

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 143 OF 2014

(Against the Order dated 20/01/2014 in Complaint No. 29/2012 of the State Commission Andhra Pradesh)

1. KRISHNA INSTITUTE OF MEDICAL SCIENCES LTD. &
3 ORS.

1-8-31/1, MINISTER ROAD,
SECUNDERABAD

2. DR. S. MOHANDAS, NEURO PHYSICIAN, KRISHNA
INSTITUTE OF MEDICAL SCIENCES LTD.,

1-8-31/1, MINISTER ROAD,
SECUNDERABAD

3. DR. E.A. VARA LAKSHMI, NEURO PHYSICIAN,
KRISHNA INSTITUTE OF MEDICAL SCIENCES LTD., 1-8-
31/1, MINISTER ROAD,
SECUNDERABAD

4. DR. B. CHANDRA SEKHAR REDDY, NEURO
PHYSICIAN,
KRISHNA INSTITUTE OF MEDICAL SCIENCES LTD., 1-8-
31/1, MINISTER ROAD,
SECUNDERABAD

.....Appellant(s)

Versus

1. B.G. SREEDEVI & 2 ORS.

W/O. LATE DR. B.G. SREEDHAR, R/O. H NO. 51/15A-121-
1, BABA BRINDAVANNAGAR, KALLUR MANDAL,
DISTRICT,
KURNOOL

ANDHRA PRADESH

2. B.G. RITEESH RAMA CHANDRA,

S/O. LATE DR. B.G. SREEDHAR, R/O. H NO. 51/15A-121-1,
BABA BRINDAVANNAGAR, KALLUR MANDAL,
KURNOORL DISTRICT

ANDHRA PRADESH

3. B.G. RITVIK YUVA RAJU,

S/O. LATE DR. B.G. SREEDHAR, R/O. H NO. 51/15A-121-1,
BABA BRINDAVANNAGAR, KALLUR MANDAL,
KURNOORL DISTRICT

ANDHRA PRADESH

.....Respondent(s)

FIRST APPEAL NO. 190 OF 2014

(Against the Order dated 20/01/2014 in Complaint No. 29/2012 of the State Commission Andhra Pradesh)

1. B.G. SREEDEVI & 2 ORS.

.....Appellant(s)

W/O. LATE DR. B.G. SREEDHAR, R/O. H NO. 51/15/A-121-
1, BABA BRINDAVANNAGAR, KALLUR MANDAL,
KURNOOL DISTRICT,
ANDHRA PRADESH

2. B.G. RITEESH RAMA CHANDRA

S/O. LATE DR. B.G. STREEDHAR, R/O. H NO. 51/15A-121-1, BABA BRINDAVANNAGAR, KALLUR MANDAL, KURNOOL DISTRICT,
3. B.G. RITVIK YUVA RAJU
S/O. LATE DR. B.G. STREEDHAR, R/O. H NO. 51/15A-121-1, BABA BRINDAVANNAGAR, KALLUR MANDAL, KURNOOL DISTRICT,

Versus

1. KRISHNA INSTITUTE OF MEDICAL SCIENCES LTD. & 3 ORS.

1-8-31/1, MINISTER ROAD,
SECUNDERABAD,
ANDHRA PRADESH

2. DR. S. MOHANDAS, NEURO PHYSICIANS

KRISHNA INSTITUTE OF MEDICAL SCIENCES LTD., 1-8-3/1, MINISTER ROAD,
SECUNDERABAD,
ANDHRA PRADESH

3. DR. E.A. VARA LAKSHMI , NEURO PHYSICIANS

KRISHNA INSTITUTE OF MEDICAL SCIENCES LTD., 1-8-3/1, MINISTER ROAD,
SECUNDERABAD,
ANDHRA PRADESH

4. DR. B. CHANDRA SEKHAR REDDY, NEURO PHYSICIANS

KRISHNA INSTITUTE OF MEDICAL SCIENCES LTD., 1-8-3/1, MINISTER ROAD,
SECUNDERABAD,
ANDHRA PRADESH

.....Respondent(s)

BEFORE:

HON'BLE DR. S.M. KANTIKAR, PRESIDING MEMBER

For the Appellant : Mr. M. Srinivas R. Rao, Advocate
Mr. Sarath Janardhanan, Advocate

For the Respondent : Appearance not marked

Dated : 19 Dec 2022

ORDER

1. This common Order shall decide two Appeals, one F.A. No. 143 of 2014 filed by the Krishna Institute of Medical Sciences Ltd. & three doctors and the other F.A. No. 190 of 2014 filed by the Complainant - B.G. Sreedevi & Ors. challenging the impugned Judgment / Order dated 20.01.2014 passed by the State Consumer Disputes Redressal Commission, Hyderabad (hereinafter referred to as the "State Commission") in C.C. No. 29/2012.

