(2003) 05 NCDRC CK 0051

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Kanhaiya Singh	APPELLANT
Vs	
SECRETARY/ADMINISTRATIVE OFFICER VIVEKANAND POLYCLINIC	RESPONDENT

Date of Decision: May 28, 2003

Citation: 2003 3 CPJ 263 : 2004 1 CLT 343

Hon'ble Judges: Palok Basu , Rachna J.

Final Decision: Appeal dismissed

Judgement

1. HAVING failed to get a decree from District Forum relating to the allegations made resulting in the death of his wife Smt. Mahasundari Devi the complainant Kanhaiya Singh has filed the instant appeal.

2. MR. Harendra Singh, learned Counsel for the appellant has been heard at length. He has placed the judgment, complaint and grounds of appeal. He has also placed reliance upon the documents filed by him along with a list of documents during the proceedings in the appeal.

Mr. Deepankar Bhatta has appeared on behalf of the opposite party Nos. 1 and 2 i.e. Vivekanand Polyclinic Lucknow and Dr. I.S. Bhatnagar said to be Medical Officer in the said Polyclinic.

Mr. Rajesh Chadha has been heard on behalf of opposite party No. 3 M/s. Kohli Pathology and Blood Bank, Aliganj, Lucknow.

3. COMPLAINT No. 108/1994 was preferred by Kanhaiya Singh before District Consumer Forum-II, Lucknow with the allegation that :

(1) Smt. Mahasundari Devi aged 65 years fell ill in September, 1993, consequently she was admitted in Vivekanand Polyclinic on 7.9.1993 where preliminary checking was conducted by Doctors and the case was referred to opposite party No. 2 Dr. I.S. Bhatnagar who also got some tests conducted and blood transfusion was advised in view of the serious condition of the patient. Medicines were also administered. Discharge certificate dated 24.9.1993 has been filed as Annexure-1 to the complaint showing what medicines were to be continued.

(2) Three bottles of blood were available in Pathology Lab of Vivekanand Polyclinic and three bottles were procured from opposite party No. 3 and all six bottles of blood were transfused in the body of Smt. Mahasundari Devi on different dates.

(3) Out of three bottles of blood received from the Pathology Lab of Vivekanand Polyclinic, two were administered on 10th and 11th September while one bottle of blood procured from opposite party No. 3 was administered on 13.9.1993 while the remaining one bottle of Vivekanand Polyclinic was administered on 15.9.1993 and the remaining two bottles taken from opposite party No. 3 were administered on 19.9.1993.

(4) Before actual transfusion of blood the checking regarding the blood group by the Doctor himself or by the technician under his supervision is generally done, but in the instant case the complainant had not been assured about the said checking by the opposite party No. 2. (5) Operation was done on 23.9.1993 to correct piles and the patient was discharged on 24.9.1993 with direction to take medicines mentioned on the reverse of the discharge certificate. (6) Further tests were advised on subsequent check up which were got done on several dates between 31.9.1993 to 10.11.1993.

(7) In view of the fast deteriorating condition of the patient she was taken to a private medical practitioner on 17.11.1993 who advised for H Bs Ag +ve test vide Annexure-6, the result whereof gave a startling revelation in the form of "Q" disease whereupon the said private practitioner Dr. T.C. Ahuja gave a prescription but the condition of the patient deteriorated further which compelled the complainant to take the patient to Fatima Hospital where she was examined by Dr. S.K. Singh who in turn referred to Dr. Bhatnagar of the same hospital for further examination, who after a thorough examination referred the patient to K.G.M.C. indicating the disease Heptitia B +ve. (8) The patient was admitted in K.G.M.C. on 6.12.1993 where she expired on 30.12.1993.

The grounds of complaint mentioned by the complainant are three which are quoted hereunder :

(A) Because on 7.9.1993 the date of admission in Vivekanand Polyclinic the patient was anaemic and had severe headache but no symptom or any indication of jaundice appeared but during her stay from 7.9.1993 to 24.9.1993 repeated blood transfused and the course of injections as perceptive and creative measures administered under the supervision of opposite party No. 3 and the staff, it appears due precautions and checking prior to administration of blood transfusion and various injections were not taken up. (B) Because the above mentioned apprehension and allegation are duly supported by the report of Dr. S.K. Singh (Surgeon) of Fatima Hospital addressed to Dr. Bhatnagar of the said Hospital, who declared the patient to be suffering from (Hepatitis B) and referred the patient to K.G.M.C. (C) Because the three bottles of blood supplied by opposite party No. 3 despite the seal resording Aida and Heptitis B Antige cannot be said to be from any defect, transfusion whereof could contribute towards the development of the said fatal disease Heptitis B. On the aforesaid allegations compensation was claimed by the complainant.

