Medical negligence by doctor leading to patient’s death: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI

M/S. KOHLI NURSING HOME & MATERNITY CENTRE

…Appellant

SONIKA KAPOOR

…Respondent

Case No: FIRST APPEAL NO. 85 OF 2020

Date of Judgement: 01 January 2024

Judges:

SUBHASH CHANDRA – PRESIDING MEMBER
DR. SADHNA SHANKER – MEMBER

For Appellant: MR. SANDEEP KAPOOR, ADVOCATE

For Respondent: MR. DHARMENDRA KUMAR, ADVOCATE

Facts:
The deceased patient, Mrs. Sonika Kapoor, was admitted to the appellant Kohli Nursing Home & Maternity Centre on 31.12.2009 for delivery. Due to complications in normal delivery, the doctors recommended and performed a Caesarean section on 01.01.2010. A baby boy was delivered. After the delivery, the deceased patient continuously complained of pain in her abdomen to Dr. Raj Kohli (Opposite Party No. 2). She was prescribed painkillers without proper examination. On few occasions, Dr. Vijay Kohli (Opposite Party No. 3) advised that she had stomach infection and gastroenteritis. Medicines

were prescribed accordingly. It was also opined that she may be having stones in her abdomen but no tests were conducted. Later, the deceased patient developed severe pain in her left abdomen and consulted other doctors. CT scan on 27.04.2010 revealed presence of a foreign body in her stomach. On 30.04.2010 at Sir Ganga Ram Hospital, surgery was performed and an abdominal sponge/swab was retrieved from her abdomen. The deceased patient filed a complaint before State Commission alleging medical negligence and claiming compensation of Rs. 52 lakhs. Unfortunately, she passed away during the pendency of the complaint on 16.09.2016.

Court's Opinions:

The Delhi Medical Council, in its report dated 02.01.2012, held Dr. Raj Kohli guilty of medical negligence for failure to exercise reasonable degree of skill and care expected from a doctor. It directed removal of her name from State Medical Register for one month. No negligence was attributed to Dr. Vijay Kohli. The court observed that the deceased had no abdominal pain prior to the surgery. The issues started only after the caesarean operation. The hospital failed to give any proof that the swab was not left during the operation and did not provide any specific reply to the allegation. Considering Delhi Medical Council's report, the court concluded that the doctors failed to exercise reasonable skill and care expected from doctors. On compensation, it was observed that the deceased underwent pain, distress and various ailments due to the negligence. Although direct association with her death could not be established, it did play an indirect role. The compensation awarded by State Commission was considered just and reasonable. No interference was warranted.

Arguments:

Appellant Hospital:

They are a well-equipped and registered nursing home with qualified and experienced doctors. There was no negligence. The deceased patient never visited them for abdominal pain complaints. All surgical items were counted before and after surgery as per protocol. No cause of action arose.

Respondent (Legal Heirs):

Deceased was under Dr. Raj Kohli's continuous treatment and regularly visited for check-ups. It was the duty of doctors to perform surgery carefully and ensure no foreign body was left inside. Finding of abdominal swab during later surgery proves negligence. Hospital has not denied leaving swab inside or given any specific reply.

Sections and Cases:
The appeal is filed under Section 19 of the Consumer Protection Act, 1986 against State Commission's order dated 14.11.2019 in Complaint No. 381/2011.

No specific case laws have been cited or referred to.

Referred Laws:
Reference made to Consumer Protection Act, 1986 under which appeal is filed.
Various duties and responsibilities imposed on doctors and hospitals based on regulations have been cited to argue medical negligence.

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Full Text of Judgment:

1.This appeal has been filed under section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as the 'Act') in challenge to the Order dated 14.11.2019 of the State Commission in complaint no. 381 of 2011, whereby the complaint of the complainant waspartly allowed and the appellant – opposite party was directed to pay a compensation of Rs.20,00,000/- with interest at the rate of 9% p.a. from the date cause of action arose till the date of payment.

2.Heard the learned counsel for the appellant – hospital (hereinafter referred to as the'hospital') and the learned counsel for the respondent – legal heirs of the complainant(hereinafter referred to as the 'complainant') and perused the record including the State Commission's impugned Order dated 14.11.2019 and the memorandum of appeal.

3.The facts of the case are that the complainant, since deceased (hereinafter referred to asthe ‘deceased patient’), who was in the family way, got admitted on 31.12.2009 for delivery inthe hospital on the assurance that they are a well equipped Nursing Home to take care of anycomplication that may arise during the course of delivery. Due to some complications in the normal delivery the original opposite parties no. 2 and no. 3 recommended the deceased patientand her family to go for delivery by caesarean for which the husband of the deceased patient consented. The caesarean operation was performed by the opposite party no. 2 and no. 3 and a baby boy was born to the deceased patient on 01.01.2010.

4.The grievance of the legal heirs of the complainant is that after the delivery, the deceased patient had continuously complained of recurrent pain in her abdomen to the opposite party no.2 and she visited the opposite party no. 2 and the opposite party no. 2 prescribed pain killers including tablets and injections without examining her as required under the protocol. On some occasions, opposite party no. 3 advised her that she was having stomach infection and gastroenteritis and accordingly prescribed medicines for the said purpose and the opposite partyno. 2 also opined that the deceased patient may be having stone in her abdomen but the opinion was without undertaking any test or subjecting her to an examination. Later the deceased patient developed unbearable pain in her left abdomen and as a consequence there of she consulted some other doctors for diagnosing the problem. It is alleged that her health had also deteriorated and her weight dropped from 66 kg and 44 kg in about 3 months after the delivery. CT scan was advised which was conducted on 27.04.2010 at Spectrum Imaging & Diagnostic Centre where in presence of foreign body inside the stomach of the complainant was diagnosed. The grievanceof the complainant is that the opposite party no. 2 prescribed medicines without advising or conducting the tests and has breached the professional obligation as is required that the doctors must ensure that no such negligence much less gross medical negligence takes place, which if not detected on time could have become fatal for the deceased patient and life long agony andsorrow for the family members of the deceased patient including the new born child.

