DR. SANJAY J. BATRA Vs JAGRUT NAGRIK & ORS.

567 of 2015

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: April 12, 2016

Acts Referred:
Consumer Protection Act, 1986, Section 21(b) - Jurisdiction of the National Commission

Citation: 2016 2 CPR 529

Hon'ble Judges: J.M. Malik, Dr. S.M. Kantikar

Advocate: P.V. Moorjani

Judgement

Histopathology is the microscopic examination of biological tissues to observe the appearance of diseased cells and tissues in very fine detail . The

word ""histopathology"" is derived from a combination of three Greek words: histos meaning tissue, pathos meaning disease or suffering, and. logos

meaning study. Deviation from Standard is an act of omission committed by the pathologist. Because of the complex nature, surgical pathology

diagnosis has an appreciable degree of fallibility and is increasingly subject to legal scrutiny. In litigation, the first practical step is to explain why and

how this adversity could happen, and the second is the question of apportionment of responsibility and its legal consequences.

1. The complainant, Smt. Indu Ben was suffering from menstrual problems and consulted Dr. Pratibha Gupta in the month of October 1999. She

performed dilatation and curettage (D & C) and the biopsy specimen was sent to petitioner/OP Dr. Sanjay Batra at his Dr. Batra Laboratory,

Vadodara. The OP gave a histopathology report as, ""Well differentiated Adeno carcinoma"". Thereafter, Complainant, went to M.P. Shah Cancer

Hospital at Ahmedabad on 1.11.1999, consulted Dr. Jayesh Prajapati, he advised her second biopsy / D& C again, but the patient went to

Bombay Hospital at Mumbai and consulted Dr. J. J. Vyas. He reviewed the slides on 05.11.1999 from Tata Cancer Hospital. Dr. J. J. Vyas,

performed panhysterectomy (removal of uterus) on 6.11.1999. The histopathology (HPE) report of the specimen revealed "no cancer". Therefore,

alleging medical negligence for giving wrong cancer report, the complainant underwent unnecessary operation, suffered mental agony and financial

loss, the complaint before the District Forum, Vadodara was filed by the complaint and her husband, praying compensation of Rs.2,30,000/-.

2. The District Forum allowed the complaint and directed the OP to pay lump sum amount of compensation of Rs.1 lakh with interest @ 9% per

annum from 4.5.2001 till realisation.

3. Aggrieved by the order of the District Forum the complainant filed appeal before the State Commission, Gujarat for enhancement of

compensation. Opposite parties also filed first appeal before the State Commission for dismissal of complaint. The State Commission dismissed

both the appeals.

4. Hence, aggrieved by the order of the State Commission the OP filed this revision petition u/s 21 (b) of the Consumer Protection Act, 1986.

5. We have heard both the parties. The OP, Dr. Batra/Petitioner argued the matter in person. He submitted that, the biopsy repost was not issued

negligently. Before issuing the report of the slides, he took opinion from two seniors in the city, they also opined the same. The patient concealed

the report of MP Cancer Hospital. The Tata Cancer Hospital, reviewed the slides and reported it as Atypical Papillary proliferation of

endometrium . There is always thin line of differentiation between endometrial well differentiated adenocarcinoma and atypical papillary

proliferation. Hence, it was not negligence, he took all care before issuing the report. He further contended that, the biopsy report from MP Shah

Cancer hospital, Tata Memorial slide review was not produced by the complainant. After review, knowingly, it was not a cancer, but Dr. Vyas

operated her hurriedly.

6. The counsel for complainant argued that, due to wrong report as a cancer, the patient and entire family suffered financially and mentally, because

the patient has to go different places like Ahmedabad, Bombay for treatment. She underwent unnecessary hysterectomy operation, which at the

age of 37 years, hence, it is a clear case of medical negligence.

7. To get clarity in this complex matter, we have requisitioned the original record from the District Forum. Perused the medical record and HPE

reports/opinions issued by different doctors. 1. As per medical record, on 1.11.1999, at M.P.Shah Cancer Hospital the pre operative patient"s

investigations like blood, biochemical, radiological/USG .Thereafter, she was operated at Bombay Hospital by Dr.Vyas and remained hospitalised

from 5.11.1999 to 15.11.1999.

