

**Tsk Ramani and Another Vs. Dr.C.Christopher Mariadass, M.D., [General Medicine, D.M. (Neuro), M/S. St. Luke Hospital**

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**Court :** Tamil Nadu State Consumer Disputes Redressal Commission SCDRC Chennai

**Decided On :** Oct-19-2011

**Judge :** Honourable Thiru Justice M. Thanikachalam President, Thiru J. Jayaram, M.a., M.L., Judicial Member & Tmt. Vasugi Ramanan, M.a., B.L., Member

**Appeal No. :** F.A.457 of 2009 [Against order in C.C.No.273/2006 on the file of the DCDRF, Coimbatore]

**Appellant :** Tsk Ramani and Another

**Respondent :** Dr.C.Christopher Mariadass, M.D., [General Medicine, D.M. (Neuro), M/S. St. Luke Hospital

**Judgement :**

The appellants as complainants filed a complaint before the District Forum against the respondent/opposite party praying for the direction to the opposite party to pay Rs.4,90,000/- to the complainants towards compensation for the death of Tmt.Nagarathinam with accrued interest from the date of complaint, to till the date of realization and to pay Rs.25,000/- towards costs. The District Forum dismissed the complaint, against the said order, this appeal is preferred praying to set aside the order of the District Forum dt.01.06.2009 in C.C.273/2007.

This appeal coming before us for hearing finally on 30.09.2011, upon hearing the arguments of the either counsels and perused the documents, as well as the order of the District Forum, this Commission made the following order:

**M. THANIKACHALAM J, PRESIDENT**

1. The complainants are the appellants.

2. Facts necessary for the disposal of the case:-

Tmt.Nagarathinam, wife of the second complainant, mother of the first complainant, consulted the opposite party on 02.02.2007 at 11.30 a.m. since she had pain at the nap of neck. As prescribed, Tmt.Nagarathinam took the medicines and after consumption, severe pain had occurred at the nap of neck intolerably on the same day, which was reported over phone, for which, she was advised to admit, admitted at St.Lukes Hospital immediately. On admission, the opposite party examined Tmt.Nagarathinam and even given infra red light treatment, but there was no improvement at all, pain has not subsidized and in fact, she became drowsy, gradually disoriented, which was explained,, that Tmt.Nagarathinam would recover soon and the symptoms are because of the medicines.

3. On 6.2.2007 at 6 a.m., when the first complainant reported to the doctor about the disorientation of her mother, he suggested some tests to be taken at N.M. Hospital, for which, the complainants are not agreeable and discharged Tmt.Nagarathinam, in order to admit her in Ramakrishna Hospital. The opposite party also gave a letter to Dr.K.R.Shetty, without furnishing the case history. At 10.30 a.m. on the same day, Tmt.Nagarathinam was admitted in the Ramakrishna Hospital, where it was diagnosed that she was suffering from Carbuncle at the nap of neck and due to the same, septicemia was caused, suggesting immediate operation on the very next day. But despite treatment, due to late admission and late diagnoses, respiratory depression formed and she died on 7.2.2007 at 1.25 a.m. due to cardio respiratory arrest secondary to septicemia and T2DM.

4. The opposite party being the qualified and experienced doctor, though specialized in Neurology, failed to diagnose the presence of Carbuncle, thereby he

committed negligence in his professional duty and without diagnosing, he administered medicines, causing septicemia throughout the body, which was the root cause for the death. By the death of the affectionate mother, the first complainant suffered mental strain and the second complainant suffered due to loss of his wife, for which, the complainants are entitled to the compensation, which is quantified at Rs.4,90,000/-. Hence, the complaint.

#### 5. Defence in brief:-

The complaint, without impleading the Ramakrishna Hospital, is liable to be dismissed in limine for non-joinder of necessary party. Tmt.Nagarathinam was admitted with severe pain in the neck radiating to the right arm and was diagnosed as a case of cervical spondylosis with brachial neuralgia right side, a common cause for the pain the neck due to old age. As the patient had blood sugar, pain did not come down, for which, she was advised to be shifted to another hospital, for further investigation like MRI Scan to assess the severity of the compression of nerve roots and spondylosis. But the complainant wanted to consult Dr.Shetty at Ramakrishna Hospital, for which, a referral letter was given by this opposite party. The case history was not given since not demanded. Later, the opposite party came to know that the functioning of the kidney of Tmt.Nagarathinam was normal, CT brain was normal. If at all, the Ramakrishna Hospital would have diagnosed the deceased had septicemia due to Carbuncle, than they should had immediately done incision and drainage irrespective of the condition of the patient, which they have postponed, causing death, which cannot be attributed to the opposite party. This opposite party never did anything wrong and it not committed medical negligence and deficiency in service and therefore, question of paying compensation, is imaginary and the claim is liable to be dismissed.

