N. Raghavan Vs. Dr. P.B. Sadasivan Physician and Cardiologist, Chennai and Others

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Court : Tamil Nadu State Consumer Disputes Redressal Commission SCDRC Chennai

Decided On : Nov-30-2009

Judge : Hon'Ble Thiru Justice M. Thanikachalam President Thiru Pon. Gunasekaran B.a.,B.L., Member - I

Appeal No. : O.P.NO.186 of 1999

Appellant : N. Raghavan

Respondent : Dr. P.B. Sadasivan Physician and Cardiologist, Chennai and Others

Judgement :

M. THANIKACHALAM J, PRESIDENT.

1. The complainant took his wife to their family Dr. Revathi Ananthasubramaniam., for checkup, since his wife had noticed lump under her right breast. At her request, series of tests were conducted, and after scrutinizing the results of the test, the doctor confirmed that the complainants wife is having a problem of Carcinoma. To confirm the complainants wife decided to have second opinion and in this view they have approached the 1st opposite party, who is in 2nd opposite party hospital. He advised to consult the 3rd opposite party by name

Dr.A.N.Vaidheeswaran. The 3rd opposite party, after physical examination, confirmed it to be a case of carcinoma. Thus the complainant hired the services of opposite parties 1 to 3 for consideration.

2. On 30.9.1997, at the request of the 1st opposite party, various tests such as X-ray, chest PA view, ECG were taken, and after obtaining the test report, wife of the complainant was admitted in the 2nd opposite party hospital on 1.10.97. There, further tests were done, such as TC, DC, ESR, Blood grouping and Rh typing. The 1st opposite party informed that immediate surgery is required and a decision was also taken, to perform surgery on the same day viz. 3.10.97. Considering the anemic nature of the complainants wife, Dr.Rajendran, Anesthetist, expressed his reservation, and despite the 1st opposite party assured that the surgery should be done, has to avoid unnecessary wastage of blood. The surgery for Right Simple Mastectomy with Axillary Clearance for Carcinoma Right breast was done as planned. After surgery, a specimen of Lympnodes were sent to 4th opposite party for Biopsy, which revealed infiltrating ductal carcinoma.

3. After a week, i.e., on 11.10.1997, the patient developed cough and back pain. The doctors have not taken steps to investigate the reason for the cough and back pain. Only suppressive medication was given, without attempting to do any investigation. The healing of wound was very slow and persistent yellowish discharge from the surgical wound was noticed, till her death. When the wound had not healed, even after a month had lapsed, the 1st opposite party decided to give radiation treatment to the patient and accordingly the patient was sent to Dr.A.N. Vaidheeswaran, suggesting chest wall irradination to the patient. Dr. Vaidheeswaran also gave preference only for Radotheraphy, and accordingly Radiotheraphy was given from 17.11.97 to 18.12.97, without any improvement. At the request of Dr.A.N. Vaidheeswaran, on 1.12.97, 4th opposite party CBC test, barring ESR to the patient and forward its test report. If ESR had been done, at that stage, it would have revealed the pulmonary and lumbar secondaries and prompt treatment could have been administered. But the patient was discharged from Tamil Nadu Hospital, on the completion of the Radiation treatment on 18.12.1997.

4. No assessment was done in the 2nd opposite party hospital for the persistent problem of the patient, and she was discharged from the hospital on 19.12.1997. Once again, since cough and back pain was severe, the patient went to Tamil Nadu Hospital to consult Dr.A.N. Vaidheeswaran. Instead of investigating the cough, he simply gave a prescription for analgesic and did not conduct any test to rule out the suspicion of metastasis. In view of the fact that there was no relief, the patient consulted Dr.Shankaralingam of SRM Hospital and the medicine prescribed therein also, did not give any relief. Thereafter, once again the patient consulted 1st opposite party on 20.3.1998, where X-ray also taken, which revealed that the patient had lung secondaries due to Carcinoma of the breast. Further, he advised the patient to consult the 3rd opposite party, who confirmed the same diagnosis. The 3rd opposite party should have taken steps even on 24.2.1998, when the patient consulted him and his failure to do so, amounts to negligence, which caused spread of disease. Having taken treatment, no relief was found, and therefore the patient consulted Dr.N. Gopalan on 3.4.98, who informed that the cancer had advanced to stage IV, and in fact he questioned why chemotherapy was not administered after surgery immediately, thereby revealing improper treatment. He has put on cobalt beam therapy and subsequently started chemotherapy from 5.4.98, and finally discharged on 10.4.98.

