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Court : Kerala State Consumer Disputes Redressal Commission SCDRC Thiruvananthapuram

Decided On : Oct-17-2012

Judge : The Honourable Mr. K. Chandradas Nadar Judicial Member

Appeal No. : First Appeal No. A/11/679 (Arisen out of Order Dated 27/10/2010 in Case No. CC/08/87 of District Malappuram)

Appellant : Master Gokul Krishnan

Respondent : The Managing Director, Al Salama Eye Hospital Limited and Others

Judgement :

SHRI.K. CHANDRADAS NADAR: JUDICIAL MEMBER

A minor boy aged 7 years at the time of filing CC.87/08 in the CDRF, Malappuram represented by his father was the complainant and is the appellant herein. He approached the Forum alleging deficiency of service on the part of the opposite parties. The boy was complaining of diminishing vision when he approached the 1st opposite party hospital for treatment. The disease was diagnosed as Lamellar Cataract to both eyes. He was advised to undergo cataract surgery in both eyes. It is alleged by the complainant that the doctors attached to the opposite party hospital assured 100% success if operation was done. Believing the assurance

the complainant decided to undergo cataract surgery and was admitted on 27.4.06. The surgery named vitrectomy was done to his right eye. Even though the patient was taken for surgery at 9.am he was detained in the operation theatre till late night. The doctors attached to the opposite party hospital availed the advice from various doctors outside after conducting surgery. Doctors from other hospitals were brought to treat the patient. All these were done without the consent of the complainant. It was revealed later that during surgery while fixing the lens (IOL) it dropped into the vitreous of the eye. The opposite parties attempted to remove the lens with the assistance of other doctors. The delay in removing the patient from the theatre was due to this. The 3rd opposite party refused to say the same to the complainant and relatives. All acts were done without obtaining permission. The boy was discharged on 1.5.06. The patient had severe pain, irritation and other inconveniences. The various modes of treatment to relieve pain yielded no result. On opening the eye it was found that the vision was reduced considerably. Though the patient went for reviews there was no relief. On detailed discussion with the doctors at the opposite party hospital it is revealed that because IOL dropped into vitreous it caused haemorrhage to the eye and the patient has lost eye sight in the operated eye for ever. The haemorrhage caused is irreparable. The IOL dropped due to the negligence of the doctor. The opposite party hospital deputed inexperienced and unqualified doctors for conducting surgery and fixing IOL to bring the cost of surgery to the minimum. IOL dropped due to the inexperience and negligence of the doctor concerned. The opposite parties tried their level best to suppress the inefficiency. When compelled the opposite party issued a case summary on 22.2.06. There was nothing abnormal to the eye before surgery. Haemorrhage was caused after surgery due to drop of IOL. Though opposite party hospital claims to have modern facilities instead of resorting to modern equipments surgery was done manually. That was also a reason for the unfortunate incident. The patient lost vision to the right eye for ever. The patient underwent much pain and sufferings due to the deficiency in service on the part of the opposite parties. Hence the complaint claiming compensation.

2. The opposite parties filed joint version and contended that the complaint is filed to gain undue financial advantage by suppressing true facts. The complainant was

brought to the hospital on 21.4.06 with the complaints of diminishing of vision of both eyes noted since one year. The 3rd opposite party examined the complainant. He was diagnosed to have congenital lamellar cataract with amblyopia in both eyes. The complainant was duly advised to undergo cataract surgery under guarded, visual, prognosis in view of amblyopia. The 3rd opposite party explained to the relatives of the complainant about the nature of the congenital anomaly and that it required treatment by cataract extraction with primary posterior capsulotomy with anterior vitrectomy and IOL implementation. The complainant was informed about all possible complications associated with paediatrics cataract surgery. After fully conversant with the pros and cons of the surgery the relatives of the complainant voluntarily agreed to the surgery and the father of the complainant gave written informed consent.

