

RESERVED/AFR
STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW
COMPLAINT NO. 134 OF 2012

01. Smt. Archana Sharma
W/o Late Shri Jitendra Sharma
02. Km. Ekta Sharma
D/o Smt. Archana Sharma
03. Krishna Sharma
S/o Smt. Archana Sharma
All R/o 129/9L, 40 Shop, Kidwai Nagar
Kanpur Nagar

...Complainants

Vs.

01. North star Hospital & Joint Replacement Centre
25/11 Canal Road, Kanpur Nagar
Through its Owner Shobhit Jaiswal
02. Dr. D K Singh Regd. No. H-24540
03. Dr. Ashutosh Trivedi Regd. No. 39809
04. Dr. Abhishek Trivedi Regd. No. 42817
05. Dr. Saurav Gupta
All (OP No. 2-5) Panel/Visiting Doctors of
North Star Hospital & Joint Replacement Centre
25/11 Canal Road
Kanpur Nagar
06. Uttar Pradesh Medical Council
5, Sarvapally, Mall avenue Road
Lucknow

Deleted

...Opposite

Parties

BEFORE:

HON'BLE MR. JUSTICE VIRENDRA SINGH, PRESIDENT
HON'BLE MR. A K CHAUDHARY, MEMBER

For the Complainant : Sri Alok Kumar Singh, Advocate.

For the Opposite Parties : Sri Sarvesh Kumar Sharma, Advocate.



Dated : 08.12.2014

JUDGMENT

PER MR. JUSTICE VIRENDRA SINGH, PRESIDENT

The complainants have filed this complaint against the opposite parties seeking a sum of Rs. 95,00,000/- alongwith 12% interest per annum in respect to alleged medical negligence committed by the opposite parties in the treatment of Jitendra Kumar Sharma (deceased) and a further sum of Rs.4,00,000/- for mental pain and suffering and a sum of Rs.50,000/- for cost of the case.

Briefly stated the facts of the complaint are that Jitendra Kumar Sharma (deceased) was engaged in a business of Tiranga Agarbatti alongwith his brother earning thereby a sum of Rs.7,82,795/-, Rs.8,12,340/- and Rs.9,56,817/- in the Assessment Year 2009-10, 2010-11 and 2011-12 respectively and he enjoyed a sound health and was not suffering from any disease. On 18-05-2012 at about 6 a.m. Jitendra Kumar Sharma was coming back to his residence by Honda Civic car after playing badminton. His car met with an accident and he sustained serious injuries on his nose including fracture at the root of the nose. Due to that injury, edema was developed. He had also sustained contusion on the left side of forehead just above the left eyebrow. He was taken to North Star Hospital & Joint Replacement Centre, Kanpur Nagar by Dr. Ashutosh Trivedi from his house who was known to the family of the deceased. Dr. Ashutosh Trivedi got CT Scan done of Jitendra Kumar Sharma as he had sustained contusion in the forehead. His X-ray was also got done. On 18-05-2012 Dr. Ashutosh Trivedi, Dr. Abhishek Trivedi and Dr. Sourav Gupta were duty doctors in the aforesaid hospital. The said three doctors took a decision to operate the nose of Jitendra Kumar Sharma for which his wife the complainant was asked for consent and she had expressed her apprehension about the success and urgency of the operation as CT Scan had not been got seen by any specialist till then and acute edema in the nose of Jitendra Kumar Sharma was present. However, upon the insistence of the said doctors,



the complainant (wife of the husband), had reluctantly given the consent. After the operation of the nose of Jitendra Kumar Sharma, he was apparently looked well as he could walk and also could attend natural call. He did not complain about any acute pain during the period from 18-05-2012 to 20-05-2012 upto about 6 p.m. On 20-05-2012 at about 6 p.m., Dr. D K Singh, a Homeopath in consultation with Dr. Abhishek Trivedi administered two heavy dose injections of Phenergan and Serenace to Jitendra Kumar Sharma. After few minutes, Dr. D K Singh administered injection of Butrum 2 mg. to Jitendra Kumar Sharma in consultation with and in the presence of Dr. Ashutosh Trivedi and Dr. Abhishek Trivedi. At that time Sri Ram Khiladi Sharma, father of the complainant, alongwith other family members was present there. On seeing the Butrum 2 mg. injection, Sri Ram Khiladi Sharma had told the said three doctors present there that Jitendra Kumar Sharma was apparently well and was not complaining of any acute pain and, therefore, there was no need to administer Butrum 2 mg. injection. At this objection, all the three doctors annoyed and scolded Sri Ram Khiladi Sharma that they were the doctors and they knew their job well. Sri Ram Khiladi Sharma then kept mum and Dr. D K Singh administered Butrum 2 mg. injection to Jitendra Kumar Sharma. Soon after the administration of Butrum 2 mg. injection, Jitendra Kumar Sharma started perspiring heavily and his teeth were clenched. His nose had already been blocked due to nasal surgery. His condition started deteriorating fast and he had much difficulty in breathing. The said three doctors after 30 minutes took the patient to the I.C.U. and after few minutes they declared him dead. Sri Ram Khiladi Sharma and his family members rushed soon into the alleged I.C.U. room and shocked to see that there was no necessary equipments and even oxygen cylinder was missing. This shows that the hospital administration had given the patient an ordinary room in the name of I.C.U. simply with a view to cheat the patient by preparing inflated bills. Dr. D K Singh, Dr. Ashotosh Trivedi and Dr. Abhishek Trivedi are not qualified anaesthetist. Dr. D K Singh was not even an allopathic doctor. He was a homeopath and was not at all qualified to

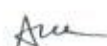


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administer those injections or allopathic medicines. There had been a gross medical negligence and serious deficiency in service on the part of the hospital as well as the said three doctors in respect to the treatment of Jitendra Kumar Sharma for which the complainants, being the wife and kids of Jitendra Kumar Sharma, are entitled to the relief as aforesaid.

