

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 5991 OF 2002**

Ramesh Chandra Agrawal ..... Appellant

Versus

Regency Hospital Ltd. & Ors. .... Respondents

**J U D G M E N T**

**H.L. Dattu, J.**

This appeal is directed against the order passed by National Consumer Disputes Redressal Commission, New Delhi in Original Petition No. 128 of 1996 dated 23.5.2002. By the impugned order National Consumer Commission has rejected the petition filed by the complainant.

2) The facts in brief are as under:

The appellant/complainant was a teacher by profession. He was aged about 60 years when he was down with physical ailments such as

backache and difficulty in walking as a result of progressive weakness of both his lower limbs. As the problem worsened, on 20.11.1995, the appellant approached Regency Hospital Ltd. (Respondent No. 1), for Medical check-up. On the same day, C.T. Scan was done and he was diagnosed as a patient of “Dorsol Cord Compression D4-D6 Pott’s spine” which in simple terms means that T.B. infection has spread till his vertebra. On the same day he was advised to get operated for decompression of spinal cord by *Laminectomy D-3 to D-6*. The operation was performed by Dr. Atul Sahay (Respondent No.2) on 25.11.1995. It is asserted, that, after the operation, the condition of the appellant deteriorated further and it was revealed from the MRI scan that the operation was not successful as it was not done at the right level. It is also stated that the case summary and the MRI reports suggest that the problem was aggravated and there was need for another operation. Dr.I.N.Vajpayee (respondent no.3) was consulted on 12.12.1995 and he performed the operation on the same day. Even after the second operation the infection was not cured and this forced him to refer his case to Vidya Sagar Institute of Mental Health and Neurological Sciences, New Delhi (VIMHANS) for further treatment. It is further stated, that, the third operation was performed and it

provided the appellant some relief, but left him handicapped due to his legs being rendered useless and loss of control over his Bladder movement.

- 3) **COMPLAINT BEFORE THE NATIONAL COMMISSION:** The appellant, being impaired by the treatment, filed a complaint before the National Consumer Disputes Redressal Commission (hereinafter referred as “National Commission”) alleging medical negligence on the part of respondents 1 to 3.

The claim of the appellant before the National Commission was as under :

- i) That the correct method of operating his infection was the *Antero-Lateral Decompression (ALD)* and not *Laminectomy*.
- ii) That the complainant/appellant contends that he was kept only for one week on the Anti-Tubercular drugs before the surgery which is a much shorter duration than the accepted medical practice.
- iii) That there was no requirement of immediate surgery.
- iv) That the respondent no.2, who was a Neurosurgeon did not consult the Orthopedic surgeon, even though he was not capable to handle the case of complainant/appellant without consulting Orthopedic surgeon.

Hence, it was claimed that there is gross negligence and carelessness on the part of the respondents in treating the complainant/appellant,

and therefore, respondents be directed to pay a sum of Rs. 22,00,000/- with interest at the rate of 24% per annum to the complainant.

**4) NATIONAL COMMISSION JUDGMENT:**

After considering the case presented by the appellant and the respondents and looking through the affidavits filed by the parties, the National Commission has come to the conclusion that medical negligence is not proved against the respondents. The Commission has concluded:

“Medical negligence is when a doctor did something which he ought not to have done or did not do what he ought to have done. The doctors were qualified professionals. They did whatever was required to be done of Neuro-Surgeons. In fact, we find the complainant’s deficient, who neither appeared for cross examination nor produced any literature in support of this case to be of any assistance to this Commission.

5) Feeling aggrieved by the decision, the appellant has filed this appeal under Section 23 of the Consumer Protection Act, 1986.

**6) Contention in the Appeal :**

It is the contention of the appellant that it was due to non-compliance of the order of National Commission by the Registry of National Commission, the Commission did not have the benefit of the expert opinion to arrive at a conclusion, as to whether there was any negligence of the doctors who treated the appellant. It is further

contended that pursuant to the order passed by the Commission dated 5.1.2000, the appellant had submitted all the records relating to his treatment on 4.2.2000 and had requested the Registry of the Commission to forward the same to Dr. A.K. Singh, Neurologist, who had been requested to offer his opinion on the surgery done to the appellant. However, the Registry had not sent the documents furnished by the appellant to the expert and, therefore, the expert could not offer his opinion and thereby, the appellant was denied the benefit of having an opinion which would have proved his case before the Commission.

