

[2023 LiveLaw \(SC\) 676](#)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

A.S. BOPANNA; J., PRASHANT KUMAR MISHRA; J.

CIVIL APPEAL NOS.3905, 3906 & 3907 OF 2016; AUGUST 16, 2023
UPENDRA KAUL versus S.C. MATHUR (DEAD) THR LRS. & ANR.

Medical Negligence - Complaint alleges that the angiography was carried out without proper medical equipment, and care was not taken by both the doctor and the hospital, leading to the death. The State Consumer Commission concluded that the Doctor wasn't negligent, but the hospital was guilty of administrative negligence due to the unavailability of necessary equipment during the angioplasty. The NCDRC upheld this decision and a subsequent review petition was also dismissed. Held, Complainants have not tendered evidence of any independent doctor regarding the treatment's appropriateness or any potential medical negligence by the Doctor and the Hospital. The observation as made by the NCDRC that the ventilator was connected belatedly, is not justified. Therefore, insofar as the adverse observations as contained in the impugned order against the Doctor as well as the Hospital, are set aside. The payment of compensation already made shall not reflect on the professional competence of the appellants.

For parties Mr. Shekhar Kumar, AOR Mr. Prashant Bhushan, AOR Mrs. Neha Rathi, Adv. Mr. Kamal Kishore Upadhyay, Adv. Mr. Anurag Tiwary, Adv. Ms. Shipra Mathur, AOR

Respondent-in-person

ORDER

Heard learned counsel for the parties and perused the appeals papers.

The respondents herein were before the State Consumer Disputes Redressal Commission (for short 'State Commission') alleging medical negligence on the part of the appellant herein. The respondents in the said complaint had alleged that in respect of the angiography conducted on the deceased by the appellant-Dr. Upendra Kaul, the same was carried out without medical equipment and care not being taken both by the Doctor as well as the Hospital and therefore the death had occurred. The State Consumer Disputes Redressal Commission (for short 'SCDRC') through its judgment dated 08.06.2006 having referred to the material available on record, had arrived at the conclusion that the appellant-Doctor cannot be held guilty of negligence. However, the Hospital is to be held guilty of administrative negligence since the PCPS Machine and ventilator support was not available in the hospital when the angioplasty was conducted. The NCDRC in the appeal filed by the appellant herein, has through its judgment dated 09.05.2012 upheld the finding and conclusion reached by the State Commission. The Review Petition filed was dismissed on 10.07.2012. It is in that light, the appellant is before this Court in this appeal.

Having heard learned counsel for the appellant, we have at the outset, perused the judgment passed by the State Commission. Though a detailed order has been passed, the matter lies in a narrow compass to consider as to whether in the circumstance as contended, the allegation of negligence against the Doctor as well as the Hospital would be justified.

At the outset, we note that after detailed discussion of the matter, the State Commission has categorically recorded that the Doctor cannot be held negligent and it is only the Hospital which is administratively negligent. In the order passed by the NCDRC in paragraph 19 thereto, the NCDRC in fact, has upheld the judgment of the State Commission which would in fact mean that the finding as against the Hospital alone was upheld and the allegation

against the appellant-Doctor has not been accepted even by the NCDRC. Hence it is evident that the appellant Doctor has not been indicted on the allegation of medical negligence.

However, a further observations as contained in the order of the NCDRC to refer to the PTCA Report so as to contradict the version of the appellant Doctor could give an impression as if certain adverse observations are made against the Doctor. It is in that light, it is necessary for us to take note of the same and take into consideration this aspect of the matter. While examining these aspects of the matter, it is evident from the record that except for allegations made in the complaint, the respondents-complainants have not tendered evidence of any independent Doctor to speak with regard to the manner in which the treatment was rendered and as to whether the procedure as followed by the appellant-Doctor and the Hospital was not the appropriate procedure and therefore as to whether there was medical negligence or deficiency of any sort. In the absence of the said evidence all that the State Commission was to examine was the evidence tendered on behalf of the appellant that is the version through the affidavit of Dr. Kaul, the appellant who is the appellant herein and the procedure that was followed. So far as the fact that the angiography was conducted and it was diagnosed that the angioplasty is to be performed and the same was performed as required, is not in dispute.

The issue that had been taken into consideration both by the State Commission and the NCDRC is with regard to the requirement post angioplasty i.e., ventilator support system subsequent to the angioplasty being conducted and also the bypass machine i.e. Percutaneous Cardio Pulmonary Bypass Support (PCPS) being put in use. In that regard, what is specifically noted by the NCDRC is that though Dr.Kaul/appellant herein had stated that the ventilator system was immediately connected when the angioplasty had been conducted and the PCPS i.e., that is the bypass machine was connected within thirty minutes, the NCDRC in fact, in that regard, has arrived at the conclusion that such statement made by Dr. Kaul, is in fact contradicted by the very PTCA Procedure report. In that regard, the NCDRC has indicated that in view of the said report, it would be clear that ventilator support was started within thirty minutes of cardiac arrest and therefore has arrived at the conclusion that there was delay in adopting the said procedure which has led to its conclusion that there was negligence. On the other hand, a perusal of the PTCA procedure report, which is at Annexure P-1 to the appeal memo, would indicate that the reference as contained therein is to the PCPs Bypass Machine which was to be connected, which was done within thirty minutes, which is the normal procedure and the ventilator was already in place. Therefore, the observation as made by the NCDRC that the ventilator was connected belatedly, is not justified.

If that be the fact, the very observation to hold that there was delay and therefore the same had led to negligence on the part of the Hospital also is not justified and at the same time, the observation to hold that the PTCA report would contradict the version of Dr. Kaul is also not justified. Therefore, insofar as the adverse observations as contained in the impugned order against the appellant-Doctor as well as the Hospital, are set aside.

Though we have arrived at the above conclusion, having taken note that the State Commission had directed payment of the lump sum compensation of Rs.2,00,000/- including the cost of the proceedings and since the said amount has already been paid to the respondents, we direct that the said amount shall not be recovered but at the same time, the payment made shall not bear any reflection on professional competence of the appellants.

In terms of the above, the appeals stand disposed of.