

A.F.R.

RESERVED  
STATE CONSUMER DISPUTES REDRESSAL COMMISSION  
UTTAR PRADESH LUCKNOW  
COMPLAINT CASE NO. 42 OF 2002

1. Sunil Kumar son of Yadram
2. Smt. Archana wife of Sunil Kumar  
Both resident of C/o Rachna Verma, 106/39 Gandhi Nagar, Kanpur

Complainants

Versus

1. Dr. Gyan Prakash Gupta resident of 'Ramayan' 1/177 Lala Lajpat Rai Marg,  
Bagh Farzana Agra
2. Dr. Naval Kishore Hospital and Research Center , Bagh Farzana Agra

Opposite parties

BEFORE

HON'BLE MR. JUSTICE VIRENDRA SINGH, PRESIDENT  
HON'BLE MR. SYED ALI AZHAR RIZVI, MEMBER

For the Complainants : Sri Deepak Mehrotra, Advocate  
For the Opposite parties : Sri Sanjeev Bahadur Srivastava, Advocate

DATED: 14.07.14

JUDGMENT

MR. JUSTICE VIRENDRA SINGH, PRESIDENT

The complainants have filed this complaint against the opposite parties seeking a sum of Rs.4,44,000/- as medical expenses, Rs.5,00,000/- as compensation and Rs.10,000/- as litigation charges on account of medical negligence committed by the opposite parties during the course of treatment of Yad Ram who died due to medical negligence of the opposite parties.

Briefly stated the facts of the complaint are that the complainants are the

legal heirs of the deceased Yad Ram. On 14.11.2000 Yad Ram was hospitalized on account of pain in his stomach, on the advise of the opposite parties. The opposite parties started his treatment negligently and the he/patient was operated thrice within a span of 6-7 days. The condition of the patient was being regularly deteriorated during the course of treatment of opposite parties and ultimately the patient had died on 07.12.2000 at 7.30 p.m. The operations were done by the opposite parties on the body of the patient thereby erasing his stomach at about 6 inches length. The opposite parties remained negligent in treatment and committed deficiency in their medical service. Three operations were not advisable for the patient of 80 years old. The patient was hail and healthy engaged in his business without any external help of his movement. The opposite parties got done unnecessary pathology tests on the body of the patient thereby costing the complainants medical expenses to the tune of Rs.4,44,000/- in the treatment of the deceased. The complainants were tortured too for which also they are entitled to an additional amount of compensation to the tune of Rs.5,00,000/-.

The opposite party no.1 has denied the allegations made in the complaint case by filing written statement as well as written arguments stating therein that the patient was examined by him on 14.11.2000. At the time of presentation he gave history of abdominal pain for last 24 hours. On examination he was found toxic. His pulse rate was 106 mt. B.P. was 90 mm Hg. He was having generalized tenderness and guarding of abdomen. Clinical diagnosis of duodenal perforation was made. All risks were explained to his attendants and the patient was advised hospitalization. The patient was referred to Dr. Naval Kishore Hospital, Agra for admission. After admission resuscitation was started. I/V fluids, antibiotics, putting nasal and urethnal tubes were included in the treatment. As his blood pressure was low dopamine drip was also started. Considering the age and general condition of patient, pre-operative assessment was asked from physician. Dr. Rajeev Kishore examined him and considered him as a high risk surgical case. All risks were explained to the attendants and written consent was taken for operation. In his case special consent was also taken explaining the serious condition and