5. The complainants wife became very sick, drowsy and suffering with severe pain, which compelled the complainant to admit his wife in the 2nd opposite party hospital on 13.4.98, where she lost her breath on 15.4.98, as the treatment has no effect at all. Because of the negligent act performed by the 1st opposite party, as well as because of the reason proper steps have not been taken at appropriate time, by the 1st and 3rd opposite parties, and due to their gross medical negligence, the complainant lost his affectionate wife, for which all the opposite parties should be held jointly and severally responsible. For the treatment alone, the complainant had spent a total sum of Rs.89,817.25/-. At the age of 60, the complainants wife, who is drawing pension, and who was offered the post of principal in a reputed school at Kodaiknal, died only due to the negligence on the part of the opposite parties, for which they are liable to pay compensation of Rs.6 lakhs. Hence this complaint is filed for the recovery of a sum of Rs.6,89,817.25/- as compensation for deficiency in service, on the part of the opposite parties.

6. The case of the 1st opposite party in brief as follows:

The 1st opposite party explained the patient and her husband about the nature of the patients illness, the necessity for right simple Mastectomy with Accilary clearance, the alternative for proposed treatment, the ater effects of the proposed treatment and the alternatives, the early and later complications of the proposed treatment, the anaesthetic complications and the option of not undergoing any treatment. He also advised the patient to perform X-ray, chest PA view, Electrocardiogram (ECG) and Ultra sonogram (USG) of abdomen on 30.7.1997. After necessary investigation, the patient was admitted in the hospital on 1.10.1997. Based upon the report and clinical signs and symptom, the 1st opposite party and the 3rd opposite party, suspected to be a breast cancer of the patient in stage IIIA, which was confirmed by Tamil Nadu Hospital also. The 2nd opposite party and his team of doctors, performed Right Simple Mastectomy with Axillary Clearance on the patient on 3.10.97, with the help of Dr.Rajendran, Anesthetist. The patient was transfused a pint of blood procured from the Janseva Blood Bank on 3.10.97 on 3.00 p.m.

7. The 3rd opposite parties removed the drain from the wound created by the operation, after 10 days, who is also reported that the healing of the wound was slow and it took one month. At Tamil Nadu Hospital, 3rd opposite party, Dr. A.N. Vaidheeswaran, after examining the patient, asked her to undergo 22 sittings of chest wall irradiation, starting from 17.11.1997. Then and there, appropriate medicines were administered, and review revealed lung secondaries due to carcinoma breast, which were explained to the patient and the complainant once again. The patient admitted at 2nd opposite party hospital on 13.4.1998, and thereafter treatment was given as required. At 4.00 p.m, the patient was semi conscious, and the emergency measures were initiated to revive the patient, but inspite of the best effort of the opposite party, the patients condition did not improve and she has declared dead at 12.30 p.m., on 15.4.1998. This party never stayed away from the methodology, that is observed by other consultant, physicians under similar circumstances in treating such cases as that of the patients. There was no controversy between Dr.Namasivayam and Dr. Rajendiran as to the advisability of performing surgery. When the patient developed cough, to

control it, required medicines were administered. This opposite party has done the stating properly, taking into account the measurement of the tumor, and the histopathology report showed that she was in State IIIA of breast cancer, and infiltrating ductal carcinoma. Mamogram was not necessary in this case, since there was palpable mass in the right breast and no palpable mass in the other breast. For diagnosis and staging of breast cancer, surgery followed by histopathology of the removed specimen is absolutely essential, and pre-operative CT scan or Mamography does not help staging or type of cancer. Pre-operative irradiation distorts the morphology and staging cannot be done with accuracy. Similarly, preoperative chemotherapy is given when there is obvious metastasis as in Stage IV. When the patient was discharged form the hospital, she was not having any cough and she never complained of any back pain and she was advised to take Tomoxifen and Zincofer. When the patient met the First opposite party after 90 days on 20.3.1998, neither she nor her husband could give any valid reasons, for not carrying out this first opposite partys specific instructions. The only inference that could be made out is that the patient willfully disregarded the advice of this opposite party and discontinued the use of Tomoxifen, which must have resulted in the rapid spread of the breast cancer, leading to Stage IV of the disease. In view of the fact that the patient being the sister of the Administrative officer, she was treated like a VVIP, and this opposite party took all the care to look after her. It is not correct to say, that this opposite party failed to make proper staging of the cancer, that he performed careless and negligent surgical operation, that he did not assess the extent of the cancer spread pre-operatively, and it is also in correct to state that no proper post-operative assessment was done. Since this opposite party and other opposite parties have performed their duties perfectly, not allowing any cause to be negligent, alleging so is improper. Hence it is prayed, the petition may be dismissed with cost.

