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Court : Tamil Nadu State Consumer Disputes Redressal Commission SCDRC Chennai

Decided On : Apr-30-2013

Judge : R. Regupathi, President & the Honourable Mr. J. Jayaram, M.a., M.L., Judicial Member

Appeal No. : O.P. 93 of 2001

Appellant : K. Geeta Devi

Respondent : M/S Apollo Hospitals Enterprise Ltd., Represented by Its Managing Director

Judgement :

J. Jayaram, Judicial Member

The case of the complainant is as follows:

2. The complainant is a girl aged 18 years. The complainant met with a fire accident at her residence on 12-10-1999 and sustained 30% burn injuries over her face, neck, upper limbs and thighs. She was admitted in Chennai Port Trust Hospital on the same day at about 6.15 p.m., where first aid was given to her and after that she was admitted in the opposite party hospital at about 8.30 p.m. on the same day. She was under treatment in the Intensive Care Cure Unit for 13 days

and blood transfusion was done through her right leg. At the time of admission in the hospital, there was no injury in the legs under knee and due to maltreatment and carelessness in blood transfusion through her right leg, her right leg became septic which resulted in amputation of her right leg. At the initial stage, septic condition showed some abnormalities in the right leg which the mother of the complainant noticed when she visited her daughter in the ICCU and she informed the nurses and doctors who were treating the complainant, and requested to give necessary treatment for such abnormalities in color and size found in the right leg; but the nurses and doctors did not realize it and they did not take it seriously. On 1-11-1999 the complainants father was asked by the opposite party to give his consent for surgery for amputating the complainants right leg and when her father questioned it, neither the doctors nor the nurses did give proper reply regarding the amputation of the leg and they simply told him that if amputation was not done, it would endanger the life of the complainant. Having no other way, her father gave his consent for amputation of her right leg as instructed by the doctors. The complainant was able to walk normally at the time of admission as there was no burn injury in the legs under knee which is evidenced by the Admission Sheets issued by the Port Trust Hospital and the opposite party hospital and she was kept under treatment in ICCU for the injuries sustained in other parts of the body. The amputation was done only due to the carelessness and negligence of the nurse and doctors of the opposite party hospital. There was no necessity for amputation of the right leg as no injuries were reported in the legs under knee and for the alleged reason her right leg turned septic as stated in the Discharge Summary. In order to escape from the liability for carelessness and callousness, the opposite party has given the reason as Septicaemia and Wet Gangrene in the right leg, in the Discharge Summary. Due to the negligence, carelessness and maltreatment of the nurses and doctors of the opposite party hospital, she lost her right leg. This amounts to negligence and deficiency in service on the part of the opposite party in treating the complainant. The opposite party is liable to pay compensation of Rs.25 Lac for the loss of her leg and to pay a sum of Rs.9.5 Lac spent on treatment and expenses in the opposite party hospital and a sum of Rs.2 Lac for mental agony and torture suffered by the complainant and her family and litigation expenses of Rs.15,000/-. Thus, the opposite party is liable to pay Rs.36,65,000/-

to the complainant. However, the complainant restricts her claim to Rs.20 Lac.

3. The opposite party filed the version stating as follows: The complainant was admitted in their hospital on 12-10-1999 and she was placed under the care of Dr. M.S. Sundararajan and Dr. Sekar. The complainant had sustained about 30% mixed burns deeply involved mostly in her face, front of both arms, and front of both thighs. The patient was treated for burn shock and was stabilized. The serious condition of the patient and the complications that may arise and the risk involved were explained to the complainant and their attendants and they were convinced about the mode of treatment suggested and after that they gave their consent. The patient progressed well and it was decided to take the patient for primary excision and skin grafting on 19-10-1999. However, on 17-10-1999 she showed signs of difficulty in breathing and so she was put on Oxygen and for careful monitoring the dreaded burn respiratory distress syndrome which usually occurs on the 5th day of burn injury; but again on 18-10-1999 she showed severe signs of respiratory distress syndrome and so the patient was immediately shifted to Intensive Care Cure Unit and intubated and aggressive treatment was started to save the patient by a femoral arterial line and femoral line was started which was absolutely essential for monitoring and treating the patient. The patient was in a critical stage for the following 10 days in the Intensive Care Cure Unit where every effort was made to save her life. The arterial line was removed on 23-10-1999 and blood culture was done and the culture from the tip of the sheath showed infection indicating that the patient had developed septicaemia, another common fatal complication of deep burns, and the patient recovered properly by antibiotic cover and the patient was extubated on 27th October, 1999 and transferred to the Burns Unit on 30-10-1999. The patient had some swelling of the right leg which is not unusual with the burn area above and she had intravenous line there. After this successful treatment, the patient had recovered from the respiratory distress syndrome and thereafter she was posted for surgery for the burns on 1st Nov 1999. In the operation theatre, the complainant developed darkening of the toes for the first time and Dr. Sekar, Vascular Surgeon was immediately called to attend the patient and after seeing the patient, Dr. Sekar was of the opinion that the condition was an acute ischaemic leg due to thrombosis of right femoral artery and that the condition was irreversible and not suitable for vascular surgery. He

