Supreme Court of India
M/S. Spring Meadows Hospital & Anr vs Harjol Ahluwalia Through, K.S. ... on 25 March, 1998
Author: G Pattanaik
Bench: S. Saghir Ahmad, G.B. Pattanaik

PETITIONER:
M/S. SPRING MEADOWS HOSPITAL & ANR

Vs.

RESPONDENT:
HARJOL AHLUWALIA THROUGH, K.S. AHLUWALIA & ANR

DATE OF JUDGMENT: 25/03/1998

BENCH:
S. SAGHIR AHMAD, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

WITH CIVIL APPEAL NO. 7858 OF 1997 J U D G M E N T G.B. PATTANAIK, J.

These two appeals arise out of the order dated 16th June, 1997 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as 'the Commission') in Original Petition No. 292 of 1994. The Hospital is the appellant in Civil Appeal No. 7708 of 1997 while the insurance company is the appellant in the other appeal. When the special leave applications out of which the two aforesaid appeals arise were listed for preliminary hearing, the court had issued notice limited to the award of Rs. 5 lacs as compensation to the parents of the child even though the insurance company has raised the question of its liability to pay the compensation in question.

A Complaint Petition was filed by minor Harjot Ahluwalia through his parents Mrs. Harpreet Ahluwalia and Mr. Kamaljit Singh Ahluwalia before the Commission alleging that the minor was being treated at a Nursing Home in Noida in December, 1993. As there was no improvement in his health the said minor was brought to M/s. Spring Meadows Hospital, appellant in Civil Appeal No. 7708 of 1997 on 24th of December, 1993. In the hospital the patient was examined by the Senior Consultant Paediatrician, dr. Promila Bhutani and on the advice of the said doctor the patient was admitted as an in-patient in the hospital. The doctor made the diagnosis that the patient was suffering from typhoid and intimated the parents that medicines have been prescribed for the

treatment of the typhoid fever. On the 30th of December, 1993 at 9.00 a.m. Miss Bina Matthew, nurse of the hospital asked the father of the minor patient to get the injection - In Lariago - to be administered intravenously to the minor patient. The father of the minor child purchased the medicine which was written down by the nurse and gave it, whereupon the nurse injected the same to the minor patient. The patient, immediately on being injected collapsed while still in the lap of his mother. it was further alleged that before administering the injection the nurse had not made any sensitive test to find out whether there would be any adverse reaction on the patient. Seeing the minor child collapse the parents immediately called for help and the Resident Doctor Dr. Dhananjay attended the patient. Said Dr. Dhananjay told the parents that the child had suffered a cardiac arrest and then by manually pumping the chest the Doctor attempted to revive the heartbeat. The hospital authorities then summoned an Anaesthetist, Dr. Anil Mehta who arrived within half an hour and then started a procedure of manual respiration by applying the oxygen cylinder and manual Respirator. In the meantime Dr. Promila Bhutani also reached the hospital and the minor child was kept on a device called manual Respirator. Though the child was kept alive on the manual ventilator but the condition of the child did not show any improvement. In course of treatment as the minor's platelets count fell, a blood transfusion was given but still no improvement could be seen. Dr. mehta, therefore, intimated the parents that the hospital does not have the necessary facilities to manage the minor child and the should be shifted to an intensive Care Unit equipped with an Auto Respirator. On the advice of Dr. Mehta the parents brought the child and admitted him in the Paediatric Intensive Care Unit of the All India Institute of Medical Science on the 3rd January, 1994. In the Institute the doctors examined the minor child thoroughly and informed the parents that the child is critical and even if the would survive, he would live only in a vegetative state as irreparable damage had been caused to his brain and there was no chance of revival of the damaged p[arts. The minor was then kept in the Paediatric Intensive Care Unit of the AIIMS till 24th of January, 1994 and was thereafter discharged after informing the parents that no useful purpose would be served by keeping the minor child there. Dr. Anil Mehta as well as Dr. Naresh Juneja, Chief Administrator of Spring Meadows Hospital, however, offered to admit the minor child at their hospital and to do whatever was possible to stabilise the condition of the child and accordingly the minor child was again admitted to the hospital. The complainant alleged that the child on account of negligence and deficiency on the part of the hospital authorities suffered irreparable damages and could survive only as a mere vegetative and accordingly claimed compensation to the tune of Rs. 28 lacs.

