



STATE CONSUMER DISPUTES REDRESSAL COMMISSION, HARYANA,
PANCHKULA

Complaint No.17 of 2007
Date of Institution: 27.12.2007
Date of Decision: 23.11.2012

Smt. Neelam wife of Smt. Rajesh Dhiman, resident of Village and Post Office Kalawar,
Tehsil Mustafabad, District Yamuna Nagar (Haryana).

Complainant

Versus

1. State of Haryana, through its Secretary, Department of Health, civil Secretariat, Haryana at Chandigarh.
2. The Director, Health, Services, State of Haryana at Chandigarh.
3. The Chief Medical Officer, Civil Hospital, Yamuna Nagar, District Yamuna Nagar.
4. The Senior Medical Officer, Civil Hospital, Jagadhri, District Yamuna Nagar.
5. Dr. Deepika Medical Officer, Post at Civil Hospital, Jagadhri District Yamuna Nagar.
6. Dr. Divya Mangla, Medical Officer, Posted at Civil Hospital, Jagadhri, District Yamuna Nagar.
7. Dr. Manisha Medical Officer, Posted at Civil Hospital, Jagadhri, District Yamuna Nagar.
8. Gaba Hospital, Yamuna Nagar, District Yamuna Nagar through its Medical Superintendent.
9. Post Graduate Institute of Medical Education and Research, Chandigarh (PGIMER) through its Director, Sector 12, Chandigarh.

Opposite Parties

Performa Opposite Parties

BEFORE:

Hon'ble Mr. Justice R.S. Madan, President.
Mr. E.M. Bedi, Judicial Member.

For the Parties:

Shri Jatin Sehrawat, Advocate for Complainant.
Shri Ajay Chaudhary, Advocate for Opposite Parties No.1 to 6.
Opposite Parties No.7 & 8 exparte.
Opposite Party No.9 Performa Opposite Party.

ORDER

Justice R.S. Madan, President:

Complainant-Smt. Neelam was pregnant. She got examined her at Primary Health Centre (Aanganwari) at Village Kalawar Tehsil Mustafabad District Yamuna Nagar on 28.12.2005 and after examining the complainant, the Medical Authorities at the above said Centre, assessed the LMP (Last Menstrual Period) of the complainant as 02.08.2005.



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SHB-IV

For SHB-II (two)

Ray 15.3.13

SHB-II

Dhej 18/3

SHB-II

Ms Mustafabad

18/3/13
Smt. G

Dhej 26/3

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Complainant was given the initial treatment as well as necessary vaccinations by the Primary Health Centre, Kalawar on 28.12.2005 and further necessary vaccination was given on 01.02.2006. The expected date of delivery was given as on or before within 37 weeks from the date assessed as 02.08.2005 which was due in the month of May, 2006. For further treatment, the doctors of Primary Health Centre, referred the complainant to Civil Hospital, Jagadhri where L.M.P. was assessed as on 02.09.2005 and date of delivery was assessed as 09.06.2005 by the Medical Officer on duty. The complainant was called to the Civil Hospital, Jagadhri on 20.06.2006 for further treatment as per assessed L.M.P. i.e. 02.09.2005. Thereafter, the complainant was called again on 21.06.2006 for medical check-up.

On 23.06.2006 bleeding started to the complainant and due to constant and non-stoppage of bleeding, the complainant was admitted for delivery by the Medical Authorities at Civil Hospital, Jagadhri. She was admitted at 11:00 P.M., the Medical Officer on duty put the noting on the prescription slip/Treatment Card "Dr. Manisha to be contacted", but Dr. Manisha could not be found as she was informed telephonically also but the Staff Nurse on duty namely Ms. Paramjit put the noting on the same Prescription Slip/Treatment Card "Dr. Manisha refused to come". Thus, from 10:30 A.M. on 23.06.2006 till 9:30 A.M. on 24.06.2006, the complainant remained unattended by Dr. Manisha -opposite party No.7. On 24.06.2006 at about 11:00 A.M. Dr. Divya was called who performed all management to attend the complainant and finding the case of complainant as that of serious and complicated nature and after taking all the necessary action as required, the complainant was referred to Civil Hospital, Yamuna Nagar but due to the deteriorating condition of the complainant, she was admitted in Gaba Hospital, Yamuna Nagar as 'Gaba Hospital' is situated on the way from Civil Hospital, Jagadhri to Civil Hospital, Yamuna Nagar where the necessary delivery was got completed by the doctors of 'Gaba Hospital' and a male baby was born at 1:05 P.M. on 24.05.2006. According to the complainant, the doctors at Gaba Hospital declared it a 'over period delivery'. The Doctors at Gaba Hospital referred the newly born baby to PGIMER, Chandigarh as the child was having some respiratory problem. However, the complainant