3. Under all aseptic care and precautions the 3rd opposite party had conducted cataract extraction to the right eye with anterior vitrectomy and IOL implantation under general anaesthesia on 28.4.06. During the procedure the IOL dropped in the vitreous cavity which is a medically known complication of the said surgery. Immediately the vitreo-retina surgeon, Dr.Kalpna attached to the hospital attended the patient and she successfully retrieved the dropped IOL and IOL was implanted in the sulcus. Vitrectomy was done by the vitreo-retina surgeon with due care and caution. Intra operatively vitreous haemorrhage was noticed and it was managed by non expansile C-3 F-8. The complication occurred was not the result of any negligence or carelessness on the part of the 3rd opposite party or the vitreo retina surgeon. The occurrence of the complication was well explained to the relatives of the patient. Post operatively on 29.4.06 the patient had mild pain due to post operative inflammation and corneal oedema. His visual acuity was perception of light⁺ and projection of light normal which was due to vitreous haemorrhage. The patient was duly treated and the patients pain was considerably reduced. The patient was kept under proper observation and care and vitreo retina surgeon examined and monitored the condition of the patient. On 1.5.06, the patient complained of slight pain but the corneal oedema had reduced. Necessary follow up treatment was done. B-scan revealed vitreous haemorrhage. On that day the patients father insisted for discharge of the patient and hence he was discharged on request. Patient was advised to continue the medicines prescribed.

On 8.5.06 he was examined by the vitreo retina surgeon and he did not have pain. B-scan was repeated which showed resolving vitreous haemorrhage. Follow up reviews were done on 27.5.06, 1.6.06 and 22.6.06. The patient developed pthysisbulbi a known complication of vitrectomy. The 3rd opposite party had done cataract extraction with utmost care and caution and the procedure was done according to the standard protocol. The opposite party hospital has advanced and sophisticated facilities. The hospital is having specialized doctors and has been conducting all sorts of eye surgeries and other complicated treatments. The allegation that the opposite party assured 100% success is denied. For the type of ailment suffered by the complainant no doctor can assure 100% success. The allegation that the complainant was detained for long hours in the operation theatre is denied. At 7.45 am he was taken to the operation theatre and was given pre medications and anaesthesia. Surgery was completed at around 11.30 am. At 11.45 am the patient was extubated and kept in the post recovery room and shifted to ward around 2 pm and not at night. The allegation that advice from outside doctors was availed is denied. Vitreo-retina surgeon, Dr. Kalpana is attached to the opposite party hospital. Nothing was suppressed from the patients relatives. Vitreous haemorrhage gets absorbed on its own in due course of time and it is incorrect to say that it is irreparable. If it has not cleared in 2 or 3 months it can be cleared by doing repeat vitrectomy later. There is no negligence as alleged. The allegation that opposite party hospital deputed inexperienced and unqualified doctors for conducting the surgery and for fixation of IOL in order to bring the cost of surgery to the minimum is denied. It is incorrect to say that the opposite parties tried their level best to suppress deficiency in service on their part. It is incorrect to say that there was nothing abnormal to the eye before surgery. It is incorrect to say that opposite parties adopted the manual system and did not resort to modern equipments. There was no deficiency in service at all on the part of the opposite parties.

4. Before the CDRF, Malappuram, the father of the minor complainant and an expert were examined on the side of the complainant and Exts.A1 and A2 were marked. On the side of the opposite parties, the 3rd opposite party was examined. Ext.X1 is the case sheet produced from the opposite party hospital. Ext.X2 is the case sheet of AravindEye Hospital. The Forum held that on the evidence available

even on mere preponderance of probabilities it was not possible to hold that there was deficiency in service on the part of the opposite parties and accordingly dismissed the complaint. Hence the appeal by the aggrieved complainant. The only point that arises for consideration is whether the conclusion of the Forum is in any way erroneous and if so whether the appellant is entitled to any relief.