The opposite party no.6 being unnecessary party has been deleted vide order dated 07-04-2014 passed by this Commission. The opposite parties no. 1 and 2 filed their joint written statement, opposite parties no.3 and 4 have also filed their joint written statement while opposite party no.5 filed his written statement separately.

The gist of the case/pleadings of the opposite parties is that this complaint case has been filed by the complainants claiming imaginary and flimsy relief on vague and baseless allegations. There is no relationship of 'consumer' and 'service provider' in between the parties since no payment has been made by the complainants in respect to the treatment of Jitendra Kumar Sharma. The complainants are guilty of suppression of material facts and concealment and have not come before this Commission with clean hands as the deceased Jitendra Kumar Sharma was remained earlier under the treatment of Dr. Ravi Kumar who is a Psychiatrist. The deceased was suffering from affective disease and was alprazolam dependent and the deceased under the state of intoxication had committed accident. The fact of the intoxication was duly recorded in the Medico-legal Report by the brother of deceased Sri Narendra Sharma. On 18-05-2012 the opposite party no.3 Dr.Ashutosh Trivedi had examined the deceased and prescribed necessary tests to be done and referred the patient to ENT surgeon and Orthopaedic surgeon since the case was accidental case. The opposite party no.5 being an ENT Surgeon and possessing requisite qualification asked for pre-anaesthetic check-up and also asked to give consent for surgery. The complainant gave her consent to the hospital. It was duly recorded by the doctor that the patient is addictive of Alprax tablet. The wife of the patient was adequately informed about the status of patient and she was well aware about the condition of the patient and the entire process and

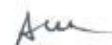


consequences of the surgery were informed to her. On the request of the patient, his regular doctor, Dr. Ravi Kumar was also called and he had prescribed Tab Encorate 500 mg., Librate and Lopez Injection which are the medicines to be provided to the alcoholic patient as an anti-withdrawal. Dr. Ravi Kumar prescribed Phenargan injection and Serenace injection to the deceased and on 20-05-2012 at about 2 O'clock the same was administered to the patient by the staff nurse named Toshima. The pre-anaesthetic check up of the deceased was conducted on 18-05-2012 by Dr. Kajal Gupta and the details of the case history was recorded in her report which indicates that the deceased used to take Alprax 40 Tablets and he was having history of psychiatrist treatment. This test was conducted prior to the surgery and the report was seen by the treating doctors. The entire necessary and requisite tests of the deceased were conducted, CT Scan of PNS-Axial and Coronal and CT Scan of the Cranium plain was also conducted and the report was examined by the treating doctors. The opposite party no.2 Dr. D K Singh was appointed for a post of Floor Manager on 08-06-2011 in the hospital and accordingly he was assigned the administrative job of the hospital and it is vehemently and emphatically denied that opposite party no.2 Dr. D K Singh had provided any treatment to the patient in the hospital. No injection or treatment to the deceased was provided by the opposite party no.2 Dr. D K Singh and the allegation of administration of Butrum 2 mg. injection is wholly incorrect, wrong and is vehemently and emphatically denied. Suddenly on 20-05-2012 the deceased suffered cardiac problem for which he was shifted to ICU which is fully equipped and the treating doctors made all the best efforts to save the life of the deceased. The Cardiologist was present with the deceased and CPR was started. Since the deceased was poor prognosis and regarding the same the complainants were got aware, the entire treatment was conducted and explained to the complainants and the same is mentioned in the hospital sheet. Despite all best possible efforts of the doctors, the deceased died at 9.40 p.m. The complainants were informed regarding his death.

It is further pleaded by O.P.s that Sri Ram Khiladi Sharma and Sri



Brijendra Mohan Sharma, the attendants of the complainant, lodged a First Information Report with the Police Station. Sri Brijendra Mohan Sharma filed a complaint with U.P. Medical Council too, on which the notices were issued by the Medical Council to the opposite parties. In the proceedings before the Medical Council, Sri Ram Khiladi Sharma filed his affidavit. The contents of that affidavit are in complete contravention of the grounds taken in the present complaint petition. The Chief Medical Officer conducted an enquiry and by virtue of report dated 22-12-2012, found that the entire allegations made by the complainants Sri Prakash Sharma and Sri Brijendra Mohan Sharma were frivolous and no case of medical negligence was established. It is further pleaded that Dr. Abhishek Trivedi was in Jhansi on 19-05-2012 and 20-05-2012 staying in a Resort, therefore, the allegation of the complainant that on 20-05-2012 Dr. DK Singh administered the injection in presence of Dr. Abhishek Trivedi is false and concocted which malign the image of the reputed doctor in the society. Further there is no justification of the claim of Rs.95,00,000/- as the same has not been quantified relating to the medical negligence, neither the same has been established and corroborated in the affidavit in evidence filed by the complainants, therefore, the complaint case is barred by pecuniary jurisdiction of this Commission as only a claim of Rs.4,50,000/- seems to have been made in accordance with the provisions of Consumer Protection Act, 1986. The Consumer Protection Act 1986 envisaged the three tier consumer councils and provides their jurisdiction to entertain the complaint case but in the instant case the complainants intentionally and deliberately bypassed the pecuniary jurisdiction of the District Consumer Forum and has filed the present complaint case claiming flimsy and imaginary amount of Rs.99,50,000/- which is wholly unjustified, illegal, arbitrary and is not supported by pleadings and evidence filed by the complainants. Since there is no justification in the claim for award of Rs.95,00,000/-, the complaint case requires to be dismissed on this ground alone. The complaint is filed by the complainants collectively which is akin to a representative suit for which no separate applications



