

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI
(CIRCUIT BENCH AT PUNE, MAHARASHTRA)**

FIRST APPEAL NO.625 OF 2006

(From the order dated 17.12.1997 in Complaint No. 89/1994 of the State
Commission, Maharashtra)

Bombay Hospital & Medical
Research Centre,
12 New Marine Lines,
Mumbai-400 020

..

Appellant

Versus

1. Sharifabai Ismail Syed
Residing at 3/16, Sydamhan
Compound, I.R. Road,
Byculla,
Mumbai-400 003.
2. Rafique Syed
Residing at 3/16, Sydamhan
Compound, I.R. Road,
Byculla,
Mumbai-400 003
3. Dr. (Miss) Mehar Dadachanji
Medical Practitioner,
C/o Bombay Hospital & Medical
Research Centre,
12 New Marine Lines,
Mumbai-400 020
4. Dr. Keki E. Turial
Medical Practitioner,
C/o Bombay Hospital & Medical

Research Centre,
12 New Marine Lines,
Mumbai-400 020

.. Respondents

BEFORE :-

**HON'BLE MR. JUSTICE M.B. SHAH, PRESIDENT
HON'BLE DR. P.D. SHENOY, MEMBER**

For the Appellant : Mr. Chitale J.M., and
Mr. S. De, Advocates

For the Respondent No.1 : Mr. Syed,
Son of the Respondent.

For the Respondent No.3 : Mr. S.B. Prabhawalkar,
Advocate.

Dated the 25th February, .2008

O R D E R

M.B.SHAH, J., PRESIDENT

Can a consulting doctor (radiologist) defend an apparent mistake in noticing a tumor on the basis of MRI film by contending that MRI was taken by a senior resident doctor, despite the fact that the said report is endorsed by the consulting doctor by mentioning that the tumor was at D10-11 position outside the spinal cord?

In our view, such defence cannot be accepted. The consulting radiologist who signs the report is responsible for misreading or not reading/looking at the MRI film correctly. In such a case, this would be gross negligence. It is the duty of the consulting doctor to correct such errors.

Brief facts:

This appeal is filed by the Bombay Hospital & Research Medical Centre, Mumbai, against the judgment and order dated 17.12.1997 passed by the State Consumer Disputes Redressal Commission, Maharashtra, in complaint No.89/94 directing the hospital only to pay a sum of Rs.1,30,000/- as compensation and Rs.5,000/- by way of costs to the Complainants 1 and 2. Complaint against Dr.(Ms.) Meher Dadachaji and Dr. Keki Turel, Neuro Surgeon, was dismissed.

In this appeal it is the contention of the Hospital that only the Radiologist would be liable to pay the compensation because of

negligence on her part. With regard to Neurologist, it is contended that he is no more.

It was contended that Complainant No.1, Ms.Sharifabi Ismail Sayed, developed suspected tumor in her back outside the spinal cord and was having difficulty in walking, but could sit comfortably. For that, she was admitted to one Masina Hospital under Dr.Modi. But, thereafter, Dr.Modi referred her to Bombay Hospital for diagnosis and treatment, as that hospital was having reputation for sophisticated diagnostic methods and surgical expertise. MRI (Magnetic Resonance Imaging) Scan was carried out on 20.5.1993. Scanned film was examined by Dr.(Miss) Mehar Dadachanji, Respondent No.3, in this appeal, and in her report she had indicated presence of tumor at D10-11 position, outside the spinal cord. She referred the MRI film to Respondent No.4, Dr.Turel, who is a Neuro Surgeon. On the basis of the MRI report, the Complainant, Ms.Sharifabi Ismail Sayed, was taken for operation for removal of tumor at the side D-10-11 on 24.5.1993. No tumor was found at D-10-

11 as noted in the MRI film. Dr.Turel also sent a portion of the issue for pathological testing and it was found to be benign. Dr.Turel informed Dr. Dadachanji that no tumor was found at D-10-11 side and that surgical adventure was of no utility for the patient.

On account of this, on 3.6.1993, under the supervision of Dr.Dadachanji, another MRI was carried out and as per the report tumor was noted at D-7-8 position. Hence, on 4.6.1993 second operation 'laminectomy' was performed which lasted for about 6 hours, and, according to Dr.Turel the tumor was removed. For this purpose, the Complainant was required to stay in the hospital from 21.5.1993 to 28.6.1993 and was required to incur heavy expenditure for medical treatment.