On behalf of the appellants objection was filed before the commission taking the stand that no payment having been made it cannot be said that the services of the hospital having been availed for consideration and as such the complainant is not a consumer within the definition of 'Consumer' in the Consumer Protection Act, 1986. It was further stated that there has been no deficiency or negligence in service on the part of the doctors of the hospital and the negligence, if any, is on the part of the nurse who misread the prescription. It was also contended that immediate steps have been taken by Dr. Dhananjay as Well as dr. Mehta and the hospital authorities had summoned three specialists to examine the patient. It was further stated that the patient was taken to the All India Institute of Medical Sciences by the parents for better treatment but on being discharged from the Institute the hospital authorities on sympathetic consideration readmitted the child and are taking all possible steps and giving all possible treatment without any payment and at no point of time there has been any negligence on the part of the doctors attending the minor child in the hospital. It

was also urged that in any event the liability to pay compensation would be that of the insurer.

Miss Bina Matthew the nurse who injected the Lariago injection to the child, who was opposite party No.2 before the Commission field her objections station therein that she is a qualified nurse and had exercised all diligence and care in discharging her duties. It was further stated that the patient was under the treatment of Dr. Bhutani who had the duty to decide the course treatment and as nurse she was only working under her control and direction. She also stated that as the patent was already taking lariago syrup and when the doctor advised that injection should be given she thought that the same lariago injection to be given and it was the duty of the duty of the doctor to give the injection and take all care.

The insurer-opposite no. 3- which is appellant in Civil Appeal No. 7858 of 1997 contested the claim and took the defence that there has been no deficiency in service on the part of the reinsurance company and the provisions of the Consumer Protection Act could not be invoked against the insurer. According to the insurer the insurance company issued medical establishment professional negligence errors and omissions insurance policy and the terms and conditions of the policy would indicate that the liability of the insurer, if any, is to the extent of 12,50,000/- and not beyond the same and further the insurer cannot be made liable when the liability in question has arisen on account of negligence or deliberate non-compliance of any statutory provisions or intentional disregard o the insured's administrative management of the need to take all reasonable steps to prevent the claim. According to the insurer the nurse Miss Bina Matthew was not a qualified nurse at all and she was not authorised to take up the employment as a nurse not having been registered with any Nursing Council of any State. It was also stated t hat the present state of affairs of the minor child is on account of negligence of an unqualified nurse and therefore the insurer cannot be made liable to pay for any loss or damage sustained. In course of the proceedings before the Commission to assess the minor's condition and rehabilitation requirement the Commission referred the matter to the medical Superintendent, Safdarjung Hospital by order dated 28th January, 1997, and in pursuance to such order the said minor was examined and a report was received by the Commission from the Medical Superintendent, Safdarjung Hospital, New Delhi. The Commission also examined witnesses including Dr. J.S. Nanra and Dr. A.S. Ahluwalia who testified that on account of a medicine having been injected the minor suffered from cardiac arrest on account of which the brain has been damaged. on the basis of the oral and documentary evidence on record the Commission came to the conclusion that the child had suffered from cardiac arrest and cause of such cardiac arrest was intravenous injection of lariago of high dose. The Commission also came to the conclusion that there has been considerable delay in reviving the heart of the minor child and on account of such delay the brain of the minor child got damaged. On the question of the negligence of services the Commission came to the conclusion that there was a clear dereliction of duty on the part of the nurse who was not even a qualified nurse and the hospital is negligent having employed such unqualified people as nurse and having entrusted a minor child to her care. The Commission also came to the conclusion that Dr. Dhananjay was negligent in the performances of his duties inasmuch as while Dr. Bhutani had advised that the injection should be given by the doctor but he permitted the nurse to give the injection. The Commission, ultimately came to the finding that the minor patient had suffered on account of negligence, error and omission on the part of nurse as well as Dr. Dhananjay in rendering their professional services and both of them were

