IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1235 OF 2020

SAHARA INDIA MEDICAL INSTITUTE LIMITED & ORS. Appellant(s)

VERSUS

GYAN MISHRA (DECEASED) THROUGH LEGAL HEIRS & ANR. Respondent(s)

WITH

C.A. No. 3874/2022

O R D E R

C.A. No. 1235 of 2020:

There are specific findings recorded by the National Consumer Disputes Redressal Commission on the negligence of the concerned doctors, who treated the patient, who ultimately died and thereafter compensation has been awarded.

In the facts and circumstances, we see no reason to interfere with the same. The appeal stands dismissed.

The amount which is already deposited by the appellants, pursuant to the earlier order passed by this Court, is directed to be paid to the original Complainant.

C.A. No. 3874/2022:

This appeal filed by the original Complainant for enhancement of the amount also stands dismissed.

..... J.
(M.R. SHAH)

..... J.
(B.V. NAGARATHNA)

Signature Not Verified
Digitally signed by R Natarajan
Date: 2022.05.21 13:24:48 IST
Reason:

New Delhi;
May 17, 2022.

ITEM NO.29 COURT NO.11 SECTION SCANNING CELL

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 1235/2020

SAHARA INDIA MEDICAL INSTITUTE LIMITED & ORS. Appellant(s)

VERSUS

GYAN MISHRA (DECEASED) THROUGH LEGAL HEIRS & ANR. Respondent(s)

WITH
C.A. No. 3874/2022 (XVII-A)
(IA No.37397/2022-CONDONATION OF DELAY IN FILING and IA No.37396/2022-PERMISSION TO APPEAR AND ARGUE IN PERSON)

Date : 17-05-2022 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.R. SHAH
HON'BLE MRS. JUSTICE B.V. NAGARATHNA

For Appellant(s) Dr. S.K. Khattri, Adv.
Mr. Ashish Grewal, Adv.
Mr. Rabin Majumder, AOR

Petitioner-in-person

For Respondent(s) Respondent-in-person

UPON hearing the counsel the Court made the following
O R D E R

Both the Appeals stand dismissed in terms of the signed order.

Pending applications stand disposed of.

(R. NATARAJAN) (NISHA TRIPATHI)
ASTT. REGISTRAR-cum-PS ASSISTANT REGISTRAR
(Signed order is placed on the file)

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 998 OF 2015

1. GYAN MISHRA
Flat No. 401, 57 Kheri House, Vishnupuri Colony, Church Road, Aliganj,
Lucknow
U.P. - 226 024 .....Complainant(s)

Versus

1. SAHARA INDIA MEDICAL INSTITUTE LIMITED. & ANR.
THROUGH ITS CHIEF MEDICAL SUPERINTENDENT, SAHARA INDIA POINT, CTS 40-44, S.V. ROAD, GOREGAON (WEST),
MUMBAI - 400 104.
MAHARASHTRA.
2. Dr. Sandeep Agarwal,
A-1/13, Sector 'B', Near Nehru Bal Vatika Aliganj,
Lucknow - 226 024.
3. Dr. Muffazal Ahmed.
Zainess Hospital Compound, Near Neelkanth Sweets, Viviek Khand - 2, Gomti Naga,
Lucknow - 226 010.
4. Dr. Ankur Gupta.
MAX SUPER SPECIALITY HOSPITAL, MUSSOORIE DIVERSION ROAD, MALSI, DEHRADUN
UTTRAKHAND - 248 001.
5. .
. .....Opp.Party(s)

BEFORE:
HON'BLE MR. JUSTICE V.K. JAIN,PRESIDING MEMBER

For the Complainant : Mr. Dron Mishra, Son/A.R.
For the Opp.Party :

Dated : 07 Nov 2019

ORDER

For the Complainant	Mr. Dron Mishra, Son/A.R.
For the Opposite Party	Mr. Gautam Awasthi, Advocate
No. 1 & 2	Mr. Ayush Choudhary, Advocate
	(Informed at a later day that he also represents OP No.3)
	Mr. Kapil Kher, Advocate

