(1996) 11 NCDRC CK 0013

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

MASTER P.M.ASHWIN	APPELLANT
Vs	
MANIPAL HOSPITAL, BANGALORE	RESPONDENT

Date of Decision: Nov. 18, 1996

Citation: 1997 1 CPC 540 : 1997 1 CPJ 238 : 1997 1 CPR 393

Hon'ble Judges: D.R.Vithal Rao , Susheela Cheluvaraju J.

Final Decision: Complaint allowed with costs

Judgement

1. IN this complaint, under Section 17 r/w Section 12 of the Consumer Protection Act, 1986, the complainants have sought compensation in a sum of Rs. 12,50,000/- from the opposite parties. Complainant No. 1 is a minor under the guardianship of complainants 2 and 3-parents. Opposite parties 1 and 2 are the Managing Director and Medical Director respectively of M/S. Manipal Hospital, Bangalore; opposite party Nos. 3 & 4 are a Paediatric Surgeon an Anaesthesiologist at Manipal Hospital, Bangaloe. Pending enquiry, Opposite Party Nos. 5 and 8 expired. Opposite Party No. 6 is a Chief Anaesthesiologist, Opposite Party No. 7 a Doctor and Opposite Party No. 9 is a Nurse in O.T. of Manipal Hospital, Bangalore.

2. COMPLAINANT No. 1 was born on 13.1.92; the parents of C-l, that is, C-2 and C-3, took the baby to Opposite Party 3 the Paediatric Surgeon at Manipal Hospital, Bangalore, on 26.2.92. Opposite Party No. 3 examined the baby and diagnosed as having inguinal hernia on the right side and has advised immediate surgery. Complain- ants 2 and 3 got C-1, when he was 65 days old, admitted in the Opposite Party hospital on 19.3.92 for hernia surgery. The surgery was fixed at 9.00 a.m. on

20.3.92. The baby was prepared for operation. COMPLAINANTs 2 and 3 deposited a sum of Rs. 1,500/- (Rupees one thousand and five hundred only) with the opposite party- hospital. By about 9.00a.m. on 20.3.92 complain- ant No. 1 was carried to the operation theatre. Few Minutes thereafter Opposite Party No. 3 came out of the O.T. and asked the mother of the baby C-3, complainants 2 and 3 were standing outside the O.T., which side the hernia was. C-3 informed Opposite Party No. 3 the surgeon that it was on the right side.

By about 10.30 a.m. on 20.3.92, the baby was brought to the ward from the O.T. It was observed that both the legs of the baby were bandaged from knee downwards. They asked the duty nurse to loosen the bandage. To their dismay, found blisters on both the legs of the baby. By about 11.30 a.m. Opposite Party No. 3 came to the ward and told the complainants that O.T. nurse had kept an extremely hot water bag under the child''s legs while it was under anaesthesia due to which both its legs were scalded. Opposite Party No. 3 further informed that the burns were superficial and would heal within a week. The baby was constantly crying and refusing feeds. 3 or 4 hours thereafter some painkiller injection was given through I.V. and kept under heavy sedation.

The complainants further averred that in the evening of that day Opposite Party 3 again came and dressed up the wound then they found the extent of the bum on the legs of the child. The lateral side of the left leg was burnt from the knee to the ankle with additional blisters on the foot, the bottom half of the right leg was burnt. The baby was put on a one week antibiotic course of two injections a day and oral antibiotics alongwith dressing. The complainants contacted the M.D., in the opposite party hospital on 25.3.92 to seek an explanation and reassurance, but they were curtly told that he was busy.

3. IN the meanwhile the complainants found that burn wounds were getting worse and complainants 2 and 3 became extremely worried about the depth of the bums, the effect of the bums on the baby''s future movements. The complainants asked for an independent assessment of the wound Opposite Party No. 1 suggested an examination by Dr. Ananthram, an aminent Plastic Surgeon. Opposite Party No. 1 had visited the ward on 26.3.92 and delivered an apology and at that time suggested the examination of the baby by Dr. Ananthram.

The complainants nextly averred that Dr. Ananthram examined the baby on 27.3.92. At that time the complainants came to know about the severity of the bums. Dr. Ananthram told them that the baby had suffered 2nd and 3rd degree burns. Then he discussed with Opposite Party No. 3 for the future course of treatment. The

complainants also requested the second opinion from Dr. Sekhar, a Plastic Surgeon at Bangalore Hospital. Dr. Sekhar examined the baby and he also concurred with the opinion of Dr. Ananthram that burns suffered by the baby were of second and third degree burns and on discussing with Dr. Ananthram he concurred with the course of treatment suggested by Dr. Ananthram. From 29.3.92 onwards, commenced the treatment of the baby.