have been filed by the complainants seeking permission of this Commission to file and contest the joint complaint case which is mandatory as per provisions of Order VIII Rule-1 applicable to the Consumer Fora by virtue of Section 13(6) of the Consumer Protection Act. As per Section 2(1)(d) of the Consumer Protection Act which defines the term 'consumer', since there is no single penny has been paid by the complainants towards the treatment of the deceased to the opposite parties, the complainants are not the consumers and the complaint is liable to be dismissed on this count too.

Apart from the above common pleadings of the opposite parties, the opposite parties no. 3 and 4 Dr. Ashutosh Trivedi and Dr. Abhishek Trivedi jointly pleaded more that they have been, in most illegal and arbitrary manner, impleaded in the present complaint case as the complainants neither hired any services of them; nor any negligence or deficiency in service have been committed by them and they require to be struck out from the array of parties. They are visiting consultant in the said hospital and as such they have not been paid by the complainants for any treatment taken in the hospital of the opposite party no.1, merely that the patient did not survive shall not make liable the treating doctors and staff for negligence and thus the case of the complainant that the death was caused on account of administration of Butrum injection is wholly incorrect, false and are not corroborated with any evidence. It is the onerous duty of the complainant to establish the nexus with the cause of death with the alleged administration of Butrum injection, contrary to this the complainants have failed to substantiate their allegations with any expert evidence. Merely alleging negligence and blaming the doctors is not a ground for maintaining the consumer complaint case before this Commission. Dr. Ravi Kumar has not been arrayed as a party while it is evident that he had also prescribed certain medicines and the injections in the treatment of the deceased.

Evidene by complainant

A short affidavit dated 17-10-2012 in support of complaint sworn



by Smt. Archana Sharma thereby verifying the contents of para 1 to 18 of the complaint has been filed on behalf of the complainant thereby stating that the contents of para 1 to 18 of the accompanying complaint are true on the basis of record and personal knowledge.

The following documents have been filed on behalf of the complainants as annexure of the complaint.

- 01) Annexure No. A-1 – Photocopy of report dated 06-08-2012 of Uttar Pradesh Medical Council.
- 02) Annexure No. A-2 – Photocopy of bill dated 20-05-2012 of Northside Medical Centre for a sum of Rs.47/- only in the name of Jitendra.
- 03) Annexure No. A-3 – Photocopy of FIR lodged by Brijendra Mohan Sharma with Police Station Keelkhana, Kanpur.
- 04) Annexure No. A-4 – Photocopy of death certificate of Jitendra Kumar Sharma.
- 05) Annexure No. A-5 – Photocopy of post-mortem report.
- 06) Annexure No. A-6 – Photocopy of Final Bill dated 20-05-2012 of North Star Hospital & Joint Replacement Centre in the name of Jitendra Sharma to the tune of Rs.19,140/-.
- 07) Annexure No. A-7 – Photocopy of ITR-V of Income Tax Department pertaining to Assessment Year 2011-12.
- 08) Annexure No. A-8 – Photocopy of ITR-V of Income Tax Department pertaining to Assessment Year 2009-10.
- 09) Annexure No. A-9 – Photocopy of Bill dated 18-05-2012 in the name of Jitendra Sharma from Paliwal Diagnostics (Pvt.) Ltd., Central Lab for a sum of Rs.500/- only.
- 10) Annexure No. A-10 – Photocopy of letter dated 24-05-2012 to the Manager, North Star Hospital regarding demand of medical reports/Medicals tests in the matter of Jitendra Sharma.
- 11) Annexure No. A-11 – Photocopy of Charge Slip from North Star Hospital & Joint Replacement Centre annexed with visiting consultants for the patient Jitendra Sharma showing the name of Dr. Sourav Gupta, Dr. Ashutosh Trivedi and Dr. Ravi Kumar,



further annexed with Nursing Chart, Face Sheet, Clinician Incharge/Resident Doctor Order Sheet.

A further affidavit dated 29-07-2013 of Smt. Archana Sharma as evidence on behalf of the complainant has also been filed thereby stating and reiterating the contents of complaint.

Evidence By opposite parties

On behalf of opposite parties affidavit dated 27-05-2014 sworn by Shobhit Jaiswal the owner of the hospital, affidavit dated 27-05-2014 sworn by Dr. Sourav Gupta, affidavit dated 27-05-2014 sworn by Dr. Aashutosh Trivedi have been filed in support of the pleadings of the opposite parties.

The following documentary evidence have also been filed on behalf of the opposite parties no.3 and 4 .