4. ON notice to opposite parties Vivekanand Polyclinic as well as opposite party No. 2 Dr. I.S. Bhatnagar and also opposite party No. 3 M/s. Kohli Pathology and Blood Bank appeared and contested the case.

In gist argument of all the three opposite parties as advanced by their Counsel based upon written statement filed by them and documents relied upon are :

(1) There is absolutely no evidence as to what treatment was extended to the patient prior to the admission in Vivekanand Polyclinic inasmuch as haemoglobin noted at the first instance was 3.9% which raised to 6.9% on same day which must be result of medicines administered. (2) The patient did not show any convulsion nor any reaction to the blood administered on her. (3) The test of blood for Hepatitis "B" could come out with definitive result within a period of six weeks to six months on contacting the patient. Since the patient was admitted on 7.9.1993 and till the date of discharge no symptom of Hepatitis B were noticed the question of attributing Hepatitis B to the treatment extended at Vivekanand Polyclinic or blood transfused in the body does not arise. (4) Subsequently it was found that patient had already contacted Hepatitis B. The condition of the patient was extremely weak inasmuch as she had bleeding pile. It goes without saying that the blood of the patient is in the closest proximity of dirtiest part of the body.

There is absolutely no evidence as to what treatment subsequently was extended on the patient by the private medical practitioner or Fatima Hospital or for that matter any other treatment which may have extended to her in K.G.M.C.

5. ON the basis of the aforesaid arguments it was strongly contested that the complainant has failed to prove his case and there is no error in the judgment of the District Forum, at all. Mr. Singh however, wanted to raise three questions :

(1) There was no proper licence with the Vivekanand Polyclinic or Blood Bank both of whom supplied blood for being transfused on the patient and, therefore, there was deficiency of service. (2) He further wanted to contend that fluctuation in Haemoglobin was not possible as much as on one day in the earlier part it was noted 3.9 while subsequently it was 6.9 and, therefore, there may have been negligence on the part of opposite party No. 2. (3) It was further said by Mr. Singh that the licence which the Blood Bank had, did not permit it to hold the Blood Bank for supplying human blood for patient because it was for different category. It was further argued by Mr. Singh that if patient holder was not produced by opposite parties 1 and 2 and, therefore, much of the arguments which the complainant may have advanced, he has been prevented from the same.

6. THE gist of the complaint has been noted above. THEre is no reference to the licence of Vivekanand Polyclinic or Blood Bank. It is not permissible for complainant to try to fish out something and then to project it.

It is simple case of blood transfusion on the patient. Blood was received well by the patient. Haemoglobin could be raised by 2-3% by medicines and at the time of admission because of critical condition of patient there was need of blood transfusion also so that operation could be performed.

Mr. Bhatta rightly pointed out that primary duty of any attending Doctor is to see to save the patient. There is no doubt that there was sincere effort of Doctors of Vivekanand Polyclinic.

7. COMING to the reasons why complaint has been dismissed, it may be pointed out that following reasons have been given in the judgment of the District Forum :

(1) Hepatitis B could be contacted by several methods and it takes between two months to six months to diagnose whether patient has contacted Hepatitis B or not. (2) Hepatitis B could be caused even by mosquito, operation, injection etc. at any place. (3) There was no defect in the blood supplied. (4) No evidence has been produced by the complainant to indicate any negligence at Vivekanand Polyclinic or on the part of Dr. I.B. Bhatnagar or Blood Bank. The opinion of Doctor of Fatima Hospital that patient may have developed Hepatitis B after transfusion of blood is at best only an opinion and even if that opinion is accepted it is not sufficient for recording the finding that blood has caused the illness of Hepatitis B.

It has also been pointed out that since three bottles were administered from one place and another three bottles from other place it is impossible to find out which blood at all has caused Hepatitis B. The pleadings of the opposite party No. 1 that in-patient-holder could not be produced because it was kept with an Advocate for drafting the reply and unfortunately the said file was lost in police raid which was conducted at the residence of the said Advocate and that document was, therefore, not possible for being produced.

8. EVEN if it is held that in-patient-holder was not produced there is no difficulty in concluding that Hepatitis B was not the result of blood transfusion because of the reasons given above.

It is impossible to conclude on the basis of evidence existing on the record that patient developed Hepatitis B by anything in treatment, injection or blood transfusion at Vivekanand Polyclinic or having been attended by opposite party No. 2 or having blood transfusion supplied by opposite party No. 3.

In view of the aforesaid reasons the District Forum has dismissed the complaint on examining the record. The aforesaid reasons are fully supportable on the basis of record. There is no error in the judgment passed by the District Forum. Appeal fails and dismissed. However, parties will bear their own cost. Let a copy of this order be issued to the parties as per rules. Appeal dismissed.