NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6284 OF 2014
(@SPECIAL LEAVE PETITION (CIVIL.) NO. 18367 OF 2012)

MRS. KANTA … **APPELLANT**

VERSUS

TAGORE HEART CARE & RESEARCH CENTRE PVT. LTD.& ANR. …**RESPONDENTS**

J U D G M E N T

CHANDRAMAULI KR. PRASAD, J.

The complainant-appellant, aggrieved by the order dated May 27, 2011 passed by the National Consumer Disputes Redressal Commission (hereinafter referred to as 'the National Commission'), setting aside the Order dated July 14, 2006 of the Punjab State Consumer Disputes Redressal Commission (hereinafter referred to as 'the State Commission')

granting her compensation of Rupees five lacs, has preferred this Special Leave Petition.

Leave granted.

Bereft of unnecessary details, facts giving rise to the present appeal are that the complainant-appellant Mrs. Kanta, aged about 55 years at the relevant time, suffered acute chest pain in the last week of August, 1999. She consulted a medical practitioner at Amritsar who found her symptoms to be of heart attack. Accordingly, she was advised to obtain opinion and treatment of a cardiologist and cardio vascular surgeon. She was taken to Jalandhar by her family members where they consulted Dr. Raman Chawla (Respondent No.2 herein), attached to Tagore Heart Care and Research Centre Pvt. Ltd., hereinafter referred to as 'the Research Centre', (Respondent No.1 herein). Dr. Chawla examined the complainant clinically on September 1, 1999 and conducted Echo

test. Dr. Chawla noticed that there was possibility of blockages which needed appropriate confirmation and medical treatment and accordingly he advised for admission of the complainant in the Research Centre for conducting angiography. It was made known by the complainant that she is allergic to almost all the antibiotics except few. Dr. Chawla with the consent of the complainant's son, a medical practitioner, decided to conduct angiography on September 2, 1999.

It is the allegation of the complainant that the angiography was to be performed in the morning of September 2, 1999 but it was not done at the scheduled time but was performed in the afternoon. The complainant was not allowed to take any food the previous night. The complainant has alleged that during the angiography procedure, she felt severe pain in the abdomen and brought the said fact to the notice of Dr. Chawla but he ignored the same and continued with the procedure. After the

procedure was completed, according to the complainant, she was shifted to the recovery room. Angiogram showed LAD artery blockage to the extent of 95 per cent. It has been specifically alleged by the complainant that Dr. Chawla took consent of her son for performance of PTCA or angioplasty for removal of the blockage, yet it was given up in the midway after about 15-20 minutes on the pretext that she was allergic to many drugs. According to the complainant, she was shifted to Intensive Care Unit (ICU) and though she had severe pain throughout the night, yet nobody attended her. On September 3, 1999, according to the complainant, Dr. Chawla alongwith another consultant namely Dr. Suri examined her who found pulse of her right leg practically absent and as such he reprimanded Dr. Chawla. The complainant was discharged from the Research Centre and thereafter she came to Delhi and consulted Dr. Trehan of the Escorts Heart Institute, Delhi and was admitted in the said Institute on September 13, 1999. Another

angiography was conducted at the Escorts Heart Institute through radial artery of the right arm and on that basis, according to the complainant, Dr. Trehan opined that aorta dissection has taken place during the angiography procedure done by Dr. Chawla at Tagore Heart Care and Research Centre, Mahavir Nagar, Jalandhar, Punjab and that was iatrogenic in nature. Ultimately, she had undergone angioplasty on October 18, 1999 and was discharged after ten days.

The complainant alleged medical negligence on the part of Dr. Chawla and the Research Centre while conducting the angiography on September 2, 1999 resulting into dissection of aorta. She has alleged that she had to obtain further treatment and due to the sheer negligent act of Dr. Chawla incurred heavy expenditure in undergoing angioplasty and angiography at Escorts Heart Institute. Alleging the aforesaid, the complainant filed petition before State Commission, *interalia,*

praying compensation of Rupees Eleven lacs from Dr. Chawla-Respondent No.2 and the Research Centre-Respondent No.1.

After issuance of notice, Dr. Chawla-Respondent No.2 and the Research Centre-Respondent No.1 entered their appearance and denied allegations made by the complainant that former was negligent while conducting the angiography on the complainant on September 2, 1999. According to them, the complainant was a patient of hypertension and had a history of ischaemia as also allergic to most of the antibiotics and as such there was risk involved in conducting the angiography on the complainant on September 2, 1999. Dr. Chawla and the Research Centre further averred that coronary angiography was done successfully and the complainant was shifted to ICU in a stable condition. According to them, after about a couple of days of stabilization, the coronary angioplasty was planned. However, on September 3, 1999 in the

morning, the complainant got acute pain in abdomen and thereafter Dr. Suri, a Cardio-thoracic Surgeon was called for examining her. He suspected aorta dissection and as such CT scan of the abdomen and thereafter MRI was done immediately and on that basis the dissection of aorta was confirmed and further treatment in consultation with Dr. Suri was planned. According to them, the complainant was stable and discharged on September 8, 1999. They have further averred that conservative management was planned for 4 to 6 weeks to ensure healing of the aorta dissection prior to conducting of contemplated angioplasty. According to them, the complainant did not turn up after the discharge. She took further treatment at the Escorts Heart Institute, Delhi and in fact developed allergy due to side effects of the drug called 'Ticlopidin' prescribed at the Escorts Heart Institute after the angioplasty procedure. According to them, they were not at all responsible for deterioration of her condition nor deficiency in their medical

service. They have also denied the allegation of negligence made against Dr. Chawla (Respondent No.2) while conducting the angiography on September 2, 1999.