8. Now, we would like to discuss about veracity of HPE reports of endometrium in the instant case as ""Cancer or No Cancer.

a) The report issued by Dr. Batra- OP is reproduced as below:

HISTOPATHOLOGY REPORT

CLINICAL NOTES: Known Hypertensive. H/O Continuous bleeding P/V since 15 days

MICROSCOPY: The sections show endometrial glands some of which are dilated and contain necrotic material. The stroma is desmoplastic. No

invasion is seenWELL DIFFERENTIATED ADENOCARCINOMA .

b) As per the TMC slide and paraffin block review report dated 5.11.1999 is, ""Atypical papillary proliferation of endometrium Please repeat if

clinically indicated"".

c) After operation the Uterus HPE was reported by Pathology Department, Bombay Hospital, report dated 6.11.1999 is:

PANHYSTERECTOMY.

(Endometrical biopsy: well diff. adeno ca. (on 28.10.99: Baroda). TMH (4.11.99) Atypical papillary proliferation of the endometrium. USG

Pelvis:? Adenomyosis changes, simple ovarian cyst, right)

Gross: The uterus measures 8.5 cm in length. The endometrium is thin and smooth. No papillary projections are seen. The myometrium is

tuberculated. The endocervical surface is ridged and the squamo- columnar-junction is blurred.

The right and left ovaries measuring 4X2. 5X2 cm, 3X2. 5X1.5 cm respectively show multiple cysts on cut surface. Both the tubes are

unremarkable.

MICROSCOPIC & DIAGNOSIS:

1. Proliferative endometrium .

2. Adenomyosis, severe .

3. Polypoid endocervictis with squamous metaplasia and Nabothian cysts.

4. Follicular cysts in ovaries.

5. Tubes - unremarkable.

6. There is no dysplasia or malignancy .

We do not accept the submission of OP that, Dr.Vyas performed surgery hurriedly, even knowing it was not cancer. In our view, the decision of

Dr.Vyas to conduct surgery was not wrong, because Atypical hyperplasia is one of the indications, the USG showed adenomysis, it was further

confirmed as Severe adenomyosis by the HPE study of surgical specimen.

9. Whether the OP- Pathologist gave a wrong report? Several medical literatures and the text books discussed about Diagnostic Pitfalls in Histo

and Cytopathology. In this context it is relevant to peruse the report/opinion given by Dr. Suresh Sadhwani, M.D. Path, from Baroda, it is

reproduced as below:

TO WHOMSOEVER IT MAY CONCERN

This to certify that I have seen Induben Gautam''s Histopathology reports of both Dr. Batra Laboratory and Tata Memorial Hospital

The report of Dr. Batra laboratory opines Well Differentiated Adenocarcinoma. Well differentiated Cancer means cancer cells look more like

normal cells. It is usually associated with early stage of cancer.

The report of Tata Memorial Hospital opines Atypical Papillary proliferation which means an accumulation of abnormal cells. It is a precancerous

condition.

These two conditions bear a strong resemblance microscopically and in some cases may lead to overdiagnosis or underdiagnosis as also reported

in text books and research papers of Histopathology.

10. The petitioner produced medical articles on ""Difficulties in diagnosing cancer Problems in the Differential Diagnosis of Endometrial Hyperplasia

and Carcinoma"" The relevant extract from the article is reproduced as below:

Abstract:

The differential diagnosis of endometrial hyperplasia and well-differentiated endometrioid adenocarcinoma is complicated not only by the

resemblance of these lesions to each other, but also by their tendency to be overdiagnosed (particularly hyperplasia) on the background of polyps,

endometritis, artifacts, and even normally cycling endometrium. Atypical hyperplasia may also be overdiagnosed when epithelial metaplastic

changes occur in simple or complex hyperplasia without atypia. Low-grade adenocarcinomas are best recognised by architectural evidence of

stromal invasion, usually in the form of stromal disappearance, desmoplasia, necrosis, or combination of these findings between adjacent glands.

Endometrioid adenocarcinomas are usually Type 1 cancers assocated with manifestations of endogenous or exogenous hyperestrongenic

stimulatioin and a favrouable prognosis. Subtypes include adenocarcinomas with squamous differentiation and secretory, ciliated cell and

villoglandular variants. Rules and pitfalls in the grading of endometrioid adenocarcinomas and the estimation and reporting of myometrial invasion

are presented.

11. The OP brought our attention to Ackerman''s surgical pathology book reference, it explained as;

A great deal of experience is needed to distinguish an extreme case of hyperplasia from an adenocarcinoma, largely because of the fact that

endometrial hyperplasia and carcinoma represent different points in a disease continuum at the morphologic, ultrastructurlal biochemical, immune-

cytochemical and cytodynamic levels.

