

(2011) 12 NCDRC CK 0008

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Escorts Heart Command Centre

APPELLANT

Vs

Premlata Dubey

RESPONDENT

Date of Decision: Dec. 8, 2011

Citation: 2012 1 CPJ 292

Hon'ble Judges: Ashok Bhan , Vineeta Rai J.

Final Decision: Revision Petition No. 2371 allowed. Revision Petition No. 3172 dismissed.

Judgement

1. THESE cross revision petitions have been filed by Escorts Heart Command Centre and Another (hereinafter referred to as the "Petitioner"), being aggrieved by the order of the State Consumer Disputes Redressal Commission, Raipur (hereinafter referred to as the "State Commission") in Appeal No. 118 of 2005 wherein Prem Lata Dubey and Another are the Respondents. Since, these revision petitions arose from a single order of the State Commission, it is also proposed to dispose of these revision petition by a common order by taking the facts from R.P. No. 2731 of 2007.

2. IN her complaint before the District Forum, Respondent had contended that her husband late Narayan Prasad Dubey (hereinafter referred to as the "Patient") was admitted to the Petitioner/Hospital on 28.5.2003 on the advice of one Dr. Shashank Gupta of Medical College Hospital, Raipur, where he was undergoing treatment following a heart attack. After tests, Petitioner/Hospital advised "Early Myocardial Revascularization (bypass)" which was estimated to cost Rs. 1,60,000. Since, Respondent belonged to a poor family, she was sanctioned medical assistance of Rs. 1,50,000 by the State Government under the Rajiv Jiwan Rekha Yojna which she deposited by cheque and Rs. 10,000 in cash with the Petitioner/Hospital. Although,

the patient was informed on 21.7.2003 that surgery would be performed after 3-4 days, she was later informed that the staff required for this type of surgery was not available in the Petitioner/Hospital and this facility was available only in Delhi. Respondent wanted to take the patient to Delhi but Petitioner/Hospital advised her to wait. Since the condition of the patient had deteriorated and Respondent had already deposited her entire money with the Petitioner/Hospital, she had no option but to wait. In this manner, Petitioner/Hospital asked the Respondent to bring the patient on a number of occasions but kept postponing the surgery. Finally on 6.10.2003, Respondent was informed that bypass surgery facilities were available in the Petitioner/Hospital for which she was asked to deposit another Rs. 65,000 and also to make arrangements for blood. The surgery was finally conducted as late as 3.11.2003 and the patient was discharged from the Petitioner/Hospital on 18.11.2003 though he had not fully recovered. On 25.11.2003, the patient's condition deteriorated and he had to be re-admitted to the Petitioner/Hospital who demanded another Rs. 50,000 for his treatment. Patient was put on a ventilator but before completion of treatment he was discharged on 24.12.2003 and her son was forced to sign some papers. The patient was thereafter admitted to the Medical College Hospital, Raipur in a critical condition where he expired on 27.11.2003. Respondent stated that the doctors in that Hospital had told her that the bypass surgery was not properly done. Aggrieved by the treatment meted out to her husband by the Petitioner/Hospital, Respondent filed a complaint before the District Forum on grounds of medical negligence and deficiency in service and requested that the Petitioner/Hospital be directed to pay her Rs. 15 lakh as damages and litigation cost.

3. PETITIONER/Hospital denied the above contentions and stated that the patient had already suffered two heart attacks by the time he was brought to the Petitioner/Hospital and after angiography it was noted that one artery was 100% blocked while there was a blockage of 60% to 70% in the other artery. Angioplasty was not advised as it is high risk in such cases and since at that time there was no facility for by-pass surgery in the Petitioner/Hospital, Respondent was asked to take the patient to Delhi for the same. However, an estimate for the angioplasty was given to the Respondent to help her in getting necessary financial assistance from the State Government. It was the Respondent who chose not to go to Delhi and on 21.8.2003, Petitioner decided to perform angioplasty on the patient as his condition was not improving. Patient was therefore, asked to report for an angioplasty on 6/7.9.2003 but he was brought only on 29.9.2003. By that time, bypass surgery facilities were also available in the Petitioner/Hospital and therefore, Respondent