disease and it was also explained that the patient may even die during treatment. Thereafter he was undergone surgery on 15.11.2000. There was satisfactory recovery up to 25.11.2000. On 26.11.2000, significant amount of drainage was noticed. The situation was explained to the attendants. Opinion of Dr. Sandeep Agarwal, Senior Surgeon was asked. After explaining all risks and benefits of further surgery, he was again examined on 27.11.2000 by Dr. Sandeep Agarwal and Opposite party no. 1. As there was no healing, it was decided to remove the involved part of intestine and Distal gastrectomy with gastrojejunostomy with feeding jejunostomy was done. Post operatively, patient was regularly seen by both Dr. Sandeep Agarwal and O.P. 1. His drainage were stopped. After few days, feeding through jejunostomy was also started. Patient had developed severe chest infection for which adequate measure were taken but unfortunately the patient died on 07.12.2000 due to septicaemia and cardio respirating failure inspite of all possible efforts. Body was received by his attendants and they had no complaint at that time. The pleadings regarding the enormous charges by O.P. made by complainants are false. There was no payment received by the opposite party no.1 from the patient or from any of his relatives. Whatever may be the payment if any made by the complainant that might have been made to Dr. Naval Kishore Hospital and Research Centre, O.P. no. 2. The opposite party no.1 committed no medical negligence and all efforts were made to save the life of the patient thereby giving the best treatment to him by the opposite party no.1. The opposite party no.1 is insured by the New India Assurance Company Limited under policy no. 4632290102496 dated 21.03.2000 for a sum of Rs.10,00,000/-.

The opposite party no.2 Dr. Naval Kishore Hospital and Research Centre have pleaded that the opposite party no.2 is also covered under the "Doctor Indemnity" Policy w.e.f. 19.06.2001 to 20.06.2002 through National Insurance Company Limited. The complainants are not the consumer. They have no cause of action and there has been absolutely no deficiency in the service was provided by the opposite party no.2 and a false complaint has been filed by the complainants which is not maintainable. The complainant no.2 Smt. Archana wife of complainant no.1 Sunil Kumar cannot be a legal heir of the deceased Yadram for filing this complaint. The said patient was admitted in the hospital of opposite





party no.2 and was under the treatment of opposite party no.1 and other doctors who have not been impleaded in this complaint. True and correct facts have not been put forth by the complainants before this Commission. The operation was performed by the opposite party no.1 after having obtained the consent from the attendants and it is wrong to state that there was any negligence on the part of the opposite parties. The patient continued in the treatment even after 21.11.2000. If the attendants of the patient were not satisfied they could have request to shift their patient immediately after 21.11.2000. The patient was suffering from severe abdomen pain. He was toxic and was having generalised tenderness and grading of abdomen. The ultrasound showed fluid collection. B.P. of the patient was low as such dopamine drip was started. The attendants of the patient had given the history of the patient as a chronic smoker. The operation stood conducted by the opposite party no.1 which was essential and all the risk factors were explained to the attendants and the consent was obtained from them. The Peritoneal cavity of the patient was full of pus and great care of the patient was taken by keeping the patient on antibiotics, I.V. fluids and continued blood transfusion was given. The patient was having satisfactory recovery. The complainants have no medical knowledge and they are repeating that three operations were performed. However, it is put forth before this Commission that opposite party no.1 decided to remove the involved part of the intestine. The complainants have claimed the exorbitant compensation with no cause of any medical negligence on the part of the opposite parties for which this complaint deserves to be dismissed.

Joint affidavit dated 08.09.2003 and 23.10.2003 of Sunil Kumar and Smt. Archana has been filed on behalf of the complainants alongwith Annexure-1 the voter card of Sunil Kumar the complainant no.1, Annexures 2 and 3 prescription letters of Dr. Gyan Prakash Gupta, Annexures 4 and 5 the receipt of dead body and consent of the operation, Annexures 6 to 14 Pathology reports, Annexure-15 cutting of news paper "Dainik Jagran" dated 20.02.2002 pertaining to a news in respect to statement of Dr. Shiva Kant Misra, Laparoscopic Surgeon, that the pain never extinguishes by major operation. Annexure-16 Photocopy of the literature





pertaining to respiratory system and Digestive system, Annexures 17 to 53 photocopy of the treatment charts.

