

Ajay Kumar Vs. Dr. Devendra Nath

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Court : Bihar State Consumer Disputes Redressal Commission SCDRC Patna

Decided On : Jan-12-2004

Judge : D.P.S. Choudhary, President & the Honourable Dr. Asma Ahmad, Member

Appeal No. : Appeal No. 87 of 2003

Appellant : Ajay Kumar

Respondent : Dr. Devendra Nath

Judgement :

D.P.S. Choudhary, President:

1. Complainant is the appellant who has preferred the appeal against the order dated 31.1.2003 passed by District Forum, Motihari (East Champaran) in Case No. 21/2002 dismissing the complaint.

2. The brief fact of the case is that complainant filed a complaint before the District Forum alleging therein that his father Sharda Prasad Singh retired on 30.9.1997 as Head Clerk. After retirement he was working in a shop of local businessman on a monthly salary of Rs. 4,000/-. His father fell ill on 23.1.2002 and was brought to the clinic of respondent-O.P. for treatment and deposited consultation fee of Rs. 60/-. The doctor prescribed him two medicines which his father started taking but the condition of his father deteriorated and he was having acute headache and both the eyes became reddish with unbearable pain. The appellant with his father

approached the respondent-doctor on the next day who advised to stop earlier medicine and in its place prescribed another medicine of which his father started taking but his condition did not improve rather deteriorated. It is alleged that appellant thereafter took his father to another doctor namely B.K. Singh on 27.1.2002 who after examining him came to the conclusion that retina of both the eyes of the father of the complainant had become invalid. He also prescribed some medicine and advised to get him examined by an eye specialist. Appellants father started taking the medicine prescribed by Dr. B.K. Singh and got some improvement. He got his father examined by a specialist on 31.1.2002 (Dr. A.B. Singh) who pointed out that in the prescription of Dr. D. Nath (respondent) the medicine lariago D.S. has been prescribed which is used in the case of malaria. This medicine is prescribed after pathological test but in this case the respondent-doctor has not advised for any pathological test and prescribed this medicine. Dr. Singh told him that due to side effect of this medicine his fathers eye has been damaged and now there is no chance of improvement in the eye sight. The appellant thereafter took his father to Lumbani Ram Ambika Eye Hospital, Bhairhwa, Nepal where he was examined and it was declared that his eye problem was incurable and eye sight can not be restored.

3. The allegation of the complainant is that due to negligence on the part of Dr. D. Nath-respondent his fathers both eyes were damaged and he lost eye sight. The job of his father discontinued and his life became a burden as he could not perform his duty properly. The appellant filed the complaint before the District Forum claiming compensation of Rs. 4,95,000/-.

4. On notice the O.P.-respondent appeared before the District Forum and filed written version denying the allegation of the complainant. His contention was that complainants father was alive but he is not the complainant. The complainants father was brought to his clinic for examination and he found liver and spleen enlarged which was the symptom of malaria. Therefore, he prescribed lariago D.S. for four days. The patient visited on 25.1.2002 with certain complaints but not of headache and eye trouble. The O.P. denied that he was negligent in his duty or in diagnosis of the disease. On a routine checkup he found it a case of malaria and, therefore, prescribed the above medicine. The eye trouble of the patient was

another problem not co-related with the use of Iariago medicine. This medicine was given in very low dose, i.e., 1.8 mgs and only for four days. This medicine could have side effect if it is used for prolonged period and in higher dose. It was also the contention of the O.P. that no medical authority or an expert evidence has been produced on behalf of the complainant in support of his case that O.P. was negligent in his duty and he negligently advised the above medicine and this medicine has caused side effect to his eyes.

5. The District Forum after considering the submissions of the parties and material available on record held that complainant himself was not a consumer and when his father was alive the complaint should have been filed by him. The complainant has failed to prove by any evidence that his father was working in the house of a businessman after his retirement on the monthly salary of Rs. 4,000/-. There is no evidence to support this contention of the complainant. The District Forum further held that from the prescription of the O.P. it is clear that when the patient was brought to him he was suffering from fever with shivering and loss of appetite, yellowish urine and thereafter he prescribed Iariago medicine which is meant for malarial fever. He prescribed dose as two tabs. to start with and repeat one tab after six hours and thereafter half tab twice a day after meal. It is alleged that when the patient visited on 25.1.2002 after two days O.P.-doctor prescribed Extacef and Polybion as this medicine had no concern with eye problem. Thereafter the complainant's father was examined by Dr. B.K. Singh on 27.1.2002 and he prescribed some medicine and then he had some eye trouble which finds support from the prescription of Dr. A.B. Singh, Eye Specialist and thereafter the patient visited Nepal and it was found that he had lost eye sight permanently. The District Forum held that from the material available on record it is clear that complainant's father was having fever since 6-7 days prior and he was having no eye trouble. It is mentioned in the prescription of Dr. B.K. Singh who had examined him later on that his eyes were reddish and thereafter Dr. A.B. Singh found the eye trouble and advised him to go to Nepal. The District Forum has perused the Book produced on behalf of the complainant Text of principles and practice of medicine which mentions that a course of treatment consists of four tablets followed by two tablets in six hours and two tablets daily for three more days. The District Forum examined the prescription of respondent-doctor and found that he has prescribed

