

(2017) 08 SC CK 0153

SUPREME COURT OF INDIA

Case No: C.A. No. 1988-1989 of 2010

Dr. Sathy M. Pillay and
Anr.

APPELLANT

Vs

S. Sharma & Ors.

RESPONDENT

Date of Decision: Aug. 9, 2017

Hon'ble Judges: N.V. Ramana, J; Prafulla C. Pant, J

Bench: Division Bench

Advocate: T. G. NARAYANAN NAIR, M. T. GEORGE

Final Decision: Dismissed

Judgement

1. These appeals, by special leave, are directed against the judgment and order, dated 10.08.2007, passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter "NCDRC" for brevity) in FA No. 174 of 2001 and 441 of 2002, whereby the NCDRC, while confirming the findings of the Kerala State Consumer Dispute Redressal Commission, Thiruvananthapuram, enhanced the compensation from Rs. 3,00,000/- to Rs. 6,00,000/- with 10% interest from three months of the order of the State Commission till the date of payment and additionally granted Rs. 50,000/- towards cost of litigation.

2. It would be necessary to briefly state the facts for the disposal of this case. One Chandrakala (deceased), aged about 25 years, was the wife of the first complainant i.e. respondent No. 1 herein. She was admitted in the hospital of the appellant herein for encirclement of the cervix so as to prevent future miscarriage. The operation was carried out on 23.05.1996. As a pre-operation procedure, appellant no. 2, who is a skin specialist and has undergone training for administering anesthesia in Medical College Thiruvananthapuram, tried to give spinal anesthesia. However, it is to be noted that the surgery was carried out after giving local anesthesia. Around 6 p.m., after the operation, the deceased complained to one Dr.

Narayanan that she was suffering unbearable pain due to the suture. At midnight, complainants heard loud cries of Chandrakala. It is to be noted that even on the second day, the parents and the husband were not allowed to see her. Thereafter Dr. Ajay Kumar, family doctor of the respondents herein, was not permitted to see her. Ultimately on 25.05.1996 at about 11.30 A.M. she expired. Thereafter, the post mortem was conducted. In the post mortem report, the doctor has opined as under:

3. Based on the post-mortem finding and results of Laboratory examination, I furnish my final opinion as follows:

"Postmortem findings are consistent with death due to shock following spinal anesthesia."

4. The respondent-complainant filed a petition before the State Commission seeking compensation of Rs. 15,00,000/- for the death of Chandrakala due to the medical negligence of the appellants. The State Commission on appreciation of evidence, came to the conclusion that there was a medical negligence on the part of the appellant and awarded Rs. 3,00,000/- as compensation for the same. Aggrieved by the aforesaid order of the State Commission, the complainant filed first appeal before NCDRC. It is to be noted that NCDRC, by a well considered judgment, enhanced the compensation from Rs. 3,00,000/- to Rs. 6,00,000/- with 10% interest. Aggrieved by the order of NCDRC, appellants are in appeal before this Court.

5. Learned counsel for the appellant mainly contended that there is no medical negligence on the part of the appellant herein and an excessive reliance on the post mortem certificate, issued by the Government hospital, is not proper as the same is contrary to the medical records. Appellant emphasized the evidence of PW4, wherein it is specifically stated in the cross examination that an attempt to inject spinal anesthesia was abandoned as Cerebrospinal Fluid [CSF] could not be drawn. Additionally he submits that it is on record that the operation was performed on the basis of local anesthesia, so there can never be a question of death due to shock following spinal anesthesia.

6. On the other hand, learned counsel on behalf of the respondents, supported the judgment of NCDRC. He mainly relied on the fact that, but for the operation, spinal anesthesia and medical negligence, there was no reason for the death of Chandrakala.

7. We have perused all the documents available on record.

8. There is no dispute as to the fact that a young healthy woman of 25 years had

died in the hospital without any ailment in the course of a minor surgery. Even according to learned counsel for the appellant, the surgery was smooth and there was no complication arose out of the surgery. It is another admitted fact that, even though she was under the supervision of the appellants, her condition progressively deteriorated ultimately leading to her death. Nevertheless it is borne out of the records that appellant no. 2 is not specialized in the administration of anesthesia. Moreover the factual finding, that the death was caused due to shock following spinal anesthesia, being a reasonable inference from the material available on record, has attained finality and remains unshaken by virtue of concurrent findings of the courts" below. We are aware of the fact that certain medical experts have testified that the death due to shock following spinal anesthesia could not have happened in the emergent facts. The argument of the appellant, that the death could not have occurred in the manner as suggested in the post mortem report, cannot be accepted, as the consumer forums/courts are at liberty to reject the evidence of the medical expert on scrutinizing and evaluating the relevant evidences and other circumstances in order to adjudicate the appropriate standard of care required in cases of medical negligence arising from administration of anesthesia.

9. It is to be noted that no reasons are forth coming, from the appellants, about the cause of the death. Further there is no dispute as to the fact that the appellants had the obligation to care for the deceased, which it has been found to be in dereliction of. Nevertheless incompetence and inexperience of the doctor coupled with the fact that the appellants have failed to handle the crisis, clearly points to the negligence on the part of the appellants.

10. We are of the opinion that in facts and circumstances, both the state commission as well as NCDRC, after an elaborate consideration, have reached to a right conclusion that the appellants were negligent and accordingly, compensation was awarded at a reasonable amount of Rs. 6,00,000/-. Therefore this case does not require our interference.

11. Accordingly, the civil appeals are dismissed. No costs.