negligent in performing their duties in consequence of which the minor child suffered and since the doctor and the nurse were employees of the hospital the hospital is responsible for the negligence of the employees and the hospital is liable for the consequences. The Commission then determined the quantum of compensation and awarded 12.5 lacs as compensation to the minor patient. In addition to the aforesaid sum of Rs. 12.5 lacs, the Commission also awarded Rs. 5 lacs as compensation to be paid to the parents of the minor child for the acute mental agony that has been caused to the parents by reason of their only son having been reduced to a vegetative state requiring life long care and attention. On the question of the liability of the reinsurance company the Commission came to hold that the said insurance company is liable to indemnify the amount of Rs. 12,37,500/- in terms of the policy on account of the liability of the hospital as the case is fully covered under the indemnity clause. The Commission then considered the question as to how the amount of compensation should be disbursed for being spent for the welfare of the child and then issued certain directions with which we are not concerned in this appeal.

The learned counsel for the appellant appearing for the hospital contended that the complaint having been filed by the minor child who was the in-patient in the hospital through his parents the said minor child can only be the consumer and the parents cannot claim any compensation under the Consumer Protection Act for the mental agony they have suffered and as such the award of compensation to the tune of Rs. 5 lacs in favour of the parents is beyond the competence of the Commission. The learned counsel then urged that under the Consumer Protection Act the consumer to whom services has been provided can make a complaint and in the case in hand the services having been provided to the minor patient, he becomes the consumer and consequently no compensation can be awarded in favour of the parents of the consumer and according to the learned counsel it is apparent from the provisions of Section 12(1)(a) of the Consumer Protection Act. The learned counsel lastly contended that under Section 14(1) (d) of the Act the Commission would be entitled to pay such amount as compensation to the consumer for any loss or damage suffered by such consumer and in the case in hand the minor child being the consumer the Commission was not competent to award compensation to the parents for the mental agony they have suffered. The learned counsel for the insurer - appellant in the other appeal vehemently contended that insurer cannot be held liable to indemnify the hospital who is the insured as the said hospital had employed unqualified people to treat the patients and the direction of the Commission that the insurer would indemnify the insured is unsustainable in law. But we are not in a position to examine this contention advanced on behalf of the learned counsel appearing for the insurer in view of the limited notice issued by this Court. It would not be open for us to entertain this question for consideration as the notice issued by this Court indicates that only the award of compensation to the parents of the minor child and the legality of the same can only the considered. We are, therefore, unable to examine the contention raised by the learned counsel appearing for the insurer.

In view of the submissions made by the learned counsel appearing for the hospital the following questions arise for our consideration:

1. The minor child being the patient who was admitted into the hospital for treatment can the parents of the child be held to be consumers so as to claim compensation under the provisions of the Consumer Protection Act?

2. Is the commission under the Act entitled to award compensation to the parents for mental agony in view of the powers of the commission under Section 14 of the Act?

3. Even if the child as well as the parents of the child would come under definition of the 'consumer' under Section 2(1) (d) of the Act whether compensation can be awarded in favour of both the consumers or compensation can be awarded only to the beneficiary of the services rendered, who in the present case would be child who was admitted into the hospital?