advised amputation of the leg as wet gangrene had set in which would endanger the life of the patient with another episode of septicaemia. These facts were explained to the relatives of the patient and consent was obtained for amputation of the right leg. It is false to state that the patients mother noticed some abnormalities in the right leg under knee and that she informed the nurses and doctors in ICCU about it. Everything was explained to the complainants father and he did not have any grievance at that time; but he has filed the complaint after 1 years which is an afterthought and without any basis and malafide. Had the right leg been not amputated, it would have been fatal for the patient. There is no negligence or deficiency in service in treating the patient by the opposite party.

4. The complainant (PW-1) and her father (PW-2) filed proof affidavits and they were cross-examined. One Dr. C. Raja Ravi Varma, Medical Officer, attached to Chennai Port Trust Hospital was examined as PW-3 and was cross-examined; and one Dr. P. Thirunavukkarasu, Medical Officer, attached to the Government hospital, Vellore was examined as PW-4 and was cross-examined; PW-3 and PW-4 deposed about the disability of the complainant. Ex.A1 to A13 were filed and marked on the side of the complainant. The treating doctor / Plastic Surgeon Dr. M.S. Sundararajan (RW-1) filed proof affidavit on the side of the opposite party and he was cross-examined. Ex.B1 to B21 were filed and marked on the side of the opposite party.

5. The points for consideration are:

- i) Whether there is negligence or deficiency in service on the part of the opposite party as alleged in the complaint;
- ii) If so to what relief the complainant is entitled;

6. Point No.1:

The complainant has filed the complaint claiming compensation from the opposite party on account of the negligence and deficiency in service on the part of the opposite party in treating the complainant in their hospital resulting in amputation of her right leg. Admittedly, the complainant was admitted in the opposite party

hospital with burn injuries to the extent of 30% on 12-10-1999 and she was in the Intensive Care Cure Unit for 13 days where blood transfusion was done through her right leg. There was no injury in the leg under the knee and the contention of the complainant is that due to the maltreatment, carelessness and callousness of the doctors, and the negligence in the process of blood transfusion and the procedure of insertion of sheath into femoral artery, the complainants right leg became septic causing amputation of right leg and that there was no necessity for amputation of the leg and amputation was unwarranted and all these amount to negligence and deficiency in service on the part of the opposite party.

7. It is pertinent to note that there is no medical experts evidence or opinion on record to establish the contention of the complainant that in the procedure of blood transfusion through the complainants right leg and the procedure of insertion of sheath into the artery there was negligence and carelessness on the part of the opposite party causing septic condition of the right leg resulting in amputation of the right leg up to the knee and further that the amputation was unwarranted and unnecessary. Therefore, we have to decide the points considering the available other evidence.

8. In this regard, we rely on the following decisions of Honble Supreme Court for our guidance:

V. Krishna Rao v. Nikhil Super Speciality Hospital and Anr. III-(2010)-CPJ-I-(SC)

In the opinion of this Court, before forming an opinion that expert evidence is necessary, the Fora under the Act must come to a conclusion that the case is complicated enough to require the opinion of an expert or that the facts of the case are such that it cannot be resolved by the members of the Fora without the assistance of expert opinion. This Court makes it clear that in these matters no mechanical approach can be followed by these Fora. Each case has to be judged on its own facts. If a decision is taken that in all cases medical negligence has to be proved on the basis of expert evidence, in that event the efficacy of the remedy provided under this Act will be unnecessarily burdened and in many cases such remedy would be illusory. (Para 13)

In a case where negligence is evident, the principle of *res ipsa loquitur* operates and the complainant does not have to prove anything as the thing (*res*) proves itself. In such a case it is for the respondent to prove that he has taken care and done his duty to repel the charge of negligence. (Para 47)

Jacob Mathew v. State of Punjab and anr. 2005 (6) Supreme Court cases.