- 7) The respondents in their counter affidavit filed before this court, have denied the assertions and allegations made by the appellants and further justified the judgment of the National Commission.
- 8) We have heard the learned counsel for the parties to the lis.

9) **POTT'S DISEASE AND PROTOCOL OF TREATMENT:**

***i) The Disease***

Pott's disease results from an infection of the bone by the Mycobacterium Tuberculosis bacteria via a combination of hematogenous root and lymphatic drainage. The organism may stay dormant in the skeletal system for an extended period of time before the disease can be detected.

In Pott's disease, the spinal cord may become involved in a compression by bony elements and/or expanding abscess or by direct involvement of cord and leptomeninges by granulation tissue. Through experimentations it is found that the golden standard of the diagnosis in patients is CT guided needle aspiration biopsy.[Assistance taken from the website]

ii) ***Diagnosis***

At present, the treatment of Pott's disease remains controversial. Some advocate conservative treatment with late spinal fusion and others early spinal fusion followed by conservative treatment. Surgical treatment should include anti-TB medication, abscess decompression. The anterior surgical approach is chosen for cervical and lumbar regions. Anterior spinal fusions is currently thought to be the best surgical adjunct to after at least 18 months of anti-TB chemotherapy.

The differential diagnosis of lower back pain is complicated by the number of possible causes and the patient's reaction to the discomfort.

In many cases the patient's perception of back pain is influenced by poor-quality sleep or emotional issues related to occupation or family matters. A primary care doctor will begin by taking a careful medical and occupational history, asking about the onset of the pain as well as

its location and other characteristics. Back pain associated with the lumbar spine very often affects the patient's ability to move, and the muscles overlying the affected vertebrae may feel sore or tight. Pain resulting from heavy lifting usually begins within 24 hours of the overexertion. Most patients who do not have a history of chronic pain in the lower back feel better after 48 hours of bed rest with pain medication and either a heating pad or ice pack to relax muscle spasms.

If the patient's pain is not helped by rest and other conservative treatments, he or she will be referred to an orthopedic surgeon for a more detailed evaluation. An orthopedic evaluation includes a **physical examination**, neurological workup, and imaging studies.

### **iii Conservative treatments**

Surgery for lower back pain is considered a treatment of last resort, with the exception of cauda equina syndrome. Patients should always try one or more conservative approaches before consulting a surgeon about a laminectomy. [<http://www.surgeryencyclopedia.com/Fi-La/Laminectomy.html>]

#### **10) CLEAVAGE OF OPINION:**

Since medical science is complicated, expert opinion provides deep insight. (See Malay Kumar Ganguly vs. Dr. Sukumar Mukherjee and

Ors.) [Criminal Appeal Nos. 1191-1194 of 2005 alongwith Civil Appeal No. 1727 of 2007, decided on 7.8.2009].

It is clear that diagnosis and the method of treatment suggested to a patient of Pott's disease vary. The nature of disease is such that there exist difference in the identification of the symptoms and also the protocol of treatment to cure the disease. Therefore, the expert opinion forms an important role in arriving at conclusion.

11) **EXPERT OPINION:**

The law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that the matter is outside the knowledge and experience of the lay person. Thus, there is a need to hear an expert opinion where there is a medical issue to be settled. The scientific question involved is assumed to be not within the court's knowledge. Thus cases where the science involved, is highly specialized and perhaps even esoteric, the central role of expert cannot be disputed. The other requirements for the admissibility of expert evidence are:

- i) that the expert must be within a recognized field of expertise
- ii) that the evidence must be based on reliable principles, and

iii) that the expert must be qualified in that discipline.