On the basis of the aforesaid facts, it was contended that there was gross negligence on the part of the hospital and the doctors in performing the uncalled for operation. Hence, Complaint No. 89 of 1994 was filed before the Maharashtra State Consumer Disputes Redressal Commission, claiming a sum of Rs.5,83,888/-.

That complaint was partly allowed and the Appellant, Bombay Hospital, was directed to pay a sum of Rs.1,30,000/- as compensation to the Complainants with Rs.5,000/- as costs.

Against that order, the Bombay Hospital has preferred this appeal, mainly contending that the hospital was not liable for the deficiency in service rendered by the doctors, namely, Dr.Dadachanji and Dr.Turel. Learned counsel for the Appellant Hospital submitted that if Dr.Dadachanji has committed the error in interpreting the MRI film she would be responsible for the deficiency in service and not the hospital. He further contended that as per Rule 14 of the Rules and Regulations framed by the hospital, the entire responsibility of the treatment of the patient lies exclusively with the consultant under whom the patient is admitted, in case of proven mal-practices, negligence or mis-management.

As against this, Complainant No.2 who is appearing in

person submitted that not only the hospital but the doctors are equally responsible for the deficiency in service. He heavily relied upon the second MRI report which is produced on record stating that tumor was at D-7-8 of the spinal cord. He also contended that it was the duty of the Neuro Surgeon to scan the MRI film before proceeding with the operation.

As against this, learned counsel for Dr.Dadachanji submitted that there was no mistake on her part because there was a standard protocol by which the Senior Resident Doctor, on duty, was to carry out the scan. The scan was actually performed by a technologist and the entire procedure was supervised by the Senior Resident Doctor.

The attending Consultant, namely, Dr.Dadachanji was not required to routinely monitor the scan as she has to attend other duties in the hospital. The consultant relies on the Senior Resident Doctor who is a qualified Radiologist to perform a complete and

accurate scan of the patient. The consultant is mainly concerned with making the report on the scan taken and the duty of the consultant is purely confined to preparation of reports on test carried out by others. It is pointed out that the consultant neither carries out the test nor identifies the pathological levels nor supervises the same and she is not the administrative head. It is contended that when the final films are documented from the computer monitor, only detailed views of the spine are provided, and, these are presumed to be correctly labelled by qualified Radiologist, i.e. the Senior Resident Doctor. These are, therefore, placed before the Consultant and the Consultant makes report on the basis of the final labelled film put up before him/her by the Senior Resident Doctor. It is contended by the learned counsel for Dr.Dadachanji that because of the wrong labelling by the technicians, the mistake occurred, and, therefore, she is not at all responsible.

On behalf of the Neuro Surgeon, Respondent No.4, before the State Commission, it is contended that he performed the operation on the basis of the MRI scan report to remove the tumor.

In appeal, on behalf of Dr.Dadachanji an affidavit has been filed on 8th May, 2007, wherein it is contended that:

- .(1). With a mala fide intention and ulterior motive to disown its liability vis-à-vis the acts of para-medical staff of the hospital, bald, baseless, and frivolous allegations appeared to have been made against her in the grounds of appeal on behalf of the hospital without substantiating the same;
- .(2). The hospital appointed her as a specialist in MRI to interpret the MRI scan, placed before her by the technicians and doctors employed by the hospital;
- .(3). It is the technician's job to perform and reveal the scan correctly;
- .(4). She was expected to ensure a daily output of at least 20 to 25 cases; and,
- .(5). Appellant hospital more often than not employ technicians not technically qualified who did not even hold a basic science degree.

It is further submitted that her contentions are supported by the affidavit filed by Dr.Jimmy Nadershaw Sidhva an eminent Radiologist of international repute.

Findings:

At the outset we have to state that the State Commission has rightly observed that the case was to be decided in the back drop of almost all admitted facts.

For appreciating the contentions we would first refer to the report dated 20th May 1993 signed by Respondent No.3, Dr.Dadachanjani, which is as under:

“Plain and post contrast MRI of the dorsal spine was performed using serial sections in sagittal and axial planes. Both T1 and T2 weighted images were obtained.

Inhomogeneous enhancing **heterogeneous mass is seen in the dural space on the left side at D-10-11** The mass is isointense on the T1 weighted images and shows multiple hypointensities within it on the T2 weighted images. These hypointensities probably represent areas of clarification within it.

There is extension of the mass into the left neural foramina at the D-10-11 level. There is no extension beyond the neural foramina.