01. Annexure No.1 of the affidavit of Dr. Ashutosh Trivedi – Photocopy of orders dated 18-09-2013, 29-10-2013 and 07-04-2014 passed by this Commission during the proceedings of this complaint pertaining to prayer to struck off the names of opposite parties no. 3 and 4 from the array of complaint.
02. Annexure No.2 of the affidavit of Dr. Ashutosh Trivedi – Photocopy of Medico-legal report pertaining to the fact of intoxication recorded in the Medico-legal report by the brother of the deceased Sri Narendra Sharma.
03. Annexure No.3 of the affidavit of Dr. Ashutosh Trivedi – Photocopy of Doctor Sheet showing the requirement of pre-anaesthetic check up and the consent of surgery and the record of deceased to be addictive of Alprax Tablet.
04. Annexure No.4 of the affidavit of Dr. Ashutosh Trivedi – Photocopy of consent form and the letter of consent written by the complainant.
05. Annexure No.5 of the affidavit of Dr. Ashutosh Trivedi – Photocopy of record of Dr. Ravi Kumar prescribing tablet Encorate 500 mg., Librate and Lopez Injection for alcoholic patient as a treatment of withdrawal syndrome and prescription

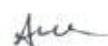


of Phenargan injection and Serenace injection to the deceased on 20-05-2012 and was administered by the staff nurse Toshima.

06. Annexure No.6 of the affidavit of Dr. Ashutosh Trivedi - Photocopy of pre-anaesthetic check up report conducted by Dr. Kajal Gupta indicated that the deceased used to take Alprax 40 tablets and was having history of psychiatrist treatment.
07. Annexure No.7 of the affidavit of Dr. Ashutosh Trivedi - Photocopy of CT Scan report.
08. Annexure No.8 of the affidavit of Dr. Ashutosh Trivedi - Photocopy of hospital record and the bed head ticket.
09. Annexure No.9 of the affidavit of Dr. Ashutosh Trivedi - Photocopy of the First Information Report.
10. Annexure No.10 of the affidavit of Dr. Ashutosh Trivedi - Photocopy of complaint to Uttar Pradesh Medical Council by Sri Brijendra Mohan Sharma.
11. Annexure No.11 of the affidavit of Dr. Ashutosh Trivedi - Photocopy of affidavit of Sri Ram Khiladi Sharma filed before the Medical Council in contravention of the grounds of the present complaint petition.
12. Annexure No.12 of the affidavit of Dr. Ashutosh Trivedi - Photocopy of the investigation report dated 22-11-2012 of Chief Medical Officer thereby finding the entire allegation frivolous and no case of medical negligence.
13. Annexure No.13 of the affidavit of Dr. Ashutosh Trivedi - Photocopy of bill of Resort pertaining to Dr. Abhishek Trivedi showing the presence of him in Agra on 19-05-2012 and 20-05-2012.

The following documentary evidence has also been filed on behalf of the opposite party no.1 Shobhit Jaiswal.

01. Annexure No.1 of the affidavit of Sri Shobhit Jaiswal - Photocopy of Medico-Legal Report pertaining to the factum of intoxication of the deceased.
02. Annexure No.2 of the affidavit of Sri Shobhit Jaiswal -



03. Photocopy of Doctor Sheet showing the pre-anaesthetic check-up and also requirement of consent for surgery and the factum of addictiveness of Alprax tablet to the deceased.
04. Annexure No.3 of the affidavit of Sri Shobhit Jaiswal – Photocopy of consent form and the letter of consent dated 18-05-2012 written by the complainant herself.
05. Annexure No.4 of the affidavit of Sri Shobhit Jaiswal – Photocopy of nursing chart pertaining to the medicines prescribed by Dr. Ravi Kumar regarding anti-withdrawal of a alcoholic patient showing tablet Encorate 500 mg., Librate and Lopez injection, Phenargan injection and Serenace injection.
06. Annexure No.5 of the affidavit of Sri Shobhit Jaiswal – Photocopy of pre-anaesthetic check up by Dr. Kajal Gupta recording that the deceased used to take Alprax 40 tablet and was having history of psychiatrist treatment.
07. Annexure No.6 of the affidavit of Sri Shobhit Jaiswal – Photocopy of CT Scan report conducted on 18-05-2012.
08. Annexure No.7 of the affidavit of Sri Shobhit Jaiswal – Photocopy of letter of appointment of Dr. D K Singh, opposite party no.2 assigned the administration job of the hospital.
09. Annexure No.8 of the affidavit of Sri Shobhit Jaiswal – Photocopy of resignation letter dated 15-05-2013 of Dr. D K Singh.
10. Annexure No.9 of the affidavit of Sri Shobhit Jaiswal – Photocopy of hospital record and bed head ticket.
11. Annexure No.10 of the affidavit of Sri Shobhit Jaiswal – Photocopy of First Information Report.
12. Annexure No.11 of the affidavit of Sri Shobhit Jaiswal – Photocopy of the complaint lodged with U.P. Medical Council.
13. Annexure No.12 of the affidavit of Sri Shobhit Jaiswal – Photocopy of affidavit of Sri Ram Khiladi Sharma filed before the Medical Council.



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14. Annexure No.13 of the affidavit of Sri Shobhit Jaiswal – Photocopy of investigation report of Chief Medical Officer dated 22-12-2012 thereby finding the entire allegation pertaining to medical negligence frivolous.

15. Annexure No.14 of the affidavit of Sri Shobhit Jaiswal – Photocopy of bill of a Resort thereby showing that Dr. Abhishek Trivedi was in Jhansi on 19-05-2012 and 20-05-2012.

We have heard Sri Alok Kumar Singh, learned Counsel for the complainant and Sri Sarvesh Kumar Sharma, learned Counsel for the opposite parties.