6. The District Forum based upon the pleadings as well as affidavits, assessing the documents filed on either side, came to the conclusion that the complainant failed to act as per the advise of the opposite party, whereas, they on their own, went Ramakrishna Hospital to consult Dr.Shetty, for which, at request, a referral letter was given, that due to old age with hypertension, uncontrolled diabetes mellitus, she would have sustained myocardial infarction with cardiac arrest, for

which, the opposite party has not committed any act of negligence and did not confine the deceased in his hospital. In this view, the complaint was dismissed on 01.06.2009, which is under challenge.

7. Tmt.Nagarathinam, herein after called Patient mother of the first complainant, wife of the second complainant, had some problem at the nap of neck, including pain. As admitted in the complaint itself, the opposite party/doctor being a qualified and experienced doctor, served as specialist in Neurology, had rich experience. Therefore, the patient was taken to him for consultation and the opposite party also prescribed medicines, admitting her as inpatient on 2.2.2007. When the pain has not come down despite medication administered, admittedly, the opposite party advised the complainants, to shift the patient to another hospital, for investigation, taking MRI Scan to assess nerve root, diagnosing the problem as spondylitis. But the complainants wanted to consult Dr.Shetty, who was working in Ramakrishna Hospital, Coimbatore. As requested by the complainants, a referral letter was given [Ex.A5] to Dr.Shetty. Admittedly, the complainant on their own, discharging the patient from the opposite partys hospital, admitted her in the Ramakrishna Hospital, Coimbatore, where they have diagnosed the problem as septicemia due to carbuncle. In order to perform incision and drainage, they have fixed the surgery on 7.2.2007 at 11 a.m. as pleaded in Para 11 of the complaint. But due to respiratory depression, before the time of surgery, at 1.25 a.m. on 7.2.2007, she died. The complainants, accusing the opposite party, as if, because of the wrong diagnoses or not properly diagnosing or the doctor failed to diagnose the presence of carbuncle at the nap of neck, immediately death caused, for that they are entitled to compensation. Thus alleging a case has been filed for compensation, as if, that alone caused the death, which was opposed successfully, resulting this appeal.

8. In a case of medical negligence, it is the settled position of law that the initial burden is upon the complainant to prove medical negligence. In this case, to prove the alleged medical negligence against the opposite party, no expert evidence has been examined, except the questionnaire served upon the Doctor, who treated the patient before her death. The complainants attempted to examine Dr.Shetty and he informed his inability to come to the Court to give evidence, requesting the

questionnaire, to answer, which was accepted by the complainant by filing memo. As seen from the records, four questionnaires were served upon Dr.Shetty, who replied in his own handwriting for all queries. Our endeavor to find out any, medical negligence against the opposite party by going through the questions and answers ended in vain and therefore, we would say that the answer elicited from Dr.Shetty, by serving the questionnaire will not serve the purpose of expert opinion or expert evidence, which we will discuss later.

9. The main grievance of the complainant appears to be that the opposite party failed to diagnose Carbuncle in the nap of the neck at the earliest point of time, whereas belatedly referred to Dr.Shetty, where also before surgery the patient died. Fortunately to the Ramakrishna Hospital or Dr.Shetty, they have not been impleaded, as party, for not performing immediate surgery. Therefore, in this case, the limited point which we are expected to decide is, whether the opposite party failed to diagnose the presence of carbuncle at earliest point of time, referring the matter for further treatment. **Carbuncle is nothing but skin infection caused by Staphylococcus infection where two or more firuncles coalesce to form carbuncle which takes 7-10 days to form fully developed carbuncle.** For the second question **The presence of carbuncle at the nap of neck was found with the naked eye.** The answer given was Yes with conditions that is it can be seen by naked eye, provided if it is well formed and evidently obvious for naked eye examination. When the patient was with the opposite party, Carbuncle was not well formed and therefore, he had no opportunity to see by naked eye, in order to take follow up action, diagnosing the presence of carbuncle. A doctor, who followed a line of treatment, as per the medical standard, if failed to follow, another standard of practice, for the same disease, he cannot be faulted, as if, if the doctor had followed the another method, disease would have been occurred and for not following, it is not possible to say, that the doctor committed medical negligence. No doctor can assure the complete cure, and cure of disease especially administering medicines will depend upon, including the side effect of the medicines, of course which are to be studied by the doctor. No allegations are made against the opposite party in the complaint, as if, he has not given the proper treatment, questioning his qualification or something like that. In fact, his qualification is well appreciated in Para 2 of the complaint. Even as per the