was advised to pay Rs. 65,000 required for the surgery and also to arrange for blood. Respondent again brought the patient for the surgery after some delay and, therefore, the surgery could only be done on 3.11.2003. The patient was discharged after a successful bypass surgery in a satisfactory condition on 18.11.2003. When the patient visited the Petitioner/Hospital on 5.12.2003, he was diagnosed as having Pneumonitis in the right lung and he was being treated conservatively for the same. However, on 24.12.2003, while the treatment was still ongoing, the relatives of the patient requested for his discharge and took away the patient. As per the death certificate, the patient died due to cardio-respiratory failure. There was no deficiency or medical negligence on the part of the Petitioner/Hospital and the delay in conducting the surgery occurred because of the Respondent who initially refused to visit Delhi for the surgery and later because she did not bring the patient on the dates fixed for the angioplasty/bypass surgery.

4. THE District Forum after hearing both parties dismissed the complaint by observing as follows:

"The non-applicant/opposite party continuously provided treatment and also gave medicines. He was operated upon on being fit for surgery. Had there been any wrong surgery the patient would have died on the operation table or soon thereafter but he died after one month and 24 days from which it cannot be said that he died due to wrong operation. In these circumstances and when no specialist have been examined, it cannot be said that the death has been caused due to wrong operation or due to delayed operation. Therefore, it is not proper to hold negligence against the doctor. If the patient was not satisfied with the treatment of the non-applicants then why he was brought here for 4-5 times admission or he would not have deposited the money with the non-applicants which he received from the State Government. By the cross-examination of the doctor who operated upon it could not be verified that what kind of deficiency has been there in the operation. By granting rebates the opposite parties have given considerable relief to the complainant and as such it cannot be said that the delay in operation or discharge from the hospital was the motive of extorting money."

5. AGGRIEVED by this order, Respondent filed an appeal before the State Commission which allowed the appeal by concluding that it was the Petitioners who were responsible for the unnecessary delays in conducting the by-pass surgery on the patient which proved to be fatal and that there was also negligence in conducting the bypass surgery because of which the patient's cardiac problems persisted even after the surgery. This is confirmed by the documents of the Petitioner/Hospital at the time of Patient's last admission on 5.12.2003 wherein it was recorded in the case history that apart from Pneumonitis (Right Lung), the patient was also diagnosed with recurrent ventricular tachycardia, left ventricular failure and hemodynamic instability which are overt symptoms of cardiac problems. The State Commission noted that these problems occurred within a short period of 18 days of the patient's discharge after the bypass surgery and further, that 3 days after he left the Petitioner/Hospital, he passed away which confirmed medical negligence. The State Commission also did not accept the Petitioner's contention that it was the Respondent who had got the patient prematurely and voluntarily discharged while he was still under treatment. Thus holding the Petitioners guilty of medical negligence and deficiency in service, the State Commission directed the Petitioners to jointly and severally pay the Respondent Rs. 7 lakh within a period of 45 days with 9% interest per annum from the date of complaint and Rs. 2,000 as litigation costs. Hence, the present revision petition.

6. COUNSEL for both parties made oral submissions. Counsel for Petitioners reiterated that the patient had already suffered two major heart attacks before he was brought to the Petitioner/Hospital and after conducting an angiography which confirmed major blockages to two arteries, he was rightly advised to get a bypass surgery in Delhi since these facilities were not available in the Petitioner/Hospital. However, it was the Respondent who chose not to go to there and instead requested that an estimate for angioplasty be given to facilitate her sanction for necessary financial assistance from the State Government. It was under these circumstances that Respondent deposited a cheque for Rs. 1,50,000 and an additional Rs. 10,000 in cash with the Petitioner/Hospital and requested that the angioplasty be done. Although, initially Petitioner/Hospital had decided not to do angioplasty on the patient, later in the best interest of the patient's health which was fast deteriorating, Petitioners decided to do the angioplasty which was advised for 6-7.9.2003. However, the Respondent did not bring the patient on that date and instead came on 29.9.2003. Since, by-pass surgery facilities were available by that date, Petitioners promptly fixed the date for surgery but again it was the Respondent who got this delayed by not depositing the required money as also

arranging the blood in time. It needed to be appreciated that bypass surgery being a more complex procedure, additional money was required for the same. There was no delay on the part of the Petitioner in treating the patient and finally the bypass surgery was also successfully conducted and the patient was discharged. Counsel for Petitioner further contended that when the patient was admitted on 25.11.2003 to the Petitioner/Hospital, it was not because of any cardiac problems but because he was suffering from pneumonia. It is medically well-established that tachycardia or fast heartbeat commonly occurs in cases of pneumonia and is not necessarily indicative of any cardiac problems or because the bypass surgery had failed. It is the Respondent who had been making false allegations by accusing the Petitioners of medical negligence although no evidence to this effect was produced by her including any medical expert medical advice to corroborate these allegations. The State Commission, therefore, erroneously concluded that the Petitioners were guilty of medical negligence by not taking into account the correct facts based on documentary and other credible evidence.