A perusal of the record shows that on 18-05-2012 at about 6 a.m., Jitendra Kumar Sharma met with an accident and sustained injuries on his nose. He was taken to the North Star Hospital & Joint Replacement Centre, Kanpur Nagar the opposite party no1. The CT Scan was got done of Jitendra Kumar Sharma as he had sustained contusion in the forehead. X-ray was also got done. Dr. Ashutosh Trivedi, Dr. Abhishek Trivedi and Dr. Saurabh Gupta were the duty doctors in the said hospital. Though Dr. Abhishek Trivedi has been stated to have not been present on 18-05-2012 in the said hospital as he is said to have been present in the a Resort but we are not convinced with this contention raised on behalf of the opposite parties thereby filing the record of alleged Resort because there is no signature of Dr. Abhishek Trivedi on the record filed by the opposite party pertaining to the presence of Dr. Abhishek Trivedi in the alleged Resort. In this regard, Annexure No.14 has been brought on record in the affidavit of Shobhit Jaiswal as well as in the affidavit of Dr. Ashuthosh Trivedi. This alleged proof for the absence of said Doctor pertaining to the Orchha Resort, Unit of Oswal Motels & Resorts Ltd., Kanchanaghat, Orchha, District Tikamgarh, M.P., India, though shows that a person named Mr. Abhishek Trivedi had arrived on 19-05-2012 at 6.02 p.m. in room No. 232 and departed on 20-05-2012 at 4.15 p.m. thereby making a payment of Rs.4,500/- but there is no signature of Dr. Abhishek Trivedi



on this proof of absence, nor Abhishek Trivedi has deposed before this Commission pertaining to the facts of this proof of absence. Hence, it is proved that Dr. Ashutosh Trivedi, Dr. Abhishek Trivedi and Dr. Saurabh Gupta were the duty doctors in the hospital.

The consent for the operation of Jitendra Kumar Sharma was given by the complainant as is evidence on record. However, in this regard the case of the complainant remained that she had expressed her apprehension about the success and urgency of the operation as CT Scan was not seen by the specialist till then and acute edema in the nose of Jitendra Kumar Sharma was present and however, upon the insistence of the said doctors she had reluctantly given her consent but since these facts have not been mentioned in the consent given by the complainant and since there had been no complaint relating to the success of the operation for which the consent was required, therefore, these facts bear not so much importance as the dispute of the consent is irrelevant in deciding the dispute of giving the alleged wrong injection in this complaint.

After the operation of his nose, Jitendra Kumar Sharma apparently looked well as he could walk and also could attend natural call and did not complain about any acute pain during the period from 18-05-2012 to 20-05-2012 up to 6 p.m. These facts of the complaint have been verified on affidavit by the complainant and there had been no specific denial of these facts by the opposite parties too on record.

The main dispute in between the parties is that on 20-05-2012 at about 6 p.m. Dr. DK Singh a homeopath, in consultation with Dr. Ashutosh Trivedi, Dr. Abhishek Trivedi had administered two heavy dose injection of Phenargan and Serenace to Jitendra Kumar Sharma and thereafter Dr. DK Singh after few minutes administered injection of Butrum 2 mg. to Jitendra Kumar Sharma in consultation with and in the presence of Dr. Ashutosh Trivedi, Dr. Abhishek Trivedi and soon after the administration of Butrum 2 mg. injection, Jitendra Kumar Sharma started perspiring heavily and his teeth were clenched and due to which, even after taking him to ICU, he was died. In this respect as per case of the opposite parties the regular doctor of the deceased named Dr. Ravi Kumar



was called and he had prescribed tablet Encorate 500 mg., Librate and Lopez injection, which are the medicines to be provided to alcoholic patient as anti-withdrawal and Dr. Ravi Kumar himself had prescribed Phenargan injection and Serenace injection to the deceased on 20-05-2012 at about 2.00 O'clock and the same were administered to the patient by staff nurse Toshima. The nursing chart in this regard is on record showing the proof of aforesaid facts. There is no rebuttal of these facts by the complainants. Hence it cannot be said that the deceased's personal/regular doctor Dr. Ravi Kumar was not called who had prescribed the aforesaid injection. It is worthy to note here that there is no evidence to show that Phenargan injection and Serenace injection remained fatal to the deceased. Since the record of the hospital is on record and staff nurse Toshima is mentioned administering those injection, therefore, contrary to these facts a statement of the complainant is not acceptable. As per record, pre-anaesthetic check up of the deceased was conducted on 18-05-2012 by Dr. Kajal Gupta, who had recorded that the deceased used to take Alprax 40 tablet and he was having history of psychiatrist treatment. Whatever may be the impact of psychiatrist's treatment for the state of intoxication of the patient, leaving apart it, at this stage we have to deal with the fact as to whether the Butrum injection was administered to the patient by Dr. DK Singh or any other person, which is said/accepted by both the parties that if the Butrum is administered to such patient, that may be fatal to the patient.

Ethical Committee, U. P. Medical Council, Lucknow, to whom the complaint was made by the complainant's side, had noticed that Dr. DK Singh is a Homeopath doctor and registered with Homeopathic Council but owner and himself emphasized that he is working in the hospital as administrator and not as duty doctor while as per records submitted by doctors, Dr. DK Singh's name was in duty doctor and this fact was confirmed by the receptionist of the hospital while contacted on phone to inquire the status of Dr. DK Singh, the day when the patient expired Dr. Ashothosh Trivedi and Dr. Abhishek Trivedi were not in town, according to Dr. Kajal Gupta, the Anaesthetist of the hospital, there was no problem