8. The 2nd opposite party more or less adopting the version filed by the 1st opposite party, denying the adverse allegations against them, filed a written version separately.

9. The written version of the 3rd opposite party in brief is as follows:

The complaint itself is not maintainable since the complainant is not a consumer. The exorbitant and inflated claim had been made by the complainant for the death of his wife, without any basis, and as such the complaint is liable to be dismissed.

10. As requested by Dr.P.B.Sadasivan, he examined Mrs.Thangam, which showed that she had a mobile mass in the right breast measuring level about 4 to 5 c.m., There was a small node in the right axilla which was suspicious of malignancy. She was diagnosed to have clinically carcinoma of right breast T3 N1 Mo. She was advised to have routine investigations namely a complete blood count, x-ray chest and ultrasound abdomen. She had underwent a mastectomy with axillary clearance on 3.10.1997. As the wound has not healed well, it was decided to defer radiotheraphy till wound healing has occurred. Therefore on 12.11.97, a reference for radio therapy was given by Dr.P..Sadasivam, after the wound had healed well. After examining the patient, radiotherapy was started to the chest wall and drainage area, using a linear accelerator after simulation on 17.11.97. She completed the radiation therapy on 18.12.97, without any complication and advise to come after four weeks, as well to consult primary physician Dr.P.B.Sadasivam.

11. The complainant's wife reported on 24.2.1998 with mild back pain. Examination revealed nothing abnormal. On 23.3.98, the patient had mild cough and the axillary showed lung secondaries. At this juncture, she was advised chemotherapy and the prognosis was explained to her very clearly. As she wanted time for the above treatment, she was advised to come as early as possible, which she did not do.

12. This opposite party is not guilty of any omission or commission in treating the patient, since he exercised and provided reasonable decree of care in treating the deceased. A medical practitioner has full liberty, to adopt any of the accepted theories of medicine or surgery, in which he only believes. Therefore, the practitioner could be found guilty, when he has fallen short of reasonable medical care. The course of radiotherapy reveals, that the patient was asymptomatic, and did not give any complaints, which warranted any further investigations. She was admitted at 2nd opposite party hospital, during the course of radiotherapy and her

treatment as out- patient, traveling every day for nearly 14 Kms, to Tamil Nadu Hospital, and if she had severe back pain, could not have travelled this distance confortably. She had mild back pain on 24.2.98, for which also appropriate treatment was given. The complainant's wife had operable locally advanced breast cancer, which was managed with surgery initially, and irradiation was planed to prevent local spread of the disease. There is no evidence to say, that Metastasis occurred after surgery for breast cancer. There was no mistaken diagnosis, and this opposite party did his services as per the accepted one of the protocols. In fact, nothing is alleged against this opposite party, complaining letter of service in performing irradiation to the deceased, on the other hand he ought not to have performed radio therapy immediately, and also ought to have advised the patient to undergo clinical test, such as X-ray and CT scans. The complaint is motivated and vexatious. Hence it is prayed, for the dismissal of the complaint with cost.

14. The 4th opposite party is given up. hence 4th opposite party's version is not extracted.

15. In support of the case, so pleaded by the parties, affidavits were filed, in addition to marking Ex.A1 and A2 series on the side of the complainant and Ex.B1 series and Ex.B2 to Ex.B6 on the side of the opposite parties.

16. The complainant has been examined as PW1, and in support of the case, to prove the medical negligence. Against these materials, the 1st opposite party, having filed proof affidavit, he was cross examined as RW1, by the complainant and 3rd opposite party as RW2.

17. Points for determination are:

1. Whether the opposite parties have committed any medical negligence leading to the death of the complainant's wife?

2. Whether the opposite parties are liable to pay compensation for the alleged medical negligence, if so what is the amount, and by whom?

