

Vipln and Another Vs. Dr. Ravindra Goyal and Another

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Court : Uttaranchal State Consumer Disputes Redressal Commission SCDRC
Dehradun

Decided On : Jan-16-2014

Judge : B.C. Kandpal, President & the Honourable Mr. C.C. Pant, Member

Appeal No. : First Appeal No. 310 of 2010

Appellant : Vipln and Another

Respondent : Dr. Ravindra Goyal and Another

Judgement :

B.C. Kandpal, President:

1. This is complainants appeal under Section 15 of the Consumer Protection Act, 1986 against the order dated 14.09.2010 passed by the District Forum, Haridwar in consumer complaint No. 323 of 2008, whereby the District Forum has dismissed the consumer complaint.

2. Briefly stated, the facts of the case as mentioned in the consumer complaint, are that the complainants are husband and wife. The complainant No. 2 “ Smt. Vineeta became pregnant and consulted Dr. Seema Gupta of Dr. Seema Maternity Home, Haridwar for her treatment. On 05.11.2008, Dr. Seema Gupta advised the complainant No. 2 to get her ultrasound done. The complainants thereafter approached opposite party No. 1 “ Dr. Ravindra Goyal of Dhanwantri Ultrasound and X-ray Centre, Haridwar and paid consultation fee of Rs.300/-, but they were

not provided any receipt for the same. After ultrasound, the complainants were verbally informed that the baby in the womb of the complainant No. 2 is not alive and has died, which caused lot of agony to the complainants. The report of the ultrasound was given on 06.11.2008. The complainant No. 2 was thereafter taken to Dr. Seema Gupta, but she was not available and hence the complainant No. 2 was taken to Dr. Praduman Tyagi, who after check-up told that the baby is alright and advised for another ultrasound from any other laboratory. The complainant No. 2 was then taken to Dr. Vipin Premi of Ratan Bharti Diagnostic Centre, Haridwar on 05.11.2008, who after necessary tests, told that the baby in the womb is alive and hearty and gave the report in that regard. The complainants thereafter approached the opposite party No. 1, who told that the report issued by him is correct. The complainant No. 2 thereafter visited Dr. Manoj Singh of Haridwar Scan Centre, Haridwar on 06.11.2008 and got herself examined. The said doctor also told that the baby in the womb is hale, hearty and alive and issued the report. The said report was also shown to the opposite party No. 1, who told that the said report is incorrect. On 07.11.2008, the complainants visited Chainray District Women Hospital, Haridwar and the complainant No. 2 got her ultrasound done and in the said report too, it was mentioned that the baby in the womb is fully hale, hearty and alive. Alleging medical negligence on the part of the opposite party No. 1, the complainants filed a consumer complaint before the District Forum, Haridwar and since the centre of the opposite party No. 1 was insured with National Insurance Company Limited and hence the insurance company was also impleaded as opposite party No. 2.

3. The opposite party No. 1 filed written statement before the District Forum and pleaded that the complainant No. 2 complained of severe pain in her stomach and requested for her ultrasound; that in the case of pregnant lady, the ultrasound of whole of the stomach is not done; that when there is pain in the stomach of the patient, the baby in the womb does not show activity and that there is no negligence on his part. The opposite party No. 2 also filed written statement before the District Forum and pleaded that there is no privity of contract between the complainants and the insurance company and that there is no deficiency in their services.

4. The District Forum, on an appreciation of the material on record, dismissed the consumer complaint vide impugned order dated 14.09.2010. Aggrieved by the said order, the complainants have filed the present appeal.

5. We have heard the learned counsel for parties and have also perused the record. We have also perused the written arguments filed by the learned counsel for the appellants.

6. At the outset, we would like to reproduce æHalsburys Laws of England “ Volume 26 (3rd Edition) Pages 17-18? which reads as follows:

æ23. Degree of skill and care required. The practitioner must bring to his task a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care. Neither the very highest, nor a very low degree of care and competence judged in the light of the particular circumstances of each case, is what the law requires; a person is not liable in negligence because some one else of greater skill and knowledge would have prescribed different treatment or operated in a different way; nor is he guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art, although a body of adverse opinion also existed among medical men.?

7. The above principle has been well accepted and relied upon repeatedly by the Honble Supreme Court, Honble National Commission, House of Lords and otheRs. We wish to specially rely upon the observations æNeither the very highest, nor a very low degree of care and competence judged in the light of the particular circumstances of each case, is what the law requires.? We are in no doubt that when a patient who goes to a physician or diagnostic or radiologist, does not expect a wrong diagnosis leading to further mental agony and tension.

8. The case of the complainants is that the complainant No. 2 became pregnant and consulted Dr. Seema Gupta, who advised for ultrasound and thereafter the complainant No. 2 got her ultrasound done from the opposite party No. 1 on 05.11.2008, who told that the baby in the womb is not alive and has died. The ultrasound / x-ray report dated 05.11.2008 issued by the opposite party No. 1 is on

record (Paper No. 25), wherein it has specifically been mentioned, æUterus is enlarged and bulky. There is single gestation sac with dead foetus approx. 9 weeks gestational age size seen in the uterus. No foetal cardiac activity seen in it.? There is no mention in the said report that the complainants should go for second opinion in the matter. As is stated above, thereafter the complainant No. 2 got her ultrasound done from certain other laboratories including the government hospital, who all have stated in their report that the foetal heart is normal and that foetus with faint cardiac activity is seen in the foetus. One can imagine the trauma which a patient, especially a lady, and that too a pregnant lady, would have, if she is told that the baby in her womb is not alive and has died. The pathologists need to be very careful while giving findings / results, which could have some element of doubt or error, to go in for a second check. In the case before us, there was firstly no such advice, which is clear from the record and secondly, the result was incorrect.