2. The brief facts are drawn from F.A. No. 143 of 2014. For convenience, the parties herein are being referred to as mentioned in the Original Complaint.

3. The Complainant No. 1 - B.G. Sreedevi's husband - Dr. B. G. Sreedhar a qualified Dental Surgeon (since deceased, hereinafter referred to as the 'patient') working in the Primary Health Centre (PHC) in Andhra Pradesh. On 30.11.2009, he met with a car accident and sustained injuries. Immediately he was

taken to the Government General Hospital at Kurnool. After first aid, on the same day, he was admitted in Gowri Gopal Hospitals Pvt. Ltd. at Kurnool. On 02.12.2009, the knee surgery was performed for fracture of right superior pole of patella. He was complaining of headache and vomiting. On 05.12.2009, the CT Scan of brain (head) was performed at Shanthiniketan Diagnostic Centre (P) Ltd in Kurnool. It revealed haemorrhagic contusion in the left postero-temporal lobe with minimal edema. The patient had continuous headache and vomiting, therefore on 11.12.2009 second CT scan of brain was done. It revealed new findings suggestive of Subarachnoid haemorrhage (SAH) compared with the previous CT Scan dated 05.12.2009. Therefore, on 12.12.2009, the patient was shifted to Krishna Institute of Medical Sciences (for short – 'KIMS' the OP-1) at Hyderabad for further management. He was conservatively treated by the Neurologists (OPs-2 to 4) for two days. It was alleged that to rule out bleeding the treating doctors have not done CT angiogram or MRI of brain. The patient was discharged on 14.12.2009, though complaining of headache and vomiting. The patient was taken to his hometown at Kurnool. Thereafter, on 28.01.2010 in the late night he fell down and vomited. He was also complaining of shivering and severe headache, therefore, he was immediately taken to Government General Hospital, Kurnool and admitted under Dr. W. Seetharam, but subsequently, in the early morning on 29.01.2010 the patient became comatose. As the patient was in the need of brain angiography and ventilator life support, therefore he was shifted to OP-1 KIMS Hospital by Ventilator ambulance at 10 a.m. on 29.01.2010. There at 2 p.m., CT cerebral angiogram was performed. It revealed progressive bleed and large hematoma in the brain. The patient expired subsequently on 31.01.2010. Being aggrieved by the gross negligence causing the death of the patient, his wife and children filed the Consumer Complaint before the State Commission against the OPs and prayed compensation for Rs. 90,00,000/- from the OPs jointly and severally.

4. The OPs filed their reply and raised objection that the Complaint was barred by limitation. It was stated that the OPs had no knowledge of the alleged accident and the treatment taken at Kurnool. The patient was brought to the OP hospital on 12.12.2009. He was in conscious state, no ENT bleed, or seizures. On examination, his vital parameters were normal. The cardiovascular respiratory, abdominal, and neurological systems were normal. The CT scan done at Kurnool showed small size of bleed and neurologically, the patient was stable except for headache. He was managed medically with analgesics and anti-edema medicines. The headache got reduced and he was discharged on 14.12.2009 with advice to come again after two weeks for follow-up. It was further submitted that the patient telephonically contacted Dr. B. Chandra Shekhar Reddy (OP/Appellant No. 4) and told about his wellness and he was attending to his routine work at the PHC. He also conveyed New Year greetings on 01.01.2012. The OPs submitted that on 29.01.2010 the patient was brought to KIMS with history of recurrent seizures for 6 times. He was unconscious, in comatose state with dilated nonreactive pupils and not responding to the painful stimuli. The CT Angiogram of brain was performed; it revealed frontal hematoma with massive herniation of brain. After taking informed consent of the Complainant No. 1, the cranial surgery was performed. However, on 30.01.2010 at 7 a.m., the patient suffered cardiac arrest and he was revived. Again, he suffered another cardiac arrest on 31.01.2010, but despite best efforts could not be revived and was declared dead at 7.30 p.m. Therefore, there was no negligence or deficiency in service from the OPs.

5. After considering the averments and evidence of the parties, the State Commission partly allowed the complaint and awarded compensation of Rs.5,00,000/- together with costs of Rs.5,000/-

6. Being aggrieved, the OPs Krishna Institute of Medical Sciences Ltd. & its 3 Doctors filed First Appeal No. 143 of 2014 for dismissal of Complaint and the First Appeal No. 190/2014 was filed by the Complainant for enhancement of compensation.