4. THE complainants nextly averred that the baby suffered with burns due to the gross negligence on the part of the opposite parties in discharging their duties. THE opposite parties did not take pro-operative care and failed to regulate the temperature of the O.T. at the time of the operation. THE baby was subsequently treated for a number of months and it suffered untold and unbearable misery and pain. Complainants 2 and 3 also suffered mental agony. THEy took leave from their work and were on vigil for months together. THE complainants further averred that bum injuries have left a permanent scare on both the legs of the baby and it would result into permanent disability of complainant No. 1 in his future life. THE complainants, on the basis of these averments, sought compensation in a sum of Rs. 12,50,000/- from the opposite parties on various counts, as de- tailed below:

(a) For injury sustained by the child Rs. 2.00 lakhs (b) For pain and suffering to the child Rs. 2.00 lakhs (c) For future loss of ability, medical treatment such as plastic surgery etc. Rs. 1.50 lakhs (d) Pain and agony to the parents Rs. 2.00 lakhs (e) Unliquidated damages for negligence on the part of the respondents Rs. 5.00 lakhs Rs. 12.50 lakhs

The opposite parties filed their version, admitted the fact that the complainants'' baby was admitted in Opposite Party No. 1 hospital on 19.3.92 for hernia operation and it was Opposite Party No. 3 who conducted the hernia operation at about 9.00 a.m. on 20.3.92 at Opposite Party No. 1 hospital. It is also an admitted fact that it was Opposite Party No. 4 Anaesthesiologist, who administered general anaesthesia to the baby for the said operation.

The opposite parties also admitted the fact that C 1-the baby, suffered bums on both the legs at the time of the said hernia operation.

5. THE opposite parties further averred that there was a drastic drop in the body temperature of the child at the time of operation, so measures were taken to bring the body temperature of the child to normal, for which warm water bag was placed under the child''s body. THE warm water bag was duly wrapped in a sterile towel and keep under the child''s legs below the sterilised drapes. THE opposite parties nextly averred that it was a pure and simple accident which occurred without any element of negligence on the part of the doctors and the nurses.

6. THE opposite parties averred that a satisfactory treatment subsequently was rendered to the child and it was discharged on medical advice on 2.4.92. THE complainants continued the treatment of the child for a period of 1 year and 2 months after the operation in the Opposite Party hospital. THEy gave proper treatment and the burns were healed up and there was no disability whatsoever suffered by the child. THE opposite parties, on the basis of these averments, sought the complaint to be dismissed.

During enquiry, C-3-mother of the baby was examined as CW 1 and the Plastic Surgeon Dr. Ananthram as CW 2 and got Exs. C 1 to C 8 marked in evidence. Opposite Party No. 3 Paediatric Surgeon, who conducted the hernia operation on the baby was examined as R.W 1 and Dr. Jayashree Simha, who had administered general anaesthesia to the baby at the time of the operation, was examined as RW 2. The opposite parties got Ex. R 1 series marked in evidence.

We have heard the learned Counsel for the parties, perused the pleadings and the material on record.

7. IT is not disputed that 65 days old baby C1 was admitted in Opposite Party No. 1 hospital on 19.3.92 for the hernia (inguinal hernia) Operation. IT is also not disputed that by about 9.00 a.m. on 20.3.92 C1 was carried into the operation theatre for the hernia operation. IT was Opposite Party No. 3-Paediatric Surgeon, who Conducted the operation and it was Opposite Party No. 4-Anaesthesiologist who administered the general anaesthesia to the baby. The baby which was carried into the O.T. by about 9.00 a.m. for hernia operation was brought out of O.T. to the ward by about 10.30 a.m. The hernia operation was successful but both the legs of the baby had received bum injuries. The lateral side of the left leg was burnt from the knee to the

ankle and right side bottom half of the leg was burnt. Both the bums injuries were found bandaged. The opposite parties admitted the fact that the baby sustained the said burn injuries on both the legs during the said inguinal hernia operation.

R.W. 1 the Paediatric Surgeon, has stated that during the operation the child''s tempera- ture had come down and so Opposite Party No. 4-Anaesthesiologist, secured warm water bag wrapped in the sterile towel and put warm water bag under the legs of the child to bring up the temperature of the child. That is the evidence given by RW 2 also. RW 2, has in this regard, in her evidence, stated thus:

"The surgery started by about 9.30 a.m. within 10 minutes from commencement, I found that the temperature of the child was dropping. In order to bring up the temperature, I asked the sister to bring the warm water bag duly wrapped in a steriled sheet. The water bag was kept under the legs of the child to increase the temperature. I checked the temperature of the water bag manually and it was suitable to be kept beneath the legs of the child. It was about 15 minutes to bring back the temperature to the normal level. I was constantly checking the increase of the temperature and when the temperature attained to the normal level I removed the water bag from beneath the legs."