7. COUNSEL for Respondent on the other hand emphasized that it was the Petitioner who had caused delays in treatment of the patient by demanding unreasonable amounts of money and advising the patient not to visit Delhi for the bypass surgery and instead waiting for it in Raipur when these facilities would become available in the Petitioner/Hospital. Delay in dealing with cardiac problems, as is well known, is fatal as unfortunately proved in this case. Counsel for Respondent further stated that it was Petitioner who discharged the patient from the hospital by forcibly obtaining signatures from her son stating that it was a voluntary discharge. The State Commission had rightly concluded that this was not the case and the Petitioners were guilty of medical negligence.

8. WE have heard learned Counsel for both parties at length and have carefully considered the evidence on record including the medical literature on the subject. It is not in dispute that the Respondent's late husband was brought to the Petitioner/Hospital after he had suffered two heart attacks. We also note from the evidence on record that the Petitioner promptly attended to the patient and after conducting diagnostic tests including angiography which confirmed that two arteries had major blockages upto 100% and 70% respectively, recommended

bypass surgery as the best option. Since this facility was not available, the patient was rightly advised to visit Delhi which he did not do and for which Petitioners cannot be held responsible. It is also not in dispute that the Respondent did not bring the patient on the dates when the angioplasty procedure and later the bypass procedure was fixed, causing further delays. The contention of the Respondent that the delay in doing the bypass surgery occurred because the Petitioner/Hospital unreasonably demanded more money is not acceptable. Petitioners were fully justified in asking for additional money for a bypass surgery since this is a more complex invasive procedure and would thus obviously cost more than a procedure for angioplasty for which Respondent had initially deposited the money. The request asking the patient's family to arrange blood is also as per practice for all major surgeries. Therefore, any delay in conducting the surgery as per the evidence on record is not attributable to the Petitioner but to the Respondent. We also note that Respondent has not been able to produce any evidence in support of her contention that the bypass surgery was not successful. Dr. Shashank Gupta who had initially advised the Respondent to take her husband to the Petitioner/Hospital and later treated him before his death was not produced as a witness nor was any affidavit to this effect obtained from him. It is a fact that the patient was admitted on 25.11.2003 and as per the case history, he was suffering from pneumonitis. The State Commission concluded that since the case history also mentions that he had ventricular tachycardia which is a problem related to the heart, the bypass surgery was not successful. However, as per the medical literature available on this subject, it is well established that ventricular tachycardia also occurs in a patient suffering from pneumonia and, therefore, we are unable to agree with the conclusions of the State Commission in the absence of any evidence to support the same that ventricular tachycardia was the result of the failed bypass surgery. The hospital where the patient finally expired has also not given any opinion that the patient died because of any cardiac problems. As stated earlier, the Respondent on whom there was onus to prove medical negligence or deficiency in service has been unable to provide any expert medical opinion or evidence in support of her contentions. On the other hand, from the evidence on record, we note that the patient had been promptly attended to, correctly diagnosed and the right medical advice regarding the course of treatment was given to him. No doubt there was a delay in conducting the by pass surgery but this cannot be attributed to the Petitioners. We are also unable to accept the Respondent's contention that the patient was forcibly discharged from the Petitioner/Hospital while undergoing treatment for pneumonia in view of the fact that there is documentary evidence on record signed by the Respondent's son which states that he was got voluntarily discharged by the patient's relatives and no credible evidence to controvert that he was forcibly discharged was produced by Respondent.

9. KEEPING in view the above facts, we are unable to uphold the order of the State Commission that there was medical negligence and deficiency on the part of the Petitioners in dealing with the case. We, therefore, set aside the order of the State Commission and restore the order of the District Forum. The revision petition is dismissed with no order as to costs. Revision Petition No. 2371 allowed. Revision Petition No. 3172 dismissed.