

(2007) 03 NCDRC CK 0048

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

K. VARA PRASADA VARMA

APPELLANT

Vs

B.N. PRASAD

RESPONDENT

Date of Decision: March 9, 2007

Citation: 2007 3 CPJ 353

Hon'ble Judges: I.Venkatanarayana , M.Shreesha J.

Advocate: G.Krishna Murthy , P.Krishna Reddy , Raveendra , S.Agasthya Sharma

Judgement

1. THE brief facts as set out in the complaint are that the complainant approached Dr. Jayaram Pingle who is a consultant Orthopaedic Surgeon on 11.5.1999 for taking treatment in his left hip since he was suffering with heavy pain. After examining the complainant, the doctor advised him to undergo necessary tests like MRI, scanning etc. Accordingly on 14.5.1999 MRI scan test was conducted on the complainant and in the said test it was found that complainant had been suffering from "Avascular Necrosis" to both Femoral heads-Stage-I on right side and stage III to IV on the left side. Based on the said report Dr. Pingle advised the complainant to take immediate surgery to the hip joint of the left leg and he further advised the complainant that there is no necessity to conduct surgery to the right leg immediately and fixed the date for the surgery of the left hip of joint leg on 19.5.1999. THE complainant instead of undergoing surgery on 19.5.1999 with Dr. Jaya Ramachander Pingle approached opposite party No. 1 at Hyderabad Nursing Home for second opinion on 18.5.1999 and opposite party No. 1 after verifying the entire report advised the complainant that muscle pedicle graft for right hip should be done and core decompression should be done on right hip and he directed the complainant to admit himself in opposite party No. 2 hospital for treatment. Accordingly the complainant admitted himself on 18.5.1999 in opposite party No. 2 hospital. Opposite party No. 1 conducted surgery in opposite party No. 2 hospital on 19.5.1999 to the right hip of the complainant and the complainant deposited an amount of Rs. 10,000 as advance at the time of admission and paid an amount of Rs. 17,703 towards operation expenses and other charges at the time of discharge.

Opposite party No. 1 informed the complainant to come on 29.5.1999 for removal of sutures. Accordingly the complainant approached opposite party No. 1 and he removed the sutures. At that time the complainant informed opposite party No. 1 that he was suffering with pain in the right hip since the surgery whereas prior to that he suffered in the left hip only. He was informed that pain will continue only for a few days and he was asked to come for review on 22.6.1999. Even after 22.6.1999 the pain continued. On 9.8.1999 the complainant once again visited opposite party No. 1 and complained about severe pain in the right hip and opposite party No. 1 advised the complainant to take X-ray for right hip. After examining the X-ray opposite party No. 1 informed the complainant that Total Hip Replacement (THR) is to be conducted for the right hip. THE complainant submits that there is no such severe problem for the right hip and only because of opposite party No. 1's negligence in conducting the surgery on 19.5.1999 to the right hip without proper diagnoses, that he is suffering now with pain.

2. THE complainant approached Dr. Pingle on 12.8.1999 and he informed the complainant that the surgery and core decompression was not conducted in time i.e., in the month of May 1999 itself and he further advised the complainant to undergo THR test for the left hip and accordingly Dr. Pingle conducted operation on the complainant on 18.8.1999 and replaced the right hip totally. He conducted the THR test for the left hip on 24.9.1999 for which the complainant paid an amount of Rs. 1,58,135 towards operation and hospital charges. It is the complainant's case that the opposite party without properly studying the problem conducted wrong surgery to the left hip though there was no requirement at all for the right hip surgery and it is only due to negligence of opposite party No. 1 that he is suffering with heavy pain and sustained permanent physical disability for which he seeks directions to the opposite party Nos. 1 and 2 to pay an amount of Rs. 7,35,838 (i.e., Rs. 1,58,135 towards expenses for surgery, Rs. 30,000 towards medicines, Rs. 27,703 and Rs. 20,000 towards expenditure incurred in Hyderabad Nursing Home, Rs. 4 lakh for permanent physical disability and Rs. 1 lakh for mental agony with interest @ 24% p.a. till realization together with compensation and costs.