For the Opposite Party Ms. Deepika Sood, Advocate

No.4

JUSTICE V.K. JAIN, PRESIDING MEMBER

Late Shri Gyan Mishra, husband of the complainant Rupa Mishra and father of the other complainants visited opposite party No.2, Dr. Sandeep Agarwal, who is a Neurologist, for the first time on 02.5.2011 in Sahara Hospital, Lucknow. The said visit was followed by subsequent visits for consultation with Dr. Sandeep Agarwal. He was admitted in Sahara Hospital in Lucknow on 24.9.2012 and was discharged from there on 25.09.2012. During his stay in the said hospital, his pathology tests were done on 24.09.2012 and his serum creatinine was found to be 3.43 as against the range of
0.7 – 1.2. No further investigations or treatment for monitoring and management of the high serum creatinine which was indication of a kidney disease was advised to him at the time of his discharge from Sahara Hospital, nor was he advised to consult a Nephrologist for the said purpose. He was again admitted to Sahara Hospital on 09.12.2013 and was seen by Dr. Sandeep Agarwal as well as by opposite party No.3 Dr. Muffazal Ahmed, who is a Nephrologist. Opposite party No.3 informed him and his family members that the complainant was suffering from end stage renal disease and required dialysis. He was discharged from the hospital on 19.12.2013. The complainant was allegedly given iron injection during his stay in the hospital though, such injection, according to the complainant is contra indicated in the case of a person suffering from a kidney disease. This is also the case of the complainant that he was prescribed iron injection on 18.3.2014 and 26.6.2014 namely Encicarb, without checking his ferritin level.

2. Another grievance of the complainant is that the medicine Metformin was advised to him, which was contra indicated in his case and his cardiovascular examination was not done in Sahara Hospital.

3. Yet another grievance of the complainant is that a medicine namely Liofen was prescribed to him which was contra indicated in his case.

4. Alleging negligence on the part of the opposite parties in his treatment, the complainant approached this Commission by way of this consumer complaint, seeking compensation for the damages to the extent of Rs.24,81,28,253/-, along with compensation for mental agony etc., quantified at Rs.4,80,00,000/-. He also sought a sum of Rs.3.8 crores for his future medical expenses.

5. The complaint has been resisted by the opposite parties. It is stated in the written version filed by the opposite parties that the complainant was a chronic alcoholic with a long standing history of Diabetes Mellitus. He was also found to have kidney disease with Urosepsis and chronic liver disease. It is also stated that 40% of the patient with type-I or type –II diabetes mellitus develops nephropathy, which is a common cause of chronic renal failure. It is admitted that the complainant was admitted in Sahara Hospital Lucknow on 24.9.2012 and was discharged from there on 25.9.2012. The discharge, according to the opposite parties was done at the request of his relatives. It is also alleged that at the time of discharge of the complainant on 25.9.2012, it was thought that the impairment of his kidney function could be due to dehydration and should be managed conservatively. It is admitted that the complainant was seen by Dr. Muffazal Ahmed and later by Dr. Ankur Gupta, who is a Gastroenterologist when he was admitted in the hospital on 09.12.2013. It is stated in the written version that the complete iron profile of the complainant was done on 10.12.2013 and he was treated with injection ‘Cresp’ and oral iron but he continued to remain anaemic, despite aggressive erythropoietin and oral iron. No intravenous iron was given to him during hospitalization during December, 2013. It is further stated that when he visited the OPD on 18.3.2014, he was advised to take injection Encicarb to be infused in two hours daily for two days after a detailed discussion on pros and cons of the therapy. It is further stated that when the complainant visited OPD on 25.6.2014, he informed that he had not taken Encicarb, which was prescribed to him in March, 2014. He was therefore, advised to take the injection Encicarb. It is claimed that since erythropoietin is a costly therapy, India Society of Nephrology suggests a trial of IV Iron in anaemic chronic kidney disease if TSAT (transferrin saturation) is less than 30% and Ferritin is less than 500. The saturation of the complainant at that time was 11.42% and his serum ferritin was 258.1 on 10.12.2013. It is also claimed that it was not necessary to check ferritin before prescribing each dose of IV iron.