Before we examine the aforesaid questions it would be appropriate to notice the scenario in which the parliament enacted the Consumer Protection Act (hereinafter referred to as 'the Act'). The United Nations had passed a resolution in April, 1985 indicating certain guidelines under which the Government could make law for better protection of the interest of the consumers. Such laws were necessary more in the developing countries to protect the consumers from hazards to their health and safety and make them available speedier and cheaper redress. Consumerism has been a movement in which the trader and the consumer find each other as adversaries. Till last two decades in many developed and developing countries powerful consumer organisations have come into existence and such organisations have instrumental in dealing with the consumer protection laws and in expansion of the horizon of such laws. In our country the legislation is of recent origin and its efficacy has not been critically evaluated which has to be done on the basis of experience. Undoubtedly the Act creates a framework for speedy disposal of consumer disputes and an attempt has been made to remove the existing evils of the ordinary court system. The Act gives a comprehensive definition of consumer who is the principal beneficiary of the legislation but at the same time in view of the comprehensive definition of the term 'consumer' even a member of the family cannot be denied the status of consumer under the Act and in an action by any such member of the family for any deficiency of service, it will not be open for a trader to take a stand that there is no privity of contract. The Consumer Protection Act confers jurisdiction on the Commission in respect of matters where either there is defect in goods or there is deficiency in service or there has been an unfair and restrictive trade practice or in the matter of charging of excessive price. The Act being a beneficial legislation intended to confer some speedier remedy on a consumer from being exploited by unscrupulous traders, the provisions thereof should receive a liberal construction.

In the case in hand we are dealing with a problem which centres round the medical ethics and as such it may be appropriate to notice the broad responsibilities of such organisations who in the garb of doing service to the humanity have continued commercial activities and have been mercilessly extracting money from helpless patients and their family members and yet do not provide the necessary services. The influence exhorted by a doctor is unique. The relationship between the doctor and the patient is not always equally balanced. The attitude of a patient is poised between trust in the learning of another and the general distress of one who is in a state of uncertainty and such ambivalence naturally leads t a sense of inferiority and it is, therefore, the function medical ethics to ensure that the superiority of the doctor is not abused in any manner. It is a great mistake to think that doctors and hospitals are easy targets for the dissatisfied patient. it is indeed very difficult to raise an action of negligence. Not only there are practical difficulties in linking the injury sustained with the medical treatment but also it is still more difficult to establish the standard of care in medical negligence of which a complaint can be made. All these factors together with the

sheer expense of bringing a legal action and the denial of legal aid to all but the poorest operate to limit medical litigation in this country. With the emergence of the Consumer Protection Act no doubt in some cases patients have been able to establish the negligence of the doctors rendering service an din taking compensation thereof but the same is very few in number. In recent days there has been increasing pressure on hospital facilities, falling standard of professional competence and in addition to all, the ever increasing complexity of therapeutic and diagnostic methods and all this together are responsible for the medical negligence. That apart there has been a growing awareness in the public mind to bring the negligence of such professional doctors to light. Very often in a claim for compensation arising out of medical negligence a plea is taken that it is a case of bona fide mistake which under certain circumstances may be excusable, but a mistake which would tantamount to negligence cannot be pardoned. In the former case a court can accept that ordinary human fallibility precludes the liability while in the latter the conduct of the defendant is considered to have gone beyond the bounds of what is expected of the reasonably skill of a competent doctor. In the case of Whitehouse v Jordan and another, [1981] 1 ALL ER 267, an obstetrician had pulled too hard in a trial of forceps delivery and had thereby caused the plaintiff's head to become wedged with consequent asphyxia and brain damage. The trial judge had held the action of the defendant to be negligent but this judgment had been reversed by Lord Denning, in the Court of Appeal, emphasising that an error of judgment would not tantamount to negligence. When the said matter came before the House of Lords, the views of Lord Denning on the error of judgment was rejected and it was held that an error of judgment could be negligence if it is an error which would not have been made by a reasonably competent professional man acting with ordinary care. Lord Fraser pointed out thus;

> "The true position is that an error of judgment may, or may not, be negligent; it depends on the nature of the error. If it is one that would not have been made by a reasonably competent professional man profession to have the standard and type of skill that the defendant holds himself out as having, and acting with ordinary care, then it is negligence. If, on the other hand, it is an error that such a man, acting with ordinary care, might have made, then it is not negligence."

Gross medical mistake will always result in a finding of negligence. Use of wrong drug or wrong gas during the course of anaesthetic will frequently lead to the imposition of liability and in some situations even the principle of Res ipsa loquitur can be applied. Even delegation of responsibility to another may amount to negligence in certain circumstances. A consultant could be negligent where he delegates the responsibility to his junior with the knowledge that the junior was incapable of performing of his duties properly. We are indicating these principles since in the case in hand certain arguments had been advanced in this regard, which will be dealt with while answering the question posed by us.