3. What relief the parties are entitled to?

18. POINT NO.1 and 2:

Dr. Revathy Ananthasubramainiam, the family doctor of the complainant and his wife, examined Mrs. Thangam, the complainant's wife, after conducting a series of test, opined that it was a case of carcinoma. Considering its seriousness, and in order to obtain a second opinion, the complainant and his wife approached the 1st opposite party at Shivasundar Hospital/ 2nd opposite party, who in turn advised them to consult the 3rd opposite party, who also confirmed it to be a case of Carcinoma. In view of the confirmation of the disease, the patient was admitted in the 2nd opposite party hospital on 1.10.97. There several tests were conducted, and on the basis of the reports, the 1st opposite party informed the complainant and his wife, that she required immediate surgery and, accordingly a decision was taken to perform the surgery and, accordingly a decision was taken to perform the surgery on 3.10.97. Pursuant to the decision with the help of Dr.Rajendran, an Anesthetist, the operating surgeon Dr. M.P.Namasivayam, peformed surgery on the same day, in which Right Simple Mastectomy with Axillary Clearance for Carcinoma Right Breast, was done. The specimen taken was sent for analysis, which was also confirmed the disease as infiltrating ductal carcinoma.

19. After surgery, the patient took treatment including radiotherapy, medicine etc., not only from the opposite parties 1 to 3, but also from someother doctors, even as pleaded in the complaint. Because of the seriousness of illness, and the nature of disease, the doctors were unable to give full relief to the complainant's wife, and the matter went out of their control, which resulted that she lost her breath on 15.4.98.

20. The complainant, thus, at the old age, lost his wife-company, for which, he felt the opposite parties' medical negligence must be the cause. Therefore, alleging that only due to the gross medical negligence on the part of the opposite parties, he had lost his wife, though she would have survived for some more years, if treatment had been given properly and thus accusing the opposite parties on five grounds, i.e., attributing negligence, the claim came to be filed for the recovery of a sum of Rs.6,89,817.25/-, which is opposed.

21. The allegations of negligence leveled against the 1st opposite party as stated in the written submissions are

1. The doctors in the Shivasunder Hospital have failed to clinically stage the disease (Breast career) of the patient.

2. Surgery performed to the patient based on the unreliable FNAC test report.

3. The staging has been wrong and the carcinoma might have been in an advanced stage which they have not detected in which case palliative 'chemotherapy or radiotherapy' should have been given

4. No postoperative assessment was done to rule out pulmonary metastasis even when the patient presented with symptoms suggestive

5. Irregular administration of Oncomox to the patient Mrs.K.S.Thangam in the Shivasunder Hospital, which are opposed denying the allegations in detail by the opposite parties, in their written submissions.

21. From the accusation leveled by the complainant as indicated above, it is seen the grievance appears to be that the doctors have failed to perform certain acts, or failed to take certain tests, or they should have postponed the surgery. It is not the case they have done any negligent act, medically while performing the surgery. Therefore, only on the allegations that the doctors have failed to do certain things, as if those things are absolutely necessary, or the complainant is the competent person to take decision medically, we cannot affix as of routine, any gross negligent act upon the opposite parties. In this context, we have to remember the broad principles laid down by the National Commission, as well as the Apex Court, under what circumstances the doctors could be held responsible for medical negligence.

22. It is the settled position of law, that it is the bounden duty of the complainant to prove that the doctors, who attended the patient had committed negligence either by commission of certain acts, or by omission, at the first instance, which could be termed as medical negligence. Prima-facie, if a case has been made out by the complainant, as if the opposite parties have committed gross medical negligence,

then it is for the opposite parties to make out the case or disprove the allegations leveled against them by the complainant that they have followed the protocol in performing their duty, while assessing and evaluating the problems of the patient, as well in the follow-up action, including pre-operative, and post-operative, since those things are all within their knowledge. To satisfy the first part, the complainant should have let in expert evidence, and in the absence of any expert evidence on behalf of the complainant, as held by the National Commission in a case reported in I (1998) CPJ 110 (NC), it is not possible to conclude that the opposite parties have committed any negligence, merely placing reliance upon the affidavit filed by the complainant, when he is not an expert in the field. In this case, admittedly though the complainant had read so many literatures regarding this subject, he is not an expert in the field, and infact as admitted by him, he has also not consulted in the subject, with any doctor having qualification. Therefore, as rightly submitted by the learned counsel for the opposite parties, merely placing upon the affidavit of the complainant, which is based upon some literature, it is not at all possible, to fix any negligence on the part of the opposite parties, in this case.