5. Complainant, Gokul Krishnan a boy aged 7 years approached the 1st opposite party hospital for treatment complaining of diminishing vision. After examination he was found to have congenital lamellar cataract with amblyopia in both eyes. Accordingly the 3rd opposite party advised the boy to undergo cataract surgery under broad visual prognosis in view of amblyopia. Accordingly the boy was admitted in the opposite party hospital on 27.4.06 for surgery. The 3rd opposite party conducted cataract extraction of right eye under general anaesthesia. It appears that when IOL implantation was attempted it dropped into vitreous. It is the contention of the opposite parties that this is a known medical complication and the remedy was vitrectomy. Immediately vitreo retina surgeon, Dr.Kalpana attached to the hospital attended the patient. Vitrectomy was done and the dropped IOL was removed and IOL was implanted in the sulcus. One of the allegations is that the IOL dropped into the vitreous because of the negligence and carelessness of the 3rd opposite party in conducting cataract extraction and IOL implantation. The contention as already seen is that this is a known medical complication. It further appears that after cataract surgery and vitrectomy post operatively vitreous haemorrhage occurred. The patient was duly treated. It further appears that later a condition known as pthysisbulbi also developed. The allegation is that as a result of the complications the complainant boy has become visually blind in the right eye. The allegation in the complaint is that there was nothing abnormal to the eye before the surgery. It may be mentioned at once that he approached the opposite party hospital complaining of diminishing vision and immediately he was diagnosed to have congenital lamellar cataract with amblyopia. So it is quite obvious that the allegation that there was nothing abnormal to the eye before surgery is not correct. So also there is no evidence to show that the boy has become completely blind in the right eye because of the complications that developed. Ext.A2 is the only evidence adduced by the complainant in this regard. It is a certificate issued by the Superintendent,

MedicalCollge Hospital, Kozhikkodu and it is a certificate assessing physical handicap. It is mentioned that Gokul Krishnan the complainant is having permanent partial disability of 50% in the right eye after the cataract surgery. Thus, it is obvious that the boy has not gone completely blind as alleged. On the contrary there is no evidence to indicate the extent of vision at the time of surgery. In view of the fact that his condition was diagnosed as amblyopia it is unlikely that he had full vision when he approached the opposite party hospital.

6. In a case of medical negligence, what is expected from the doctor is reasonable degree of skill and knowledge neither the highest nor very low in the light of the particular circumstances of the case (vide Kusum Sharma and Others Vs. Batra Hospital and Medical Research Centre and Others. (2010) 3 SCC 480). It was further held that the doctor would be liable only where his conduct falls below that of a reasonably competent doctor. Divergence of opinion with other doctors not by itself is sufficient to infer negligence. When the doctor adopts a procedure involving higher element of risk with bonafide expectation of greater chance of success in preference to a procedure involving lesser risk but higher chances of failure, although not yielding the desired result itself may not amount to negligence. It is also held that doctors cannot be guarantors of absolute safety. This was held in Ram Swaroop Kaurav Vs. Dr.Ranjana Joshi and Another (IV (2010) CPJ 400 (NC)). It is unnecessary to refer in detail the literature submitted by the learned counsel on the aspect of medical negligence and other decisions, in view of the particular facts and circumstances of this case. What is important is the actual evidence available in this case.

7. Ext.A1 is the case summary issued from the opposite party hospital. Ext.X1 is the case sheet kept in the opposite party hospital. It mentions the procedure adopted during surgery on 27.4.06 and the fact that IOL dropped into the vitreous. It is mentioned that vitrectomy was done by vitreo retina surgeon. The history up to the development of pthysisbulbi is mentioned. On 1.6.06 he was advised to have a second opinion. It was accordingly the boy was taken to the Aravind Eye Hospital, Calicut. The letter issued by the medical officer of the Aravind Eye Hospital, Calicutdated:17.6.06 is in Ext.X2 file. It is seen from the letter that USG right eye revealed retinal detachment with vitreous haemorrhage with sub retinal bands. He

was advised to undergo procedures including right eye TPPV + MP + PFCL + IOL implantation under general anaesthesia and left eye ECCE with PC IOL with PPC with AV under general anesthesia. In the opposite party hospital the right eye was operated upon. No further treatment was seen given. So, the actual evidence available to decide whether there was any deficiency in service on the part of the opposite parties is really the oral evidence of PW1 and DW1.