Question Nos. 1 and 3 are inter-linked, and therefore, they are discussed together. The answer to both these questions would depend upon an interpretation of the expression 'consumer' in Section 2(1)(d) of the Act. Section 2(1)(d) is extracted hereinbelow in extenso:

> 2(1)(d) : " Consumer" means any person who -

(i) buys any goods for a consideration which has been paid or promised or partly paid an partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services of ra consideration which has been paid or promised or partly paid and paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed or with the approval of the first mentioned person;

Explanation - For the purpose of sub-clause (i) "commercial purpose " does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment.

In the present case, we are concerned with clause (ii) of Section 2(1)(d). In the said clause a consumer would mean a person who hires or avails of the services and includes any beneficiary of such services other than the person who hires or avails of the services. When a young child is taken to a hospital by his parents and the child is treated by the doctor, the parents would come within the definition of consumer having hired the services and the young child would also become a consumer under the inclusive definition being a beneficiary of such services. The definition clause being wide enough to include not only the person who hires the services but also the beneficiary of such services which beneficiary is other than the person who hires the services, the conclusion is irresistible that both the parents of the child as well as the child would be consumer within the meaning of Section 2(1)(d)(ii) of the Act and as such can claim compensation under the Act.

So far as the second question is concerned, the contention of the learned counsel for the appellant is that Section 14 being the provision authorising the Commission to pass appropriate orders under one or more of the clauses (a) to (i) and clause (d) alone being the provision for award of compensation, the Commission is entitled to award compensation, the Commission is entitled to award compensation for any loss or injury suffered by the consumer due to the negligence of the person whose services had been hired and that being the position it would be open for the Commission to award compensation to the minor child who has suffered injury and not the parents. In other words, the learned counsel urged that clause (d) of Section 14 may not be interpreted enabling the Commission to award compensation both to the minor child and his parents. We see absolutely no force in the aforesaid contention inasmuch as the Commission would be entitled to award compensation under clause (d) to a consumer for any loss or injury suffered by such consumer due to the negligence of the opposite party. If the parents of the child having hired the services of the hospital are consumer within the meaning of Section 2(1)(d)(ii) and the child also is consumer being a beneficiary of such services hired by his parents in the inclusive definition in

Section 2(1)(d) of the Act, the Commission will be fully justified in awarding compensation to both of them for the injury each one of them has sustained. In the case in hand the Commission has awarded compensation in favour of the minor child taking into account the cost of equipments and the recurring expenses that would be necessary for the said minor child who is merely having a vegetative life. Te compensation awarded in favour of the parents of the minor child is for their acute mental agony and the life long care and attention which the parents would have to bestow on the minor child. The award of compensation in respect of respective consumers are on different head. We see no infirmity with the order of the Commission awarding different amount of compensation on different head, both being consumers under the Act. Accordingly, the Commission in our considered opinion rightly awarded compensation in favour of t he parents in addition to the compensation in favour of the parents in addition to the compensation in favour of the minor child.

The learned counsel for the appellants in course of his argument has contended that not only the hospital authorities had immediately on their own taken the assistance of several specialists to treat the child but also even after the child was discharged from the All India Institute of Medical Sciences, humanitarian approach has been taken by the hospital authorities and child has been taken care of by the hospital even without charging any money for the services rendered and consequently in such a situation the award of damages for mental agony to the parents is wholly unjustified. We, however, fail to appreciate this argument advanced on behalf of the learned counsel for the appellants inasmuch as the mental agony of the parent will not be dismissed in any manner merely seeing the only child living a vegetative state on account of negligence of the hospital authorities on a hospital bed. The agony of the parents would remain so long as they remain alive and the so-called humanitarian approach of the hospital authorities in no way can be considered to be a factor in denying the compensation for mental agony suffered by the parents.

In the premises as aforesaid, the contentions raised by the learned counsel appearing for the appellants having failed, the appal fails and is dismissed.

Accordingly both the appeals are dismissed with costs of Rs. 5,000/-.