On behalf of the opposite parties affidavit dated 12.05.2003 and dated 10.11.2005 of Dr. Gyan Prakash Gupta has been filed annexing photocopy of insurance policy of the New India Assurance Company Limited (Schedule no.401/58772 , Policy no. 4632290102496 dated 21.03.2000 for the period 14.03.2000 to 13.03.2001). Affidavit dated 19.11.2003 of Dr. Sanjay Kishore son of Dr. Nawal Kishore in support of the pleadings of the opposite parties has also been filed on behalf of opposite parties.

We have heard Sri Deepak Mehrotra, learned counsel for the complainants and Sri Sanjeev Bahadur Srivastava, learned counsel for the opposite parties and also perused the entire record.

It is submitted on behalf of the complainants that after getting so many tests Dr. Gyan Prakash Gupta diagnosed the hole in the duodenal (intestine) of the deceased. He conducted three operations to close the hole in the intestine due to which the patient died. The stitches after operation on 15.11.2000 were made negligently which were burst on third day of the operation thereby leaking the intestine. At the time of second operation on 21.11.2000 thereby affixing omental on the same place from where the leakage was visible in the intestine, the stitches were again fixed which have also broken resulting fresh leakage in intestine. On 27.11.2000 Dr. Gyan Prakash after having opinion of a senior doctor again conducted an operation thereby cutting duodenal involved part of the intestine of the patient. At the time of this operation respiratory system of the patient was damaged and the patient died due to chest infection, septicaemia and cardio respiratory failure. Chest infection occurred due to not cleaning properly the stomach of the patient by the opposite parties. Surgery of duodenal is always done thereby separating the damaged parts of the intestine which is always safe device in such type of treatment. Had there been not made the stitches by the opposite parties in first and second operation and directly the damaged part of intestine would have been separated, the patient would have not been died and the plenty of expenses in medical treatment borne by the complainants would have been saved.



The opposite parties deliberately for the purpose of fetching money from the complainants adopted the wrong pattern of the treatment of the patient. More so at the time of third operation for cutting the intestine the opposite parties negligently damaged the respiratory system of the patient. The patient was 80 years old. He was not amenable for major surgery rather laparoscopy method should have been adopted by the opposite parties. Dr. Shiva Kant Misra, Executive and Chief of Indian Association of Gastro Intestine Indo Surgery, Northern Region, Laparoscopic Surgeon has stated that pain never goes by a major surgery of duodenal and such type of operation should be done by laparoscopy method by which the inner part of the stomach remains visual. The wind pie annexed with respiratory system and food pipe annexed with digestive system happen to be so nearer in the human body that even slight negligence in the operation may damage both the systems which is happened in the case of the patient in this case, who died due to sheer negligence of the opposite parties.

Hence it is contented on behalf of the complainants that in the light of the aforesaid scenario of the facts, the complaint deserves to be allowed and the opposite parties may be directed to pay the compensation as aforesaid to the complainants.

On behalf of the opposite parties, it is submitted that at the time of examination of patient Yad Ram the very first day on 14.11.2000, there was a history of severe abdominal pain for last 24 hours. On examination he was found toxic, his pulse rate was 106 mt. B.P. was 90 mm Hg and he was having generalised tenderness and guarding of abdomen. Ultrasound showed fluid collection. Treatment with I/V fluids, antibiotics, putting nasal and urethral tubes and dopamine drip, was started. He was found a high risk surgical case for which the patient and his relatives were informed and the written consent of the attendants was taken thereby explaining the serious condition of the patient and even explaining that the patient may even die during treatment. Surgery was done on 15.11.2000 under general anaesthesia with continuous cardiac, pulse, P Oz monitoring. The patient was exposed through mid line incision. Clinical diagnosis of duodenal perforation was found to be correct. Peritoneal cavity was full of pus





