

Case Report

No Nexus between Procedure and Illness: Not a Case of Medical Negligence: NCDRC

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ABSTRACT

A case of Keratosis Obturans (wax in ear) was dealt by an ENT surgeon without rupture of tympanic membrane of a female patient aged 12 years. Patient developed signs of meningitis after 11 days and was referred to pediatrician for further treatment by same ENT surgeon. Accordingly, patient was taken to Jeevan Jyot Hospital at Satara on 21.02.2007 where laboratory investigations diagnosed meningitis. After that she was admitted at Chirayu Hospital on 22.02.2007 where another ENT surgeon who opined no rupture of tympanic membrane after various investigations like MRI, Otoscopy, Tympanogram, and impedance audiometry. It was alleged by the patient's mother (complainant) that after the procedure, patient suffered injury to her right eardrum, which was not properly treated by the Opposite Party (OP) i.e. ENT surgeon. Only a cotton swab was placed inside the ear and a bandage was affixed. Thereafter, the patient was getting headache and pain in her right ear. She approached the OP but he intentionally ignored her therefore she filed a complaint in district forum. District Consumer Dispute Redressal Commission (DCDRC), Satara observed that meningitis was developed either on 20/02/2007 or 21/02/2007 which has resulted from operation of middle ear carried out on 10/02/2007. State Consumer Dispute Redressal Commission (SCDRC) overruled decision of DCDRC and dismissed the appeal. National Consumer Dispute Redressal Commission (NCDRC) in revision petition approved the decision of SCDRC that it was a simple case of right Otitis Externa that was aptly dealt with and no direct or related nexus between the initial treatment and procedure undertaken by the OP and the meningitis after 11 days of the initial treatment and procedure is made out.

Keywords: Meningitis, ENT, Pediatrician, Right otitis externa, Tympanic membrane, SCDRC, NCDRC

BACKGROUND OF THE CASE [1]

This revision petition has been filed under Section 21(b) of the Consumer Protection Act, 1986 against the impugned Order dated 18.04.2017 passed in RBT/A/14/907 in A/08/1087 by Maharashtra State Consumer Disputes Redressal Commission, Mumbai whereby the State Commission allowed the appeal and set aside the

Order of the District Consumer Disputes Redressal Forum, Satara and dismissed the complaint [Para 1].

FACTS OF THE CASE [1]

The brief facts of the matter are that on 18.01.2007 patient, Miss Arzoo Yusuf Bagwan, about 12 years, approached Dr. Prashant Pol, the respondent / OP for severe pain in her right ear. The OP prescribed a few

medicines and performed a procedure on her right ear on 10.02.2007.

It was alleged that after the procedure, patient suffered injury to her right eardrum, which was not treated properly by the OP. Only a cotton swab was placed inside the ear and a bandage was affixed. Thereafter, the patient was getting headache and pain in her right ear. Therefore, she approached the OP but he intentionally ignored her. On day after procedure, the cotton swab and bandage were removed, which revealed infection and foul smell. On 20.02.2007, the OP, after examination of the patient, suspected Meningitis and advised the patient to approach a Pediatrician for further treatment. Accordingly, patient was taken to Jeevan Jyot Hospital at Satara on 21.02.2007 and was then admitted at Chirayu Hospital on 22.02.2007. The treatment expenses were Rs. 2 lakh (Table 1).

CASE BEFORE DCDRC [1]

For alleged medical negligence, the complainant, the patient's mother, filed a complaint before the District Forum, Satara [Para 2]. The OP resisted the complaint and denied any deficiency or negligence during the treatment of the patient [Para 3]. The District Forum vide its Order dated 11.07.2008 partly allowed the complaint [Para 4].

APPEAL BEFORE SCDRC [1]

Being aggrieved by the Order of the District Forum, the OP preferred appeal before the State Commission. The State Commission allowed the appeal and dismissed the complaint.

Issue of Qualification, Standard Medical Protocol

It is not the case of complainant/respondent that wrong medicines were given by the appellant doctor during medical treatment. Appellant Dr. Pol is a qualified doctor. He followed standard medical protocol. Appellant/original opponent on the basis of the documents pointed out that complications were due to meningitis, which was developed subsequently ten days after operation/procedure. Evidence on record is not sufficient to hold that the opponent/appellant did wrong surgery which was not at all necessary and, as such, he is guilty of medical negligence. Ld. District Forum failed to appreciate that operation of right external ear performed by the appellant doctor was successful. Middle ear was never operated.

