

Sidda Pullaiah and Others Vs. Yashoda Super Specialty Hospital and Others

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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Jul-26-2011

Judge : Honourable Justice Sri D. Appa Rao, President, Smt M. Shreesha, Honourable Member & Sri R. Lakshminarsimha Rao, Honourable Member

Appeal No. : F.A.No.1041 OF 2009 AGAINST C.C.NO.995 OF 2005 DISTRICT CONSUMER FORUM-I HYDERABAD

Appellant : Sidda Pullaiah and Others

Respondent : Yashoda Super Specialty Hospital and Others

Judgement :

R.Lakshminarsimha Rao, Member

1. The unsuccessful complainants are the appellants. Feeling aggrieved by the order of the District Forum dismissing their complaint, the complainants filed the appeal contending that the respondents fabricated the case sheet and evidence of Dr.Vijaya Mohan Reddy is of no consequence since he had not treated the patient and he is only a Chief Medical Administrative of the respondent no.1 hospital and that no neurophysician was called for to attend and treat for the Cerebrovasculal problem of the patient and that there was negligence on the part of the nursing staff of respondent no.1 hospital as also RW2 M.V.Rao who had not diagnosed the patient with coronary artery disease and triple vessel disease.

2. The wife of the first appellant was admitted to respondent no.1 hospital on 10.12.2004 for the check up of her heart problem. Angiogram was done and she was informed on 11.12.2004 that she was suffering from Coronary Artery disease, triple vessel disease and unstable angina. She was advised for Coronary Artery Bypass grafting (CABG) and she was shifted to the respondent no.2 hospital on 13.12.2004 and she had undergone surgery on 15.12.2004. On 22.12.2004 at 12.45 p.m. the patient had developed hiccups and collapsed and she was shifted to ICU where she was declared dead.

3. It is contended on behalf of the appellants that the respondent no.3 doctor hastened to perform surgery without giving time to the appellants to have second opinion and he had prevailed on them that he would convince the patient. It is contended that when the patient was informed on 6th day of the operation that she had undergone heart surgery, she had wept for concealing the fact from her and on 22.12.2004 when the patient was running low blood sugar level, she was administered insulin and the second appellant who was monitoring the dosage and the sugar level had cautioned the nurse.

4. It is contended on behalf of the respondents no.1 and 2 hospital that the appellants or the patient had not informed about the patient suffering from Osteoarthritis. The patient was a case of known diabetic mellitus for about 15 years and being a diabetic she developed heart disease. After confirming blood sugar level and on monitoring it, surgery was performed on 15.12.2004 and during the post operative period she was extubated on 16.12.2004 and put on mild inotropic support which was gradually weaned off. Her recovery was stable. On 22.12.2004 the patient developed sudden loss of consciousness and apnea followed by Brady cardia. She was put on intubation and shifted to CT Post. Open chest massage and CPR were done. The heart was revived. IABP inserted with support. Brady Cardia and Cardiac arrest started. She died at 3 p.m. due to multiple diseases.

5. The respondent no.3 remained exparte.

6. It is contended on behalf of the respondent no.4 insurance company that there was negligence on the part of the respondents no.1 to 3 and that the complaint

was not maintainable.

7. On behalf of the appellants, the first appellant has filed his affidavit and the documents, Exs.A1 to A9. On the side of the respondents, Dr.Vijayamohan Reddy, the Chief Medical Administrator of respondent no.1 hospital was examined and Exs.B1 and B2 had been marked.

8. The District Forum has dismissed the complaint opining that negligence cannot be attributed to the respondents no.1 to 3 in view of the heart surgery the patient had undergone and the documentary evidence coupled with the evidence of the doctors to the effect that all required care and due diligence was exercised during the treatment of the patient.

9. The point for consideration is whether there was any medical negligence in administering the treatment to the patient from the respondents no.1 to 3?

10. The first appellants wife Mrs Venkata Subbamma was admitted to the respondent no.2 hospital on 10.12.2004 with the complaint of retrosternal pain on minimal exertion prior to two months thereof. The patient was shifted to the respondent no.1 hospital for coronary angiogram. The appellants have not adduced evidence to prove that they had not been given time to seek for second opinion in respect of the proposed CABG. It is not disputed that on 11.12.2004 the appellants were informed that the patient was suffering from coronary artery disease, triple vessel disease and unstable angina and she was advised to undergo CABG since four vessels were blocked.

11. The patient was taken to the operation theatre at 10.30 a.m. on 15.12.2004. The case record indicates that prior to performing the surgery required tests had been conducted. In fact the appellants have not disputed the tests that were conducted prior to the date of surgery and there had been no complaint till 6th day of surgery. The patient was extubated on 6.12.2004 and she was shifted out of CT post and her condition hemodynamically was recorded as stable. The plea of the appellants is that despite the patient suffering from low blood sugar level and in the light of objection raised by the second appellant, the duty nurse had administered insulin which resulted in collapsing of the patient. RW2 has stated

that they maintained diabetic chart of the patient by taking blood samples and sending it to the laboratory. Page 27 of the case sheet is diabetic chart. The patients blood sugar levels were mentioned as 208mg/dl at 1 p.m. on 11.12.2004, 98mg/dl at 7 p.m. on the same day and on 12.12.2004 at 6 a.m. it was 189mg/dl and at 7pm. 222mg/dl. Again on 13.12.2004 at 6 a.m. the fasting sugar level of the patient is noted as 165mg/dl. The diabetic chart combined with the evidence of Dr.M.V.Rao who had stated that during the post operative stage from 19.12.2004 to 22.12.2004 he was given instructions to watch the dose of insulin to be given to the patient, clinchingly shows that blood sugar levels of the patient had been monitored and brought to the normal level.

