NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 1934 OF 2018

1. JAGDISH K. SHARMA & ANR.
R/o 1986, Ground Floor, Sushant Lok - 1C,
GURUGRAM - 122001
HARYANA
2. MRS. ANITA SHARMA
R/o 1986, Ground Floor, Sushant Lok - 1C,
GURUGRAM - 122001
HARYANA .....Complainant(s)

Versus

1. MEDANTA, THE MEDICITY & ANR.
(Through Chairman and MD - Dr. Naresh Trehan) Sector - 38,
GURUGRAM - 122001
HARYANA
2. DR. BALBIR SINGH - CARDIOLOGIST MEDENTA
The Medicity, Sector-38,
GURUGRAM - 122001
HARYANA .....Opp.Party(s)

BEFORE:

HON'BLE MR. BINOY KUMAR,PRESIDING MEMBER

FOR THE COMPLAINANT : APPEARED AT THE TIME OF ARGUMENTS:
FOR THE COMPLAINANTS : MR. RAKESH TANEJA, ADVOCATE
WITH THE COMPLAINANTS IN PERSON

FOR THE OPP. PARTY : APPEARED AT THE TIME OF ARGUMENTS:
FOR THE OPP. PARTIES : MS. SHYEL TREHAN, ADVOCATE
MS. SHIVALIKA RUDRABATLA, ADVOCATE
DR. AHMAR NAUMAN TARIQUE

Dated : 14 May 2024

ORDER

1. The present Complaint has been filed under Section 21(a)(i) of the Consumer Protection Act, 1986 by Dr. Jagdish K. Sharma and his wife – Mrs. Anita Sharma (in short, the Complainant No. 1 and the patient respectively) against Global Health Pvt. Ltd., Medanta; The Medicity and Dr. Balbir Singh (Opposite Parties Nos. 1 to 3 respectively) for the alleged gross medical negligence resulting in Vascular Parkinsonism, Pseudobulbar Palsy and Bulbar Palsy, etc.
2. The facts leading to filing of the present Consumer Complaint are that on 04.07.2016 at 1603 hrs, as advised by Dr. Balbir Singh (Opposite Party No. 3), the patient was admitted at Medanta, The Medicity (Opposite Party No. 2) for planned and Elective Procedure of Pacemaker Implantation. After detailed examination, no abnormality on

the patient was detected by the doctor and the nurse on duty. The medical history of the patient that she was a high-risk case for development of a stroke and was on Pradaxa 150mg twice per day was informed to the Opposite Party No. 3, considering which, the Opposite Party No. 3 had kept the patient off Pradaxa for 48 hours. On 05.07.2016 at 2.58 pm, the patient underwent Pacemaker Implantation at Opposite Party No. 2. On 06.07.2018, it was informed to the Complainant No. 1 that the patient was under medical supervision in Cardiology ICU and would be discharged on the same day after the Complainant No. 1 cleared the bills. It was alleged that upon arrival at Medanta Hospital, the Complainant No. 1 was denied access to the Cardiology ICU to see his wife unless he cleared the bills first. Hours later, when finally granted entry, he found his wife in the ICU unconscious and unattended, suffering from a life-threatening stroke. Being a Cardiologist himself, he had to intervene to provide emergency care instructions and the delay in treatment due to hospital negligence resulted in severe consequences for his wife, including paralysis. It was further alleged that the hospital's failure to restart the patient's medication i.e. Pradaxa much earlier after surgery and the irresponsible conduct of the Opposite Parties towards the patient further aggravated the situation due to which, the patient suffered a stroke leading to paralysis. On 08.07.2016, ultimately, the patient was discharged. Despite complaints to the Hospital administration, including a letter to Dr. Naresh Trehan, Chairman & MD, no satisfactory response was received. It was further alleged that due to unhygienic conditions in the hospital, the patient developed pacemaker infection on 29.07.2016. On meetings of the Complainant No. 1 with Dr. Naresh Trehan, Chairman and MD and the Medical Superintendent of the Hospital, they denied any negligence on the part of their Doctors or Hospital. Alleging medical negligence causing stroke and ultimately paralysis to the patient, the Complainants filed the present Consumer Complaint seeking total compensation to the tune of Rs. 2,78,24,904/- with interest at the rate of 12% p.a. from the date of Complaint till realisation.