23. As decided by the National Commission in Dr.N.T. Subramanyam and Another Vs. Dr.B. Krishna Rao and another, reported in II (1996) CPJ 233 (NC) "The principles regarding medical negligence are well -settled. A doctor can be held guilty of medical negligence only when he falls short of the standard of reasonable medical care. A doctor cannot be found negligent merely because in a matter of opinion he made an error of judgement. It is also well settled that when there are genuinely two responsible schools of thought about management of a clinical situation the Court could do no greater disservice to the community or the advancement of medical science than to place the hallmark of legality upon one form of treatment."

24. In Smt. Vinitha Ashok Vs. Lakshmi Hospital and others, in CA No.2977/1992, the Apex Court has ruled that Doctors will not be guilty of negligence if he followed practice accepted as proper by responsible body of medical men, skill in that particular field." Therefore for the non-performance of certain act, which the complainant thought, if it had done, would have been better or would have yielded better result, cannot be the reason and could not be the reason also to fix

culpability of negligence on the opposite parties, which is also reiterated by the Supreme Court in Martin F.D'Souza Vs. Ishfaq reported in (2009) 3 Supreme Court Cases 1. Their Lordships of the Supreme Court, considering various decisions rendered even by the Apex Court of this land, as well as the decisions rendered by some foreign courts also, have recorded, mostly relying upon the principles laid down in Jacob Mathew Case, which reads as "The professional is one who professes to have some special skill. A professional impliedly assures the person dealing with him (i) that skill shall be exercised with reasonable care and caution. Judged by this standard, the professional may be held liable for negligence on the ground that he was not possessed of the requisite skill which he professes to have".

25. It is also recorded by the Apex Court that "A medical practitioner is not liable to be held negligent simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference to another. He would be liable only where his conduct feel below that of the standards of a reasonably competent practitioner in his field. From the above observation of the Hon'ble Supreme Court, it is seen that accusing the opposite parties, as if they have not followed certain procedures or they have not conducted certain tests, which are essential, according to the complainant, cannot be taken, as the ground as if negligent to affix the seal of negligence.

26. In "Nizam Institute of Medical Sciences Vs. Prasanth S. Dhananka and Ors., reported in "2009 4 Law Weekly Part 1, the Hon'ble Supreme Court has observed based upon the previous decision, Negligence in the context of the medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgement or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the

accused followed. When it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used. Therefore, we have to see while performing their duties, whether the opposite parties have committed any mistake or in other words, whether they have not followed the standard protocol while treating this kind of disease, which resulted in the termination of the life of complainant's wife. In this context, we have to see the evidence adduced on behalf of the parties.

27. The complainant in his proof affidavit, reiterating the allegations in the complaint, based upon certain literatures, had attempted to find fault, in the procedure adopted by the opposite parties. But, when he was cross-examined, we would say fairly, he conceded that the opposite parties have not done anything negligently. During the cross examination, he admits "during this one month period, we had no complaints against the treatment". It is also admitted by PW1, that during the stay of his wife, she was given treatment and nursing care, further admitting that the doctors used to check her parameters regularly, and gave appropriate treatment. It is the further admission of the complainant that the 3rd opposite party used to regularly visit 2nd opposite party hospital, in order to see his wife. From the above answers available through the mouth of PW1, it is clear that in the treatment given by the doctors-the opposite parties, no defect was noticed even by PW1, and therefore if at all we have to see whether the doctors have followed the established procedure, while treating this kind of disease, caused to the complainant's wife.

