2024 INSC 825

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 272 OF 2012

NEERAJ SUD AND ANR. ...APPELLANT(S)

VERSUS

JASWINDER SINGH (MINOR) AND ANR. ...RESPONDENT(S)

with

CIVIL APPEAL NO.5526 OF 2012

JASWINDER SINGH (MINOR) AND ANR. ...APPELLANT(S)

VERSUS

NEERAJ SUD AND ANR ...RESPONDENT(S)

J U D G M E N T

PANKAJ MITHAL, J.

1. Heard learned counsel for the parties.

2. Both the above appeals arise out of the common judgment and order dated 24.08.2011 passed by National Consumer Disputes Redressal Commission[1], New Delhi deciding First Appeal No.245/2005 filed by the complainants against Dr. Neeraj Sud and the Post

[1] Hereinafter referred to as 'NCDRC'

Graduate Institute of Medical Education & Research[2], Chandigarh.

3. The complaint of the complainants i.e. Complaint Case No.29/1998 regarding medical negligence against Dr. Neeraj Sud and the PGI was dismissed by the State Commission *vide* judgment and order dated 27.05.2005. Aggrieved by the above decision, the complainants preferred appeal before the NCDRC. After remand in the first round, the matter again came up before the NCDRC wherein the present impugned order has been passed and the complaint has been partly allowed. The judgment and order of the State Commission dismissing the complaint has been set aside holding that Dr. Neeraj Sud and the PGI are jointly and severely liable for payment of compensation of Rs.3,00,000/- and Rs.50,000/- as costs with 6% interest from the date of the complaint for the negligence in treatment.

4. Dr. Neeraj Sud and the PGI together have filed Civil Appeal No.272 of 2012 aggrieved by the finding of NCDRC which states that they had not taken due care in the

[2] Hereinafter referred to as 'PGI'

treatment and as such are liable for payment of the compensation and cost as aforesaid.

5. The other appeal i.e. Civil Appeal No.5526 of 2012 has been filed by the complainants. The complainants in the appeal have not claimed any enhancement though upon a reading of the contents, it is implicit that they are not satisfied with the compensation awarded and that the same is inadequate. The main prayer in appeal is only to grant the special leave to petition against the judgment of the NCDRC but with no other prayer. The relief claimed in the appeal by the complainants has been drafted in a very casual and improper manner with no sense of responsibility. We deprecate the manner in which this appeal has been filed, but in the ends of justice, proceed to consider it on merits along with the tagged appeal.

6. The complainants are father and son. The son was a minor aged about 6 years when he was diagnosed of congenital disorder in his left eye (also known as 'PTOSIS' or 'drooping eyelid') for which a minor surgery was performed on 26.06.1996 by Dr. Neeraj Sud at PGI. The complainant alleges that there was no other defect in the

eyes of the son and both eyes had normal 6/9 equal vision and the physical deformity diagnosed (PTOSIS, drooping eyelid) could have been cured by a minor operation which required lifting of the left eyelid a little to make it of the same size as the right eye but the said surgery was done in a most negligent manner. Instead of any improvement the condition of the eye further deteriorated post-surgery.

7. The complainants, thus through the complaint made to the State Commission claimed compensation of Rs.15,00,000/- for the sufferings due to negligence of the doctor and a further sum of Rs.4,55,000/- towards the cost of the treatment, loss of studies etc. In defence, Dr. Neeraj Sud and the PGI admitted that the surgery was performed on 26.06.1996 by Dr. Neeraj Sud who is a qualified post-graduate in ophthalmology. He had three years of experience in eye surgeries including surgery of PTOSIS. During the period 1994-1996 when Dr. Neeraj Sud was a Senior Resident at PGI, he was associated with about 74 PTOSIS operations. The complainant was given proper treatment with due care during operation and that

the correction and reoccurrence of PTOSIS is a common complication of congenital ptosis which could have been set right by repeat surgery. The patient was not examined by Dr. Neeraj Sud after January, 1997 as he was taken for treatment to Guru Nanak Eye Centre, Delhi and Dr. Daljit Singh Hospital, Amritsar.

8. The complainants have not adduced any evidence to establish any negligence in the performance of surgery or treatment on part of Dr. Neeraj Sud or the PGI. They mainly relied upon the medical records of the PGI which were obtained and considered by the State Commission.

9. The State Commission, upon examination of the records, concluded that the complainants failed to establish any negligence or carelessness on part of the doctor in treating one of the complainants and that the doctor had not adopted any unacceptable medical practice which may have caused damage to the patient. Dr. Neeraj Sud was a duly qualified doctor possessing requisite professional skill and competence to perform the surgery. Therefore, neither Dr. Neeraj Sud nor the PGI can be held responsible for any negligence in the treatment.