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noticed at the time of PAC, nasal surgery and post-op period were uneventful, at around 4.00 p.m. on 20-05-2012 Dr. DK Singh administered injection Butrum to the patient, as per patient's attendants, Dr. Kajal Gupta was called and as per her statement when she attended the patient around 8-8.30 p.m. on 20-05-2012, the patient was pulse-less, his B.P. was not recordable, pupils were dilated, she started CPR with endo-tracheal intubation in the O.T., after 45 minutes to one hour patient was declared dead, she told in front of Ethical Committee that if any patient is given Butrum 2amp(2mg) IVI, within 5 minutes of administration, the patient may develop Laryngospasm and Respiratory Arrest, Dr. KK Tyagi, Cardiologist was also interrogated who told that when he saw the patient at 9.00 p.m., patient did not have cardiac activity and patient was declared dead at 9.40 p.m., the attendants gave their statement on affidavit in which they mentioned all the details, on prima facie it appears that Dr. DK Singh has been working as a Duty Doctor in allopathic hospital though he is a registered Homeopathic Physician, Homeopathic Council is being informed to take appropriate action against him, the Chief Medical Officer, Kanpur is being informed to take necessary action. As per these facts in the report of Ethical Committee, the learned Counsel for the complainant contended that Butrum injection was given by Dr. DK Singh and due to that injection Jitendra Kumar Sharma was died.

We have gone through the report of Ethical Committee. This report is based merely on the statements of persons of the complainant's side as has been stated the facts in the complaint too before us. Therefore, a report based on one sided person may be taken for enquiry and/or any action against Dr. DK Singh as has been indicated in the Ethical Committee report too but that report cannot be the proof of this fact that injection Butrum was administered to the patient and that too by Dr. DK Singh. This fact remained unproved on record that Dr. DK Singh had administered the alleged injection because this fact neither finds place in the history of treatment; nor there is any such evidence that such injection was purchased or brought for the purpose of treatment of the deceased



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Jitendra Kumar Sharma. In this regard the facts investigated in respect to the FIR and the complaint made to Chief Medical Officer are very much relevant wherein it is found that there had been all the required equipments available in the ICU of the opposite party, the death of the patient was occurred due to Cardio Respiratory Cerebral Arrest as per Dr. Kajal, Anaesthetists and Dr. KK Tyagi, Heart Specialist, the patient was suffering from psychosis, remained in the treatment of Dr. Ravi Kumar, there was no drug reaction proved in the post-mortem report wherein cause of death could not be ascertained and Visra was preserved, there was no proof of administration of Butrum injection, nor there was any proof found that Dr. DK Singh had administered any such injection to the patient, Dr. DK Singh had been the Manager/Administrative Officer of the hospital and there had been no negligence on the part of the opposite parties in the treatment of the patient. In such scenario of the facts that medical experts have not found any medical negligence on the part of the opposite parties and there is no evidence even of administration of injection Butrum, the medical negligence of the opposite parties cannot be found established in the absence of specific medical expert report which has not been brought on record by the complainants in rebuttal of the medical expert evidence/report of Chief Medical Officer brought on record by the opposite parties. Hence, we are convinced that there is no proof that the injection Butrum was administered by Dr. DK Singh to the patient which is said by the complainants a sole factor of the death of the deceased.

Though the death of the deceased said to have been occurred due to administration of injection Butrum has not been found established on record but it remains a bare fact on record that the deceased was died after his successful operation in the hospital, therefore, the death of the deceased has to be dealt with on this count too that what would have been the reason of the death of the deceased. As per case of the opposite parties Cardiac Arrest had been the cause of death of the deceased. This fact finds place in the report of medical experts reported by the Chief Medical Officer too. Not only this as aforesaid, a further perusal of the record shows at page 33 of the complaint showing the name of



visiting consultants wherein the name of Dr. Ravi Kumar has also been mentioned and to whom a visiting fees of Rs.1,000/- has also been paid by the hospital and who had been the personal doctor of the deceased and at page 40 of the complaint Dr. Ravi Kumar had endorsed as follows:-

'Thanks for the reference, patient is a prone case of affective disease with Alprazolam/tobacco dependence, present mental status is suggestive of transient organic disfunction query withdrawal phenomenon, pill rolling movement present. To be review tomorrow.'

He has prescribed Tab Encorate 500 Mg., Tab Librate and injection Lopez on 20-05-2012. Phenargan injection, Serenace injection and Alprax tablet has also been stated to have been prescribed by the Dr. Ravi Kumar and there is no rebuttal of these facts by the complainant or even by the said Dr Ravi Kumar that Dr. Ravi Kumar had been the personal doctor of late Jitendra Kumar Sharma and the fact that the deceased was a drug addict, chronic alcoholic and was not in a good health.

In this regard the law as is laid down in the following citations is very much relavant;

UNION TERRITORY CONSUMER DISPUTES REDRESSAL COMMISSION, CHANDIGARH in the case of BARINDER KAUR versus CHANDER MALHOTRA (DR.) & ORS Appeal Case No. 1255 of 2000(Pb)/RBT No. 137/2007 decided on 31.7.2007 have also dealt to similar situation and held in the case of removal of Tonsils, where the deceased had visited respondent doctor to get throat checked and he was advised to undergo operation for removal of tonsils. Prior to operation, deceased was subjected to sensitivity test, no reaction shown but during operation, deceased suffered sudden cardiac arrest. Emergency treatment given,unsuccessful. Complainant alleged death caused due to reaction with intravenous injection. Post-mortem report negated allegation. No negligence on part of respondents was held.