Res ipsa Loquitur - is a rule of evidence which in reality belongs to the Law of Tort. Inference as to negligence may be drawn from proved circumstances by applying the rule.

(Page 22)

Res Ipsa loquitur is a rule of evidence and operates in the domain of civil law, especially in cases of torts and helps in determining the onus of proof in actions relating to negligence.

(Page 34)

9. The next contention of the complainant is that when the complainant was in the ICCU, the complainant's mother who visited her daughter in the ICCU noticed some abnormalities including the colour and size of the right leg and she informed the doctors and nurses about it requesting them to attend to the problem; but the doctors and nurses in the ICCU did not take it seriously, which tantamounts to negligence and deficiency in service on the part of the opposite party.

10. The complainant has filed proof affidavit as PW-1 and she was cross-examined. She has deposed that her mother saw her in the ICCU and at that time her mother noticed some abnormalities such as colour and size of the right leg and her mother brought it to the notice of the doctors and nurses in the ICCU but the doctors ignored it. Her averment was not challenged or disputed by the opposite party during her cross-examination and it was not suggested to the witness that her averment was false. We have to note that her evidence is not discredited in any manner and so, we find no valid reason to disbelieve or disregard her testimony on this point.

11. The further contention of the complainant is that Septicaemia, Ischaemia and Thrombosis are conditions associated with gangrene in burn cases and that during the treatment of burn cases, it is incumbent upon the doctors to suspect and anticipate the onset of any of the conditions such as Septicaemia, Ischaemia and Thrombosis causing gangrene. It is on record that the doctors anticipated the onset of respiratory distress syndrome at the early stage and successfully treated the condition though there were two episodes of respiratory distress syndrome. However, they were not vigilant and careful at all in the matter of other probable conditions / problems leading to amputation of leg, even when there were manifestations of the symptoms of the oncoming problems.

12. We have to note that affliction with Septicaemia, Ischaemia, thrombosis and consequent gangrene, all these must have been suspected and anticipated beforehand because these conditions are associated with gangrene which is very common in case of burns particularly when admittedly there was swelling in the right leg and the patient was lying motionless and therefore the wet gangrene could have been prevented or detected / diagnosed at the very initial stage and the onset of these conditions could have been successfully treated and it is further significant to note that no preventive steps were taken by the opposite party to thwart the onset of the problems. It is further pertinent to note that wet gangrene affecting the right leg of the complainant was visible to the treating doctor M.S. Sundararajan who noticed this only in the operation theatre when she was taken for surgery for excision of burns and skin grafting. It is further significant to note that until the girl was taken to the operation theatre, nobody including the operating Surgeon was aware of the problem viz. blackening / discoloration of the complainants leg and that the Surgeon casually noticed the blackening only by chance and not on examination of the complainant prior to the procedure. It is astonishing that the Surgeon chanced to see the blackened toes of the complainant who was brought in wheel chair to the operation theatre when gangrene was already formed up to to the knee and not earlier. Therefore, it is evident that Dr. M.S. Sundararajan, the Plastic Surgeon and Dr. Sekar, the Vascular Surgeon under whose care admittedly the patient was taking treatment failed to suspect gangrene which is associated with other conditions as stated supra; so also the doctors in the ICCU and the Burns Ward were not vigilant

enough to watch the onset of probable conditions that might arise in the case of burn injuries. Of course, the respiratory distress syndrome was treated successfully on both the occasions. It is admitted by Dr. M.S. Sundararajan, that Thrombosis, and Ischaemia are common occurrences in burn cases and any of these conditions would cause gangrene.

13. The Plastic Surgeon, Vascular Surgeon and the doctors in the ICCU and the burns ward ought to have acted with abundant caution against the onset of any other problems because these conditions are common occurrences especially when the patient was bed-ridden for about 13 days in inactive condition and had swelling in the leg. Had the Vascular Surgeon examined the complainant, periodically by Doppler study or other tests and monitored her condition properly, the onset of wet gangrene could have been prevented or detected at the earliest stage, at the earliest point of time. Therefore, when the above said conditions are commonly and usually occurring in burn cases, it is to be noted that no preventive steps or steps for earliest detection / diagnosis have been taken and only after the wet gangrene spread up to the knee, matured enough for amputation and surgery, the Plastic Surgeon casually happened to observe it and informed the Vascular Surgeon and they planned to amputate the leg. There is no pleading by the opposite party that they took any precaution against the onset of the above conditions causing wet gangrene and resulting in amputation.