Opposite party No. 1 filed counter stating that he is the Head of Department of Orthopaedic Surgery in NIMS and submits that the complainant himself stated in his notice that Dr. Pingle had conducted Total Hip Replacement of right hip on 18.8.1999 and Total Hip Replacement of left hip on 24.9.1999. According to the complainant he has sustained permanent physical disability due to loss of both the hips. The physical disability will arise only in case of failure of Total Hip Replacement Operation. Opposite party No. 1 submitted that he is not the doctor who has

conducted both the operations and that the complainant was suffering from Avascular Necrosis when he first visited him and the stage of the disease of right side of femoral heads. Hence the question of Total Hip Replacement is not imminent. By conducting muscle pedicle graft and core decompression Total Hip Replacement can be postponed for 5 to 6 years or can be avoided. According to Orthopaedic literature, hip replacement can be effected only for 15 years. Therefore under the circumstances he has resorted to muscle pedicle graft and core decompression only to postpone Total Hip Replacement. He further submits that notice was issued to him on 15.4.2000 and operation of muscle pedicle graft was conducted on the patient on 19.5.1999 that is after almost one year. He denies that the complainant approached him on 22.6.1999 and also complained of pain in the right hip and once again he approached him on 9.8.1999 and complained of pain. He denies for want of knowledge the expenses incurred by the complainant and submits that there is no negligence on his behalf and that he has acted according to the standard medical practice and seeks dismissal of the complaint with costs.

Opposite party No. 2 filed counter stating that there are no specific allegations by the complainant about any defects or deficiency of service rendered in opposite party No. 2 hospital. Opposite party No. 2 further states that there is no evidence of expenditure of Rs. 20,000 and that no evidence has been put-forth with respect to negligence of opposite party No. 2. Therefore opposite party No. 2 submits that it was unnecessarily made a party.

3. OPPOSITE party No. 3 filed counter stating that it has not received any notice for payment of any damages and has denied that it is liable to pay compensation.

The complainant filed affidavit by way of evidence and Exs. A1 to A5 are marked on his behalf. PW1, RW1 and RW2 have been cross-examined. Opposite parties also filed their affidavits of evidence.

4. THE point for consideration is whether there is any deficiency of service or negligence on behalf of the opposite parties in treating the complainant and whether the complainant is entitled to any relief sought for in the complaint.

The complainant filed detailed affidavit by way of evidence reiterating the facts in the complaint. Ex. A1 is a legal notice dated 15.4.2000 got issued to opposite party Nos. 1 and 2 calling upon them to pay an amount of Rs. 7,35,838 for wrong diagnosis and medical negligence. Ex. A2 is a reply notice dated 9.5.2000. Ex. A3 is the discharge summary of the department of Orthopaedics dated 17.8.1999 which is the date of admission and 23.8.1999 which is the date of discharge. The principal diagnosis was Bilateral Avascular Necrosis, Femoral Heads with Secondary Osteo Arthritis. The operative procedure is Total Hip Replacement of right hip. The second discharge summary is with 23.9.1999 as date of admission and 28.9.1999 as date of discharge. The operative procedure is THR done on 24.9.1999. Ex. A3(a) are receipts for Rs. 26,965, 34,500, Rs. 29,029, Rs. 20,000, Patient Requisition-cum-cash Receipt and Hyderabad Nursing Home bill receipt for Rs. 2,973, Rs. 315, Rs. 100, Rs. 215, Rs. 115 and Rs. 200.

Insurance Company also filed professional indemnity policy.

