SUPREME COURT OF INDIA

P.G.Inst.of Medical Education & Research

Vs.

Jaspal Singh

C.A.No.7950 of 2002

(D.K. Jain and R.M. Lodha JJ.)

29.05.2009

JUDGEMENT

R.M. Lodha, J.

1. In this appeal by special leave, the appellant, Post Graduate Institute of Medical Education and Research, Chandigarh (for short, `PGI' ) has challenged the order dated September 29, 2000 passed by the National Consumer Disputes Redressal Commission (for short, "National Commission"). By its order, the National Commission dismissed the appeal filed by PGI under Section 21 of the *Consumer Protection Act, 1986* (for short, `Act, 1986') and affirmed the order passed by the State Consumer Disputes Redressal Commission, Chandigarh (for short, `State Commission' ) whereby it directed the PGI to pay compensation in the sum of rupees two lacs to the respondents 1 and 2 herein (for short, `the complainants') and cost of Rs. 5,000/-.

2. The brief facts of the case are thus:

> "On March 30, 1996, Smt. Harjit Kaur (wife of complainant No. 1 and mother of complainant No. 2) received accidental burns while making tea on the stove. She sustained 50% TBSA III burns involving both upper limbs, part of trunk and most of both lower limbs. Smt. Harjit Kaur was taken to Daya Nand Medical College and Hospital, Ludhiana immediately where she responded to the treatment well. She remained admitted in Daya Nand Medical College and Hospital upto April 19, 1996.
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> Since the treatment at Daya Nand Medical College and Hospital was expensive, the complainant No. 1 decided to shift his wife to PGI for further treatment. On April 19, 1996, Smt. Harjit Kaur was admitted in PGI, Chandigarh. Dr. Varun Kulshrestha, Senior Resident Doctor, Department of Plastic Surgery attended to her.
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> The condition of Smt. Harjit Kaur started improving at PGI. On May 15, 1995, she was transfused A+ blood which was her blood group. On May 20, 1996, the patient was transfused B+ blood group in the afternoon although her blood group was A+. On

the night of May 20, 1996, the urine of the patient was reddish like blood and the attendant nurse was informed accordingly. As to the bad luck of Smt. Harjit Kaur, on the next day, i.e., May 21, 1996 again one bottle of B+ blood group was transfused although her blood group was A+. Because of transfusion of mismatched blood, the condition of Smt. Harjit Kaur became serious; her hemoglobin levels fell down to 5mg. and urea level went very high.

Later on, it transpired that due to transfusion of mismatched blood, the kidney and liver of the patient got deranged. The complainant No. 1 made a written complaint to the Head of the Department of Plastic Surgery for mismatched transfusion of blood to the patient whereupon an inquiry was conducted through senior doctor and wrong transfusion of the blood to the patient was found.

The condition of Smt. Harjit Kaur started deteriorating day by day and she ultimately died on July 1, 1996. In the complaint before the State Commission, the complainants alleged that the death of Smt. Harjit Kaur was caused due to the negligence of Dr. Varun Kulshrestha and the medical staff at PGI; that there was negligence in the discharge of service by the PGI and its doctors and they claimed damages to the tune of rupees nine lacs for the loss of life of Smt. Harjit Kaur."

3. Dr. Varun Kulshrestha filed reply to the complaint. He principally set up the plea that although the patient was transfused wrong blood but it was not due to any negligence on his part. He stated that due to the care exercised by him and the other nursing staff, the patient became alright and her hematological and biochemical parameters became almost normal and she recovered from mismatched blood transfusion. It was stated in his reply that Smt. Harjit Kaur died of septicemia and not by mismatched blood transfusion and, therefore, the complaint was liable to be dismissed.

4. Insofar as PGI is concerned, no reply to the complaint was filed separately but they adopted the reply filed by Dr. Varun Kulshrestha. The parties filed their respective affidavits and also produced before the State Commission the summary report and the documents concerning treatment of Smt. Harjit Kaur.

5. The State Commission after hearing the parties and upon consideration of the materials made available to it, came to the conclusion that there was serious deficiency and negligence on the part of PGI and its attending doctor(s)/staff in transfusion of wrong blood group to the patient which resulted in death of Smt. Harjit Kaur. The State Commission in its order dated February 1, 2000 held that PGI was liable to pay sum of rupees two lac to the complainants out of which 3/4th was to be put in the fixed deposit in favour of the minor son Amandeep Singh (complainant no. 2) and 1/4th amount to be paid to the complainant No. 1. The State Commission also awarded the cost of Rs. 5000/-.