14. Regarding negligence as a tort, the Honble Supreme Court has held as follows:

Jacob Mathew v. State of Punjab and anr. 2005 (6) Supreme Court cases. Page.15

- Negligence as a tort

- The jurisprudential concept of negligence defies any precise definition. Eminent jurists and leading judgments have assigned various meanings to negligence. The concept as has been acceptable to Indian Jurisprudential thought is well stated in the Law of Torts, Ratanlal and Dhirajlal (24th Edn., 2002, edited by Justice G.P. Singh). It is stated (at pp.441-42):

Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Actionable negligence consists in the neglect of the use of ordinary care; or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or property. the definition involves three constituents of negligence (1) A legal duty to exercise due care on the part of the party complained of towards the party complaining the formers conduct within the scope of the duty; (2) breach of the said duty; and (3) consequential damage. Cause of action for negligence arises only when damage occurs; for, damage is a necessary ingredient of this tort.

15. In this context regarding burden of proof, Hon ble Supreme Court has laid down as follows:

Nizam Institute of Medical Sciences v. Prasanth S. Dhananka and Ors. 2009-INDLAW-SC-1047

In a case involving medical negligence, once the initial burden has been discharged by the complainant by making out a case of negligence on the part of the hospital or the doctor concerned, the onus then shifts on to the hospital or to the attending doctors and it is for the hospital to satisfy the Court that there was no lack of care or negligence.

16. Further we have to take note of the fact that when negligence is attributed to the Plastic Surgeon, the Vascular Surgeon and the opposite party hospital, Dr. Sekar who is a star witness to be examined on the side of the opposite party and other key witnesses who are the doctors of the ICCU and the burns ward to be examined by the opposite party have not been examined to substantiate that there was no negligence in the treatment given by the opposite party hospital.

17. Dr. M.S. Sundararajan, the Plastic Surgeon, who treated the complainant for burns has been examined as RW-1, on the side of the opposite party. When we evaluate the evidence of RW1, we feel that we cannot place reliance on his

evidence because of the contradictions in his evidence and the witness cannot approbate and reprobate in his proof affidavit and his answers in the cross-examination and he is not a competent witness to depose about the happenings in ICCU and he had no say and no access in the management of the complainant in the ICCU.

18. According to him, he noticed the blackened toe of the complainant when she was wheeled into the operation theatre and it is stated in his proof affidavit that the darkening of the toes of the right leg was noticed by him for the first time when she was on the operation table. In the version it is stated that the complainant developed blackening of the toe in the operation theatre. We have to note that the onset of gangrene up to the knee could not have developed dramatically all on a sudden and the fact remains that the gangrene caused due to non-supply of blood was not detected at the initial stage by the ICCU and Burns Ward and it has progressed up to the knee and only at that stage it was detected by the Plastic Surgeon at the operation theatre.

19. In his cross-examination, he has answered the questions put to him by the counsel for the complainant and his answers recorded are as follows:

- I was treating the patient right from the start.
- I was in-charge of treatment of the burns;
- I am fully responsible to the patient and also ICCU.
- While visiting ICCU on various occasions, I have given instructions with regard to burns; but however, in respect of treatment relating to respiratory distress syndrome ailment there are experts available in the ICCU who alone will monitor in the above treatment.
- The treatment was given by ICCU Consultant and they should be asked whether any treatment was given for Thrombosis.
- I am not in a position to answer regarding the treatment given in respect of Thrombosis.

- The femoral artery line was started by the ICCU Consultant.
- The tip of the sheath was sent for culture and it was found that there was infection;
- The sheath was removed on 23-10-1999.
- There is possibility of septicaemia associated with Thrombosis.
- Discolouration of the skin was noticed on 1-11-1999 when the patient was taken to the operation theatre for surgery for burns.
- Prior to 1-11-1999, no Doppler test was done.
- Thrombus would have occurred being in the bed in ICCU ward without walking continuously for 13 days.
- In the records, except swelling, no other reference such as discolouration is found.
- In order to prevent Thrombus, in the particular case, no medicine was given because of burn injuries.
- Normally, Heparin is given to control Thrombus, but I did not advise any medicine to control Thrombus as the patient was under the control of ICU Consultant.
- I did not advise femoral artery catheter.
- Treatment in ICCU was done by the ICCU in-charge Doctor.
- Sheath - femoral artery line was introduced under the instruction of ICCU doctors.
- On perusal of the records, it appears that sheath was introduced.
- I agree, sometimes in early diagnosis of Thrombosis, one can reverse.