6. It is an admitted position that the serum creatinine of the complainant was 3.43 at the time he was discharged by opposite party No.2 Dr. Sandeep Agarwal from Sahara Hospital on 25.12.2012. A perusal of the discharge summary would show that high serum creatinine was not even noted in the said discharge summary. Despite the serum creatinine level being so high, neither any monitoring or management by way of periodical investigation was advised to him, nor was he asked to consult a nephrologist. The case of the opposite parties is that they thought that the serum creatinine level might have increased due to dehydration. The discharge summary however, does not record any such assumption. Even if the opposite party / treating doctor was of the opinion that high creatinine level could be due to dehydration, the least expected from him was to note it down in the discharge summary and advise the patient to get his creatinine level checked regularly, since the said level would have come down in due course had the same been caused by dehydration. In fact, considering the high level of serum creatinine, the opposite party No.2 Dr. Sandeep Agarwal ought to have suggested consultation by a Nephrologist to confirm the cause of the increase in serum creatinine. Therefore, it would be difficult to say that the opposite party No.2 Dr. Sandeep Agarwal was negligent in the treatment of the complainant, he having not given any treatment or advise to him for the monitoring, management and treatment of the high level of serum creatinine found nor having advised him to consult a Nephrologist during the course of his treatment and at the time of his discharge on 25.9.2012. As a result of this negligence, the complainant could not get any treatment for his kidney disease for more than one year.

7. It is an admitted position that the opposite party No.3 Dr. Muffazal Ahmed advised iron injection Encicarb to the complainant on 18.3.2014. The guidelines issued by the Indian Society of Nephrology, to the extent they deal with the administration of iron to CKD patients, read as under:-

> *"…… the most widely used test to asses iron status are TSAT and ferritin level. A low serum ferritin less than 30 ng / ml and TSAT less than 20% is indicative of iron deficiency. However, most CKD patients with serum ferritin more than 100 ng / ml and TSAT more than 20% do respond to supplemental iron by increase in Hb concentration and decrease in ESA dose. Hence in these guidelines we recommend, as suggested by KDIGO iron administration in anaemic CKD patients with less than 30% TSAT and less than 500 ng / ml serum ferritin, after considering the potential risk of iron administration. In CKD patients with TSAT more than 30% and ferritin more than 500 ng / ml, the safety of providing additional iron has not been studied. We do not recommend routine use of iron supplementation in these situations. Mode of Iron supplementation is either oral or IV.*
>
> *Iron Status Evaluation –*
>
> *3.8.1 We suggest to assess iron status (TSAT and ferritin) at least every three months during ESA therapy, including the decision to start or continue iron therapy.*
>
> *3.8.2 We suggest to Test iron status (TSAT and ferritin) more frequently when initiating or increasing ESA dose, when there is blood loss, when monitoring response after a course of IV iron, and in other circumstances where iron stores may become depleted."*

It would thus be seen that the treating doctor should first get the TSAT and Ferritin level of the patient checked before initiating ESA therapy. Admittedly, ferritin and TSAT of the complainant were not got checked soon before 18.3.2014 when intravenous iron Encicarb was advised to him. His ferritin levels were last checked on 10.12.2013 and more than three months had already expired by the time iron injection encicarb was advised to him on 18.3.2014. In view of the guidelines issued by Indian Society of Nephrology advising the injection Encicarb on 18.3.2014, without checking TSAT and ferritin was an act of negligence on the part of the opposite party No.3 Dr. Muffazal Ahmed in the treatment of the complainant.

Admittedly, encicarb injection was again advised to the complainant on 25.6.2014. Admittedly, his TSAT and ferritin levels were not got checked before advising encicarb to him on that date. It was solely on the basis of the report dated 10.12.2013 that the injection encicarb was advised to the complainant. The case of the opposite parties is that the complainant had told opposite party No.3 Dr. Muffazal Ahmed when he visited his clinic on 25.6.2014 that he had not got encicarb administered when it was advised to him in March, 2014. Even if this is so, considering that more than six months had already elapsed form the date the saturation level and ferritin level of the complainant were checked on 10.12.2013, it was obligatory on

the party of the opposite party No.3 Dr. Muffazal Ahmed to get the said levels checked before advising encicarb to him on 25.6.2014. Though, the opposite parties have claimed that it was not necessary to get the ferritin level checked before advising each dose of iron, considering the guidelines issued by the Indian Society of Nephrology. I have no hesitation in holding that the checking of the said levels was necessary before advising intervenors iron on 25.6.2014. In fact, when the Endoscopy of the complainant was done at Fortis Memorial hospital on 01.9.2014, within about two months of his taking injection encicarb, his system was found overloaded with iron.