Conclusion: Inhomogeneous, mixed sigma, intensity intradural mass within the left lateral dural space at **D-10-11 which causes significant cord compression.** This could either be a meningioma or a neurofibroma, the former being more likely”.

Further, on the basis of the complaint, an inquiry was held by the Secretary, Association for Consumer Action on Safety of Health and it submitted its report on 18.5.1996, after recording the statements

of the concerned persons.

“1. I have gone through the file and films submitted by you and gather the following facts:

.1. Statement made by the Complainants:

Ms.Sharifa Ismail Sayed, aged 67, was suspected, in May, 1993, to have a tumour in the spinal canal and was referred by Dr.D.K.Mody at Masins Hospital to the Bombay Hospital for investigation and treatment. When she was sent to the Bombay Hospital there was difficulty for her to walk. The first magnetic resonance scan (MR) at the Bombay Hospital was reported to show a meningioma or neurofibroma at D-10-11 on the left side. Mr.Rafique Sayed's note dated 26th June, 1993, addressed to the Medical Director, Bombay Hospital, states that on 25th May, 1993 the first laminectomy (D-10-11) was performed by Dr.Keki Turel. No tumor was found. A small portion of the spinal cord

was sent for histology. The second MRI on 3rd June, 1993 (report bears the date 20 May 1993) showed laminectomy defects at D-8, D-9 and D-10 levels along with mild swelling of the spinal cord. A meningioma or neurofibroma was seen just above the superior margin of the laminectomy on the left at D-7-8. The second laminectomy D-7-8 was carried out by Dr.Turel and a tumor was removed. We are told that the physical condition of the patient has worsened after the two operations and that she is bed-ridden, complaining of pain in the back shooting into the legs. The Complainant wonder whether it was necessary to open the spinal cord, especially when consent for doing so was not taken, the consent having been given only for the removal of a tumor outside the spinal cord.

.2. Statement made by Dr.Meher Dadachanjani:

Dr.Dadachanjani states that according to protocol in the MR Department, she relies on the senior resident doctor to

perform the scan, her role being limited to reporting on the completed scan and consultation. **When scans of the spine are carried out, the localization of the level of the disease is made using a large coil.** As a routine this image, proving the location of disease, is not provided to the consultant on the final film. **The consultant thus makes the report based on the senior resident's identification of the level. During the second scan, however, she was present when the scan was done and found the tumour lying at D-7-8 and not at D-10-11 as reported earlier.** She states that the error in the earlier report followed 'incorrect labeling by the resident doctor'.
.....
.....

Queries:

.1. "Is it possible to misjudge the level of the tumour on MR?

Dr.Dadachanji has clearly stated in her report that **an error**

was made in the report on the first MR. This was attributed by her to incorrect labeling by the resident doctor.

.2. Is it proper and correct for the Neuro Surgeon to open the spinal cord when the tumour was not found at the expected site?

I have studied the MR scan dated 20th May, 1993 and find the **tumour clearly outside the spinal cord**. Under such **circumstances, I would not have opened the spinal cord** but would, instead, have checked two levels above **and below the site of exploration**. However, we must also lend credence to Dr.Turel's finding of swelling of the spinal cord. Under such a circumstance, it is not wrong to take a small piece for histology to ensure that we are not missing an additional lesion within the cord.

An additional point to be made here is that despite the best efforts of the treating clinician it is not possible to

envisage each and every eventuality and seek consent for each and every step that may be necessary. Several additional steps are taken in many operations in good faith and in the best interests of the patient. Were we take consent for each and every such step, the consent form would be several sheets long and prove meaningless to the patient and relatives. It is also not possible to interrupt an operation to take consent for a particular step made necessary by an unforeseen circumstances.

.3. Is it the ethical responsibility of the surgeon to check the correct level of the tumour?

When we demarcated the level of disease using plain x-rays and myelograms, it was also the surgeon's responsibility to check the level. The high-technology CT and MR scanners disallow such a confirmation by the surgeon in each and every case and we often have to abide by the report of the CT or MRI expert.

.4. Is failure to judge the correct level is a ‘failure to exercise reasonable skill and care’?

This is a matter for the judge to decide. **As a neurosurgeon, I consider failure to clearly and** correctly demonstrate the level of a tumour within the spinal canal a serious error. Marking the level of the tumour wrongly misleads the surgeon and, **as in this case, leads to fruitless operation** at a wrong level. A second operation – with all attendant risks – then becomes necessary to remove the tumour.