5.The deceased patient filed a complaint before the State Commission alleging medical negligence on the part of the opposite parties no. 1, no. 2 and no. 3 and prayed for compensation of Rs. 52 lakhs towards compensation along with litigation cost of Rs. 11,000/-. Unfortunately, during the pendency of the complaint, patient died.

6.The opposite parties no. 1, no. 2 and no. 3 have contested the complaint by filing written version stating that the complainant never visited the opposite party no. 2 with the complaint of abdominal pain. It is admitted that the patient was admitted and delivered a baby boy at 2.25 a.m. on 01.01.2010 and was discharged on 03.01.2010. It is further submitted that at the time of cesarean section all surgical instruments, gauges, swabs and mops were duly counted by theoperation theatre nurse and duly displayed on the board in the operation theatre and aftersecuring bleeding point and controlling bleeding, the instruments and gauges were duly counted by the scrub nurse and only after confirmation from the scrub nurse, the abdomen was closed inlayers. It is also stated that no cause of action arose against the hospital and the doctors.

7.Learned counsel for the hospital submitted that the hospital is a well equipped and registered centre with the appropriate government authorities and the doctors are highly qualified and experienced doctors in their respective fields. He further submitted that there wasno medical negligence on the part of the hospital and the doctors and the deceased patient never visited them with the complaint of abdominal pain and that had she visited the hospital, shewould have been properly treated. It is further submitted that only in the month of April, 2010 she visited for insertion of intra-uterine contraceptive device and the complaint has no merit and the same is liable to be dismissed.

8.Learned counsel for the legal heirs of the complainant submitted that the deceased patient was under continuous treatment of Dr. Mrs. Raj Kohli, opposite party no. 2 and regularly visited for checkup and consultation. He further argues that it was the solemn duty of the opposite parties no. 2 and 3 to perform the operation with utmost sincerity, devotion and carefulness and ensure that no foreign body

was left inside her abdomen during the operation and after the CTscan finding of foreign body in the abdomen of the deceased patient, she was admitted in City Hospital on 29.04.2010 with a case of intermittent pain in left upper abdomen. He further submits that the deceased patient was operated on 30.04.2010 at Sir Ganga Ram Hospital and aforeign body (abdominal sponge) was retrieved from her abdomen by the doctors. He further argues that the hospital has not taken any defence that the swab has not been left in the abdomen.

9.The main question for consideration is whether there was any negligence on the part ofthe hospital and the doctors.

10.Firstly, we would like to quote the report of the Delhi Medical Council on the matter dated 02.01.2012 which reads as under:
“In light of the observations made hereinabove, it is the decision of the DelhiMedical Council that Dr. Raj Kohli failed to exercise reasonable degree of skill,knowledge and care which is expected of an ordinary prudent doctor, in thetreatment of the patient Smt. Sonika Kapoor. The Delhi Medical Council, therefore,directs that the name of Dr. Raj Kohli be removed from State Medical Register ofDelhi Medical Council for a period of one month.
The Delhi Medical Counsel, however, clarifies that the acts or omissions on thepart of Raj Kohli in the management of this patient were not reckless or patently wanton to invite criminal liability.
The Delhi Medical Council further holds that no act of negligence can be attributedon the part of Dr. Vijay Kohli, Medical Superintendent, Kohli Nursing Home and Maternity Centre.
It is observed that the decision of Delhi Medical Council holding the above nameddoctor guilty of medical negligence is final, however the order directing theremoval of name from the State Medical Register of Delhi Medical Council shallcome into effect after 30 days from the date of the order.”
(As per State Commission’s Order dated 14.11.2019)
As per the legal heirs of the complainant, this was upheld by the Medical Council of Indiain its Order dated 01.06.2012.

11.Considering the facts that the deceased patient was taking the treatment regularly for pre-natal; prior to that, the deceased patient

had no problem of abdominal pain and it occurred onlyafter the ceasare an operation; also the fact that the hospital has not produced any cogentevidence to prove that the swab was not left at the time of cesarean operation and has not givenany specific reply to the said allegation and also considering the report of Delhi MedicalCounsel, we are of the view that the hospital and doctors have failed to exercise reasonable degree of skill, knowledge and care which is expected of an ordinary prudent doctor in the treatment of the deceased patient.

12.As far as the quantum of compensation is concerned, it is seen that the lady was a software professional. After the delivery she underwent abdomen pain and distress on account of health.It is averred in the written statement of the hospital that “although no direct association can belinked to the death of the complainant during the pendency of the complaint on 16/9/2016 as thecomplainant or her family members had never thought that she would die as a consequence ofthe negligence of the respondent/appellants, but in fact she had died as a result of her collapsing due to sudden fall in blood pressure and never regained consciousness. Thus, her death was indirectly a consequence of the negligence of the respondent doctors/appellants as she was gripped with various ailments during the above said period.”

13.In view of the above, we are of the view that the compensation granted by the State Commission is just and reasonable and we find no illegality or infirmity in the Order dated 14.11.2019 of the State Commission warranting our interference.

14.The appeal fails and the same is dismissed. Pending I.A., if any, stands disposed of with this Order.