8. It is an admitted position that the medicine Liofen was prescribed to the complainant by opposite party No.2 Dr. Sandeep Agarwal. He was advised Liofen in December, 2012 as well as in March, 2013. The Medical Literature filed by the complainant would show that most of the patients with severely impaired renal function develop toxic symptoms after initiating a baclofen regimen. Baclofen is the compound Liofen is made of. The said literature includes that administration of baclofen, regardless of the dosages, in patients with severe impaired renal function, is not appropriate. No medical literature to the contrary, advising prescription of Baclofen with severely impaired renal function has been produced by the opposite parties. Therefore, I see no reason to reject the medical literature produced by the complainant. Opposite party No.2 Dr. Sandeep Agarwal advised Liofen (Baclofen) to the complainant not only on 25.12.2012 when his serum creatinine was very high but also in March, 2013 when it had been established that he was suffering from chronic kidney disease, prescribing Liofen to the complainant, therefore, was an act of negligence on the part of opposite party No.2 Dr. Sandeep Agarwal in the treatment of the complainant.

9. Though, the complainant has also alleged that the Metformin was prescribed to him there is no credible evidence of Metformin having been prescribed to him after 24.12.2012 when his serum creatinine was found to be very high.

10. As far as opposite party No.4 Dr. Ankur Gupta is concerned, there is no evidence of any negligence on his part in the treatment of the complainant. Though, the prescription dated 1.3.2014 was written by him for the complainant, it was noted on the prescription itself that the advice for the said prescription was given by opposite party No.3 Dr. Muffazal Ahmed. A doctor wiring a prescription advised by any doctor cannot be said to be negligent only on account of his writing such a prescription.

11. During the course of arguments, the learned counsel for the opposite parties pointed out that the complaint made by Mr. Dron Mishra against the OPs was rejected by the Ethical Committee of Uttar Pradesh Medical Council. A copy of the recommendation of the Ethical Committee was filed by the learned counsel during the course of arguments. I have perused the recommendation. The recommendation does not contain any justification for Dr. Sandeep Agarwal not advising any monitoring and management of the high creatinine, at the time of discharge of the complainant on 25.12.2012. It does not deal with the opposite party No.3 Dr. Muffazal Ahmed prescribing iron injections without getting the ferritin level checked soon before initiating the therapy. The injection Encicarb was advised to the complainant on 24.1.2014 on the basis of the ferritin level checked more than six months earlier on 10.12.2013, which was contrary to the guidelines issued by the Indian Society of Nephrology. The recommendation also does not deal with prescribing the medicine Liofen to the complainant, despite his suffering from chronic kidney disease at the time the said medicine was advised. Therefore, the complaint cannot be rejected in view of the aforesaid recommendation of the Ethical Committee of Uttar Pradesh Medical Council.

12. It was also submitted by the learned counsel for the opposite parties that no expert has been examined by the complainant to prove any negligence in the treatment of late Shri Gyan Mishra. In support of his contention, the learned counsel relied upon the decision of the Hon'ble Supreme Court **dated 01.10.2018 in Civil Appeal No.3971 of 2011 Dr. S.K. Jhunjhunwala Vs. Mrs. Dhanwanti Kaur & Anr.** Nowhere has the Hon'ble Supreme Court said in the above referred decision that even in a simple and uncomplicated case, based on admitted facts, the negligence in the treatment of a patient can be proved, without examining a medical expert. If the matter is simple and uncomplicated, the negligence can in an appropriate case, also be proved on the basis of the admitted facts and relevant medical literature written by medical experts. A reference in this regard can be made to the decision of the Hon'ble Supreme Court in **V. Kishan Rao Vs. Nikhil Super Speciality Hospital & Anr. (2010) 5 SCC 513 decided on 08.3.2010,** where the Hon'ble Supreme Court inter-alia held as under:

"18. In the opinion of this Court, before forming an opinion that expert evidence is necessary, the Fora under the Act must come to a conclusion that the case is complicated enough to require the opinion of an expert or that the facts of the case are such that it cannot be resolved by the members of the Fora without the assistance of expert opinion. This Court makes it clear that in these matters no mechanical approach can be followed by these Fora. Each case has to be judged on its own facts. If a decision is taken that in all cases medical negligence has to be proved on the basis of expert evidence, in that event the efficacy of remedy provided under this Act will be unnecessarily burdened and in many cases such remedy would be illusory.