this medicine below the prescribed dose as mentioned in the above book produced on behalf of the complainant. Therefore, the District Forum held that doctor has prescribed the optimum dose of this medicine which rarely has any side effect must the less on the eye sight. The District Forum further held that complainants father was an old person. It is possible that he lost his sight due to age or other factors but there is nothing on record much the less expert evidence to show that medicine consumed by the patient on the advice of the O.P. caused his eye damaged. On the above grounds dismissed the complaint.

6. The learned appellants lawyer submitted before us that the impugned order is bad both in law as well as on fact. The finding arrived at by the District Forum that complainant is not a consumer is not correct. The complainant is the son of the victim father because of his blindness he has filed the complaint case. His father has sworn affidavit dated 5.8.2002 by which he has authorized the appellant to make pairvi in his case. He is unable to move due to blindness. The complainant being the heir of victim Sharda Prasad Singh (his son) and bona fidely come within the definition of consumer under the Consumer Protection Act. The District Forum has not considered the abstract of the book filed on behalf of the complainant in support of the fact that the medicine prescribed by the respondent-doctor Iariago D.S. should not have been prescribed without blood test and coming to the finding that patient was suffering with malaria. The said medical book mentions that this medicine had side effect including the vision and may damage the eye sight. The affidavit of the victim and book referred to above are sufficient to prove the case of the complainant. The doctor-B.K. Singh who examined the complainants father on 28.1.2002 after the treatment of respondent has mentioned in his prescription that when the patient was brought before him he was complaining trouble in his eye and he found his eye reddish and he referred to an Eye Specialist. The prescription of Dr. A.B. Singh, Eye Specialist dated 31.1.2002 mentions that complainants father had acute eye problem and his visibility was almost nil and thereafter he was brought to Nepal (Eye Hospital) and it was diagnosed that he has completely lost his eye sight which is not repairable. These facts along with prescription of the doctor prove beyond doubt that the first doctor (respondent) who treated his father on the basis of fever has wrongly administered him Iariago D.S. which caused effect on the eye sight and he lost the sight permanently.

Therefore, the negligence on the part of the doctor (respondent) is proved beyond all doubt.

7. The respondent has filed written statement and the learned lawyer appearing on his behalf submitted that it is admitted fact that respondent had treated the father of the complainant who was brought to his clinic on 23.1.2002 and remained in his treatment till 28.1.2002. It is also admitted fact that the patient is still alive but he has lost his eye sight. Under the definition of Section-2(d) of the Consumer Protection Act complainants father was the consumer and not the complainant. Only in the case of death of his father the heir complainant was liable to file the complaint. His father has filed affidavit to the effect that his son will do the pairvi in the case because of his blindness. That does not amount that complainant was competent to file the complaint. The victim father was still alive and he was the competent person to file the complaint. The complainant being his son could have made pairvi in the case but he cannot file the case as complainant on behalf of his father. Therefore, the finding of the District Forum that complainant is not a consumer is in accordance with the law.

8. It was further contended that respondent is a qualified and reputed doctor of Motihari. There is no allegation against him that he is not a qualified doctor. From his prescription which is annexed with the rejoinder petition (Annexure-2) it is clear that complainants father was brought before him on 23.1.2002 and he found him running fever shivering for last six days and found enlargement of liver and spleen. He advised for pathological test like TCDC, etc and in the meantime anti-malarial drug lariam 300 mg half tablet to be taken morning and evening prescribed for a short period. This is a very common medicine under such symptom and the area where the patient resides was malarial zone and most of the patients of this area under such system were found to be suffering from malaria. The routine examination of the patient also indicated all the sign of malarial. Before the result of pathological test as per doctor it was advisable on his part to administer any malarial dose in optimum level which he did. When the patient came again on 21.8.2002 with pathological test he stopped lariam tablet and other medicines were prescribed but thereafter the patient did not come to his clinic. Annexure-D annexed with the rejoinder is a literature on lariam tablet which also used as