12. It is deposed by RW2 that the cause of death was due to post operative Cerebro Vascular, respiratory arrest. The death was on account of multiple diseases. There is no denying of the fact that the appellants had not informed the doctors either at the first respondent hospital or the second respondent hospital or even to the respondent no.3 who performed the surgery upon the patient that the patient was a known case of Osteoarthritis. It is suggested to RW2 that the patient who undergoes bypass surgery is given TED stockings and clopidogree forte tablets in order to prevent blood clotting. RW2 has deposed that at the first instance beating heart surgery was proposed and due to the problems, the operation was switched to CPB. It was suggested to him that the line of operation was deviated and by itself the deviation in the line of operation was the indication of lack of care on the part of the respondents no.1 and 2 hospital.

13. We do not agree with the plea that the deviation in line of treatment by itself would be considered as negligence on the part of the doctor. Different doctors adopt various lines of treatment depending upon the attending circumstances. In this regard, the law laid down in C.P. Sreekumar (Dr.), MS (Ortho) v. S. Ramanujam (2009) 7 SCC 130 is applicable as in that case it was held that the treating doctor is at liberty to adopt a particular line of treatment in accordance with the requirement of the circumstances. On this count, it cannot be said that the respondents no.1 to 3 had been negligent by adopting CPB mode instead of beating heart surgery.

14. Non-administration of heparin by itself would not amount to negligence. As seen from the case sheet Heparin was given till 15.12.2004 and thereafter Clodrel Forte was given on 20th and 22nd December 2004. It is for the intensive care specialists to decide which medicine has to be administered. The statement of the appellants is not supported by any evidence. The Gastroenterologist had noticed that haemoglobin of the patient was 9.2 less than normal and decrease in hemoglobin count would lead to internal bleeding in case heparin was continued to be administered and eventually it would lead to serious repercussions. In the circumstances, discontinuing of heparin cannot be considered as negligent treatment on the part of the respondents no.1 to 3.

15. The Honble Supreme Court considered the principles of the law on negligence in **Jacob Mathew v. State of Punjab and Another**, III (2005) CPJ 9 (SC), it was held that in order to constitute negligence the legal duty or obligation and exercise thereof as also breach of the duty coupled with consequential damage are the parameters to be considered in order to establish the negligence in the treatment rendered by the doctor. It was held:

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.

16. Since the entire case of the appellants spring out from the attending circumstances during the post operative stage, we would consider the treatment administered to the patient. The patient was suffering from diabetes mellitus for

about 15 years prior to the date of the surgery. CABG was performed upon the patient on 15.12.2004 and she was extubated on 16.12.2004. Her hemodynamics were recorded as stable and she was shifted out of CT post. On 17.12.2004 at 8.a.m. she was examined and the findings are recorded as :

Temp (N); HR 96/mt;BP120/70, CVS S1,S2; RS Lump clear;MS/IP drain removed.17. Tab. Clodrel Forte, Augumentum etc., were prescribed. Thereafter the progress sheet contains description of the condition of the patient and the medicines administered till 22.12.2004 there had been no complications except sweating at 6 pm on 22.12.2004 which was controlled and at 6.30 p.m. the condition of the patient was recorded as comfortable. On 22.12.2004 the temperature of the patient at 8 p.m. was normal and so are the other parameters. At 11 a.m. Dr.Govind Verma has examined the patient and noted her condition as better and he advised for continuing of the same medicine. At 1 p.m. the patient developed sudden loss of consciousness, apnoe and respiratory arrest was experienced. Her pulse rate was feeble and she had suffered from brady cardia and cardiac arrest. Immediately she was intubted and CPR was done. It is noted that she was shifted to CT post OP and open chest massage was done and all steps were taken for revival of the functioning of the heart. However, the patient has again developed bradia cardia and cardiac arrest and despite cardiac massage as also the other resuscitative medications given, she could not be revived.

18. Aforesaid line of treatment goes to show that the respondents no.1 to 3 had taken proper care in administering treatment to the patient. The learned counsel for the appellants relying upon the decision of the Supreme Court in Savita Garg Vs National Heart Institute 2005 (3) CPJ (SC) contended that the burden cannot be placed on the patient or the appellants to show that there was no negligence on the part of the doctors. In that case the doctor who treated the patient was not impleaded as a party to the proceedings and the complaint was dismissed for non-joinder of necessary parties. The hospital had taken a plea that the doctor was not its employee and only a consultant and as such obligation cannot be fastened on the hospital. Distinguishing the contract of service from the contract for service, the Supreme Court held that non-impleading of the treating doctor would not change

or have any effect on the circumstances of the case and it is for the hospital in the absence of the treating doctor as to show that there was no negligence in administering the treatment to the patient.

19. The principle laid down in that case is not applicable to the facts of the case on hand, for the initial onus does always lie upon the person who approaches the court i.e., the appellants herein which they had not discharged at all. The respondents no.1 to 3 by adducing the evidence of RWs 1 and 2 coupled with the case sheet have established that there was no negligence on their part in rendering treatment from the time the patient was admitted to the respondent no.2 hospital on 13.12.2004 till she died on 22.12.2004. We do not see any infirmity in the findings recorded by the District Forum.

20. In the result the appeal is dismissed confirming the order of the District Forum. There shall be no order as to costs.

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