and intestinal fluid. Fluid sucked, perforation sutured with silk with omental only peritoneal toilet was done. Drains were left in pelvis and sub hepatic space. Post operative he was kept on antibiotics, I/V fluids, chest physiotherapy. Dopamine support continued & blood transfusion was also done. On third post operative day the amount of drain was increased which could not subside with conservative treatment. These complications were discussed with patient's attendants and it was decided to re-explore him. Re-exploration was done under G.A. with proper monitoring. Leakage from suture sites was noticed and margins were freshened. Resuturing with omental plug was done. Simultaneously bye pass operation (Gastio ejunostomy) was also done to reduce tension on sutine live. There was satisfactory recovery upto 25.11.2000. On 26.11.2000 significant amount of drainage was noticed. The situation was again explained to the attendants and the opinion of Dr. Sandeep Agarwal , Senior Surgeon was taken. Opposite party no.1 alongwith Dr. Sandeep Agarwal discussed the gravity of situation with patient attendants. After explaining all risks and benefits of further surgery he was again explersed on 27.11.2000 by Dr. Sandeep Agarwal and opposite party no.1. As there was no healing therefore it was decided to remove the involved part of intestine. Distal gastrectomy with gastrojejunostromy with feeding jejunostromy was done. Post operatively patient was regularly attended by opposite parties. His drainage was stopped. After few days feeding through jejunostromy was also started. Patient had developed severe chest infection for which adequate measure was taken. Unfortunately patient died on 7.12.2000 due to septicaemia and cardio respirating failure inspite of all possible efforts. The statement regarding enormous charges pertaining to negligence of the opposite parties is false and frivolous.

It is further submitted on behalf of the opposite parties that there is no expert opinion otherwise on record to prove the medical negligence of the opposite parties. Despite knowing the fact that the opposite parties are insured the complainants did not array the insurance company as party in the complaint. Best efforts to save the life of the patient were done and best treatment was given to the





patient but since the patient was chain smoker and old person, unfortunately could not survive.

We have gone through the entire facts and circumstances as well as evidence on record in the light of the aforesaid arguments of both the parties.

Hon'ble Supreme court in the case of **Malay Kumar Ganguly v. Sukumar Mukherjee, (2009) 9 SCC** has held that **professional competence** of highest order is not expected from every doctor. Parameters for determination of *Medical negligence should be that he must use reasonable degree of skill of his profession in diagnosis and treatment. Failure to use due skill in diagnosis, resulting in wrong treatment, amounts to negligence. Where there are more than one methods of treatment, use of one in preference to the other, is not negligence. In a complicated case, court would be slow in inferring negligence if doctor has performed his duty to the best of his ability.*

*For establishing medical negligence or deficiency in service, the courts are guided by following factors,*

*(i) no guarantee is given by any doctor or surgeon that patient would be cured, (ii) doctor, however, must undertake a fair, reasonable and competent degree of skill, which may not be the highest skill,*

*(iii) adoption of one of the modes of treatment, if there are many, and treating the patient with due care and caution would not constitute any negligence,*

*(iv) failure to act in accordance with the standard, reasonable, competent medical means at the time would not constitute a negligence. However, a medical practitioner must exercise reasonable degree of care and skill and knowledge which he possesses. Failure to use due skill in diagnosis with the result that wrong treatment is given would be negligence,*

*(v) in a complicated case, the court would be slow in attributing negligence on the part of doctor, if he is performing his duties to the best of his ability. (Para 157)*

Hon'ble Supreme Court has held in the case of **Malhotra v. Dr. A. Kriplani, (2009) 4 SCC 705** regarding need of expert opinion for medical negligence that *where statements made by respondent doctors neither rebutted nor appellant*





*leading evidence of any expert doctor and where it was not the case of appellant that doctors were not qualified and specialized and all the doctors who treated patient were skilled and duly qualified specialists in their respective fields and tried their best to save the patient's life and performed their professional duties as a team, there is no case made out of negligence or deficiency in service. In that case patient was brought for treatment when her health was in very bad condition and renal failure had already taken place. Appellant, sister of patient was informed well in advance regarding deteriorating condition of patient. Records indicating no difference or divergence of opinion about method or mode of treatment adopted between the two sets of doctors. Appellant not questioning post-mortem report indicating death due to peritonitis with renal failure*

Hon'ble Supreme Court has held in the case of **Ramesh Chandra Agrawal v. Regency Hospital Ltd., (2009) 9 SCC 709** in reference to expert evidence, when called for and test for issues involving medical science that *test is whether matter is outside knowledge and experience of a layperson. Where a medical issue is to be settled, scientific question involved therein is assumed to be not within court's knowledge and hence there is a need to hear expert opinion. Since medical science is complicated, expert opinion provides deep insight. Where diagnosis and the method of treatment suggested to a patient vary, held, expert opinion forms an important role in arriving at a conclusion.*

In the light of the law as is aforesaid, we have scrutinized the case/submissions of both the parties and we have found that the complainant could not prove the medical negligence committed by the opposite parties because there may be no guarantee given by the opposite parties to the complainants that the patient would be cured and specifically in this case while the deceased's condition pre treatment was found critical showing fluid collection for which the treatment as per norms of the medical science as is narrated in the submissions of the opposite parties was given by the opposite parties to the deceased. The opposite parties undertook fair, reasonable and competent degree of skill for which there is no otherwise case of the complainants except saying thereby that instead of major





Surgery, laparoscopy method should have been adopted in the case of the deceased by the opposite parties. In this reference, though the version of Dr. Shiva Kant Misra, Executive and Chief of Indian Association of Gastro Intestine Indo Surgery, Northern Region, have been referred but merely an abstract from the news paper, could not be recognised as an evidence in the case of difference in the medical opinion of the Doctors. Failure to use due skill in diagnosis, resulting in wrong treatment, no doubt amounts to negligence but where there are more than one methods of treatment , use of one in preference to the other , is not negligence as is held by the Hon'ble Supreme Court and since the statement of the opposite parties about the skill of Doctor neither has been rebutted, nor the complainants led any evidence of any expert Doctor in this regard, therefore, it cannot be held that the opposite parties have not used reasonable degree of skill of their profession in diagnosis and treatment of the deceased. It is not the case of the complainants that the method adopted by the opposite parties was never been the method of treatment, therefore, as is held by the Hon'ble Supreme Court that where there are more than one method of treatment, use of one in preference to the other, is not negligence, hence the opposite parties cannot be held adopting one of the method of the treatment which in our view, does not come within the sphere of medical negligence by the opposite parties. Any failure to act in accordance with the standard, reasonable, competent medical means at the time of treatment of the deceased by the opposite parties have not been proved by the complainants by way of any expert opinion. It had not been the case of the complainants before us that the opposite parties/Doctor was not qualified specialised in the field of the treatment of the deceased and since they have tried their best to save the patient's life who was 80 years old therefore, we do not find any circumstance on record that any case is made out of negligence or deficiency in the service of the opposite parties. The entire facts of treatment, risks involved , even the possibility of death of the patient were told by the opposite parties to the complainants. Therefore, in such circumstances none of the aspect proving the medical negligence is found established on record. No doubt the medical practitioner must exercise reasonable degree and skill and knowledge which he possess and failure to do so with the result wrong treatment is given would be negligence but since in this case before





us this much have not been proved by the complainants with any medical expert opinion, therefore, no medical negligence is found proved as is submitted by the learned counsel for the complainants. In such circumstances we do not find any substance in the complaint which deserves to be dismissed.

ORDER

The complaint is hereby dismissed.

  
(JUSTICE VIRENDRA SINGH)  
PRESIDENT

  
(SYED ALI AZHAR RIZVI)  
MEMBER

Asif  
Steno-2  
Court no.1