6. PGI challenged the order of the State Commission in appeal before the National Commission but without any success.

7. The learned counsel for PGI raised the same contentions before us which were raised before the National Commission that the cause of death of Smt. Harjit Kaur was Septicemia and not mismatched blood transfusion. He would submit that Smt. Harjit Kaur recovered from mismatched blood transfusion given to her on 20th and 21st May, 1996; her hemoglobin level was brought up and her vital organs started functioning normal. The learned counsel would submit that Smt. Harjit Kaur died due to burn injuries and the other connected reasons arising out of said injury and not due to mismatched blood transfusion and, therefore, no negligence can be attributed to the hospital and the attending doctor/s. He relied upon two decisions of this Court namely (i) *Jacob Mathew v. State of Punjab*[1] *and Another and (ii) Martin F D'Souza v. Mohd. Ishfaq.*[2]

8. The term negligence is often used in the sense of careless conduct. Way back in 1866 in *Grill vs. General Iron Screw Collier Co.*[3], Wills J. referred to negligence as " ..... the absence of such care as it was the duty of the defendant to use."

9. Browen L.J. in *Thomas v. Quatermaine*[4] stated, " ...idea of negligence and duty are strictly correlative, and there is no such thing as negligence in the abstract; negligence is simply neglect of some care which we are bound by law to exercise towards somebody".

10. In *Donoghue v. Stevenson*[5], Lord Macmillan with regard to negligence made the following classic statement:

> "The law takes no cognizance of carelessness in the abstract. It concerns itself with carelessness only where there is a duty to take care and where failure in that duty has caused damage. In such circumstances carelessness assumes the legal quality of negligence and entails the consequences in law of negligence. The cardinal principle of liability is that the party complained of should owe to the party complaining a duty to take care, and that the party complaining should be able to prove that he has suffered damage in consequence of a breach of that duty."

11. In Jacob Mathew1 this Court while dealing with negligence as tort referred to the Law of Torts, Ratanlal and Dhirajlal, (24th Edn., 2002 edited by Justice G.P. Singh) and noticed thus:

> "Negligence is the breach of a duty caused by the 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. Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or property.
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> ... the definition involves three constituents of negligence: (1) A legal duty to exercise due care on the part of the party complained of towards the party complaining the former's conduct within the scope of the duty; (2) breach of the said duty; and (3)

> consequential damage. Cause of action for negligence arises only when damage occurs; for, damage is a necessary ingredient of this tort."

12. Insofar as civil law is concerned, the term negligence is used for the purpose of fastening the defendant with liability of the amount of damages. To fasten liability in criminal law, the degree of negligence has to be higher than that of negligence enough to fasten liability for damages in civil law.

13. In *Syed Akbar v. State of Karnataka*[6], this Court dealt with in details the distinction between negligence in civil law and in criminal law. It has been held that there is a marked difference as to the effect of evidence, namely, the proof, in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the Court, as a reasonable man, beyond all reasonable doubt.

14. In *Bhalchandra Waman Pathe v. State of Maharashtra*[7], this Court held that while negligence is an omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

15. With regard to the professional negligence, it is now well settled that a professional may be held liable for negligence if he was not possessed of the requisite skill which he professed to have possessed or, he did not exercise, with reasonable competence in the given case the skill which he did possess. It is equally well settled that the standard to be applied for judging, whether the person charged has been negligent or not; would be that of an ordinary person exercising skill in that profession. It is not necessary for every professional to possess the highest level of expertise in that branch which he practises.

16. In Jacob Mathew1 as well as Martin F D'Souza2, this Court quoted with the approval the opinion of MacNair, J in *Bolam v. Friern Hospital Management Committee*[8]:

> "[W]here you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill ... It is well-established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art."

17. In *Hucks v. Cole*[9], Lord Denning stated that a medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.

18. Lord President (Clyde) in *Hunter v. Hanley*[10] observed that the true test for establishing negligence in diagnosis or treatment on the part of a doctor is whether he has been proved to be guilty of such failure as no doctor of ordinary skill would be guilty of, if acting with ordinary care.

19. In their classic work, `On Professional Negligence (fifth edition)', Jackson & Powell state that mistakes made in the course of treatment may be purely physical; purely intellectual or they may fall somewhere between the two. Whichever form the mistake takes, there are two separate questions to consider: (i) whether the defendant made a "mistake"; (ii) if so, whether the mistake was one which a reasonably careful and skilful medical practitioner would not have made. The claimant must, of course, succeed on both questions in order to establish negligence.