9. Instead of accepting his fault and negligence, the opposite party No. 1 went on saying that the report issued by him is correct and the other reports are incorrect. The fact that the report issued by the opposite party No. 1 was incorrect is also evident from the fact that the complainant No. 2 gave birth to a male baby on 26.05.2009 in Dr. Seema Maternity Home and Medical Centre, Haridwar and copy of the birth certificate dated 31.05.2009 is on record (Paper No. 36), which also falsifies the report issued by the opposite party No. 1. The complainant No. 2 has also averred this fact in para 8 of her affidavit filed before the District Forum (Paper Nos. 20 to 23).

10. The opposite party No. 1 has denied that the complainant No. 2 was referred to him by Dr. Seema Gupta, but the said contention of the opposite party No. 1 is belied by the affidavit of Sh. Praduman Tyagi (Paper No. 45), wherein in paragraph No. 3, he has specifically averred that he has seen the ultrasound reports of the complainant No. 2 issued by various laboratories including that of the opposite party No. 1 and that he along with Dr. Seema Gupta had advised her to get the ultrasound done.

11. The opposite party No. 1 has also stated that the complainant No. 2 complained of severe pain in her stomach and requested for her ultrasound and that in the case of pregnant lady, the ultrasound of whole of the stomach is not done. The complainant No. 2 was advised ultrasound from the opposite party No. 1 by Dr. Seema Gupta, who she had consulted in regard to her pregnancy. Even if the complainant No. 2 had complained of severe pain in her stomach, it was the duty of the opposite party No. 1 to thoroughly examine her, as she was a pregnancy case, which fact could not be ruled out by the opposite party No. 1, as he has himself stated in his report that the baby in the womb of the complainant No. 2 was not alive and has died. If there was any doubt in the mind of the opposite party No. 1, he should have advised the complainants to have a second opinion in the matter, but as is stated above, instead of accepting his negligence, the opposite party No. 1 went on saying that the report issued by him is correct. From the facts and evidence on record, the medical negligence on the part of the opposite party No. 1 is clearly established.

12. Learned counsel for opposite party No. 1 cited a decision of the Honble Apex Court in the case of Martin F. DSouza Vs. Mohd. Ishfaq; 2009 NCJ 193 (SC), wherein it has been held that medical practitioners are not liable for negligence simply because things went wrong from mischance / misadventure through error of judgment. In the instant case, there is clear-cut negligence on the part of the opposite party No. 1 in issuing the wrong and incorrect ultrasound report and instead of accepting his negligence, he has acted in a most unfair manner. There is no question of referring the matter to specialist in the concerned field, because in the other ultrasound reports of the complainant No. 2, as is stated above, there has clearly been mentioned that there is live baby in the womb of the complainant No. 2 and the complainant No. 2 went on to deliver a male child on 26.05.2009. Learned counsel also cited a decision of the Honble National Commission in the case of Manimegalai (Smt.) and others Vs. Steel Authority of India Ltd. and others; 2011 (1) CPR 66 (NC), wherein it has been held that the standard to be applied for judging whether the person charged has been negligent or not would be that of an ordinary person exercising skill in that profession. It is not necessary for every professional to possess the highest level of expertise in that branch which he practices. In the case in hand, the negligence on the part of the opposite party No.

1 is apparent on the face of record and it can safely be said that the opposite party No. 1 did not exercise the skill which he possessed, with due care and competence and the similarly situated professionals have given the opinion contrary to that of the opposite party No. 1.

13. In the case of Bombay Hospital and Medical Research Centre Vs. Sharifabi Ismail Syed and others; I (2008) CPJ 432 (NC), the presence of tumour was wrongly indicated in MRI film and on operation, no tumour was found. Another MRI was conducted and second operation was performed on the basis of that MRI. It was held by the Honble National Commission that the consulting Radiologist who signed the report was responsible for misreading, non-reading / looking at MRI film correctly. Similarly, in the case of Nehra (Dr.) Vs. Shalini Vij and others; IV (2008) CPJ 230 (NC), there was wrong ultrasound report about abscess left lobe, which was contradicted by another Radiologist in another report within 24 hours. It was held by the Honble National Commission that the negligence on the part of the petitioner is writ large and the Radiologist was held liable for giving wrong report and was made liable to pay compensation.

14. From the discussion made above, it is clearly established that the opposite party No. 1 has committed negligence in the performance of his duties and has issued a wrong and incorrect ultrasound report. The District Forum has not properly considered the facts and circumstances of the case and has returned an absurd finding and has fallen in error in dismissing the consumer complaint and the order impugned can not be maintained and is liable to be set aside.

15. Now coming to the compensation aspect of the case. The complainants have claimed the compensation of Rs.3,72,255/- with interest. The complainants have not filed evidence to show that they are entitled to the compensation to such an extent. But looking into the negligence made by the opposite party No. 1 in issuing the wrong and incorrect ultrasound report and the agony undergone by the complainants, we are of the considered view that the complainants are entitled to lumpsum compensation of Rs.1,00,000/- with interest @7% p.a. from the date of filing of the consumer complaint till payment and Rs.5,000/- towards litigation expenses. Since the opposite party No. 1 was insured with the opposite party No.

2 “ insurance company and hence both the opposite parties are, jointly or severally, held liable to pay the award amount to the complainants.

16. For the reasons aforesaid, appeal is allowed. Order impugned dated 14.09.2010 passed by the District Forum is set aside. Consumer complaint No. 323 of 2008 is partly allowed and the respondents “ opposite parties are, either jointly or severally, directed to pay compensation of Rs.1,00,000/- to the appellants “ complainants together with interest @7% p.a. from the date of filing of the consumer complaint till payment and Rs.5,000/- towards litigation expenses.

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