5. THE complainant and opposite party Nos. 1 and 3 filed their written arguments. THE learned Counsel for the complainant submitted that it was opposite party No. 1 who advised the complainant on 18.5.1999 that muscle pedicle graft for left hip and core decompression should be done and he advised the complainant to get admitted in opposite party No. 2 hospital to undergo surgery and core decompression. Opposite party No. 1 conducted surgery on the right hip of the complainant on 19.5.1999 and he was discharged on the same day. On 29.5.1999 complainant went to opposite party No. 1 for removal of the stitches and complained that he is getting pain on the right hip since the date of operation whereas prior to that there was no pain on the right hip. It is his case that opposite party No. 1 informed that Total Hip Replacement is to be conducted but he did not reveal the fact of failure of operation and total collapse of both femoral heads of right hip even after seeing the X-ray of right hip on 9.8.1999. It was only Dr. Pingle who after seeing the X-ray on 12.8.1999 told him that both the femoral head of right hip collapsed and operation of decompression of right hip failed and Dr. Pingle conducted Total Hip Replacement for both right and left hips. It is the complainant's case that opposite party No. 1 conducted operation to the right hip on 19.5.1999 instead of left hip thereby necessitating Total Hip Replacement of both the hips for which act of negligence opposite parties have to compensate him by paying an amount of Rs. 7,35,838.

6. THE learned Counsel for the opposite parties submitted that Core Decompression was done only to delay the Total Hip Replacement and the complainant's contention that opposite parties ought not to have done the operation or decompression is not correct since there is 70% to 90% success shown in core decompression. Opposite party No. 1 chose to do this procedure only to avoid Total Hip Replacement for both the hips. Bone decompression is necessary and should be done. Moreover the Total Hip Replacement for both the hips was done by Dr. Pingle who has not been made a party. Opposite party No. 1 did only bone decompression on the right hip.

We have heard the arguments of both the parties and on perusal of the material on record we observe that the complainant suffering from Avascular Necrosis of both femoral heads is not in dispute. Complainant approaching the opposite party No. 1 on 18.5.1999 is also not in dispute. Opposite party No. 1 suggested core decompression operation for the right hip which is also not in dispute. It is the complainant's contention that the Total Hip Replacement on both the legs has failed and has incapacitated him in attending to his normal work. It is not in dispute that opposite party No. 1 has not touched the left leg of the complainant and he has not conducted the Total Hip Replacement to his right leg also. The point for consideration is whether the only operation conducted by opposite party No. 1 that is core decompression of the right leg was valid or negligent and whether it has necessitated for Total Hip Replacement of right leg also. There is absolutely no material on record to state that opposite party No. 1 was negligent in conducting the core decompression operation to his right leg. It is pertinent to note that Dr. Pingle who has conducted Total Hip Replacement for both the legs has not been made a party and neither has his affidavit been filed. The complainant did not chose to make him a party or examine him to establish negligence on behalf of opposite party No. 1. Dr. L. Narendra Nath, Professor in Orthopaedics, NIMS has deposed as an expert witness on behalf of opposite party No. 1. He submitted in his affidavit that a variety of techniques are available for diagnosis of Avascular Necrosis including plain radiographs, Tomograms, C.T. Scan, technetium bone scan, single-photon emission computed tomography and MRI, etc. He stated that non-operative treatment has been shown to be ineffective in the treatment of A.V.N. Operative methods of treatment include procedures that attempt to salvage the existing femoral head and reconstructive procedures. The salvage procedures include core decompression, bone grafting, osteotomy, electrical stimulation, or combinations of these procedures. Reconstructive procedures include either Bipolar Hip Replacement or Total Hip Replacement Core Decompression is one of the procedures to salvage the existing femoral head and it helps to reconstruct. It was popularized by a study that reported clinical successes of 80% to 90% if the procedure was done before collapse of the femoral head. He further relied in his