3. The Opposite Parties, in their reply, denied negligence on their part and stated that the patient was provided for as per her clinical needs and in accordance with standard of care and protocol. The treatment to the patient was given by a team of expert doctors including the Opposite Party No. 3. It was stated that the stroke suffered by the patient on 06.07.2016 was the fourth stroke suffered by the patient, which was attended to very swiftly and the damage caused to the patient was not due to the stroke. The Complainant No. 1 being a Cardiologist himself, a detailed discussion regarding the pacemaker implantation including the management of Pradaxa was conducted. It was also informed to the Complainants that the patient being a known case of recurrent stroke, Tab. Pradaxa will be temporarily discontinued and will be started after 24 hours of the conduct of the procedure. On the date of pacemaker implantation, pre-operative relevant blood investigations were conducted which reported the patient fit and normal to undergo implantation. The Single Chamber Pacemaker implantation was conducted by the Opposite Party No. 3, which was uncomplicated. Post-operative protocol was followed to manage the patient. Chest X-ray and ECG were conducted, which showed normal report post-operation. On 06.07.2016, in the morning, the patient was conscious and was examined. She was showing expected improvements. As per protocol at 1.00 pm, Tab. Pradaxa, which was on hold for 24 hours of the procedure, was administered. However, at around 3.10pm, when the discharge formalities were completed, the patient suffered a sudden stroke, in response to which, CT Brain Plain and CT Angio Brain and Neck

was conducted on urgent basis, the findings of which revealed that the stroke to the patient in 2014 and January, 2016 had caused damage to the brain. It was also suggestive of the fact that the patient was prone to atherosclerosis and such significant stenosis at such an aggressive rate cannot be solely due to temporary discontinuation of Tab. Pradaxa for a very limited period. An informed consent was given by the Complainant No. 1 at 3.50pm for procedure of endovascular mechanical thrombectomy on the patient to prevent major infarct. The patient underwent a successful procedure by 5.30pm. The patient was, thereafter, shifted to ICU for continued monitoring. Tab. Pradaxa was advised to start. On 07.07.2016, finding the patient conscious and oriented and after getting the required examination, she was shifted to a room and she completely recovered from the stroke. On 08.07.2016, the patient was discharged from the Hospital in a stable condition with follow-up advice. It was stated that except on 14.07.2016, the Complainants, thereafter, did not come-up for further follow up. It was stated that the Complainants filed the allegations leveled against the Opposite Parties are misconceived and as such the Complaint is frivolous and baseless and prayed for its dismissal.

4. Heard the learned counsel for both the sides.

5. The basic issue to be looked into in this Complaint is whether there was any negligence on the part of the hospital and the treating doctors on account of (a) delayed administration of Pradaxa (b) whether the ICU staff of the hospital should have been more attentive in attending to the patient.

6. I have gone through the voluminous record and also heard the arguments of the learned Counsel for both parties. Since the issue of administration of Pradaxa being technical, I deemed it fit to seek expert opinion from a medical board comprising of Specialists of All India Institute of Medical Sciences (AIIMS), New Delhi to examine this matter as well as the issue of any negligence on the part of the ICU Doctor / Nursing staff. The note sent to AIIMS is reproduced herein under:

Note seeking Expert Opinion

The learned Counsel for the Complainant argued that there was deficiency on the part of the Hospital and the Cardiologist on basically two grounds. The first ground taken was that the patient had a history of heart problem and was earlier prescribed Pradaxa to be taken daily. However, the same was not given to her after the pacemaker implantation, which was done on 05.07.2016 at around 3pm. It was argued that the patient should have been given this medicine shortly after this procedure. The patient had Pradaxa on 03.07.2016. On instruction of the Cardiologist, the patient was off Pradaxa for 48 hours. Instead, the medicine was given only at 1pm on the next day which is 06.07.2016, by which time, the patient had suffered a stroke, resulting in the patient suffering from Vascular Parkinsonism & Pseudobulbar Palsy and Bulbar Palsy. This could have been avoided if Pradaxa drug was administered, much earlier after the procedure.

The second ground taken by the Counsel for the Complainant was that there was no proper care in the concerned ICU of the hospital as it was the patient's husband, who himself being a Doctor, had found that the patient suffered cardiac arrest in the ICU in

the afternoon of 06.07.2016, a day after the procedure and on his instructions, she was taken to the CT wing for undergoing CT tests and thereafter, Mechanical Thrombectomy was performed and after that admitted to the Neuro ICU. She was discharged on 08.07.2016. The Counsel for the Complainant and the Complainant No. 1 submitted that if the Complainant No. 1 / husband of the patient would not have come at around 3.30 pm to take away the patient on discharge after having done necessary formalities, then the patient would have died in the ICU as there was nobody to take care of her in the ICU. He referred to the discharge summary, which is placed at page no. 107 of the main paperbook, where it has been noted that "*while leaving at 3.30pm, the relatives notices left sided weakness and inability to speak. ...*". So the contention of the Complainant is that this fact was not noticed by the Nursing staff or the Duty Doctor, who should have attended to the patient immediately, thereby averting such stroke.