complaint, when the complainants informed the suffering of the patient to the opposite party, the opposite party suggested, that it is necessary to take some required tests at N.M. Hospital, probably the opposite party personal contact with N.M. Hospital that cannot be per-se faulted. It is the definite case, as seen from the Para 7 of the Written Version that Tmt.Nagarathinams blood sugar and pain did not come down to normal even in spite of the medication administered and therefore, she was advised to be shifted to another hospital for further investigation like MRI Scan to assess the severity of the compression of nerve roots and spondylosis. Thus, it is an admitted fact, that the doctor suggested a specialized treatment, after further investigation even taking MRI, thereby indicating, he adopted a correct procedure. Therefore, for not diagnosing the carbuncle at early point of time, which was not possible, no negligence would be attributed. The complainants instead of accepting the suggestion of the opposite party, preferred Dr.Shetty, who was working in Ramakrishna Hospital. Therefore, as requested by the complainants, the opposite party has given a referral letter as seen from Ex.A5 informing the nature of problem, treatment given etc., Pursuant to Ex.A5 after thorough investigation, Dr.Shetty came to a provisional diagnoses of carbuncle in the nap of the neck. He was also no sure and therefore, he followed further investigation in order to confirm the same by taking blood test, x-ray of the local part, in order to have, finally incision and drainage. Before completing the tests and other things, the patient expired at 11.00 p.m. at the fateful day. Therefore, the non-diagnose of carbuncle, which required to be identified so strictly, by various tests when insisted, the complainants left on their own to Dr.Shetty, for that, the opposite party cannot be blamed.

10. Dr.Shetty has not faulted the treatment given by the opposite party and from the questionnaire also, they have not sought any remarks from Dr.Shetty faulting the treatment given by the opposite party to the patient. All the questionnaires relates to the nature of the treatment, which was explained that Tachypnoea cannot be concluded exclusively for septicemia and it will depends upon very many other medical conditions like respiratory illness, cardiovascular illness etc. as per the answers given by Dr.Shetty as per the Question No.1. As adverted above, it is the opinion of Dr.Shetty accepted by the complainant also, not challenged, that carbuncle would be seen by naked eye if it is well formed, not

otherwise. No case has been made out by the complainant that it was well formed, not noticed by the opposite party. Question No.3 relates to the conduct of Dr.Shetty, which we are not concerned since no claims is made against Dr.Shetty or Ramakrishna Hospital as the case may be. Question No.4 relates to the relationship between Septicemia and rising of blood sugar, which was the case of the opposite party. From the answers, it is seen, Septicemia is common in diabetes and therefore, it is not possible to say that because of the treatment given by the opposite part, septicemia formed or it was the cause for the death of the patient. Only, at the request of the opposite party, the patient was transferred or shifted to Ramakrishna Hospital, there alone the patient expired. From the above facts, it is clear that there was no possibility for the opposite party, to diagnose forthwith and perform incision and drainage irrespective of the condition of the patient, which is not faulted as negligence. A Doctor giving hope, to the complainants that the patient would recover soon, cannot be taken as negligence since it is the duty of every doctor to give hope, give best administered medicines till the last end as expected and giving hope to every one, that is an encouraging trend. In the complaint, though a sum of Rs.5 lakhs was claimed, we are unable to find out any allegations, against the opposite party, what kind of negligence he has committed, except saying in Para 6 Due to act of the negligence of the opposite party and due to lack of involvement in his professional duty, he wrongly confined the patient at his hospital without diagnosing the illness, when there was no possibility that too it requires further tests even as did by Dr.Shetty, who was preferred by the complainant. The case records filed by the opposite party as well as the case record filed by the complainant would make it abundantly clear, that at no point of time the opposite party has deviated from the established standard of treatment, to the old lady and unfortunately she died even before the trusted doctor of the complainant, attempt to drain by incision, which had not happened in the presence of the opposite party or in his hospital.

11. The District Forum considering all the above facts, as well as mostly relying upon Dr.Shettys expert opinion, came to the conclusion that the sudden cardiac respiratory arrest should have been caused due to old age with hypertension and uncontrolled diabetes mellitus, followed by sudden myocardial infarction with cardiac arrest, not due to septicemia, further recording that after discharge, in the

absence of request for document, not given, which cannot be treated as deficiency in service. Thus concluding that Dr.Shettys answers are not in favour of the complainant, and in the absence of any expert opinion, to challenge the case record maintained by the opposite party, we are constrained to hold that the opposite party has not committed any medical negligence or deficiency in service, in treating the patient, which conclusion reached by the District Forum being well founded, we affix our seal of approval, dismissing the appeal, as not meritorious.

12. In the result, the appeal is dismissed, confirming the order passed by the District Consumer Disputes Redressal Forum, Coimbatore, in C.C.273/2007, dated 01.06.2009. No order as to costs in this appeal.

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