidence from the side of the complainant that by not removing the ovary, the appellant has done any negligent act. Therefore, we find that the finding of the District Forum is not sustainable.

3. SO far as the formation of cyst after first operation is concerned, the appellant has drawn our attention to medical literature which mentions that after surgical removal of cystic portion of ovary, it is usually followed by cyst formation in the remaining ovarian tissue. The book Principles of Gynaecology by Sir Norman Jeffcoate, Fourth Edition, published by Butterworths in Chapter 29 Tumours of Ovary at page 450 is worth reading, which we quote :

"Surgical removal of the cystic portion of an ovary, or of a whole ovary, is usually followed by cyst formation in the remaining ovarian tissue. The more ovarian tissue removed the more likely is the remainder to become cystic. This is probably because the underlying cause of disease, hormonal or vascular, persists and becomes concentrated on a smaller target."

This means that it is a common feature that after removal of ovarian mass a cyst is usually formed, therefore, it cannot be said that the operating surgeon in any way responsible for such formation. The District Forum has not considered this aspect and has based its finding on conjectures and surmises. We, therefore, do not agree with the finding of the District Forum.

4. TO conclude, we find that the appellant has acted with due diligence, skill and care and cannot be held to have committed any medical negligence in performing hysterectomy operation. We, therefore, allow this appeal, set-aside the order of the District Forum and consequently dismiss the complaint of the respondent with no order as to costs. A copy of this order be conveyed to the parties and a copy be sent to the District Forum along with the record of the case. Appeal allowed.