20. It needs no emphasis that in the medical negligence actions, the burden is on the claimant to prove breach of duty, injury and causation. The injury must be sufficiently proximate to the medical practitioner's breach of duty. In the absence of evidence to the contrary adduced by the opposite party, an inference of causation may be drawn even though positive or scientific proof is lacking.

21. `The Physiological Basis of Medical Practice (Eight Edition)' by Charles H. Best and Norman B. Taylor in Chapter 26 deals with transfusion; blood groups. In respect of incompatible transfusions, while dealing with its effects, it is stated that if blood of the wrong (incompatible) ABO blood group is transfused, a hemolytic transfusion reaction usually results red cells are destroyed and there may be jaundice with hemoglobinemia and hemoglobinuria. Chills, fever and shock may occur. Renal insufficiency may ensue believed by some to be due to a reduced blood flow through the glomeruli.

22. The patient, Harjit Kaur, got burn injuries to the extent of 50% on March 30, 1996. She was initially treated at Daya Nand Medical College and Hospital, Ludhiana for about 20 days. Her condition improved satisfactorily at Daya Nand Medical College and Hospital. She was admitted to PGI, Chandigarh on April 19, 1996.

> The available material placed before the State Commission shows that at the time of her admission, Smt. Harjit Kaur was taking medicine orally and passing urine; 75% of eschar was removed by May 1, 1996. Her condition had substantially improved at PGI before May 20, 1996 and she had no signs of septicemia. It was only after mismatched blood transfusion B+ on two consecutive days, i.e., 20th and 21st May, 1996, that she became anemic (her hemoglobin level was reduced to 5 per gram) and her kidney and liver were deranged. It is true that her hemoglobin was brought up in few days but her condition otherwise got deteriorated. Although she survived for about 40 days after mismatched blood transfusion but from that it cannot be said that there was no causal link between the mismatched transfusion of blood and her death. Wrong blood transfusion is an error which no hospital/doctor exercising ordinary care would have made. Such an error is not an error of professional judgment but in the very nature of things a sure instance of medical negligence. The hospital's breach of

duty in mismatched blood transfusion contributed to her death, if not wholly, but surely materially. Mismatched blood transfusion to a patient having sustained 50% burns by it'self speaks of negligence. Therefore, in the facts and circumstances of the case, it cannot be said that the death of Smt. Harjit Kaur was not caused by the breach of duty on the part of the hospital and it's attending staff.

23. The State Commission observed:

> "..... that there has been serious deficiency and negligence on the part of the PGI and its attending doctor(s)/staff for transfusing wrong blood group to the patient which caused death of the wife of complainant No. 1. Mismatching of blood has been confirmed by the Senior Resident in the Death Summary also (Annexure C/7). Once the patient is brought to the PGI or any other Institute of Health Care, the back-ground/History, if any, for example that the patient was maltreated by the husband, does not absolve the Hospital from its professional obligation....."

24. Affirming the aforesaid view of the State Commission, the National Commission held thus:

> "..... It is seen that the patient's kidney was damaged and the blood level reached to 100 gms. percentage, hemoglobin came down to 5 mg. after the mismatched blood transfusion was given by the Doctor in the said Hospital. It was only after the Complainant gave the written complaint to the hospital regarding the wrong transfusion of blood given to the patient, an inquiry was made and it was found correct. The damage control treatment started only after the written complaint was given by the complainant. Though it is argued by the Counsel for the Appellant that the percentage levels were brought down to normal, it is very clear to us that the internal imbalances of liver and kidney functioning and deteriorating hemoglobin levels started only after the mismatched blood transfusion was given. Though septicemia has been written as the ultimate cause of death, the patient's health took a nose dive only after wrong blood was given to her and this is clearly negligence on the part of the Doctors of the Hospital which the appellants cannot disown or absolve themselves...."

25. We concur with the view of the National Commission as it does not suffer from any error of law.

26. In the result, the appeal fails and is dismissed with costs which we quantify at Rs. 20,000/-.

[1](2005) 6 SCC *[2](2009) 3 SCC* *[3](1866) L.R. 1 C.P. 600* *[4](1887)18 Q.B.D. 685*
[5](1932)A.C. 562 *[6](1980) 1 SCC 30* *[7]1968 ACJ 38* *[8](1957) 2 All ER 118(QBD)*
[9](1968) 118 New LJ 469 *[10]1955 SLT 213*