28. It is the specific case of the opposite parties, that neither the complainant, nor his wife followed the instructions, given by the doctors, after surgery, which is also

admitted by PW1. The doctors have advised the complainant and his wife, to report for a review after 10 days, from the date of discharge. In a case of surgery, that too serious in nature, in this kind of cases, follow-up action and review are absolutely essential and necessary. But that was not followed by the complainant, as admitted by him, and in his own words "it is correct to say that, we had not followed instruction given by 1st opposite party, 3rd opposite party after discharge from 2nd opposite party hospital on 19.12.97". It is also admitted by PW1 that "radiation treatment was given between 17.11.97 to 18.12.97, and during this period they had no complaints against the treatment. It is the admission of PW1, further that they had nothing to do with any of the opposite parties, after 19.12.97. As admitted by PW1, after discharge from the hospital, they have approached one Dr. Shankaralingam, who prescribed certain medicines and as well another Dr. Gopalan of Cancer Shelter Hospital on 3.4.98. It is not the case of PW1 that those doctors have found any fault in the diagnosis done by the opposite parties, or in the treatment given by the opposite parties, to his wife. Thus it is seen from the oral evidence of PW1 , nothing is even suggestively available to accuse the opposite parties, as if they had committed any medical negligence, or they have not followed any standard procedure to be adopted, in this kind of surgery.

29. Dr. Sadasivam (1st opposite party), has reiterated in his proof affidavit about the procedure followed, pre-operatively, and what are the test taken and on the certain tests, as suggested by the complainant, has not been taken, which are all not challenged, when he was cross-examined by the complainant. For not taking MRI scan, the expert has opined, for these type of cases, MRI scan is not necessary, and it is the further assertion of RW1, that there was no necessity for conducting any special test for finding out whether there was malignancy. Being the expert, he would say "whatever test had not been done, was not done as we thought, it was not necessary to repeat." As ruled by the courts, the judgment of the expert is the final, and the courts cannot substitute its findings, as if certain things should have been done for not doing, there is negligence not being experts.

30. One of the main defence raised on behalf of the complainant is that there was no necessity to perform surgery, and if surgery had not been done, his wife would have lived for some more years. For this the answer is elicited from RW1, which

reads "if it is a Grade II problem, it was an operable case". It is the further case of RW1, that it is not their habit to subject the patient for unnecessary tests, and they used to conduct the tests, when the patient needs investigation alone. Thus according to RW1, being satisfied about the test report available, which we will discuss infra, surgery was recommended, explaining the consequences also, which is not very much challenged. Nothing is elicited from RW1, how and in what stage, he had committed negligence or he recommended unnecessary surgery or he failed in his duty and this being the position, the accusation against him, as if he committed negligence, is unacceptable.

31. Against 3rd opposite party, many accusations are leveled, which we will discuss at later point of time also. The 3rd opposite party being a consultant Radiation Oncologist, then working at Tamilnadu Hospital, has filed an affidavit, wherein he has categorically stated, about the treatment given, including radiotherapy, advised rendered by him etc., and how the stage was assessed, which prompted to have surgery etc. When he was cross-examined, nothing is elicited from him, to discard the sworn statement available in the affidavit. In the written version, the 3rd opposite party has stated, that on 23.3.98, Mrs. Thangam, had presented with mild cough and the outside chest X-ray showed lung secondaries. It is further stated, at this juncture, as she was advised chemotherapy, and prognosis was explained to them very well, for which she wanted time for the above treatment, assuring to come, later she did not come. This statement is confirmed, by the answer elicited during the cross-examination from 3rd opposite party. He would state that he had discussed with the patient, for undergoing chemotherapy, but she wanted to have discussion with her relatives, thereafter he had not seen the patient again, thereby proving, neither the complainant, nor her wife followed the instruction given by the doctor, which was admitted by PW1, as indicated above. Thus it is made out by affidavit, as well as the oral evidence, nothing had gone wrong while treating Mrs. Thangam, by the opposite parties, except the imagination of the complainant, as if the opposite parties have failed in their duties.

32. The complainant, and his wife having noticed a lump under her right breast, approached their family doctor Dr.Revathi Ananthasubramaniam, who conducted