8. FROM this statement, of these two wit- nesses, it is clear that the baby suffered burn injuries of both the legs while undergoing hernia operation. RW 1 has stated that the hernia operation was a very simple operation. The operation report, Ex.C 7, shows that the duration of the surgery was 20 minutes. RW 1 has admitted that he did not check-up the O.T. temperature before the operation was commenced. In this regard, RW 1 has stated, thus:

"I did not check up the O.T. temperature. I do not know whether there was any recording thermo-meter for recording O.T, temperature."

Even R.W 2, has in this regard, stated thus:

"I do not remember what was the temperature of the O.T. before the child was brought into the O.T. I also do not know what was the humidity of the O.T."

RW 1 has further stated, thus:

"By looking at the monitor I could have known fall in the temperature. It is true that there was a fall in the temperature and I had not noticed it."

RW 1 has further stated, thus:

"It is true to suggest that in the process of surgery, even a duration of an hour, the drop in temperature should not be more than 1 degree celsius."

He has also stated that fall in the temperature would cause cardiac complications. RW 1, has in this regard, stated thus:

"The urgency to bring up the temperature by following this quick procedure is all the more because a child under the age of 6 months under anaesthesia could have cardiac complications."

RW 2 has in this regard, stated thus:

"It is true to suggest that the temperature should not be permitted to fall below the normal, in which case it would lead to cardiac complications. It is true to suggest that there was no radiant heater available in the O.T. at the time of this operation. It is true to suggest that there was drop of temperature by 2.9 degrees in this case due to the exposure of the body to the environment."

This would go to show that fall of temperature of the body of the baby was of 2.9 degrees. As referred above, as per the statement of RW 1, the operating surgeon, the fall of temperature of the body of the baby should not be more than 1 degree celsius even during the period of one hour. Such fall of temperature would cause cardiac complication and danger to the life. According to the admission made by RW 2 fall of temperature by 2.9 degrees was allowed exposing the risk of life of the child. The temperature of the body of the child fell by 2.9 degrees but fortunately it did not cause any cardiac complications to it. This circumstance itself would go to show how negligent RW 1, and 2 that is, Opposite Party 3 and 4, were at the time of the operation. It goes to show that neither the operation surgeon nor the Anaesthesiologist did bestow their consideration to the fall of the temperature, till the temperature fell up to 2.9 degrees. Therefore, this circumstance by itself, would attribute a gross negligent act on the part of the opposite parties.

The opposite parties have stated that to bring up the temperature of the body of the child to normal, they put the warm water bag under the legs of the child. RW 1 a Paed. Surgeon, has in this regard, stated thus:

"On removal of the drapes I noticed red- ness on the lateral aspect of the legs of the child. One steel plate in the modem surgery is kept under the buttocks and the legs of the child and the said steel plate is attached to one apparatus called diothermy cautery machine. I thought that the warm water bag might have heated up the steel plate which on coming into contact with legs might have caused the burns."

RW 1, has in this regard in his operation notes as per Ex. C 7, noted thus:

"During surgery the hot water bag had heated the cautery plate and was removed by Dr. Jayshree. Post operative: Showed scars on the lateral aspect of both legs from knee to ankle. Dressed with soprotutle immediately."

RW 2, has in this regard, stated thus:

"The surgery was over within 5 to 10 minutes of the removal of the bag from beneath the leg, then we removed steriled drapes of the child and then we found that there was some redness in the area of the contact warm water bag. It is not correct to say that the hot water bag was very hot. Cautery machine is an electrical device used to burn bleeding points during surgery, and cautery plate is the part of that machine serving the purpose of earthing. It by itself does not emanate heat. The cautery plate was used in this case and it was kept under the thighs. I did not do anything with that machine. It is not possible that the cautery plate would be hotter than the hot water."

9. THESE circumstances would go to show that the opposite parties were not aware of the fact whether the bums were caused due to warm water bag or by cautery plate. Cautery plate was admittedly conected with a cautery machine - an electrical device.