7. Heard the learned counsel for both the sides.

8. The learned Counsel for the Complainant vehemently argued that the treating doctors at OP-1 Hospital ignored the Subarachnoid hemorrhage seen in the 2nd CT scan dated 11.12.2009. They failed to perform CT angiography of brain, thus the cause of progressive bleeding was missed. On 12.12.2009 itself, it could have been treated by neurosurgical intervention, but doctors discharged the patient on 14.12.2009. It would have averted the delayed aneurysmal complications and death of the patient on 31.01.2010. It was the failure to exercise reasonable standard of care from the treating doctors at KIMS (OP-1).

9. The learned Counsel for OPs argued that the Complainants did not disclose the patient's activities during 14.12.2009 to 29.01.2010. The patient did not follow the instructions and as advised, he did not visit

the OP-1 Hospital after two weeks from the date of discharge. Thus, it could be presumed that the patient was totally normal. He further stated that the patient called on mobile of OP-4 for New Year wish and also told about his wellbeing and attending to his routine work at Kodumur PHC. He further submitted that there was no relation with the previous treatment and the episode occurred on 28.01.2010 at Kurnool after 45 days after discharge. The patient was managed initially at Kurnool, but then on 29.01.2010 shifted in comatose condition to KIMS for further management.

10. Perused the evidence, medical record and medical literature on neurology and neurosurgery and gave thoughtful consideration to the arguments.

11. It is pertinent to note that, the discharge summary of KIMS is silent about the finding of Subarachnoid hemorrhage. The CT scan of brain dated 11.12.2009 was reported to be hyper dense collection in right quadrigeminal cistern and anterior interhemispheric fissure. It was suggestive of Subarachnoid Hemorrhage. The doctors at OP-1 hospital treated the patient symptomatically, but failed to do proper clinical assessment and crucial investigations.

12. I have gone through relevant medical literature and standard text book "Neurological Surgery" by Youmans & Winn. I have carefully perused the history and course of the instant case. To start with the patient had a head injury (temporal contusion) without any evidence of traumatic sub arachnoid haemorrhage in the initial CT scan dated 5.12.2009. The next CT scan which was done on 11th December revealed Peri mesencephalic cistern SAH along inter hemispheric fissure and basal cisterns as a new finding which is highly suspicious of aneurysmal bleed. This should have been followed by a CT angiogram or DSA at this point of time. However, the patient was not investigated adequately at that time. About 1 ½ month later patient probably had a re bleed from the aneurysm at home following which he became unconscious. He was taken to KIMS on 29.01.2010 and the CT angiogram done at that time revealed a large cingulate gyrus hematoma and poor contrast penetration (s/o very high intracranial pressure- preterminal condition). Hence it could not show any aneurysm which is expected with such high Intracranial pressure (ICP). These features suggest two possibilities –traumatic SAH or ACA aneurysm and rupture. In our considered view, the patient probably had a traumatic SAH due to distal ACA (anterior cerebral artery) aneurysm which initially ruptured on 11 Dec and then re-ruptured before death. Traumatic aneurysms are common in distal ACA segment and should have been looked for when patient presented with classical CT findings of Subarachnoid haemorrhage on 11th Dec, through a recommendation for angiographic investigation.

13. It is pertinent to note that the patient himself was a doctor and brought all the way from Kurnool to the KIMS, with a hope of better tertiary care. The expected duty of care at the tertiary care hospital is more. It was the duty of treating doctors to rule out the cause of Subarachnoid hemorrhage due to aneurysm. But in the instant case, the patient was discharged within short period of 2 days, it was a failure of duty of care. The CT angiography of brain if done on 12.12.2009, it could have detected the cause of SAH or any aneurysm. Thus the surgical intervention like clipping/coiling of aneurysm could have prevented from complications and saved the life of patient.

14. I further note the element of Contributory negligence that, the deceased was a dental surgeon, after initial treatment at KIMS, from 12-14.10.2009 and discharged with follow up advice to visit after two weeks, but he did not visit the KIMS. However, the patient was brought to KIMS after 45 days. The contention of OP that, the patient attended his duty at PHC for 45 days, itself the indication that he was in good health, but the OPs have not produced any evidence to prove their contention.

15. The another contention of OPs the the wife of diseased, requested the hospital to issue death certificate stating that her husband's death occurred due to injuries sustained by the motor vehicle accident. However OP-4 did not oblige to issue such certificate and therefore the instant complaint was filed intentionally after limitation that is after 2 years and 3 months. I do not find any merit in this submission.

16. Considering the entirety, the expected the standard of care from the tertiary care hospital (OP-1) was more, but it was missing in the instant case. The treating doctors failed in their duty of care, not done the CT angiogram to know the cause of SAH, it could have saved the patient as discussed *supra*. Thus, negligence is attributed to the treating doctors and the KIMS hospital.