series of tests, as described in para 3 of the complaint. Thereafter, to have the second opinion, and for further treatment, probably they have approached the 1st opposite party Dr. P.B. Sadasivam, physician and Cardiologist. On 30.9.97, the 1st opposite party also requested Mrs. Thangam, to undergo certain tests, and thereafter, physically examining her, confirmed the lump as case of carcinoma. The complainant, has questioned the decision taken by the 1st opposite party, as if pre-operative work such as CT scan or mammogram have not been done, to find out the stage of the cancer, and in his view, it is a deficiency, as seen from page 8 of the complaint, under paragraph 19. The 1st opposite party, in his written version, as well as in the affidavit, would contend that he explained the patient, and her husband about the nature of illness, the necessity for Right simple mastectomy for axillary clearance, the alternatives for the proposed treatment, the after effect of the proposed treatment, and the early and late complications of the proposed treatment etc., further advising to perform X-ray chest PA view, ECG and Ultrasonogram of abdomen on 30.9.97. On the same day, the 1st opposite party advised to consult the 3rd opposite party also, as seen from the written submissions. Thereafter, the patient was admitted at 2nd opposite party hospital on 1.10.97, then further tests were conducted. At the advise of the 1st opposite party, and as per the decision taken by him, surgery was conducted n 3.10.97, by one Dr. M.P.Namasivayam and his team, in which mastectomy was done with axillary clearance, as seen from the operation notes. The case of the complainant, that the 2nd opposite party failed to clinically stage the disease, and failed to perform pre-operative tests, appears to be a myth and it is the fertile imagination of the complainant, having studied some literature, probably not understanding its implications.

33. As seen from the records, even on 3.10.97 i.e., before the surgery, certain tests were conducted, as disclosed by the documents. The fact that, decision was taken on the basis of the previous reports, including the reports prepared by Dr. Revathy Ananthasubramaniam, is found fault, as seen from the written submission, wherein it is stated that doctors at Shiv Sundar Hospital, has failed to clinically stage the disease of the patient Mrs. Thangam. The four tests, conducted by the 1st opposite party, coupled with the size of the lump, revealed that it is a case of carcinoma. The Discharge summary, which is not challenged, also would

reveal that the disease was diagnosed as carcinoma right breast for which simple mastectomy with axillary clearance was done, which reads

Complaints of lump and harness in the breast for the past one week. History of mild pain since then. No history of discharge from the nipple. Attained menarche at the age of 16 yers. Cycle 5/28 days. Moderate flow. No history of dysmenorrhoea. Married for 35 years. No history of pregnancy so far. Attained menopayse- 12 years back (48 years). Post menopausal period uneventful. No a known diabetic. Known Hypertensive on Tab-Envass 5 Mg. 101.

ON EXAMINATION: Patient conscious, not anaemic. No peal oedema. Pulse Rate- 82/mt. B.P.-120/80 mm of Hg. CVS- S1, S2 +. RS-NVBS+. Abd-Soft. Mild hepatomagaly. No free fluid. L/E:A hard mobile spherical lump palpable I the right upper lateral quadrant size 5 cm in diameter. Retraaction of nipple towards lateral side. Skin over the lump normal, pinchable. Axilla- No significant lymphadenopathy. Left side normal

INVESTIGATION DONE:

Hb - 11.0 gms/dl.

TC - 7250 cells/cumm.

DC - P.63%, L25%, E 12%

ESR - 6mm/18mm

Blood Group - A1 Positive

USG Abdomen- Hepatomegaly with Fatty infiltration

X-Ray Chst _Normal pattern

ECG - Normal sinus rhythm. Left axis deviation

Inferior wall ischaemia.

The operation notes also in accordance with the discharge summary. As pointed out supra, there was no complaint regarding the treatment form the date of admission, till the date of discharge. The procedures adopted are noted in the operation notes, as indicated in the discharge summary. It is not the case before us, that the particulars noted therein are incorrect, and in fact pointing out any wrong, no argument was also advanced as if those entries are false, or the procedure noted therein are unnecessary or it is the deviation of the procedure, contemplated under the standard text, in respect of the breast cancer operation. Therefore, accepting the operation notes, as well the discharge summary, we have to say empathetically, that the alleged first negligence, on the part of the 1st opposite party is baseless.

33. It is the further submission of the complainant, that had the tumour been left alone without surgery, the patient would have survived, for a period of atleast 5 years, since the tumour was in stage 1 and 2, without any evidence of metastasis. The nature of a disease is concerned, which has its own character of spreading, and the reasons not yet fully unearthed medically. Therefore, under the hypothesis or imagination, it is not safe to conclude, if the surgery has not been done, the patient would have survived, thereby affixing the seal of negligence upon the 1st opposite party, who advised or had taken the decision to perform surgery for carcinoma. There is no expert evidence also, to establish that the vide spread cancer, resulted because of the unplanned surgery, as said under 4th negligence, and after the operation, pathology report obtained, which also revealed as seen from the discharge summary "infiltrating ductal carcinoma Grade II", which is operable according to the opinion of the expert, the 1st opposite party. It is also the case of the 3rd opposite party. Therefore, it is meaningless on the part of the complainant, to contend that an unwarranted surgery has been done, and if that surgery had not been done, his wife would have lived for some more years. The clinical examination, done by the 1st opposite party, staging the disease as Grade II, is confirmed later by the pathology report also, and therefore it is impossible to say that no proper pre-operative care has been taken.