10. The aforesaid findings of the State Commission have been partly reversed by the NCDRC only on the basis of the re-examination of the record of the PGI which showed that the patient before operation had proper 6/9 vision in both the eyes and was suffering from a moderate PTOSIS with no history of double vision. However, post-surgery, the condition of PTOSIS deteriorated from moderate to severe and the vision of the patient also fell down from 6/9 in both eyes to 6/18. The patient also suffered from double vision post-surgery. Thus, the NCDRC held that the doctor was apparently negligent in not giving proper treatment and was also careless in not performing the repeat surgery.

11. Deterioration of the condition of the patient post-surgery is not necessarily indicative or suggestive of the fact that the surgery performed or the treatment given to the patient was not proper or inappropriate or that there was some negligence in administering the same. In case of surgery or such treatment it is not necessary that in every case the condition of the patient would improve and the surgery is successful to the satisfaction of the patient.

It is very much possible that in some rare cases complications of such nature arise but that by itself does not establish any actionable negligence on part of the medical expert.

12. The NCDRC itself acknowledged that Dr. Neeraj Sud had the necessary professional qualification and expertise to treat the patient but it has granted compensation only for the reason that he did not bring the requisite skill and care in the treatment of the patient.

13. The said finding is based on no evidence insofar as the complainants have not adduced any evidence to prove any negligence on part of the doctor rather have relied upon the medical records produced by the PGI. The said records merely demonstrate that post-surgery the condition of the patient had not improved but has deteriorated which as stated earlier may not be indicative of the negligence in the treatment of the patient.

14. It is well recognized that actionable negligence in context of medical profession involves three constituents (i) duty to exercise due care; (ii) breach of duty and (iii) consequential damage. However, a simple lack of care, an

error of judgment or an accident is not sufficient proof of negligence on part of the medical professional so long as the doctor follows the acceptable practice of the medical profession in discharge of his duties. He cannot be held liable for negligence merely because a better alternative treatment or course of treatment was available or that more skilled doctors were there who could have administered better treatment.

15. A medical professional may be held liable for negligence only when he is not possessed with the requisite qualification or skill or when he fails to exercise reasonable skill which he possesses in giving the treatment. None of the above two essential conditions for establishing negligence stand satisfied in the case at hand as no evidence was brought on record to prove that Dr. Neeraj Sud had not exercised due diligence, care or skill which he possessed in operating the patient and giving treatment to him.

16. When reasonable care, expected of the medical professional, is extended or rendered to the patient unless contrary is proved, it would not be a case for

actionable negligence. In a celebrated and very often cited decision in ***Bolam*** v. ***Friern Hospital Management Committee (Queen's Bench Division)***[3], it was observed that a doctor is not negligent if he is acting in accordance with the acceptable norms of practice unless there is evidence of a medical body of skilled persons in the field opining that the accepted principles/procedure were not followed. The test so laid down popularly came to be known as Bolam's test and stands approved by the Supreme Court in ***Jacob Mathews*** v. ***State of Punjab and Another***[4]. If we apply the same in the present case, we would find that Dr. Neeraj Sood was a competent and a skilled doctor possessing requisite qualification to perform PTOSIS surgery and to administer the requisite treatment and that he had followed the accepted mode of practice in performing the surgery and that there was no material to establish any overt act or omission to prove negligence on his part. As stated earlier, no evidence was adduced to prove that he had not exercised sufficient

[3] English Law (1957) 1 WLR 582
[4] 2005(6) SCC 1

care or has failed to exercise due skill in performing the surgery.

17. In ***Jacob Mathews (supra)*** this Court held that a professional may be held liable for negligence if he is not possessed of the requisite skill which he supposes to have or has failed to exercise the same with reasonable competence. The complainant has not adduced any evidence to establish that Dr. Neeraj Sud or the PGI were guilty of not exercising the expertise or the skill possessed by them, so as to hold them liable for negligence. No evidence was produced of any expert body in the medical field to prove that requisite skill possessed by Dr. Neeraj Sood was not exercised by him in discharge of his duties.

18. In other words, simply for the reason that the patient has not responded favourably to the surgery or the treatment administered by a doctor or that the surgery has failed, the doctor cannot be held liable for medical negligence straightway by applying the doctrine of *Res Ipsa Loquitor* unless it is established by evidence that the doctor failed

to exercise the due skill possessed by him in discharging of his duties.

19. In view of the aforesaid facts and circumstances, we are of the opinion that the NCDRC ought not to have interfered with the findings and the impugned judgment and order of the State Commission so as to hold the doctor of the PGI negligent and to award compensation.

20. Accordingly, the judgment and order dated 24.08.2011 of the NCDRC is hereby set aside and that of the State Commission is restored. Since the complainants have failed to prove any negligence on part of the doctor or the PGI, they are not entitled to any compensation as such, no question arises for its enhancement.

21. Accordingly, Civil Appeal No. 272 of 2012 is allowed and Civil Appeal No. 5526 of 2012 is dismissed.

..... J.
(PAMIDIGHANTAM SRI NARASIMHA)

..... J.
(PANKAJ MITHAL)

NEW DELHI;
OCTOBER 25, 2024