remained admitted in 'Gaba Hospital'. On the same day i.e. on 24.06.2006, the PGIMER, Chandigarh authorities took the case of the newly born male child of complainant as case of "LAMA CASE". However, the child died on the way from PGIMER, Chandigarh to Village Kalawar Tehsil Mustafabad District Yamuna Nagar.

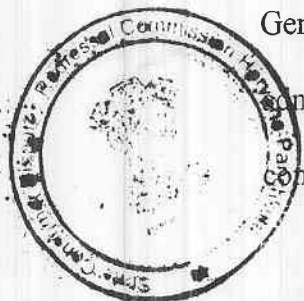
The grievance of the complainant is that the opposite parties exercised medical negligently in performing their duties, firstly the Medical Authorities of Civil Hospital, Jagadhri, she was even given inhuman treatment. She was not attended properly. Her LMP was wrongly assessed so due to the negligence of the opposite parties, the complainant suffered a lot at the hands of the opposite parties, both physically as well as mentally and also lost her first male child. Thus, the complainant alleged it a case of medical negligence and deficiency in service and alleged that the male child became the victim of "LAMA CASE" due to the fault of the Opposite Parties, which ultimately resulted into the death of the said first male child of the complainant. Legal Notice dated 20.03.2007 was given to the opposite parties through registered AD and UPC with the direction to make the payment of Rs.25 lacs but the opposite parties failed to comply with the said notice. Hence this complaint with the prayer that the complainant is entitled for compensation of Rs.15 lacs for the death of her first male child; Rs.8 lacs for physical as well as mental torture, harassment, pain and sufferings and Rs.2 lacs for the expenses spent for medical treatment.

Upon notice, the opposite parties No.1 to 6 appeared and contested the complainant by filing their joint written statement wherein they denied the allegations levelled by the complainant. It is stated that the Last Menstrual Period of the patient is assessed as per the information given by the patient herself and if the Medical Officer finds some discrepancy, the patient is advised to get ultra sound test done to verify the facts. In this case, the complainant came to Civil Hospital, Jagadhri on 20.06.2006 and she disclosed her Last Menstrual Period as 02.09.2005 and therefore her expected date of delivery was calculated as 09.06.2006. Her per abdomen findings showed 32-34 week pregnancy, since there was discrepancy in history given by patients and per abdomen examination. She was advised to get the ultrasound test done in order to assess the patient



of pregnancy. The complainant got her ultrasound test done and produced the report which revealed 37+3 weeks with single live foetus, due management foetus was given on 21.06.2007. The complainant was told that she should come to the hospital, if she had labour pains or any problems. The expected date of delivery is assessed on the basis of the date of last menstrual period and only 4% of the patients deliver on the expected date of delivery given if information is given correctly by the patient. It is also stated that the expected date of delivery is given on the basis of the ultra sound report and last menstrual period and there may be discrepancy in the report of the radiologist or the assessing clinician.

On 23.06.2006 at 10.30 P.M. the complainant had come to the Civil Hospital, Jagadhri and she was examined by the doctor on call duty at 11.00 P.M. and proper management was given. At that relevant time, there was no Gynecologist available in Civil Hospital, Jagadhri who could do Caesarean section and so in case of emergency the services of Dr. Manisha used to be availed for Caesarean section delivery. It is further stated that Dr. Manisha was neither posted as Medical Officer in General Hospital, Jagadhri nor a Haryana Government Employee. She used to be called for emergency caesarean cases only. When the complainant had come to Civil Hospital on 23.06.2006, the doctor on call duty consulted Dr. Manisha and as per the advice given by Dr. Manisha, proper management was given to the complainant. Due to non-progression of labour pains, the patient was referred by opposite party no.5 to opposite party -Dr. Divya for further management. Accordingly, Dr. Divya attended the patient for further management and when there was non descent of head she contracted Dr. Manisha, who as per the information given by on duty staff nurse Paramjeet, was not available. Therefore, Dr. Divya referred the complainant to Civil Hospital, Yamuna Nagar for further management. It is denied that the complainant remained unattended at Civil Hospital, Jagadhri due to the refusal of Dr. Manisha but instead of taking the patient to General Hospital, Yamuna Nagar, the attendants of the patient (complainant) got her admitted at Gaba Hospital, Jagadhri where a male child born alive but due to some complications, the child was referred to PGIMER Chandigarh but the attendants of the