8. PW1 was working as Ophthalmologist in the District Hospital, Manchery and was examined on the side of the complainant. He explained cataract as a condition where eye lens develops opacity. His opinion is that negligence in the implantation of lens may cause falling of lens into the vitreous. Falling of lens may cause complications such as haemorrhage to vitreous. To a question whether further lens can be implanted without removing the dropped lens he answered in the affirmative but he deposed that it was always ideal to remove dropped lens if retina surgeon is available. He agreed that possibility of causing damage to the retina in a cataract surgery is very remote. Cataract extraction itself is not vitrectomy. In every cataract extraction vitrectomy is not done. In paediatric surgery it is advisable to do vitrectomy along with cataract surgery. Usually a cataract surgeon does not do explantation of IOL. They refer the matter to the retina surgeon. In the present case explantation as well as vitrectomy were done actually by a vitreo retina surgeon. There are different techniques to perform vitrectomy. Retinal detachment causes total loss of vision and retinal detachment with sub retinal bands is a very serious complication. He has done around 10,000. ophthalmic surgeries and in his professional experience on 2 occasions lens fell into vitreous but he left the lens in the vitreous and inserted another lens. Surgical removal of vitreous is known as vitrectomy. Vitreous haemorrhage usually results within 3 months. During cross-examination he explained that amblyopia treatment after cataract surgery is necessary for best results. Posterior capsular opacification is a subsequent event in cataract surgery. He agreed that in majority of paediatric cases it occurs. PCO is also called as after cataract. Amblyopia treatment will not be effective if there is PCO or after cataract. To avoid after cataract and related problems the standard protocol adopted is primary posterior capsulotomy. It is also advisable to do vitrectomy as part of cataract surgery. He agreed to the suggestion that IOL can drop into the vitreous when the posterior capsular support is

inadequate. He agreed to the suggestion that pthysisbulbi can occur after vitrectomy and that is also an accepted complication. He was of the definite opinion that the complications in this case are known complications because falling of lens is a known complication.

9. DW1 is the 3rd opposite party. He explained that amblyopia cannot be congenital. It is acquired; it is reversible if properly managed. If it is not managed it can lead to permanent visual loss. By proper management there is the possibility of getting full vision. It is not fully correct to say that he had not treated the patient for amblyopia because the surgery was done as part of initial stage of treating amblyopia. He did not agree that there would be cataract in all cases of amblyopia. Though in cross-examination he stated that in Ext.A1 he had not mentioned that the patient was suffering from amblyopia it is quite evident from Ext.X1 that the condition of the boy was identified as lamellar cataract developmental, with amblyopia. In the same case sheet it is mentioned that the need for post operative amblyopia management was explained to the parents when the patient was discharged. RD was a later development. He also explained that in the case of the complainant the posterior capsular support was inadequate during surgery.

10. Thus, the available expert evidence only indicates that the condition of the complainant was correctly diagnosed. There was no error in the line of treatment suggested by the opposite parties. It is true that IOL dropped into the vitreous when attempted to be implanted but it is a known medical complication. Though two procedures are available once the IOL drops into the vitreous, it appears that the 3rd opposite party bonafide adopted vitrectomy rather than leaving the dropped lens alone in the vitreous, but in view of amblyopia it appears that vitrectomy was a necessary procedure to be adopted. It appears that there is no complete retinal detachment because there is 50% vision for the right eye in which surgery was done. This is evident from Ext.A2 produced by the complainant himself. There is absolutely no evidence available to show that pthysis bulbi happened because of any error or carelessness on the part of the 3rd opposite party. In view of the above circumstances and evidence the CDRF, Malappuram rightly concluded that deficiency of service on the part of the opposite parties was not established in evidence. Accordingly CDRF, Malappuram rightly dismissed the complaint.

Therefore I hold that there is no merit in the appeal.

In the result the appeal fails and is accordingly dismissed but without costs.

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