34. Therefore, the general directions in para 106 in D'Souza quoted above are with great respect, inconsistent with the directions given in para 52 in Mathew which is a larger Bench decision.

38. A careful reading of the aforesaid principles laid down by this Court in Indian Medical Assn. makes the following position clear –

(a) There may be simple cases of medical negligence where expert evidence is not required.

(b) Those cases should be decided by the Fora under the said Act on the basis of the procedure which has been prescribed under the said Act.

(c) In complicated cases where expert evidence is required the parties have a right to go to the civil court.

(d) That right of the parties to go to civil court is preserved under Section 3 of the Act.

45. It is clear from the statement of objects and reasons of the Act that it is to provide a forum for speedy and simple redressal of consumer disputes. Such avowed legislative purpose cannot be either defeated or diluted by superimposing a requirement of having expert evidence in all cases of medical negligence regardless of factual requirement of the case. If that is done the efficacy of remedy under the Act will be substantially curtained and in many cases the remedy will become illusory to the common man."

13. For the reasons stated hereinabove, I hold that the opposite party No.2 Dr. Sandeep Agarwal and opposite party No.3 Dr. Muffazal Ahmed were negligent in the treatment of the complainant, who died during pendency of this complaint. Since they were working with opposite party No.1, the said opposite party is also vicariously liable for the aforesaid negligent acts of opposite parties No. 2 and 3.

14. The next question which comes up for consideration is with respect to the quantum of compensation. Though, the complainants have claimed compensation running into crores of rupees, the facts and circumstances of the case do not justify such a huge and fanciful compensation. The complainant was alive when this complaint was instituted and he died during pendency of this complaint. There is no evidence to prove that the complainant died on account of the deficiency attributed to the opposite parties in his treatment. His creatinine level was pretty high even at the time it was checked in Sahara Hospital on 24.12.2012, though he remained untreated for the kidney disease till the same was detected by opposite party No.3 Dr. Muffazal Ahmed. In December, 2013, it is not known how much more damage to his kidney occurred during the intervening period, though it can hardly be disputed that his kidneys must have suffered further damage on account of his creatinine level having not been managed for more than one year. This is also an admitted position that after his dialysis he was discharged on 19.12.2013. Though, Encicarb was advised to him without checking his ferritin level soon before the said injection was prescribed, there is no evidence to prove the actual ferritin level of the deceased at the time the said injection was advised to him. Though, the medicine Liofen which is contrary indicated in the case of a person suffering from kidney disease was also advised to him, it is not known what damage his system had suffered on account of the consumption of the said medicine by him.

15. Considering all the facts and circumstances of the case, opposite party No.2 Dr. Sandeep Agarwal is directed to pay a sum of Rs.20.00 lacs as compensation to the complainant, whereas opposite party No.3 Dr. Muffazal Ahmed is directed to pay a sum of Rs.10.00 lacs as compensation to him. Opposite party No.1 shall be vicariously liable to pay the aforesaid amounts to the complainant. In other words, the complainant

shall be entitled to an aggregate sum of Rs.30.00 lacs as compensation, out of which Rs.20.00 lacs will be payable by opposite party No.2 Dr. Sandeep Agarwal and Rs.10.00 lacs will be payable by opposite party No.3 Dr. Muffazal Ahmed. The complainant shall be entitled to recover the whole of the said amount from opposite party No.1. The opposite parties shall also pay a sum of Rs.25,000/- as the cost of litigation to the complainants.

The compensation in terms of this order shall be paid within three months form today; failing which it shall carry interest @ 9% per annum with effect from three months form the date of this order, till the date of payment.

.....J
V.K. JAIN
PRESIDING MEMBER