

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7620 OF 2014
(Arising out of S.L.P.(C) No.35632 OF 2013)

ALFRED BENDDICT AND ANOTHER Appellant(s)

Versus

M/S. MANIPAL HOSPITAL, BANGALORE AND Respondent(s)
OTHERS

WITH

CIVIL APPEAL NO.7621 OF 2014
(Arising out of S.L.P.(C) No.22001 of 2014(CC NO. 12025)

M/S. MANIPAL HOSPITAL, BANGALORE Appellant(s)
AND OTHERS

Versus

ALFRED BENEDICT AND ANOTHER Respondent(s)

ORDER

We have heard learned counsel for the parties.

Delay condoned.

Signature Not Verified

Digitally signed by

Leave granted.

Sukhbir Paul Kaur
Date: 2014.08.14
19:14:01 IST
Reason:

1

These two appeals since filed against the common impugned order passed by the National Consumer Disputes Redressal Commission, New Delhi (in short, "the National Commission"), we took up these appeals together.

In Civil Appeal arising out of SLP(C)CC No. 12025 of 2014, the appellant - Manipal Hospital,

Bangalore assailed order dated 22.5.2013 passed by the National Consumer Disputes Redressal Commission in First Appeal No. 275 of 2007 allowing a compensation of Rs.5,00,000/- to the complainant whereas in Civil Appeal arising out of Special Leave Petition(C) No.35632 of 2013, the complainants dissatisfied with the quantum of compensation awarded, preferred this appeal for increase in compensation.

The facts in a nutshell are that complainants took their two years old daughter, who was suffering from normal cold and cough, to Dr.Arvind Shenoy, Consultant

2

Pediatric, who after giving treatment for few days, advised for her admission to M/s. Manipal Hospital Bangalore (in short, "the Hospital"). On admission, she was taken to pediatric intensive care unit and diagnosed that she was suffering from cold and cough as well as from pneumonia. She was given intravenous fluids by inserting needle on the dorsal aspect of right wrist from August 26, 2002 to August 28, 2002. However, the baby developed gangrene initially in the finger tips, which spread to the portion of the hand below wrists joint, due to blockage of blood supply. It is contended on behalf of complainants (parents of the baby) that Hospital Doctors conducted Angiogram and confirmed that there was complete blockage of blood supply to the right forearm and they conducted operation on the right forearm to restore blood supply but the same could not be restored and, eventually, the daughter of the complainants had to

lose her right forearm. It is alleged that the complainants, thereafter, came to know that the needle

3

was wrongly inserted into artery instead of vein due to which the blood supply was blocked.

The complainants were shocked and highly dismayed at the conduct of the hospital Doctors, who had admitted their daughter for treating cough, cold and fever and now she was on the brink of losing her hand due to utter negligence of the Hospital and their Doctors. The complainants-Parents did not agree for the amputation as the child was merely two years old at that time. It is alleged that Dr. Vasudeva Rao, Vascular Surgeon of the Hospital, even threatened and forced the parents to give their consent for amputation on the pretext that any delay would endanger the life of child. Thus imputing the opposite parties i.e. the Hospital and the concerned Doctors, complainants filed a complaint before the Karnataka State Consumer Disputes Redressal Commission, Bangalore (in short, "the State Commission") praying for grant of compensation of Rs.One crore.

4

The State Commission, after considering the evidence, recorded a finding of negligence against the staff of the Hospital. The State Commission found that the Hospital has not produced any evidence or medical literature to show that the explanation given by the Hospital is acceptable. The State Commission also found that there was no clear-cut proof as to who is the main person who did the cannulation, due to which gangrene

developed and the right arm was amputated. Accordingly, the State Commission awarded compensation of Rs.5,00,000/-.

Against the order of the State Commission, two separate appeals have been filed, one by the Hospital challenging the order passed by the State Commission and another by the Complainants for enhancement of the compensation. Both appeals were disposed of by the National Commission by passing the common impugned order.

5

The National Commission re-appreciated the entire facts and the evidence on record. The National Commission has gone through the medical texts, literature and reviews and the way of treatment given to the child patient and came to the following conclusion:

"11. The opposite parties did not substantiate their ground to prove their contention that there was no negligence because it appears they have not followed the standards of medical practice when conducting the arterial cannulation on the patient.

12. The principles of what constitutes medical negligence is now well established by number of judgments of this commission as also the Hon'ble Supreme Court of India, including Jacob Mathew vs. State of Punjab, (2005) 6 SCC 1, and in Indian Medical Association Vs. V.P. Shantha, (1995) 6 SCC 651. One of the principles is that a medical practitioner is expected to bring a reasonable degree of skill and knowledge

6

and must also exercise a reasonable degree of care and caution in treating a patient (emphasis provided). In the

instant case, it is very clear from the facts stated in forgoing paragraphs that a reasonable degree of care was not taken in treatment of patient in PICU.