.5. Is the explanation given by the concerned radiologist correct?

I find the system followed at the BombayHI’ faulty. The hospital places all the responsibility on the consultant in the MR department – in this case Dr.Dadachanjani – and washes its hands off the matter. Dr.Dadachanjani tells us

that the protocol in the **MR Department dictates that the consultant will not be present whilst the MR scan is being done. The MR scan is done by a senior resident. Whilst Dr.Dadachanjani places the responsibility for correct identification of the level of disease on the senior resident, the hospital rule clearly places the onus on the consultant – in this case Dr.Dadachanjani.**

I feel that if the responsibility is to be that of the consultant, it is up to the consultant to ensure that there is no mistake. Whilst the senior resident may do the scan, before taking the patient off the scanner, the consultant must be **called in to make** sure that no error is made.

The protocol followed by the MR Department at the Bombay Hospital lends itself to grave errors.”.

From the admission in the aforesaid report as well as the defence taken by Ms.Dadachanji, it is apparent that she was not

vigilant in verifying whether the labelling made by the Radiologist, i.e. the Senior Resident Doctor, was correct or not. A senior consultant is not expected only to sign whatever the junior medical staff suggest. If that is so, there is no use of having Consultant in the Hospital.

As against this, Respondent No.2 has relied upon the affidavit of Dr.Jimmy Nadershaw Sidhva.

“The hospital is responsible for providing infrastructure services which include space, machinery and consumables for the purposes of MRI scanning. It is also responsible for providing the technical personnel and the junior medical staff for carrying out the scan procedure including film processing and film labelling which includes correct patient identification, left/right side identification and scan level labelling.

The consultant radiologist is thereafter responsible for viewing the completed scan and interpreting the films presented to him. The consultant

radiologist is not responsible for checking / overseeing the scan procedure (including film processing and labeling). His responsibility / duty begins and ends with correct interpretation of, and reporting on the films / scan images presented to him by the hospital (i.e. the technician and junior medical staff).

The aforesaid affidavit clearly reveals that the duty of the consultant begins and ends with correct interpretation of report of the films and scan the images presented to the consultant by the hospital, i.e. technician and junior medical staff. This would mean that the Consultant is required to interpret the MRI film and not to merely sign without referring (reading) the same. Consultant is the expert in the field. If he/she commits mistake or error in interpreting, it is his/her responsibility or liability.

Further, there is no dispute with regard to the MRI that was taken for the second time when tumor was found at D-7-8 levels, and hence, the second operation had to be performed.

In this view of the matter, it is apparent that the State Commission committed an error apparent on the face of the record in holding that the consultant cannot be held responsible for the error committed, in signing the report, on the basis of noting by the Senior Resident Doctor (Radiologist). In our view, entire responsibility lies with the Respondent No.3, Dr. Dadachanji because she was in-charge of the Radiological Department.

At this stage, we would reproduce the observations made by the Apex Court in Spring Meadows Hospital & Anr. Vs. Harjol Ahluwalia & Anr., (1998) 4 SCC 39 at 47, wherein the Apex Court has specifically laid down the principles for holding Doctors responsible in similar situation. The Apex Court held that:

“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 re-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 questions posed by us.”

Further, with regard to the responsibility of the hospital, in our view, there is no substance in the contention of the Appellant that in view of the internal rules and regulations framed by the hospital the hospital would not be liable for the deficiency in service rendered by the doctor appointed by it. The reliance upon Rule 14 is of no consequence to the patients who are admitted in the hospital.

It is the patient or the Complainant who approaches the

hospital for treatment and hence the primary liability in case of deficiency in service is that of the hospital. Doctors working in the hospital are its employees. Further, from the record it is apparent that the Senior Resident Doctor (Radiologist) appointed by the Hospital committed a blunder which resulted in wrong reporting by the Consultant. Therefore, if there is deficiency by the doctor, then, it would be the joint and several liability of the hospital and the Doctor.

In this view of the matter, we partly modify the order passed by the State Commission and hold that the hospital as well as Dr. Ms.Dadachanji are jointly and severally liable to pay the compensation and costs as ordered by the State Commission. We also award Rs.10,000/- as costs to be paid to the Complainant by the appellant – Hospital and Miss Dadachanji - Respondent No.3 jointly and severally.

The appeal is disposed of accordingly.

Sd/-

.....J.
(M.B.SHAH)
PRESIDENT

Sd/-