[See Errors, Medicine and the Law, Alan Merry and Alexander McCall Smith, 2001 ed., Cambridge University Press, p.178]

12) Section 45 of the Indian Evidence Act speaks of expert evidence. It reads as under:

*“45. Opinions of experts - When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of hand writing or finger-impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions, are relevant facts. Such person called experts. Illustrations*

*(a) The question is, whether the death of A was caused by poison. The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.*

*(b) The question is whether A, at the time of doing a certain act, was by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.*

*The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or knowing that what they do is either wrong or contrary to law, are relevant.*

*(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.*

*The opinion of experts on the question whether the two documents were written by the same person or by different persons are relevant.”*

13) The importance of the provision has been explained in the case of *State of H.P. v. Jai Lal and Ors.*, [(1999) 7 SCC 280]. It is held, that,

Section 45 of the Evidence Act which makes opinion of experts admissible lays down, that, when the court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.

- 14) It is not the province of the expert to act as Judge or Jury. It is stated in *Titli v. Jones* (AIR 1934 All 237) that the real function of the expert is to put before the court all the materials, together with reasons which induce him to come to the conclusion, so that the court, although not an expert, may form its own judgment by its own observation of those materials.
- 15) An expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of

the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions. (See Malay Kumar Ganguly vs. Dr. Sukumar Mukherjee and Others) [Criminal Appeal Nos. 1191-1194 of 2005 alongwith Civil Appeal No. 1727 of 2007, decided on 7.8.2009].

- 16) In the case of State of Maharashtra v. Damu s/o Gopinath Shinde and others., [AIR 2000 SC 1691 at page 1700], it has been laid down that without examining the expert as a witness in Court, no reliance can be placed on an opinion alone. In this regard, it has been observed in The State (Delhi Administration) v. Pali Ram, [AIR 1979 SC 14] that “no expert would claim today that he could be absolutely sure that his opinion was correct, expert depends to a great extent upon the materials put before him and the nature of question put to him.”

17) In the Article “Relevancy of Expert’s Opinion” it has been opined that the value of expert opinion rest on the facts on which it is based and his competency for forming a reliable opinion. The evidentiary value of the opinion of expert depends on the facts upon which it is based and also the validity of the process by which the conclusion is reached. Thus the idea that is proposed in its crux means that the importance of an opinion is decided on the basis of the credibility of the expert and the relevant facts supporting the opinion so that its accuracy can be cross checked. Therefore, the emphasis has been on the data on basis of which opinion is formed. The same is clear from following inference: “Mere assertion without mentioning the data or basis is not evidence, even if it comes form expert. Where the experts give no real data in support of their opinion, the evidence even though admissible, may be excluded from consideration as affording no assistance in arriving at the correct value.”

18) Though we have adverted to the nature of disease and the relevancy of the expert opinion, we do not think it necessary to go into the merits of the case in view of the course we propose to adopt, and in view of the fact that the Commission is the last fact finding authority in the scheme of the Act.

19) The Commission by its order dated 6.3.2000 had requested Dr. A. K. Singh, Neurologist, to give his opinion on the surgery done in this case. It was also ordered that all the records of the surgery will be submitted by the complainant to the Registrar of the Commission to enable him to forward it to Dr. A. K. Singh, along with the complaint and also the affidavits filed on behalf of the respondents. Dr. A. K. Singh will make himself familiar with the complaint and the records and then give his opinion.

20) The Assistant Registrar by his letter dated 12.6.2000, forwarded the original records of the present case to Dr. A. K. Singh. On 19.8.2000, Dr. A. K. Singh submitted his report to the Assistant Registrar with the findings that:

“After careful scrutiny of the documents now made available to me, I find that the current situation as regards these vital and missing documentary evidences is as follows:

- a) No original X-Ray films, of various radiological examinations were enclosed either in original form or in the form of copies.
- b) No details of findings at surgery are provided.
- c) No details of operative findings have been provided. Only the surgical procedure carried out has been mentioned.
- d) No details of any subsequent neurological/neuro-radiological assessment have been provided.

In view of the foregoing, I feel that no much additional information, over and above what had originally been provided to me by Dr. