

DR. K. VASANTHI & ANR. V. CHALASANI SATYANARAYANA

1. DR. K. VASANTHI & ANR.

W/o D.K Rajeshwara Rao, C/o Anupama Surgical Children's
Hospital D,No-47-9-21 Dwarkanagar
Visakhapatnam – 530016

A.P

2. Anupama Surgical Children's Hospital, Rep by its Dr K
Vasanthi, W/o Rajeshwar Rao

Situated ar D.No-47-9-21 Dwarka Nagar,
Visakhapatnam – 530016

A.P

.....Petitioner(s)

Versus

1. CHALASANI SATYANARAYANA

S/o Chalasanani Satyanaryana, R/o D.No-50-94-15/13 Srinidhi
Nivas,Santhipuram
Visakhapatnam

A.P

.....Respondent(s)

Case No: REVISION PETITION NO. 1930 OF 2012

Dated : 09 Jan 2023

Judges:

HON'BLE DR. S.M. KANTIKAR,PRESIDING MEMBER

For the Appellant :

For the Respondent : None for R-1

Mr. Aditya Ladha, Advocate proxy for R-2

Ms. Arti Singh, Advocate for R-3

Facts:

Complainant filed consumer case against Dr. Vasanthi (OP-1) and Anupama Hospital (OP-2) alleging medical negligence in treating his rectal abscess. District Forum allowed the complaint directing OPs to pay Rs. 6,29,300 to complainant. OPs and complainant filed appeals against the order in State Commission. State Commission upheld District Forum order observing deficiency in service and negligence by OPs in proper treatment and documentation. Aggrieved, OPs have filed the present revision petition.

Court's Elaborate Opinion:

Concurrent findings by fora below – revisionary jurisdiction is limited. However, crucial issue of alleged administration of 17 injections of Xigirs requires consideration. State Commission erroneously relied on invoices and vial samples as proof of such administration without corroborative medical records. Market price analysis also does not support the claim. Treating doctors have not prescribed Xigirs. Hence, this expense can't be allowed. Referral letter shows reasonable line of treatment adopted by OP-1 including investigations, antibiotics, steroids etc. Surgery was necessitated to drain pus and relieve pain. Septicemia signs showed patient was already in sepsis. Shifting to higher center for treatment was also appropriate. Thus, no negligence attributable for treatment given. However, non-maintenance of medical records including operative notes is a deficiency in service making OPs liable. Proper documentation is vital for patient care and defending claims. Hence, compensation reduced to Rs. 1 lakh along with litigation cost. Deficiency is limited to non-maintenance of records, not medical negligence.

Arguments by Petitioners:

Concurrent findings can't be easily interfered with in revision. Complainant already received substantial

compensation.

Arguments by Respondent:

Facts show negligence and deficiency in treatment requiring interference.

Sections:

Revision petition filed under Section 21(b) of Consumer Protection Act 1986.

Cases Referred/Cited:

No case has been cited.

Referred Laws:

Reference made to standard textbooks on surgery and medicine regarding septicemic shock.

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Full Text of Judgment:

1. The Complainant Mr. Chalasani Satyanarayana filed the Consumer Complaint before District Forum, Visakhapatnam against Dr. K. Vasanthi (OP-1) and Anupama Surgical Children's Hospital (OP-2) for alleged medical negligence during the treatment of rectal abscess and further he suffered septicemic shock. He incurred huge expenses for treatment taken from different hospitals.

2. The District Forum allowed the Complaint and directed The OP-1 ad 2 to pay Rs. 6,29,300/- with cost of Rs. 10,000/- and Rs. 5,000/- as advocate fee. Being aggrieved, the OPs filed F.A. No. 1213/2009 for setting aside the Order of the District Forum, whereas the Complainant filed F.A. No. 291/2012 for enhancement of compensation.

3. The State Commission dismissed both the Appeals with the

following observation:

18. In view of the discussion made supra, we are of the considered opinion that there is deficiency in service and negligence on the part of OP in treating the complainant properly and also for the reason that they did not maintain any pre or post operation reports so also the surgical notes etc. which lead the complainant to take further treatment in care hospital. In view of the above discussion and finding in favour of the complainant the written arguments and the decisions referred to in it are not helpful for the ops to decide the point in their favour. Thus, the point is answered in favour of the complainant and against the OPs.

19. Regarding quantum of compensation aspect, it is discussed as under: Ex. A3 final bill issued by care hospital, in favour of the complainant discloses that a sum of Rs.1,18,936/- was collected by the said hospital from the complainant for the treatment given to him. Ex.A19 two invoices for supply of 17, XIGIRS-20 mg injections reveal that the cost of the said injections was Rs.4,78,083/- the complainant produced empty viles in proof that the costly injections were administered to him in critical conditions. There is no clinching evidence from OP side that administering of such costly injections was unnecessary. Nobody would give such injections without there being any necessity and hence the version of the complainant that such injections were used to him in the care hospital and that he incurred expenditure of Rs.4,78,083/- is believed as true. Apart from the two said items, there are bills evidencing that the complainant has purchased some other medicines and had undergone diagnostic tests and thus the total medical expenditure of the complainant comes to Rs.4,90,341/- and if the said sum of Rs.1,18,936/- final bill is added the grand total of expenditure comes to Rs.6,09,277/- . Assigning satisfactory reasons the District Forum arrived at a right to conclusion that the complainant is entitled for such amount from the OPs for their deficiency in service to him and absolutely there are no reasons to scale down the said amount at all. For such a small operation, which resulted in

complications to the complainant the Ops are made liable to pay such huge amount towards medical and incidental expenses and in such circumstances granting of Rs.20,000/- to the complainant for mental agony etc is also reasonable and there are no reasons to enhance the said amount. Thus, the orders under appeal are upheld and consequently both the appeals are liable to be dismissed.

4. Being aggrieved the OPs filed the instant Revision Petition under Section 21(b) of the Consumer Protection Act, 1986.

5. Heard the learned Counsel on both the sides.

6. The learned Counsel for Complainant argued that there are concurrent findings from both the fora below, therefore, National Commission has limited jurisdiction. He further reiterated the facts that on 9.3.2004 the complainant (for short 'Patient') was operated for rectal abscess by the OP-1. It was alleged that surgery fixed at 6 pm but due to non-availability of Anesthetist in the evening, the surgery was performed earlier at 1 pm without preoperative tests. The Complainant was informed about the surgery as very simple and minor one, lasting for five to ten minutes only. After surgery he was kept in intensive care unit. At 3 pm, the patient developed breathing problems and further deterioration. He was shifted by ambulance to Care Hospital, allegedly without any assistance and medical records. There, he was diagnosed as a case of Septicemic Shock. He was treated in the ICU from 9.3.2004 to 18.3.2004 and later shifted to the ward till 23.3.2004. It was further argued that till July 2004, the patient took treatment in different hospitals namely Simhadri Hospital, Nagarjuna Hospital in Vijayawada and lastly at Seven Hills Hospital, Visakhapatnam. The learned counsel further submitted that the patient was administered 17 injections of Xigirs 20 mg, for the total cost of Rs. 4,78,083/-. The Complainant incurred total expenditure of Rs.7,78,250/- towards medicines, hospital, towards fees, transport and attendance charges.

7. The learned Counsel for OPs argued that there are apparent

errors in the Orders of both the fora, which failed to consider the crucial issue of purchase and administration of injection Xigirs. The Counsel further argued that on 09.03.04 the patient came to hospital with agonizing pain in the Ano-rectal region and with high grade fever for 4 days. To drain the pus, simple incision and drainage (I & D) under General Anesthesia was suggested, for which patient readily agreed. Minimum basic investigations like blood count, blood sugar and ECG were done before I & D. He was administered appropriate antibiotics. Post-operative recovery was good; he was alert and kept in the ICU under continuous observation. At 3 pm patient developed signs of septicemia and immediately ECG was performed, it was normal. Therefore, it was confirmed as a septicemic shock, accordingly for further management, the patient was shifted to Care hospital in the evening wherein the doctors confirmed the diagnosis of Septicemia.

8. Perused the medical record, inter-alia the Orders of both the fora below.

9. The relevant observation of the District forum is reproduced as below:

22. Such being the evidence placed by either side on record coming to the grievance of the complainant it is three fold. Firstly the surgery was not properly conducted, which forced him to undergo similar surgery. The other two grounds are back of proper pre-operative care as well as post-operative care to the complainant. Unfortunately in this case there is no record as to the treatment given to the complainant by the opposite party at any stage. Strange explanation given by the opposite party is that as it is an emergency no case sheet is maintained and even at the time of referring the patient to the Care Hospital she claimed to have mentioning the treatment given on her letter head. This inspite of the fact that though a minor surgery of incision and drainage was conducted but under General Anesthesia and the patient was there in the intensive care unit for about 6 hours and has shown symptoms of Septicemic Shock. We are of the view when General Anesthesia is being administered to the patient before

surgery, though a minor, one a duty is cast upon the opposite parties to open a case sheet and note down the procedure that was observed before the surgery, during surgery and treatment after the surgery.

10. In the instant case the main controversy is about use of total 17 Xigiris injections at Care Hospital. The State Commission observed that:

“Ex. A19 two invoices for supply of 17, XIGIRS-20 mg injections reveal that the cost of the said injections was Rs. 4,78,083/- the complainant produced empty vials in proof that the costly injections were administered to him in critical conditions. There is no clinching evidence from OP side that administering of such costly injections was unnecessary. Nobody would give such injections without there being any necessity and hence the version of the complainant that such injections were used to him in the care hospital and that he incurred expenditure of Rs. 4,78,083/- is believed as true.”

(emphasis supplied)

11. In my view, it was an erroneous observation of the State Commission (supra), which just relied upon two invoices and 17 empty vials of Xigris and concluded that during treatment at Care Hospital, the patient was given 17 injections of Xigris (20 mg) (Drotrecogin Alfa). Surprisingly, it is pertinent to note that the medical record and Discharge summary of Care Hospital did not show any mention or advice about the administration of

17 injections of Xigris. I have gone through the Pharmacopeia price index, one vial of Xigris costs Rs. 84,700/-, thus the total cost of 17 vials would be Rs. 14,39,900/-, but nothing is on record to prove that 17 vials of Xigris were purchased at the cost of Rs.4,78,083/- .The treating doctors of Care Hospital have neither prescribed or administered 17 Xigris injections to the patient. Therefore, the Complainant won't deserve the refund of amount allegedly paid for the injections Xigris.

12. Adverting to the maintenance of patient's medical record,

admittedly OP-1 in her evidence deposed that she did not maintain case sheet. She did not enter in the ICU register about the surgery was done in emergency though the patient was in ICU for 6 hours. According to OP-1 it was not a major case, therefore she did not make entry in hospital register or ICU register.

13. I have perused the referral letter given by OP-1 to Care Hospital. The letter clearly mentioned about the procedure I & D done for Perianal abscess at 1.30 PM under GA. He developed hypotension at 4.30 PM and shifting the patient after stabilizing for further management. Also mentioned about the medicines administered viz Monocef, IV RL and DNS, Hydrocortisone, O₂ inhalation and Dopamine drip. The investigations and ECG were enclosed.

14. In my view in absence of medical record, the referral letter clearly mentioned about the mode of treatment adopted by the OP-1 for the painful Ano-rectal abscess. Such patient needs immediate relief from acute pain. I & D was performed after doing basic investigations viz. Blood Counts, Blood Sugar and ECG. It was reasonable standard of surgical practice. In my view, it was neither failure of duty of care during pre-operative stage nor negligence while performing I & D. It is pertinent to note that the clinical signs and symptoms show the patient was already in sepsis. Post operatively patient was kept in ICU and administered higher antibiotic Monocef and other drugs as per standard practice. The complication of septicemia was managed by inj Steroid, Dopamine drip and Oxygen supply also. The patient for better treatment was referred to the higher centre – Care Hospital. In my view it was prompt referral and there was no delay. Referring the patient during absolute necessity is not negligence.

15. I have gone through the text books on Surgery (Love & Belly) and Harrison's Internal Medicine to know about Septicemic shock. The patient had symptoms of sepsis – severe infection like high grade fever, acute pain and abscess. If it remains untreated, the chances of chronic sinuses, fibrosis

may lead to anal incontinence.

16. Further, I can't ignore the non-maintenance of vital medical record by the OPs. It was the primary duty of treating doctor to maintain proper treatment record including anesthesia, Operative notes , the medication, details of recovery from anesthesia etc. It should be borne in mind that, though I & D was a minor surgical procedure, OP-1 performed it under General Anesthesia and post operatively the patient was in ICU for 6 hours. Proper documentation will help to prove the doctor's duty of care and to defend certain unavoidable and unforeseen complications. Therefore, the Petitioners (OP-1 & 2) are held liable for the deficiency in services.

17. Medical records not only serve as necessary documents for apt management of a patient, they are also legal documents. These records contain useful evidence for diverse litigations including personal injury cases, criminal cases, workers' compensation, disability determinations, and medical negligence claims. It should be borne in mind that "Good Record is Good Defense" Poor Record is Poor Defense" and "No record is No Defense." Thus, accurate and complete medical documentation is vital for appropriate and efficient patient care.

18. Based on the discussion above, medical negligence is not attributable to the OPs, however OPs are held liable for non-maintenance of medical record. Accordingly, the Order of State Commission is modified that, the OPs shall pay jointly and severally Rs.1 lakh to the Complainant along with the Rs.25,000/- as cost of litigation within 6 weeks from today. Beyond 6 weeks, the OPs shall liable to pay 10% interest per annum till its realisation.

The Revision Petition is partly allowed.