The State Commission directed both the parties to file affidavits and place such other materials which were relevant for decision of the issue before it. On the basis of the materials placed on record, the State Commission came to the conclusion that aortic dissection occurred during the angiography conducted by Dr. Chawla when he forced the catheter through artery in a negligent manner. For coming to the aforesaid conclusion, the State Commission heavily relied on the assertion of the complainant that she felt severe pain in the abdomen during angiography. In this connection, it is apt to reproduce the observations made by the State Commission in this regard:

> "….It is true that hypertension is one of the factors of causing aorta dissection but in the present case, the aortic dissection had taken place when respondent

> no.2 was passing the catheter through iliac artery travelling through aorta blood vessel reaching inside the arteries adjoining the heart. The dissection of aorta had taken place because respondent no.2 was negligent. In fact, it is case of res ipsa loquitur i.e. the facts speak themselves and point out that it has taken place due to negligence of respondent no. 2.If he taken due care and caution, then this dissection of aorta would not have taken place because it is a very rare phenomenon. Hence, we hold that the respondent had not taken due care and caution and had acted negligently in passing the catheter through iliac artery by performing angiography and this led to severe pain in her abdomen and she even complained but unmindful with the pain of complainant, he continued with the process and completed the same. This again suggests that he was insensitive to the pain and agony of the complainant."

On appeal by Dr. Chawla and the Research Centre, the National Commission set aside the finding of the State Commission that aortic dissection had taken place during angiography done negligently by Dr. Chawla. In this regard, the National Commission has observed as follows:

> "18. We are of the opinion that the State Commission committed an error while reaching a finding that the doctrine of Res ipsa loquitur is applicable to the fact situation of the present case. In

> fact, we do not find any basis to support such finding, particularly, when the medical record shows that complainant – Smt. Kanta was stable when she was discharged on 8.9.1999 from the hospital and could later on travel to Delhi for the purpose of coronary surgery. We think it proper to hold that there was no negligence committed by the appellants while conducting the angiography procedure."

Undisputedly, the complainant had suffered aorta dissection. The CT scan and MRI conducted on September 3, 1999 confirmed it. However, the controversy is when did it occur? According to the complainant, it happened while angiography was being done by Dr. Chawla on September 2, 1999 whereas according to Dr. Chawla and the Research Centre, she suffered the same not during angiography but the day following that because of high blood pressure. It is further beyond controversy that Dr. Chawla completed the angiography on September 2, 1999 which showed LAD artery blockage to the extent of 95 per cent. It is the plea of the respondents that had complainant

suffered aortic dissection during the angiography, it could not have been completed.

We have heard Mr. Mahabir Singh, Senior Counsel for the appellant as also Mr. Amarendra Sharan, Senior Counsel for the respondent. Undoubtedly, the complainant had aorta dissection. The question is as to whether it was the direct result of any negligent or rash act committed by Dr. Chawla while conducting the angiography. From the entries made in the discharge summary, we do not find that there was any emergency to treat the aortic dissection. Aortic dissection came to be noticed beyond all reasonable doubt on September 3, 1999. She was not operated upon. It may be mentioned here that in case of acute aortic dissection, emergency open heart surgery is required. However, in case of sub-acute aortic dissection, treatment with medication may be sufficient. There is sufficient material to come to the conclusion that the complainant was found stable after third day of angiography and till the date of discharge on

September 8, 1999. The only allegation of the complainant is of abdominal pain during the process of angiography. There is no dispute that she was aged about 55 years and suffering from hypertension when the angiography procedure was conducted on her. It is probable that due to such associated causes the passage of the catheter through aortic space was not smooth. There is no material to infer that Dr. Chawla had undertaken any adventurous step. There is nothing on record which points out that Dr. Chawla used any brutal force to push the catheter. In our opinion, mere completion of the angiography does not rule out aorta dissection during the procedure. We find that the complainant did not had a serious aorta dissection but was having sub-acute aorta dissection and this is the reason that the complainant was subjected to clinical management and, in fact, her condition became stable without any surgical interference. It is nobody's case that Dr. Chawla is not a competent coronary expert or he lacked adequate

knowledge in the field of coronary surgery. He is duly qualified and has good academic credentials. We have not found his conduct to be below the normal standard of a reasonably competent practitioner in his field. We are in agreement with the reasoning and the conclusion arrived at by the National Commission that the complainant has not been able to prove medical negligence on the part of Dr. Chawla.

In the result, we do not find any merit in the appeal and it is dismissed without any order as to costs.

…….……..……J.
(CHANDRAMAULI KR. PRASAD)

…….……J.
(PINAKI CHANDRA GHOSE)

NEW DELHI,
JULY 10, 2014.