MAHARASHTRA STATE CONSUMER DISPUTES REDRESSAL COMMISSION, MUMBAI in REKHA V. KAMBLE & ORS versus DR. M.M. AGRAWAL & ANR, Complaint No. 56 of 1996 decided on 14.7.1999 reported in III (1999) CPJ 75 have also found Claim not sustainable in the case of abdominal pain, intestinal obstruction retention of urine and fever where Urgent operation was performed and had Myocardial infarction with cardiac arrest caused the death of patient.

It is Held : The complainant has not been able to tender any independent evidence to show that the opposite party Doctors were negligent. Even the post-mortem report has not been obtained by the complainants. We, therefore, feel that



this being the case of myocardial infarction with cardiac arrest, no negligence can be attributed. The operation was urgent as there was intestinal obstruction which caused retention of urine and also the fever. We, therefore, feel that the claim is not sustainable and has to be rejected.

UTTARANCHAL STATE CONSUMER DISPUTES REDRESSAL COMMISSION, DEHRADUN in the case of SANJAY HASTIR *versus* SHUBHAM SURGICAL CENTER AND NURSING HOME & ORS Appeal No. 08 of 2005 decided on 17.3.2005 reported in II (2005) CPJ 287 have held in reference to alleged Medical Negligence in surgery that suspicion howsoever strong, cannot form part of proof and unless proved that some important nerve has been cut down by doctor, the doctor cannot be said to be negligent. Patient died soon after operation, but death is no ground to presume negligence. Deficiency or negligence not proved. Life and death is in hands of God, unless deficiency in service of doctor proved, no compensation can be awarded. In the absence of expert evidence to prove any negligence of doctor, mere allegation will not suffice. Obligatory duty of complainant to have got the post-mortem of dead body to be sure if there was negligence on part of doctor, but it was not done. No ground to presume negligence of doctor is found established.

Hon'ble NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI in the case of RAMJI LAL *versus* M/S. SARVODAYA MEDICAL reported in II (1995) CPJ 234 (NC) First Appeal No. 4 of 1993, decided on 17.2.1995 has held, where complainant got his two months son treated from a Paediatric and Death was caused, as follows;

Held : We have again gone through the record as to the cause of death. The child was admitted to Sir Padampat Mother and Child Health Institute, Jaipur on 30th of July, 1990. The child died on 31st July, 1990 at 4.00 p.m. A photo copy of the death certificate dated 16th August, 1990 has been filed and is Annexure C-3 to the appeal. The certificate shows that the child was admitted on 30th July, 1990 at 10.00 a.m. for Cyanotic CHD-RD and the final diagnosis is Cyanotic CHD-RD and expired on 31st July, 1990 at 4.30 p.m. The cause of death is given as Cyanotic C.H.D.-CH.F. The certificate clearly shows that the child was admitted to Sir Padampat Mother and Child Health Institute, Jaipur on 30th July, 1990 for treatment of Cyanotic CHD with RD (Cyanotic Congenital Heart Disease with Respiratory Distress) and not Diarrhoea. The cause of the death of the child is not Diarrhoea but Cyanotic Congenital Heart Disease with Congestive Heart Failure.

Even if there is negligence of the Opposite Party in dispensing a wrong medicine, it has no consequences because of the provisions of Section 14(1)(d) of the Act. Section 14(1)(d) has been considered by the National Commission in various decided cases. It has been laid down that the award of compensation by the Redressal Agencies established under the Act has to be made only on well recognised principles governing the quantification of damages or compensation and not arbitrarily. Compensation can be awarded to a consumer only in respect of any loss or injury found to have been suffered by him due to the negligence of the Opposite Party. It is of the essence of Section 14(1)(d) that the loss or injury for which compensation is to be adjudged and awarded should be found to have been caused by the negligence of the Opposite Party. The Complainant has to establish that there was negligence of the Opposite Party and that as a



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consequence thereof loss or injury was suffered by him. In this case the negligence of the Opposite Party is not the cause of the death of the child.

Looking in to the law laid down as in the aforesaid citations and the entire facts of this case, the death of Jitendra Sharma cannot be ruled out to have been occurred due to sudden severe heart attack with no negligence of the O.P.s. Life and death is in hands of God, unless deficiency in service of doctor proved, no compensation can be awarded.

One more question has been raised on behalf of the opposite parties which is relevant to be decided. It is submitted on behalf of the opposite parties that the complainants are not the consumers as there is no payment has been made by the complainants to the opposite parties in lieu of the treatment of deceased Jitendra Kumar Sharma. We have gone through the entire facts of the complaint as well as the affidavit filed by Smt. Archana Sharma on 29-07-2013 reiterating the facts on oath in evidence that there is no mention as to whether any payment in respect to the treatment of the deceased was made by the complainants to the opposite parties or there had been any promise in this regard. Though the exhibit A-6 stating the final bill prepared of North Star Hospital & Joint Replacement Centre for a sum of Rs.19,140/- is brought on record but there is no mention in that bill that any payment has been made either in advance or at the time of raising the bill. Not even a single word has been stated in this regard in the evidence of the complainant that any payment was made by the complainants or by the deceased to the opposite parties. Exhibit A-9 a receipt of Rs.500/- has also been filed annexed with the complaint thereby showing a payment of Rs.500/- to Paliwal Diagnostics Private Limited but that amount cannot be said to have been made by the complainants to the opposite parties in respect to the medical treatment of the deceased and one another receipt of purchase of Phenargan injection, Serenace amp. and syringe for a sum of Rs.47/- only has also been brought on record showing that the aforesaid drug was purchased in the name of Jitendra Kumar Sharma but this much receipt is also not to be taken into account that any payment was made by the complainants in respect to the treatment of Jitendra Kumar Sharma as this is the drug which is stated by the opposite parties to have been prescribed by Dr. Ravi Kumar the personal doctor of the deceased. As per Consumer Protection Act 1986, the consumer means,



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any person who, hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of differed payment. Here in this complaint before us there is no mention of such fact that the deceased or the complainants have hired or availed the services of the opposite parties for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment, rather is said in the complaint that Jitendra Sharma was taken to North Star Hospital & Joint Replacement Centre, Kanpur Nagar by Dr. Ashutosh Trivedi (opposite party) from his house who was known to the family of the deceased, which gives an impression that he was being treated merely in acquaintance of Dr Trivedi. Therefore, due to want of evidence of charges, we are convinced that the complainants are not the consumers of the opposite parties.