injection. In this literature it is mentioned that lario (chloroquine) is well tolerated and anti-malarial drug in the recommended doses for therapy or suppression. The adverse reaction rarely occurs and is mild dose related and readily disappear on the withdrawal of the drug. Most of the adverse reactions are noticed when chloroquine is administered for longer duration. For an adult the maximum tolerable cumulative dose of chloroquine base is 100 gm corresponding to 3 to 6 years of continuous prophylaxis, depending on the weekly dose. Chloroquine when employed as an anti-malarial for short term treatment, adverse reactions observed are gastro-intestinal discomfort with nausea, vomiting, diarrhoea, abdominal cramps and mild and transient headache. When it is prescribed for long duration then occasionally skin reactions, eye reactions like blurring of vision, double vision, interference with visual accommodation and rarely retinopathy may occur. It is admitted fact that patient was prescribed 300 mg. half tablets to be taken morning and evening for three days and it was stopped after re-examining the patient on 28.1.2002. Therefore, the patient had consumed this medicine only four days in low dose. Therefore, any side reaction must have been from mild and it must have disappeared with the withdrawal of the medicine. The above literature makes it clear that when this medicine is prescribed for very long period only then some eye problem do occur. Therefore, any eye problem in this case is ruled out. The patient was examined by another Dr. B.K. Singh on 29.1.2002 and then again by Dr. A.B. Singh, Eye Specialist and finally he went to Nepal in the Eye Hospital. None of these doctors have mentioned that use of lario tablets has affected the eyes of the patient adversely as claimed and contended on behalf of the complainant-appellant.

9. It was further argued on behalf of the respondent that a doctor is suppose to exercise a reasonable degree of care. There is chance of wrong diagnosis but if it is not mala fide but bona fide in that case the doctor cannot be held negligent if something occurs to the patient. In several decisions the Honble Supreme Court, National Commission and State Commission have held that a doctor is not guilty of negligence if he has acted in accordance with the practice accepted as proper by a reasonable body of a medical man skilled in that field. A doctor can not be held negligent simply because something went wrong. He can only be liable when he fell below the standard of reasonably competent practitioner in his field. There

is no legal opinion or expert evidence to show that the diagnosis of the respondent-doctor on the basis of the symptom of the patient was wrong and he administered wrong medicine. On the other hand all the symptom including his geographical condition from where the patient was brought the symptom were of malaria. Therefore, before the result of the blood test the malarial drug in low doses was administered which in normal course every medical practitioner does.

10. We have perused the impugned order, considered the submission of both the parties and the prescription on record. It is settled law that a qualified doctor if treated the patient and something went wrong in that case also the doctor cannot be held liable for negligence or deficiency in service. The Apex Court and the National Commission have held in several cases including, *Dr. Laxman Balkrishna Joshi v. Dr. Triambak Bapu Godbole*, I (1995) CPJ 75 (NC)=AIR 1969 page 128, and in the leading case of *Indian Medical Association v. V.P. Santha*, (1995) CTJ 969 SC, it has been held that a doctor is not guilty of negligence since he acted in accordance with the practice accepted as proper by a reasonable body of medical man skilled in that field. To make allegation against a doctor is easy but it is difficult to prove it. His case is on different footing with the negligence act of a taxi driver. Therefore, the evidence to prove negligence of a doctor must be of a high degree and must be an expert evidence which leads to the conclusion that it was the fault on the part of the doctor which he committed negligently which caused adverse to the patient. In this case most of the facts are admitted. The doctor is a qualified one. The complainant has not made any allegation against his qualification. He has administered Iariago, an anti-malarial drug in the mild dose to the patient who was having symptom of malaria before the pathological test. He consumed this medicine only for about four days and not for longer duration. The respondent has changed this medicine on 21.1.2002 and for the first time he has examined and advised to use this medicine on 23.1.2002. The above literature with regard to Iariago clearly mentioned that the side effect of this medicine if taken for longer duration can be on eye sight but this is not a fact in this case besides there is no expert evidence on record to show that use of this medicine caused damage to his eye sight. Even for argument sake if it accepted that this medicine has caused damage to his eye sight in that case also if the respondent-doctor who is a qualified one has advised to use this medicine after examining the

patient and found the patient suffering from malaria in that case also the doctor-respondent cannot be held guilty of negligence or deficient in his service. However, as stated above in this case the medicine has been used by the patient in low doses for a very few days and there is no expert evidence to show that the use of medicine has affected his eye sight. Therefore, the complainant-appellant has failed to prove that respondent was negligent and deficient in his duty as a doctor.

11. It is admitted fact that in this case the consumer is complainants father and he is still alive. Therefore, he was the right person to file the complaint case with his signature. From his affidavit it appears that he has authorized his son to make pairvi on his behalf because of the problem in his eye sight but in normal case the complaint should have been filed by the patient himself. However, in view of our finding made above that respondent has not been found negligence in his duty this point is only of academic decision and it does not affect upon the merit of the case.

12. In the fact and circumstances, we are of the view that there is no merit in this appeal which is accordingly dismissed and the impugned order is hereby confirmed. However, there shall be no order as to cost.

Appeal dismissed.

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