affidavit as follows : (i) Marvin H. Meyers, M.D., in his article on "Osteonecrosis of the Femoral Head Pathogenesis and Long-term Results of Treatment" about treatment in stage-I, it is stated as follows : " In this stage treatment is recommended in order to prevent segmental collapse of the femoral head. Core decompression with or without autogenous bone grafts or forage procedures are the treatments of choice. Ficat reported on 82 patients and reported an 86% improvement rate in the clinical symptoms with an average nine-year follow-up period. (iii) Structural Bone-grafting for early atraumatic avascular necrosis of the femoral head. J. bone Joint Surg (Am) 1991 Oct :73 (9) : 1357-64 (ISSN.-0021-9355) Buckley PD : Gearen PF; Petty RW Department of Orthopaedics, University of Florida College of Medicine, Gainesville 32610. Between 1970 and 1987, nineteen patients, thirty one to fifty five years old, had twenty core decompression procedures with corticocancellous bone grafting for stage-I or II atraumatic avascular necrosis of the femoral head. A tibial autogenous graft was used in three hips; a fibular autogenous graft, in seven hips; and a fibular allograft, in ten hips. Treatment was considered to have failed when there was clinical or roentgenographic evidence of progression of the necrosis. Eighteen patients who had a minimum follow-up of two years (average, eight years; range, two to nineteen years) were asymptomatic, with no evidence of progression of the necrosis or collapse of the affected segment. In two hips, the necrotic segment of the femoral head collapsed within one year after the operation, and a replacement arthroplasty was carried out.

He concluded that as far as left femoral head is concerned the only alternative is Total Hip Replacement and as far as right side is concerned as it is only in stage-I neither is it desirable nor advisable to resort Total Hip Replacement. But if no surgery is conducted as it is a case of Idiopathic Bone Necrosis there would be progress in disease and it reaches stage-III. Under these circumstances the decision taken by Dr. B.N. Prasad is quite scientific and it is in the best interest of the patient. The expert stated that the action of Dr. B.N. Prasad in conducting core decompression is not at all negligence.

7. On perusal of the material on record and the arguments put forth by both the parties and deposition of RW1 and RW2 and PW1 we observe that opposite party No. 1 never touched the left side of the complainant. The Total Hip Replacement of left side took place on 24.9.1999 in Apollo Hospital by Dr. Pingle. Even on the right side, Total Hip Replacement was conducted on 18.8.1999 at Apollo Hospital by the same doctor. Even the discharge summary of Apollo Hospital on both these respective dates does not anywhere suggest that there is a nexus between the negligent operation of core decompression which was conducted on left Total Hip

Replacement or that core decompression ought not to have been conducted at all. Therefore we are of the considered opinion that opposite party No. 1 has acted according to the normal standard medical practices and core decompression conducted by him on 19.5.1999 cannot be stated to be negligent or unnecessary but is according to standard medical practice only. Therefore keeping in view the judgments of the Apex Court in Tarun Thakore v. Dr. Noshir M. Shroff in O.P. No. 215/2000 dated 24.9.2002 reported in Landmark Judgments on Consumer Protection P-410 held as follows :

"The duties which a doctor owes to his patient are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties, viz., a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient. The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires."

In Indian Medical Assn. v. V.P. Shantha III (1995) CPJ 1 (SC)=(1995) 6 SCC 651, the Court approved a passage from Jackson and Powell on Professional Negligence and held that-

"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."

Supreme Court then opined as under :

"The skill of medical practitioner differs from doctor to doctor. The very nature of the profession is such that there may be more than one course of treatment which may be advisable for treating a patient. Courts would indeed be slow in attributing negligence on the part of a doctor if he has performed his duties to the best of his ability and with due care and caution. Medical opinion may differ with regard to the course of action to be taken by a doctor treating a patient, but as long as a doctor acts in a manner which is acceptable to the medical profession and the Court finds that he has attended on the patient with due care, skill and diligence and if the patient still does not survive or suffers a permanent ailment, it would be difficult to hold the doctor to be guilty of negligence".

Keeping in view these aforementioned judgments which are relevant to the facts and circumstances of this case, we are of the opinion that the doctor has attended to the patient with due care and skill and has taken the right decision keeping in

view the patient's condition at that point of time. Taking into consideration the above judgments we dismiss this complaint. In the result, this complaint is dismissed. Complaint dismissed.