The Counsel for the Hospital submitted that there was no negligence on the part of the Doctor and the Hospital and that not giving Pradaxa was a conscious decision of the treating Doctor and therefore, this ground cannot be taken at a delayed stage that if Pradaxa would have been given earlier the occurrence of stroke could have been avoided. She further argued that there was no negligence on the part of the hospital as on seeing the symptoms immediately of the patient, she was promptly attended to in the CT wing of the hospital where CT and Mechanical Thrombectomy were done on an urgent basis, which could not have been done faster.

The issue to be looked after by the Expert team of the AIIMS, New Delhi is whether there was any negligence by the hospital and the treating doctors on account of:

a. delayed administering of Pradaxa, which would have avoided the stroke;
b. whether the ICU staff should have been more attentive in attending to the patient; and
c. or any other point, which the Expert Committee may find on the part of the Opposite Parties, which might be construed as negligence on their part."

7. On both the counts, the expert opinion of AIIMS came to the conclusion that there was no medical negligence on the part of the hospital and the treating team. The detail of the medical board opinion is reproduced below:

"The medical board is of opinion that there was no medical negligence by the hospital or treating team. In response to the specific questions asked:

a. There was no delay in administering Pradaxa after the permanent pacemaker implantation.

b. According to the available hospital records and timelines the response of the ICU staff and treating team was optimal.

c. None."

8. Considering that the main argument of the learned Counsel for the Complainants that the administration of Pradaxa or rather non-administration and the same not having been found to be relevant leading to the unfortunate stroke suffered by the patient as per the

Expert Report, I do not see any further observation by me in this regard and therefore to this extent, the argument of the Complainants fails.

9. The second argument of the learned Counsel for the Complainants was about the poor post-operative care in the ICU. It is the fact that the patient did suffer a stroke while she was at the stage of being discharged from the ICU of the hospital. The Complainants have submitted that there was no prompt action taken to prevent such episode. However, on perusal of the record, it is seen that there was prompt action taken by the staff and the doctors in shifting the patient to the Cardiac Cath Lab, where she underwent mechanical thrombectomy and was discharged two days later on 08.07.2018.

10. I understand the anxiety of the Complainant No. 1, who is the husband of the Complainant No. 2 and who himself is a Cardiologist. On reading the Complaint, it becomes very evident and at times he could not control himself from giving directions to the hospital staff / doctors. It is not the case of the Complainant No. 1 that the Doctors at the hospital were really incompetent as he himself had chosen the hospital after due care and the patient had even earlier been admitted in the hospital for certain interventions, which was done to the satisfaction of the Complainant No. 1. It has to be kept in mind that once the patient is admitted to the hospital, it should be left to the treating doctors to decide on the process and procedure of treatment and also give certain space to them in performing their duties. No doubt, the Complainant No. 1 is a Cardiologist, however, interfering with the treatment and casting doubt on the treating doctors, in my opinion, after going through the record is not warranted and appears to be an over-reaction. It is unfortunate that the patient suffered a cardiac stroke and had to suffer thereafter. However, there is no proof or co-relation shown in the Complaint or argued that the cardiac arrest was the result of the implantation of the pacemaker. Since the patient was a chronic heart patient and having gone through various interventions in the past, the probability of such stroke cannot be ruled out. It is to the credit of the hospital that prompt action post-stroke was taken and the patient survived.

11. I would like to put reliance on a few Orders of the Hon'ble Supreme Court. In **Jacob Mathew vs. State of Punjab & Anr.**, Criminal Appeals Nos. 144-45 of 2004, decided on 05.08.2005, it was observed as below:

> 24. The classical statement of law in Bolam's case has been widely accepted as decisive of the standard of care required both of professional men generally and medical practitioners in particular. It has been invariably cited with approval before Courts in India and applied to as touchstone to test the pleas of medical negligence. In tort, it is enough for the defendant to show that the standard of care and the skill attained was that of the ordinary competent medical practitioner exercising an ordinary degree of professional skill. The fact that a defendant charged with negligence acted in accord with the general and approved practice is enough to clear him of the charge. Two things are pertinent to be noted. Firstly, the standard of care, when assessing the practice as adopted, is judged in the light of knowledge available at the time (of the incident), and not at the date of trial. Secondly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that point of time on which it is suggested as should have been used.