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child left the PGIMER Chandigarh against medical advice and the child was declared as 'LAMA' (Left Against Medical Advice). Thus, there is no medical negligence or deficiency in service on the part of the opposite parties and the death of child occurred due to own negligence on the part of the attendants of the child who had left the PGIMER Chandigarh as "LAMA". It is prayed that the complaint merited dismissal.

Both the parties led evidence in support of their respective claims. Complainant has rendered her own affidavit as Ex.CW-1/A and affidavit of her husband Rajesh Dhiman as Ex.CW-2/A alongwith documents Ex.C-1 to C-29.

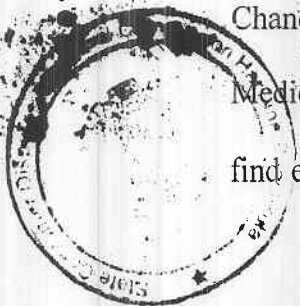
Opposite Parties in their evidence tendered affidavit of Dr. Surinder Kumar Rathi as Ex.RW-1 alongwith documents as Ex.RW and R2.

We have heard learned counsel for the parties and perused the case file.

The grievance of the complainant is that the expected date of delivery given by the Doctors at Civil Hospital, Jagadhri was not proper and also that she remained unattended at Civil Hospital, Jagadhri. It is further the case of the complainant that as per the Doctors of Gaba Hospital, Jagadhri where she had given birth to her first male child, it was a 'over period delivery' due to which there was complication to the newly born child and for that reason the Doctors at Gaba Hospital had referred the newly born baby to PGIMER, Chandigarh as the child was having some respiratory problem but child died.

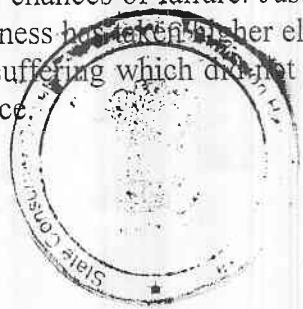
Taking into consideration the facts and circumstances of the case, we hardly find any ground to hold the opposite parties negligent and deficient in service. It has come on the record that the Last Menstrual Period of the patient is assessed as per the information given by the patient herself. However, in case of any discrepancy by the Medical Officer, the patient is advised to get ultra sound test done to verify the facts. Admittedly, the complainant had come to Civil Hospital, Jagadhri on 20.06.2006 and she had disclosed her Last Menstrual Period as 02.09.2005. Thus, expected date of delivery of the complainant was assessed as 09.06.2006. Her per abdomen findings showed 32-34 weeks pregnancy, since there was discrepancy in history given by patient and per abdomen examination, the complainant was advised to get the ultrasound test done in order to

assess the period of pregnancy. After getting her ultrasound test, the complainant had produced the report which revealed 37+3 weeks with single live foetus, due management foetus was given on 21.06.2006. The complainant was told that she should come to the hospital, if she had labour pains or any problems. The expected date of delivery is assessed on the basis of the date of last menstrual period. It has also come on the record that only 4% of the patients deliver on the expected date of delivery given if information is given correctly by the patient. On 23.06.2006 the complainant had come to Civil Hospital Jagadhri at 10.30 P.M. and she was examined by the doctor on call duty at 11.00 P.M. and proper management was given. As Gynecologist was not available in Civil Hospital, Jagadhri who could do Caesarean section and therefore in case of emergency the services of Dr. Manisha used to be availed for Caesarean section delivery. However, Dr. Manisha was neither posted as Medical Officer in General Hospital, Jagadhri nor a Haryana Government Employee and she used to be called for emergency caesarean cases only. But on 23.06.2006 Dr. Manisha was not available. However, the doctor on duty after consultation telephonically with Dr. Manisha, had given proper management to the complainant. Due to non-progression of labour pains, the patient was referred by opposite party No.5 to opposite party -Dr. Divya for further management. Accordingly, Dr. Divya attended the patient for further management and when there was non descent of head she contracted Dr. Manisha, who as per the information given by on duty staff nurse Paramjeet, was not available. Therefore, Dr. Divya referred the complainant to Civil Hospital, Yamuna Nagar for further management. Thus, it is not established that the the complainant remained unattended at Civil Hospital, Jagadhri. It has also come on the record that the complainant was referred to General Hospital, Yamuna Nagar but she was got admitted by her attendants at Gaba Hospital, Jagadhri where a male child born alive. But due to some complications, the child was referred to PGIMER Chandigarh. As per the record of PGIMER Chandigarh the attendants of the child had left the PGIMER, Chandigarh against medical advice and the child was declared as 'LAMA' (Left Against Medical Advice). Thus, in view of the facts and circumstances of the case we do not find even an iota of evidence on the record to establish it a case of any kind of medical