10. THIS also is one of the circumstances that reveals the negligent act on the part of the opposite parties in performing their duties. The Hon''ble Supreme Court, in Achutrao Haribhau Khodwa and Others v. State of Maharashtra and Others, reported in I (1996) CLT 532 (SC)=(1996) 2 Supreme Court Cases page 634, considered the question of negligence on the part of the medical practitioners and observed, thus:

"13. The above principle was again applied by this Court in the case of Mittal v. State of U.P. In that case irreparable damage had been done to the eyes of some of the patients who were operated upon at an eye camp. Though this Court refrained from deciding, in that particular case, whether the doctors were negligent, it observed: (SCC pp. 230-31, para 19

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"A mistake by a medical practitioner which no reasonably competent and a careful practitioner would have committed is a negligent one."

The Court also took note that the law recognises the dangers which are inherent in surgical operations and that mistakes will occur, on occasions despite the execrcise of reasonable skill and care. The Court further quoted Street on Torts (1983) (7th Edn.) wherein it was stated that the doctrine of res ipsa loquitur was attracted:

"Where an unexplained accident occurs from a thing under the control of the defendant, and medical or other expert evidence shows that such accidents would not hap- pen if proper care were used, there is atleast evidence of negligence for a jury.''

The latest case to which reference can be made is that of Indian Medical Association v. V.P. Shantha. The question which arose in this case was whether the Consumer Protection Act, 1986, applied to medical practitioners, hospitals and nursing homes. It was held in this case that medical practitioners were not immune from a claim for damages on the ground of negligence. The Court also approved a passage from Jackson and Powell on Professional Negligence and held that:

"(T) The approach of the Courts is to require that professional men should possess a certain minimum degree of competence and that they should exercise reasonable care in the discharge of their duties. In general, a professional man owes to his client a duty in tort as well as in contract to exercise reasonable care in giving advice or performing services."

In the present case, the circumstances referred above, clearly go to show that Opposite Party Nos. 3 and 4 did not exercise reasonable care in discharge of their duties. Such an accident would not have happened if proper care was taken by Opposite Party Nos. 3 and 4. The circumstances would go to show that such an omission would have not been committed by any reasonably competent and careful medical practitioner.

The burns sustained by the baby were 2nd and 3rd degree bums. CW 2-Dr. Ananthram, has in this regard, stated thus:

"I saw the child for the first time on 26.3.92 at the request of paediatric surgical consultant Dr. Jayanth Iyengar and at the re- quest of the then Superintendent Dr. Shantharam Pai. I was asked to assess the thermal injury on both the lower extremities. The thermal injuries sustained by the child in my opinion was of second and third degree. I treated the child for about 8 weeks."

11. THIS is the finding recorded by another Plastic Surgeon, Dr. Sekhar, as per Ex. R-l(e) on 28.3.1992. Dr. Sekhar, Plastic Surgeon at Bangalore Hospital, at the

instance of the opposite parties examined the child on 28.3.92 and found the burns sustained by the child on the right leg of 3 degree burns and on the left leg of 2 degree bums. The opposite parties, at para 19 of their version, have averred thus:

"19. On the other hand, complainants 2 and 3 were fully satisfied with the care and the treatment that was being rendered by the respondents in the respondents'' hospital and there was no cause for any complaint whatsoever until the child was discharged on medical advice on 2.4.92. If indeed the respondents were not attending properly on the child, it is strange as to how the complainants continued treatment of the child for an year and two months after the operation in the 1st respondent hospital. It is only a greedy after-though that the complainants have, at the instigation of some persons chosen to file the complaint with a view to tarnish the image of the 1st respondent hospital and to make unlawful gains."

THIS would go to show that the child was discharged from the hospital on 2.4.92 but it contiuned to take treatment for an year and 2 months after the operation.

These were very severe burns. Such burns would not have been caused if warm water bag, by manually assessing the temperature, was put under the legs of the child, as averred by RW 2. There circumstances also would go to show how Opposite Party Nos. 3 and 4 were negligent in performing their duties which has resulted in severe burns to both the legs of the baby. In a case like this, doctrine of ''res ipsa loquitur'' clearly applies. The facts in this case speak for themselves, negligence is writ large.

12. THE Hon''ble Supreme Court in the case referred above, at para 16, observed thus:

"16. In the present case the facts speak for themselves. Negligence is writ large. THE facts as found by both the Courts, in a nutshell, are that Chandrikabai was admitted to the Government hospital where she delivered child on 10.7.63. She had a sterilisation operation on 13.7.63. THE operation is not known to be serious in nature and in fact was performed under local anaesthesia. Complications arose thereafter which resulted in a second operation being performed on her on 19.7.63. She did not survive for long and died on 24.7.63. Both Dr. Divan and Dr. Purandare have stated that the cause of death was peritonitis. In a case like this the doctrine of res ipsa loquitur clearly applies. Chandrikabai had a minor operation on 13.7.63 and due to the negligence of respondent 2 a mop (towel) was left inside her peritoneal cavity. It is true that in a number of cases where foreign bodies are left inside the body of a human being either deliberately as in the case of orthopaedic operations,

