

**IN THE STATE COMMISSION : DELHI**

**(Constituted under Section 9 of the Consumer Protection Act, 1986)**

Date of Arguments :25.04.2019

Date of Decision : 02.05.2019

**FIRST APPEAL NO.231/2008**

**In the matter of:**

**Bhushan Raina**

**S/o. Shri Sham Lal Raina,**

**R/o. E-16, Moti Bagh (South),**

**New Delhi-110021.**

**Also at:**

**B-49 Basement,**

**Somdutt Chambers-I,**

**Bhikaji Cama Place,**

**New Delhi.**

**(Since deceased through LRs)**

- 1. Madhu Raina, Wife**
- 2. Agrima Raina, Daughter**
- 3. Keshav, Son**

**.....Appellants**

**Versus**

- 1. Dr. S.K. Jain (Eye Surgeon), (Since dead through LR/OPs)**

**N-9 Green Park Extn.,  
Adjoining Jain Temple,  
New Delhi-110016.**

**1. Dr. Sudeep K. Jain (Eye & retinal Surgeon),**

**N-9 Green Park Extn.,  
Adjoining Jain Temple,  
New Delhi-110016.**

**Both's Clinic at;  
541 R.C, Dehlvi Marg,  
(Esplanade Road), Delhi-110006.**

**1. United India Insurance Company.**

**Branch Office -6, Capital Cinema Building,  
Vidhan Sabha Marg, Lucknow....Respondents**

**CORAM**

**Hon'ble Sh. O. P. Gupta, Member (Judicial)**

1. Whether reporters of local newspaper be allowed to see the judgment? Yes/No

2. To be referred to the reporter or not? Yes/No

**Shri O.P. Gupta, Member (Judicial)**

**JUDGEMENT**

1. Initially the complainant filed a complaint against OP-1 and 2 on the allegations that he was a renowned press correspondent and solely dependent on his vision and writing talent for his living. Loss of sight by him is not a physical setback but also a great set back for his career. Senior journalists don't retire, they go with their boots on.
2. OP-1 is Eye Surgeon and OP-2 is Eye and Retinal Surgeon. Complainant was 60 years old, healthy gentleman having no serious health problems/ ailments. He started feeling small black objects flying in his right vision in the month of March, 2008 and consulted OP-1. The OPs diagnosed cataract symptoms in right eye. The OP suggested that complainant could wait for another 3-4 months and take medication and then go for cataract removal surgery. He was told that surgery was inevitable. OP-1 then suggested that complainant could go for surgery right away if he agreed to get himself operated from the OPs.
3. Complainant was again called on 29.05.08, checked up and prescribed some eye drops. OP-2 examined right eye of complainant and conducted an ultrasound test also. Surgery was scheduled for 31.05.08 and both the OPs jointly operated upon complainant's eye to remove the cataract. His right eye was bandaged and he was asked to come for follow up checks on 01.06.08. The OPs removed the bandage, tested his right eye and proclaimed that except for a small blood clot, the surgery was alright. OPs asked the complainant to come again on 03.06.08 for further follow up. On 03.06.08 after examination of complainant's eye for a long time, OP-1 called OP-2 for further examination. OP-2 proclaimed that complainant had suffered from retinal detachment. OP-2 wanted second opinion and himself sought an instant appointment with Dr. Sanjeev Gupta of Sama Nursing Home, Siri Fort Road. The address of Sama Nursing Home was written at the back of prescription.
4. The complainant paid Rs.250 per visit, total four visits. He paid Rs.14,000/- for surgery. No receipt was ever issued by the OPs. The complainant issued letter on 09.06.08 to OPs which has not been replied.
5. As advised complainant met Dr. Sanjeev Gupta at Sama Nursing Home, who confirmed retinal detachment and advised major surgery which could last more than two hours and cost more than Rs.30,000/-. In the same breath, he warned that there was no guarantee that the complainant will get back the sight even after the surgery. The complainant realised that he had been sent to this doctor to cover up criminal goof of OP1 & 2. So he didn't go to said doctor again.
6. Complainant got himself treated at Shrooff Eye Centre and in the last three months was undergoing agonizing treatments. He was made to keep his head facing down for a period of almost two months where he was allowed to lie on his stomach with his nose tip resting the mattress and even eat and do every thing else with his nose towards the ground. He was required to sleep, sit etc with his head down at all times for nearly two months. He was advised that his sight was not likely to be fully restored.
7. Complainant incurred Rs.43,962/- and medicines worth Rs.15,000/- for corrective surgery at Sharoof Eye Centre. Now he was with a blind eye, suffering mental agony, physical discomfort and trauma. He has been forced to loose his mental and physical independence and the quality of his life existing and coming life. He has claimed Rs.49 lakhs as compensation due to loss of vision, physical agony, loss of work and reduction in quality of life.
8. The breakup of the amount has been mentioned in para 9 (a) (i to v) of the complaint. H has sought Rs.11 lakhs for loss of eye sight, Rs.11 lakhs for loss of his independence, Rs.11 lakhs for handicap effecting his work, Rs.11 lakhs towards the reduction in the quality of life and Rs.5 lakhs inclusive of medical expenses already incurred and likely to be incurred. He has also claimed Rs.50 lakhs on account of dereliction of duty, negligence, harassment and misrepresentation according to status of the OPs. He has sought Rs.55,000/- as legal fee and interest @24% per annum till the date of payment.