12. Therefore, considering the discussion under preceding paragraphs 10 to 12, there is possibility of divergent opinions on the endometrial cancer.

As per medical literature and books, diagnostic pitfalls in histo and cytopathlogy are known. In the instant case, it appears to be an error of

judgment. In this context we rely upon the discussion made by Hon''ble Supreme Court in Kusum Sharma & Others Vs Batra Hospital & Medical

Research Centre and others , (2010) 3 SCC 480:

73. In Hucks v. Cole & Anr . (1968) 118 New LJ 469, Lord Denning speaking for the court observed as under:-

a medical practitioner was not to be held liable simply because things went wrong from mischance or misadventure or through an error of

judgment in choosing one reasonable course of treatment in preference of another. A medical practitioner would be liable only where his conduct

fell below that of the standards of a reasonably competent practitioner in his field.

74. In another leading case Maynard v. West Midlands Regional Health Authority the words of Lord President (Clyde) in Hunter v. Hanley 1955

SLT 213 were referred to and quoted as under:-

In the realm of diagnosis and treatment there is ample scope for genuine difference of opinion and one man clearly is not negligent merely because

his conclusion differs from that of other professional men...The true test for establishing negligence in diagnosis or treatment on the part of a doctor

is whether he has been proved to be guilty of such failure as no doctor of ordinary skill would be guilty of if acting with ordinary care...'"'.

The court per Lord Scarman added as under:-

A doctor who professes to exercise a special skill must exercise the ordinary skill of his specialty. Differences of opinion and practice exist, and

will always exist, in the medical as in other professions. There is seldom any one answer exclusive of all others to problems of professional

judgment. A court may prefer one body of opinion to the other, but that is no basis for a conclusion of negligence.

89. In Spring Meadows Hospital & Another (supra), the court observed that an error of judgment is not necessarily negligence. In Whitehouse

(supra) the court observed as under:-

The true position is that an error of judgment may, or may not, be negligent, it depends on the nature of the error. If it is one that would not have

been made by a reasonably competent professional man professing to have the standard and type of skill that the defendant holds himself out as

having, and acting with ordinary care, then it is negligence. If, on the other hand, it is an error that such a man, acting with ordinary care, might have

made, then it is not negligence.

13. An error in judgment has long been distinguished from an act of unskilfulness or carelessness or due to lack of knowledge. Although

universally-accepted procedures must be observed, they furnish little or no assistance in resolving such a predicament as faced by the Pathologist in

this case. The OP stated that, he sought opinion from two senior pathologists; however, there is no affidavit in this regard. In our view, OP failed to

take reasonable care while reporting the D & C specimen. The report did not bear certain details as, there is no date, biopsy number, no gross

features of specimen etc. Even, the microscopic examination was not done carefully, the comments on microscopy are not conclusive to diagnose

Well Differentiated Adenocarcinoma"". Thus, it is not a standard method of histopathology reporting by a pathologist. It should be borne in mind

that, as a pathologist, you have to provide a methodology of investigation allowing a clear distinction between reasonable and unacceptable

pathology practice. The Diagnostic errors comprise a substantial and costly fraction of all medical errors. A wrong diagnosis by a clinical

pathologist could lead to delayed or inappropriate treatment and may result in a legal action from the patient who suffered damages. In this

litigation, the first step is to explain why and how this adversity could happen, and the second is the question of apportionment of responsibility and

its legal consequences. The normative ideal is to provide a crystal-clear distinction between reasonable and unacceptable pathology practice

without the benefit of hindsight.

14. On the basis of forgoing discussion, even though, we are of considered view that, it was the OP''s error of judgement to diagnose as Well

Differentiated Adenocarcinoma , but the method adopted by the OP for histopathology reporting is just a casual approach i.e. carelessness. It is

not as per standard of practice, it''s an act of omission. The wrong reporting as a cancer led to unnecessary mental agony and sufferings to the

patient and entire family. Therefore, the OP is liable to that extent only. Therefore, we modify the order of State Commission and direct the OP to

pay Rs. 50,000/- to the complainant within four weeks from the receipt of the copy of this order, failing which it will carry interest @ 9% pa from

the date of this order till it''s realisation. The statutory amount deposited by OP be refunded as per law.

15. There shall be order as to costs.