Nexus between Complication and Previous Procedure

There is no evidence of infection in middle ear. Meningitis was developed either on 20/02/2007 or 21/02/2007, which has no nexus with the operation carried out on 10/02/2007. It cannot be said that tympanic membrane was damaged at the time of operation on 10/02/2007, which was healed on 22/02/2007 (Table 1). Various reports are supporting case of the appellant. SCDRC finds no hesitation to hold that Ld. District Forum wrongly observed that meningitis was suffered because of operation of middle ear. SCDRC found no reason to discredit the evidence of Dr. Jaywant Thoke, who treated patient Arzoo Bagwan. In view of the above discussion, SCDRC found no hesitation to hold that the Ld. District Forum committed error while appreciating the evidence

Table 1: Chronology of Events

S.No.	Date	Event
1	18.01.2007	Patient visited ENT Surgeon
2	10.02.2007	Date of operation/procedure
3	20.02.2007	Suspected Meningitis, referred to Pediatrician for further treatment
4	21.02.2007	Visited at Jeevan Jyot Hospital, Satara, Maharashtra, Laboratory report diagnosed Meningitis
5	22.02.2007	Patient Admitted at Chirayu Hospital, Satara, Maharashtra
6	11.07.2008	District Forum, Satara vide its Order partly allowed the complaint
7	18.04.2017	SCDRC Judgment
8	15.05.2019	NCDRC Judgment

in its proper perspective. Order passed by the Ld. District Forum is incorrect as contrary to the evidence on record. It requires to be set aside by allowing the present appeal.

OBSERVATIONS OF NCDRC [1]

NCDRC heard the Ld. Counsel for both the parties, and perused the documents and medical record on file, and gave thoughtful consideration to the matter [Para 6].

Question for Consideration

The main issue revolves around whether or not the patient developed meningitis due to wrong treatment or procedure of the OP. On perusal of the medical record, it is revealed that the patient took treatment from the OP for Keratosis Obturans (wax in ear). Initially, a few medicines and ear drops were given, but there was no improvement. Therefore, the OP undertook a wax removal procedure on the patient after informed consent. As per the standard practice, medicated cotton was inserted in the operated ear and a bandage was affixed. The medical record does not show that the operated ear was having any perforation of the eardrum.

Referral of Patient: Second Opinion

Admittedly, after 10 days of the operation, the OP - doctor referred the patient to consult a pediatrician for her symptoms of fever, giddiness and vomiting sensation. The patient took further treatment at Jeevan Jyot Hospital from 21.02.2007 and then from 22.02.2007 at Chirayu Hospital, where in she was diagnosed as a case of Meningitis. NCDRC noted that on 22.02.2007, at Chirayu hospital, the patient was examined by Dr. Thoke, an ENT Surgeon, and, on the basis of Jeevan Jyot Laboratory report dated 21.02.2007, she was diagnosed as having meningitis. Significantly, Dr. Thoke did not notice any infection or perforation in the right ear of the patient. According to Dr. Thoke, there was a history of removal of wax from the right ear of the patient. It was a case of right Otitis Externa (infection of external ear). The MRI did not show perforation of the tympanic membrane. The MRI showed mastoiditis; on examination, the otoscopy showed intact tympanic membrane. The tympanogram revealed normal condition of the middle ear; and the impedance audiometry was normal.

Nexus between Initial Treatment and Meningitis

NCDRC found that, in this case, meningitis, after 11 days of the initial treatment and procedure from the OP – doctor, has no direct or related nexus with the initial treatment and procedure. NCDRC therefore agreed with the State Commission that the District Forum erred in finding a nexus between the two [Para 7].

Judgment

Based on the foregoing discussion Dr. Pol, the OP, a qualified ENT specialist, treated the patient with the requisite care and as per the requisite standard of practice. On considering the subsequent investigations, *inter alia* the MRI, tympanogram and audiometry, and examination reports of another ENT surgeon, Dr. Thoke, NCDRC found that there was no damage to the eardrum. It was a simple case of right Otitis Externa (infection of external ear), that was aptly dealt with, and an apt reference to a pediatrician was also made subsequently. No direct or related nexus between the initial treatment and procedure undertaken by the OP – doctor and the Meningitis after 11 days of the initial treatment and procedure is made out [Para 8].

CONCLUSION

NCDRC found the impugned Order of the State Commission to be well-appraised and well-reasoned [Para 9]. The Order dated 18.04.2017 of the State Commission is, thus, upheld and sustained by NCDRC [Para 10]. The revision petition, being devoid of merit, is dismissed [Para 11].

REFERENCES

- [1] Arzoo Yusuf Bagwan vs. Dr. Prashant Pol, R.P. No.2430/2017, (Against the Order dated 18/04/2017 in Appeal No. 1087/2008 of the State Commission Maharashtra), Date of Judgment: 15.05.2019.NCDRC.Accessed:<http://cms.nic.in/ncdrcusersWeb/GetJudgement.do?method=GetJudgement&caseid=0%2F0%2FRP%2F2430%2F2017&dtofhearing=2019-05-15>

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