9. During the pendency of the case Insurance Company was added as respondent no.3 on the application of OP-1.
10. The complainant moved an application dated 13.01.09 for amendment of the complaint. He sought amendment in para-6 of the complaint. It appears that the same has not been disposed of till now. Anyhow the amendment sought for is immaterial as it merely mentions some subsequent facts.
11. During pendency of the case the complainant expired in January, 2016. His LRs was brought on record vide order dated 25.11.16. OP-1 also expired on 22.03.16. Anyhow since his son was already on record as OP-2, it was observed in proceedings date 25.04.19 that complainant has not abated.
12. OP-1 and 2 filed WS pleading that Consent Form for the cataract surgery was signed by the complainant. The same was witnessed by his wife. It is well established with various articles published in the journals or in the website where it has been held that in some patients after cataract surgery there is increase in the risk of retinal detachment as held in the Article-I which is Annexure-B and in Article-III, IV and V which are Annexure-C, D & F.
13. They took preliminary objections that as per decision of Hon'ble Supreme Court in Martin F. De'Souza vs. Mohd. Ishfaq followed in Jacob Mathew's case on receipt of complaint against the doctor or hospital, the Court should first refer the matter to a competent doctor or committee of doctors specialised in the field relating to which medical negligence is attributed, before issuing notice to the concerned doctor. It is only after the committee reports that there is prima facie case of medical negligence that the notice should be issued to the concerned doctors/ hospital. This is necessary to avoid harassment to doctors who may not be ultimately found to be negligent. The complainant has approached this Commission without support of any expert view of subject specialists. The complainant had read and understood the terms and conditions of Consumer Application Form (Consent Form) and had expressly agreed to the terms and conditions of the CAF.
14. On merits they denied that complainant lost sight due to surgery performed by them. They denied that complaint was not having health problems and ailments.
15. They denied that OP-1 told complainant to go for surgery immediately. The decision of going for surgery was of complainant himself. According to them the surgery was successful. In cases of cataract surgery the retinal detachment may occur after weeks or months. In cases of mature or advanced immature cataract it is difficult to examine retina and therefore diagnose retinal detachment. The complainant wanted to have another option regarding retinal detachment and asked OPs whether they know any other doctor. On persistent request of the complainants they suggested the name of Dr. Sanjeev Gupta, an expert doctor in his held. They denied that they sent complainant to Dr. Sanjeev Gupta to cover up their criminal goof. They pleaded that certificate referred to in para-6 (I) of the complaint was an eye wash. The same nowhere stated that there was any negligence on the part of the OPs.
16. OP-3 filed a separate WS. It did not dispute the insurance of OP-1.
17. The complainant filed rejoinder to WS of OPs-1 and 2. He filed his own affidavit in evidence.
18. On the other hand the OPs filed affidavit of OP-1 and 2 in evidence.
19. Both the parties have filed written arguments. I have gone through the material on record and heard the arguments. The counsel for the complainant submitted that factum of surgery by OPs on the right eye of the complainant is not in dispute. It is also not in dispute that retinal detachment took place and the complainant became almost blind by one eye. The surgery of cataract is a preliminary surgery and is a very simple surgery. That is conducted in every small Nursing Home and Hospital. Still OP-1 who is known doctor could not do the same successfully. The facts speaks for themselves and doctrine of Res IPSA Loquitur

applies. It was for the OPs to repel the case of negligence by them which they have failed to do.