negligence and deficiency in service. There is no evidence on behalf of the complainant in the shape of affidavit of the attending Doctors at Gaba Hospital, to say against the opposite parties. In fact the grievance of the complainant is on account of death of her newly born male child and as per evidence available on the record, the newly born child died due to own negligence on the part of the attendants who had left the PGIMER, Chandigarh against the medical advice. Annexure C-9 'OUT PATIENT TICKET' issued from PGIMER, Chandigarh clearly shows that the patient (minor child) was declared as a case of 'LAMA'. Thus, under the facts and circumstances of the case, no medical negligence and deficiency in service against the opposite parties has been established on the record in view of the observation made in case cited as **Kusum Sharma and others versus Batra Hospital & Medical Research Centre and others, 2010 ACJ 1444**, wherein their Lordship of the Hon'ble Supreme Court have discussed the basic principles with respect to the medical negligence as under:-

- “(1) Negligence is the breach of a duty exercised by 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.
- (II) Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.
- (III) The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.
- (IV) A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.
- (V) In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of other professional doctor.
- (VI) The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield desired result may not amount to negligence.



- (VII) Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.
- (VIII) It would not be conducive to the efficiency of the medical profession if no doctor could administer medicine without a halter round his neck.
- (IX) It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessary harassed or humiliated so that they can perform their professional duties without fear and apprehension.

- (VII) Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.
- (VIII) It would not be conducive to the efficiency of the medical profession if no doctor could administer medicine without a halter round his neck.
- (IX) It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessary harassed or humiliated so that they can perform their professional duties without fear and apprehension.
- (X) The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurizing the medical professionals/hospitals particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.
- (XI) The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals."

In **Batra Hospital & Medical Research Centre and others'** case (Supra) it has been observed that the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment. Merely, the doctor failed to cure the disease, cannot be a case of medical negligence or deficiency in service. None of the above mentioned ingredients have been proved by the complainant in this case.

In case cited as **Mohd. Abrar versus Dr. Ashok Desai and others, 2011 CTJ 613 (CP) (NCDRC)** Hon'ble National Commission has observed as under:-

"The medical practitioners cannot be treated as magicians or demi-Gods. They are fallible human beings. The liability to pay compensation may arise only when the complainant proves that the causation was result of negligence committed by the medical practitioner and there was clear material available to foresee the injury."

Hon'ble National Commission in case cited as **Smt. Sajini, Major Versus Chaya Nursing Home & Ors, 2012(1) CPR 111 (NC)** has observed that medical complications cannot always lead to inference of medical negligence.

In a recent judgment cited as **Smt. Narangiben Subodhchandra Shah through her LRs versus Gujarat Research and Medical Institute Popularly known as**



Rajasthan Hospital & Ors, 2012(3) CPR 112 (NC), Hon'ble National Commission has observed that every medical failure is not medical negligence.

As a sequel to our aforesaid discussion, we find that there is no medical negligence or deficiency in service on the part of the opposite parties and the death of child occurred due to own negligence on the part of the attendants of the child who had left the PGIMER Chandigarh as "LAMA".



Hence, we dismiss this complaint.

Announced:
23.11.2012

Certified to be true copy
Superintendent
State Consumer Disputes
Redressal Commission
Haryana Panchkula

Sd/-
Justice R.S. Madan.
President.

Sd/-
B. M. Bedi
Judicial Member

- 1. Case No. 17/07
- 2. Date of Filing 23/11/12
- 3. Date of Disposal 8/11/12
- 4. Date of Delivery/Dispatch 6/12/12

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