13. Medical records revealed that patient was on higher antibiotics and several IV medications. We have referred to medical literature, which clearly state that inadvertent intra-arterial injection in the radial artery was the main cause of gangrene of the hand or fingers. It is also to be noted that the Right little finger also showed signs of gangrene. Thus, there was also injury to ulnar artery. The swelling of the right hand is due to multiple pricks for IV lines and further damaging the arterial circulation. We, therefore, hold that due care was not taken during the invasive procedure i.e. Right radial arterial cannulation to baby Sandria in PICU which ultimately resulted in gangrene. This clearly

7

constitutes medical negligence and deficiency in service.

14. Therefore on the basis of medical texts and reviews on the arterial cannulation it is apparent, as stated earlier that not maintaining proper records of invasive procedures, charts, graphs is the deficiency in medical treatment. Apart from this the doctors from appellant hospital have not been able to explain how the gangrene of Right hand occurred. Therefore, the instant case is case of res ipsa loquitur where medical negligence is clearly established and for which Ops are liable. OP1 being employer is vicariously liable for the negligence committed by the doctors and the nursing staff working in the hospital."

The National Commission affirmed the quantum of compensation and directed to pay a further sum of Rs.10,000/- to the complainants towards the cost.

8

We have heard learned counsel for the parties and have gone through the finding recorded by the State

Commission as also the National Commission. We do not find any reason to differ with the finding that it was only because of the negligence on the part of the Hospital the two years' child developed gangrene resulting into amputation of her right arm.

However, taking into consideration the sufferings of the girl child, who is now 13 years of age, in our opinion the compensation awarded by the Commission is in a lower side. Learned counsel appearing for the complainant submitted that every year she has to incur battery charges for the artificial limb, which costs Rs.80,000/- annually. There cannot be any dispute that the girl will have to suffer throughout her life and has to live with artificial limb. Not only she would have to face difficulty in her education but would have also to face problem in getting herself married. Although the sufferings, agony and pain, which the girl child will carry

9

cannot be compensated in terms of money, but, in our view, a compensation of Rs.20,00.000/- (Rupees Twenty Lakhs only) will be just and reasonable in order to meet the problems being faced by her and also to meet future troubles that will arise in her life.

With the aforesaid reason, we allow the appeal filed by the complainants being Civil Appeal arising out of SLP(C)No.35632 of 2013 by enhancing the compensation to Rs.20,00.000/- (Rupees Twenty Lakhs only), which shall carry simple interest of 9 per cent per annum from the date of this order. It may be made clear that out of the total compensation, a sum of Rs.10 lakhs shall be

deposited in a long term fixed deposit in a nationalized bank so that this amount along with interest, that may accrue, shall take care of her future needs. The balance Rs.10 lakhs shall be utilized by investing Rs.5 lakhs in a short term fixed deposit in a nationalized bank so that this amount along with accrued interest will take care of

10

her needs in near future. The rest Rs.5 lakhs may be spent for her further medical treatment.

The aforesaid compensation amount shall be paid by owner of the Hospital within six weeks from today. It is needless to say that the amount, which has already been paid, shall be adjusted out of the amount awarded by this Court.

In the light of aforesaid order, the civil appeal filed by the Hospital, being appeal arising out of SLP(C)..CC No.12025 of 2014, is dismissed.

.....J.
(M.Y. EQBAL)

.....J.
(ARUN MISHRA)

New Delhi,
August 11, 2014.

ITEM NO.55 and
ITEM NO. 17

11
COURT NO.11

SECTION XVII

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

Petition(s) for Special Leave to Appeal (C) No(s).
35632/2013

(Arising out of impugned final judgment and order dated
22/05/2013 in FA No. 178/2008 passed by the National
Consumers Disputes Redressal Commission, New Delhi)

ALFRED BENDDICT AND ANR

Petitioner(s)

VERSUS

M/S MANIPAL HOSPITAL, BANGALORE AND ORS Respondent(s)
(With office report)
along with
ITEM NO. 17 : SLP(C) NO...../2014 (CC NO. 12025)

Date :11/08/2014 These petition was called on for hearing
today.

CORAM :

HON'BLE MR. JUSTICE M.Y. EQBAL
HON'BLE MR. JUSTICE ARUN MISHRA

For Petitioner(s)

SC 35632/2013 Mr. Joshna H. Samuel, Adv.
Ms. S. Mercy Deborah, Adv.
Mr. Tayenjam Momo Singh, Adv.
Ms. Daisy Hannah, Adv.

CC No.12025/2014 Mr. S.V. Joga Rao, Adv.
Ms. S. Radha Pyari, Adv.
Mr. B.S. Sharma, Adv.
Mr. Sureshan P., Adv.

For Respondent(s)

SC 35632 of 2013 Mr. S.V. Joga Rao, Adv.
Ms. S. Radha Pyari, Adv.
Mr. B.S. Sharma, Adv.
Mr. Sureshan P., Adv.

12

UPON hearing the counsel the Court made the following

O R D E R

Delay condoned.

Leave granted.

The appeal filed by the complainants being Civil
Appeal arising out of SLP(C) No. 35632 of 2013 is allowed.

The appeal filed by the Hospital being appeal
arising out of SLP(C) No. 22001 of 2014 (CC No. 12025 of
2014 is dismissed.

(Sukhbir Paul Kaur)
Court Master

(Veena Khara)
Court Master

(Signed order is placed on the file)