34. The discharge summary would also disclose, that operation were performed by Dr. Namasivayam, who and his team is not a party neither in the complaint, nor in

the affidavit, no allegations is leveled, as if there was defective surgery, and therefore according to the decision taken by the 1st opposite party, a successful operation was conducted, which would suggest the proper procedure has been adopted by all the doctors. It is also admitted by PW1, during the inpatient treatment, he had no complaint, and because of the improvement, and everything went correctly, the patient was discharged on 18.12.97. It is the specific case of the opposite parties, that the patient has not followed the instructions, and they have also not come to review, which is evident from the subsequent consultation or advise taken by the complainant and his wife from some other doctors, then unable to satisfy themselves, have approached once again the 1st opposite party, admittedly.

35. Against 3rd opposite pa1ty, the negligence attributed are

(1) he should have postponed the radiotherapy, as the general health condition of the patient was deteriorating, which alone accelerated the death.

(2) When the complainant's wife has reported cough and back pain, with a suspicion of metastasis, to detect the possibility of cancer spread, X-ray and CT scan should have been done, which he has neglected.

35. It is the submission of the 3rd opposite party, that at the request of 1st opposite party, when he examined, he has noticed that the wound was not healed well, and therefore, he decided to defer radiotherapy, till the wound is healed. Thus, according to him, he advised medicines and after the wound healed well, radiotherapy was started to the chest wall and drainage area, only on and from 17.11.97. We do not find, any reason, in the absence of anyother satisfactory evidence, to disbelieve the case of the 3rd opposite party, as if he has not postponed the radiotherapy, till the wound is healed, as fallacious, and against truth. It is the further case of the 3rd opposite party, that after the completion of the radiation therapy on 18.12.97, without any complication discharged and the complainant's wife was advised to come after 4 weeks, as well to consult Dr.Sadasivam. Thereafter, till 2.2.98, the patient has not consulted the 3rd opposite party, and he reported only on 24.2.98 admittedly, complaining mild back pain, and according to 3rd opposite party, complete examination revealed nothing

abnormal, and the irradiation site was quiet healthy. Once again on 23.3.98, when the complainant presented herself with mild cough, and X-ray showed lung secondaries, at that stage he advised the patient for chemotherapy and prognosis, but the patient postponed the same, for the reasons best known to her. Therefore, in the treatment given by the 3rd opposite party, either in the 4th opposite party hospital or elsewhere, nothing was unusual, and everything was usual as per the standard prescription, since it is not otherwise proved. Thus in our opinion, negligence attributed is imaginary, as if there were causes for spreading the cancer, taking to the stage to IV, certainly not due to any alleged negligent act, but because of the nature of the disease. Even after, the patient has not followed the instructions given by 1st opposite party and 3rd opposite party, went to someother doctor for treatment and once again when they came for treatment, as submitted on behalf of the 1st opposite party, since her close relative was working as Administrative Officer there, she was admitted in the hospital, treatment given, shows the utmost care taken by the opposite parties 1 and 2,and we are unable to see any iota of negligence, to say which leads to the termination of the life of Mrs.Thangam, as improperly and incorrectly contended by the complainant. The old man, having lost his wife, unable to control himself, probably as an ordinary man, attempted to find fault in the treatment given by the opposite parties, in which we are unable to agree. For the reasons stated above, the complainant has miserably failed to prove any negligence against any one of the opposite parties, and for the death of the complainant's wife, none could be blamed, except destiny. Hence, point No.1 and 2 are answered accordingly.

36. POINT NO.3:

In view of our findings on Point Nos.1 and 2, the complainant is not entitled to any compensation, against any of the opposite parties. This point is answered accordingly.

37. In the result, the complaint is dismissed, but in the facts and circumstances of the case, we direct the parties to bear their respective costs.