or accidentally no harm may be for the patient, but it also happens that complications can arise when the doctor acts without due care and caution and leaves a foreign body inside the patient after performing an operation and it suppurates. THE formation of pus leaves no doubt that the mop left in the abdomen caused it, and it was this pus formation that caused all the subsequent difficulties. THEre is no escape from the conclusion that the negligence in leaving the mop in Chandrikabai''s abdomen during the first operation led, ultimately, to her death. But for the fact that a mop was left inside the body, the second operation on 19.7.63 would not have taken place. It is the leaving of that mop inside the abdomen of Chandrikabai which led to the development of peritonitis leading to her death. She was admitted to the hospital on 10.7.63 for a simple case of delivery followed by a sterilisation operation. But even after a normal delivery she did not come out of the hospital alive. Under these circumstances, and in the absence of any valid explanation by the respondents which would satisfy the Court that there was no negligence on their part, we have no hesitation in holding that Chandrikabai died due to negligence of respondents 2 and 3."

So on consideration of the facts and in the circumstances of the case, we are constrained to hold that Opposite Party Nos. 3 and 4 did not exercise reasonable care in discharge of their duties and as such committed profession negligence that no careful professional doctor would have committed this negligence.

The complainants have sought compensation in a sum of Rs. 12,50,000/- from the opposite parties on various counts which have already been referred above. CW 1 has averred that she had taken three months leave without pay to take care of the child. She being the scientist, due to her absence, scientific work suffered. She also underwent suffering and mental agony due to the bums suffered by her child. Her husband suffered mental agony. The child, of course suffered untold agony and pain.

13. CW 2, Plastic Surgeon, who treated the bum injures, has in this regard, stated thus:

"I cannot describe the agony or pain undergone by the child during the period of my treatment. But I say that it was painful."

Therefore, it is clear that the child was under pain and agony for a considerable period. As admitted by the opposite party, the child was under treatment for one year and two months after the operation.

14. CW 2, wit regard to the future disability of the child has stated, thus:

"The child has scars as a result of thermal injury, it is difficult to give a prognosis of the behavior of such a scar. At the moment, the child does not have apparent disability. I cannot say about the future disability. It may cause disability or it may not cause any disability in future."

This would go to show that the burns sustained by the child have left deep scar on both the legs of the child and the disability of the child in future is not ruled out. We have to award compensation having regard to all these aspects of the matter.

Complainants have sought compensation for the injuries sustained by the child, pain and suffering undergone by it, for its future disability, for medical treatment, plastic surgery etc., pain and agony to the parents etc. in a sum of Rs. 12,50,000/-. We have found that the complainants suffered untold misery and serious mental distress as a result of negligent act on the part of the opposite parties while performing hernia operation causing burn injuries to both the legs of the baby. A serious mental distress is a killer ailment and can cause varieties of deadly ailments in human beings which can lead to death.

The mental agony suffered by the complainants cannot be measured in terms of money. However, the complainants deserve compensation. Though, they have claimed a sum of Rs. 12,50,000/-, but under the circumstances, we deem it just and proper to award compensation in a sum of Rs. 5 (five) lakhs.

15. OPPOSITE Party Nos. 1 and 2 are the Managing Director and Medical Director respectively of Manipal Hospital, Bangalore. The baby was taken to the said hospital by the parents. The baby was operated by OPPOSITE Party Nos. 3 and 4 in the O.T. of the said hospital. Having regard to these facts, in our opinion, OPPOSITE Party Nos. 1 and 2 are vicariously liable to pay compensation to the complainant''s. The complaint as against OPPOSITE Party Nos. 6,7 and 9, is liable to be dismissed as no case is made out against them. ORDER In the result, therefore, this complaint is allowed. OPPOSITE Party Nos. 1 to 4 jointly and severally are directed to pay to the complainants a sum of Rs. 5 (five) lakhs as compensation. OPPOSITE Party Nos. 1 to 4 jointly and severally shall also pay to the complainants a sum of Rs 3,500/- (Rupees three thousand and five hundred only) towards the costs of this proceeding. OPPOSITE Party Nos. 1 to 4 jointly and severally shall pay the amounts so awarded

to the complainants within a period of 60 (sixty) days from this day and non-payment of the aforesaid sums within the said period shall carry interest at the rate of 18% p.a. from the date of its expiry till its payment to the complainants. Complaint allowed with costs.