We will like to deal with the ruling referred by the complainants.

- (1) I(2014) CPJ 44(NC) Jai Prakash Mehta Versus B N Rai (Dr.) and another, wherein it is held in a case of burn injuries that the gangrene was happened because of burn injuries (and not because of any injection) which were not properly and adequately medically treated for over two weeks and the doctors being ENT specialist did not prima facie possess medical skills to treat serious burn injuries and, therefore, there had been the medical negligence on the part of the doctors.

We are not convinced as the facts of the aforesaid case are not similar to the case before us and being the case different before us, the aforesaid law hardly helps the complainants.

- (2) III(2013) CPJ 150(NC) Jyoshna Rani Ghosh and others Versus Sanjukta Curatives (Nursing Home), wherein it is held that in a case of urinary complications, carelessness in handling the patient amounts to gross negligence as the patient was in the hands of a Pharmacist while admittedly the condition of the patient was grave and serious.

With utmost regard to the law laid down by Hon'ble N.C.D.R.C. in this regard, we are of this view that the facts of that case also were different and the law laid down in this ruling as not applicable on the facts before us.



- (3) II(2014) CPJ 265(NC) Anamika Sharma and others versus Chhattisgarh Hospital and others, wherein it is held that in the case of Physiotherapy the use of faulty IFT machine without proper arrangements for voltage control, resulting the death of young patient is the deficiency of the staff of the hospital and the hospital is liable to medical negligence.

We are not convinced that in this case before us the aforesaid law is the relevant law being based on quite different facts of the aforesaid case.

- (4) II(2014) CPJ 212(NC) V K Mehta (Dr.) (Col.) versus Vimla Devi and others, wherein it is held that the Therapeutic Misadventure in respect to Urologist performed Cholecystectomy wherein the super specialist must have restrict or confine to his practice legally and ethically, then only he can expect good results in elective surgeries and since the Urologist performed Cholecystectomy, therefore, there had been a medical negligence.

We hold without any hesitation that the law as is laid down in this case too is also not applicable in this complaint before us as there being the different case before us.

- (5) I(2013) CPJ 392 (NC) Virendra Srivastava (Dr.) V/s Surendra Lal Srivastava and another, wherein it is held that the administration of wrong medicines in the case of head injury committing the death of patient is a deficiency in service as the post-mortem clearly indicated that there were severe injuries on head including swelling in the occipital region and, therefore, there had been the medical negligence on the part of the doctors who did not conduct necessary diagnostic and clinical tests to rule out head injuries.

The facts of this case cited by the complainants are also different and there is no case proved before us in this complaint that it would have not been noticed even affective disease with Alprazolam/tobacco dependence to Jitendra Sharma, rather the same was attended by Dr Ravi Kumar. Hence this ruling too hardly helps the complainants.

See



Not only this as aforesaid , a further perusal of the record shows at page 33 of the complaint showing the name of visiting consultants wherein the name of Dr. Ravi Kumar has also been mentioned and to whom a visiting fees of Rs.1000/- has also been paid by the hospital and who had been the personal doctor of the deceased and at page 40 of the complaint Dr. Ravi Kumar had endorsed as follows:-

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One more question has been raised on behalf of the opposite parties which is relevant to be decided . It is submitted on behalf of the opposite parties that the complainants are not the consumers as there is no payment has been made by the complainants to the opposite parties in lieu of the treatment of deceased Jitendra Kumar Sharma. We have gone through the entire facts of the complaint as well as the affidavit filed by Smt. Archana Sharma on 29.07.2013 reiterating the facts on oath in evidence that there is no mention as to whether any payment in respect to the treatment of the deceased was made by the complainants to the opposite parties or there had been any promise in this regard. Though the exhibit A-6 stating the final bill prepared of North Star Hospital & Joint Replacement Centre for a sum of Rs.19,140/- is brought on record but there is no mention in that bill that any payment has been made either in advance or at the time of raising the bill. Not even a single word has been stated in this regard in the evidence of the complaint that any payment was made by the complainants or by the deceased to the opposite parties.

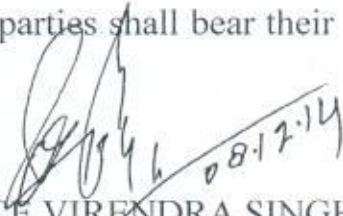
True



Hence, looking into the entire facts and circumstances of this case, we are of this view that the complaint filed by the complainants does not deserve to be allowed and which is liable to be dismissed.

ORDER

The aforesaid complaint is hereby dismissed. Both parties shall bear their own cost of litigation.


(JUSTICE VIRENDRA SINGH)
PRESIDENT ✓

A.K. Chaudhary
(A.K. CHAUDHARY)
MEMBER

PNT

Court no.1