20. From his own answers, we find that RW-1 was not in control of the patients treatment while she was in the ICCU and that there is no proper co-ordination and

interaction between the Plastic Surgeon (RW-1), the Vascular Surgeon, ICCU Department and Burns Ward. RW-1 could not answer the question regarding the treatment / management while in the ICCU. It is evident from RW-1s evidence that no Doppler test was done until she was taken to the operation theatre on 1-11-1999 to monitor blood supply and ischaemia and that no medicine such as Heparin was administered to prevent Thrombosis and Ischaemia and no effort was taken to prevent the conditions of Thrombosis and Ischaemia and the resultant gangrene and further except swelling no other reference such as discolouration is found in the records. When we peruse all the answers of RW-1, we find that his evidence itself is suggestive of negligence on the opposite party.

21. Therefore, for the aforesaid reasons, we hold that the opposite party had been seriously remiss in the medical management of the patient. The omission to suspect the onset of thrombosis, and ischaemia and the consequential gangrene in the burn cases where the patient was lying confined to bed without physical activities for a long period and taking no steps to prevent the onset of the above conditions and omission to detect / diagnose the onset of gangrene at the initial stage itself, at the earliest point of time, and noticing the gangrene at advanced stage up to the knee warranting amputation, amount to negligence and deficiency in service on the part of the opposite party.

22. The mere consent of the complainants father will not absolve the opposite party of their liability and the contention of the opposite party in this regard is untenable. Further, it was pointed out and argued by the opposite party that the complaint was filed after about 1 years later, since the complainant was discharged from the hospital. We feel that there is nothing wrong about it, since the complaint is filed within 2 years, the statutory period of limitation and the contention of the opposite party in this regard is unsustainable.

23. Thus, the complainant has established her case of negligence and deficiency in service on the part of the opposite party and hence she is entitled to just and appropriate compensation from the opposite party. Therefore, we hold that there is negligence and deficiency in service on the part of the opposite party and the point is answered accordingly.

24. Point No.2:

While determining the compensation, we have to take into consideration the facts that the complainant was aged about 18 years at the time of amputation of her leg and she was an athlete with good proficiency in sports, games and social activities as evidenced by the merit certificates (Ex. A5 series) and the loss of amenities in life and the loss of marriage prospects, the cost of artificial limb / prosthesis, etc. and the fact that the complaint was filed in the year 2001 when the value of money was dearer.

25. According to the complainant, as claimed by her in the complaint, she is entitled to compensation of a sum of Rs.25 Lac for the loss of her leg and a sum of Rs.9,50,000/- towards medical treatment and a sum of Rs.2 Lac towards mental agony and torture suffered by her and her family and litigation expenses of Rs.15,000/- and in all Rs.36,65,000/-. However, in the complaint, the claim is restricted to Rs.20 Lac by the complainant; but In the proof affidavit filed by her, the entire amount of Rs.36,65,000/- is claimed without restriction.

26. The complainants father filed an affidavit stating that he had raised loan from various sources including his employer viz. Chennai Port Trust. However, proper receipts acknowledging payment to the hospital are not produced. Having regard to all the above factors, we are inclined to award a sum of Rs.5,00,000/- only towards hospital / medical expenses and cost of prosthesis, and a sum of Rs.18,00,000/- towards compensation for the loss of leg at young age due to the negligence and deficiency in service on the part of the opposite party and a sum of Rs.2,00,000/- for the mental agony to suffer throughout her life. Thus the complainant is entitled to compensation of Rs.25 Lac which would be the adequate and reasonable compensation. However, the complainant has restricted her claim to Rs.20 Lac in the complaint and in the circumstances we feel it proper not to exceed the amount claimed in the complaint and accordingly to reduce the total compensation to Rs.20 Lac. However, having regard to the fact that the complaint has been filed in the year 2001 and considering the distance of time, we intend to award interest for the amount from the date of filing of the complaint, to meet the ends of justice.

27. In the result, the complaint is allowed, directing the opposite party to pay total compensation of Rs.20,00,000 (Rupees Twenty Lac only) to the complainant with interest @ 9% p.a. from the date of filing of the complaint viz. 11th June, 2001 till realization, and to pay costs of Rs.10,000/- (Rupees Ten Thousand only). Time for compliance: 6 weeks from the date of receipt of copy of this order.

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