25. A mere deviation from normal professional practice is not necessarily evidence of negligence. Let it also be noted that a mere accident is not evidence of negligence. So also an error of judgment on the part of a professional is not negligence per se. Higher the acuteness in emergency and higher the complication, more are the chances of error of judgment. At times, the professional is confronted with making a choice between the devil and the deep sea and he has to choose the lesser evil. The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Which course is more appropriate to follow, would depend on the facts and circumstances of a given case. The usual practice prevalent nowadays is to obtain the consent of the patient or of the person incharge of the patient if the patient is not be in a position to give consent before adopting a given procedure. So long as it can be found that the procedure which was in fact adopted was one which was acceptable to medical science as on that date, the medical practitioner cannot be held negligent merely because he chose to follow one procedure and not another and the result was a failure.

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28. A medical practitioner faced with an emergency ordinarily tries his best to redeem the patient out of his suffering. He does not gain anything by acting with negligence or by omitting to do an act. Obviously, therefore, it will be for the complainant to clearly make out a case of negligence before a medical practitioner is charged with or proceeded against criminally. A surgeon with shaky hands under fear of legal action cannot perform a successful operation and a quivering physician cannot administer the end-dose of medicine to his patient.

…xxx…

30. The purpose of holding a professional liable for his act or omission, if negligent, is to make the life safer and to eliminate the possibility of recurrence of negligence in future. The human body and medical science, both are too complex to be easily understood. To hold in favour of existence of negligence, associated with the action or inaction of a medical professional, requires an in-depth understanding of the working of a professional as also the nature of the job and of errors committed by chance, which do not necessarily involve the element of culpability.

In another case, **Kusum Sharma & Ors. Vs. Batra Hospital & Medical Research Centre & Ors.**, Civil Appeal No. 1385 of 2001, decided on 10.02.2010, the Hon'ble Supreme Court observed as below:

94. On scrutiny of the leading cases of medical negligence both in our country and other countries specially United Kingdom, some basic principles emerge in dealing with the cases of medical negligence. While deciding whether the medical professional is guilty of medical negligence following well known principles must be kept in view:-

I. Negligence is the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

II. Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

III. The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.

IV. A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.

V. In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of other professional doctor.

VI. The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence.

VII. Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.

VIII. It would not be conducive to the efficiency of the medical profession if no Doctor could administer medicine without a halter round his neck.

IX. It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessary harassed or humiliated so that they can perform their professional duties without fear and apprehension.

X. The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurizing the medical professionals/hospitals particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.

XI. The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients.

> The interest and welfare of the patients have to be paramount for the medical professionals.

In **Vinod Jain vs. Santokba Durlabhji Memorial Hospital,** (2019) 12 SCC 229, the Hon'ble Supreme Court observed as under:

> "9. A fundamental aspect, which has to be kept in mind is that a doctor cannot be said to be negligent if he is acting in accordance with a practice accepted as proper by a reasonable body of medical men skilled in that particular art, merely because there is a body of such opinion that takes a contrary view *(Bolam v. Friern Hospital Management Committee)*. In the same opinion, it was emphasised that the test of negligence cannot be the test of the man on the top of a Clapham omnibus. In cases of medical negligence, where a special skill or competence is attributed to a doctor, a doctor need not possess the highest expert skill, at the risk of being found negligent, and it would suffice if he exercises the ordinary skill of an ordinary competent man exercising that particular art. A situation, thus, cannot be countenanced, which would be a disservice to the community at large, by making doctors think more of their own safety than of the good of their patients."

In **Bijoy Sinha Roy vs. Biswanath Das & Ors.**, (2018) 13 SCC 224, the Hon'ble Supreme Court observed as under:

> 13. In Martin F. D'Souza v. Mohd. Ishfaq, (2009) 3 SCC 1, this Court observed that uncalled for proceedings for medical negligence can have adverse impact on access to health. While action for negligence can certainly be maintained, there should be no harassment of doctors merely because their treatment was unsuccessful. This Court directed that the Consumer Fora must proceed with any complaint only after another competent doctor or Committee of doctors refers that there was a prima facie case. In *V. Krishan Rao versus Nikhil Super Speciality Hospital (2010) 5 SCC 513, para 33*, this direction was however, held to be inconsistent with the binding judgment in Jacob Mathew (supra). It was held that there was obvious jurisprudential and conceptual differences between the cases of negligence of civil and criminal matters. Protection of the medical professionals on the one hand and protection of the consumer on the other are required to be balanced.

12. In view of the aforesaid discussion, I do not find any medical negligence on the part of the Opposite Parties. Accordingly, the Complaint is dismissed.

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BINOY KUMAR
PRESIDING MEMBER