17. Now adverting to the compensation, the contention of OPs that the Complainant No. 1 did not disclose whether she received any compensation from the Motor Accident Claim Tribunal (MACT). In my view the compensation under MACT is a distinct one to the award of compensation under Consumer Protection Act is for medical negligence.

18. The Hon'ble Supreme Court and this Commission held doctors liable for medical negligence, where the doctors act carelessly, results an action in torts. In the decision in the case of **Spring Meadows Hospital v Harjot Ahluwalia**^[1], their Lordships observed as:

"Very often in a claim for compensation arising out of medical negligence a plea is taken that it is a case of bona fide mistake which under certain circumstances may be excusable, but a mistake which would tantamount to negligence cannot be pardoned. In the former case a court can accept that ordinary human fallibility precludes the liability while in the latter the conduct of the defendant is considered to have gone beyond the bounds of what is expected of the skill of a reasonably competent doctor..."

19. It is relevant to quote the Judgment of House of Lords/English Courts in **Whitehouse vs. Jordan**^[2], wherein it was ruled that:

"The true position that an error of judgment may or may not be negligent it depends on the nature of the error. If it is not one that would not have been made by a reasonable competent professional man professing to have the standards and type of skill that the defendant held himself out as having, and acting with ordinary care, then it is negligence, if on the other hand, it is an error if such a man, acting with ordinary care, might have made, than it is not negligence".

The instant case was not a case of Error of Judgment, but it was the failure of duty of ordinary care, thus negligence. The Hon'ble Supreme Court in **Dr. Laxman Balkrishna Joshi vs. Dr. Trimbak Bapu Godbole**^[3] had observed on "Duty of Care", that every doctor must exercise "reasonable standard of care" that are set out in the profession. Any breach towards these duties shall hold him liable for medical negligence. In the recent decision of the Hon'ble Supreme Court in the case of **Arun Kumar Manglik V Chirayu Health and Medicare Private Limited and anr**^[4]. has traced the developments of law regarding medical negligence by referring to various Indian and foreign decisions and has held that a medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care.

20. The quantum of compensation in medical negligence cases payable based on strict liability will of course depend upon the peculiar facts of each case and no strait jacket formula can be evolved in that behalf. In the instant case it is an admitted fact that the Complainant did not follow the instructions at the time of 1st discharge on 14.12.2009. The doctrine of Contributory negligence applies and the amount of compensation payable to the Complainants reduces. However, in my view it was Comparative negligence, a type of contributory negligence. It is sometimes referred to as "non-absolute contributory negligence" which helps to determine the percentage of negligence on the part of the patient that contributed to the injury. Thus the victim/Complainant will receive less than they claimed, but a percentage of that amount that is proportional to the fault of OPs. The patient himself was a doctor (Dentist) and after discharge for a month he had no symptoms, therefore he did not come for follow-up. Therefore, in my view, in the instant case an act of omission on the part of the patient has not materially contributed to the damage.

21. In the instant case, the State Commission awarded Rs.5 lakh. The deceased was a Dental surgeon working in Primacy Health Centre who left behind a wife and two children. Thus the legal heirs deserve just and proper compensation. As the Hon'ble Supreme Court noted in **Sarla Verma vs. Delhi Transport Corporation**^[5].

"The lack of uniformity and consistency in awarding compensation has been a matter of grave concern... If different tribunals calculate compensation differently on the same facts, the claimant, the litigant, the common man will be confused, perplexed, and bewildered. If there is significant

divergence among tribunals in determining the quantum of compensation on similar facts, it will lead to dissatisfaction and distrust in the system.”

Considering the facts and peculiar nature of the instant case in my view, the interests of justice would be met, if the amount of compensation is enhanced. Accordingly, the Complainants shall be entitled to receive an amount of Rs. 25 lakhs by way of compensation from the OPs. The hospital shall pay 16 lakhs and 9 lakhs shall be paid by the treating doctors OPs-2, 3 and 4 in equal proportion. The compensation, as awarded, shall carry interest at the rate of 6% per annum from the date of the institution of the Complaint before the State Commission until payment or realisation. In addition, the hospital shall pay Rs.1 lakh towards cost of litigation.

The payment should be effected within two months of the pronouncement of this Order, failing which the entire amount shall carry interest @ 9% per annum till its realisation.

22. The First Appeal No. 190/2014, filed by the Complainant, is allowed and the First Appeal No. 143/2014, filed by the OPs, is dismissed.

[1] (1998) 4 SCC 39

[2] (1981)1 All ER 267

[3] 1969 AIR 128

[4] (2019) 7 SCC 401

[5] (2009) 6 SCC 121

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DR. S.M. KANTIKAR
PRESIDING MEMBER