20. On the other hand counsel for the OPs submitted that in case of mature cataract it is difficult to examine the retina before hand. The retina can be inspected only after removal of cataract. I am unable to accept the arguments. The science has advanced much, sensitive machines are available with the help of which the retina can be examined, the outer layer of cataract could be diluted by the use of medicines. The OPs should have ensured before conducting the surgery that there was no risk. They hurriedly decided to conduct the surgery. Initially they asked the complainant to wait for 3-4 months and in the next breath they fixed the surgery for next day itself.
21. Counsel for OP also relied upon the consent form which is Annexure-F to WS and is placed at page-23. Clause 4 thereof recites that the complainant understood that the result of surgery could not be guaranteed. Clause 5 provided that from the result of surgery it was possible that his vision might not improve, this could happen as a result of other problems in the eye like retinal problems, age related macular degeneration, oedema, corneal opacity, glaucoma, uveitis etc.
22. I am unable to appreciate the arguments advanced by the counsel for OP. The consent has to be informed as per decision in Vaidya Nath Chakraborty (DR) vs. Chandi Bhattacharjee II (2014) CPJ 601 NC. Informed consent means that the patient has been explained consequences in layman's language so that he is able to take a decision to whether to go for surgery or not. Merely writing 'informed consent' on the top of the form does not make it an informed consent. The form is one page fully printed form containing ten clauses. The clauses are so widely worded that virtually they do not leave any situation. Obtaining signature on such printed form amounts to obtaining signature on dotted lines. I have no hesitation in concluding that such consent is no consent in the eyes of law.
23. The counsel for OP relied upon decision of State Commission, Uttarakhand in Govind Ram Aggarwal vs. Dr. V.P. Gupta III (2003) CPJ 110 in which it was held that – absence of expert evidence in support of medical negligence, is fatal to the case of the complainant. I am unable to persuade myself with the arguments. In a later decision in INS Malhotra vs. Dr. A. Kirpalani II (2009) CPJ 18 SC it was held that expert opinion is required only when complicated question is involved.
24. Decision in Jacob Mathew referred to be by the OPs in their WS has been overruled in V. Krishna Rao vs. Nikhil Supra Speciality Hospital III (2010) CPJ 1 SC.
25. The counsel for OP also relied upon decision of Hon'ble Supreme Court in Civil Appeal No.2024 of 2019 titled as Vinod Jain vs. Satokhba Durlabh Ji Memorial Hospital decided on 25.02.19. I have gone through the said judgement. The same reiterates general principle that merely because treatment or surgery does not prove to be successful, doctor can not be held guilty or negligent. In para-13 of the said decision distinguishing feature is that explanation offered by respondent no.2 doctor was that when he attended the patient at 1.00 a.m. on 16.10.11, he found that the drip had been disconnected, on account of all peripheral veins being blocked due to past chemotherapy, and the drip had been stopped the night before itself, at the instance of the appellant. The same is not applicable to the case in hand.
26. From the material on record I find that in case OPs were unable to examine the retina due to major cataract or advanced stage of cataract, they should have referred the patient for a second opinion before taking a decision of surgery but they did same after doing surgery. His failure to do so is per se negligence.
27. To sum up I find that the OPs 1 and 2 were negligent in conducting the surgery.
28. As regards compensation it may be mentioned that life of a person is almost like a death, without eye sight. He can not see properly, he can not walk, he can not eat with comfort. He feels secluded from society, his nears and dears. The complainant lived in this state of affair

from 2008 till 2016 i.e. 8 years approximately. He must get a compensation of Rs.1 lakhs per year. Accordingly the OPs are directed to pay Rs.8 lakh to the LR of the complainant within 45 days from the date of receipt of copy of this order.

29. Copy of the order be sent to both the parties free of cost.
30. File be consigned to record room.

**(O.P. GUPTA)**

MEMBER (JUDICIAL)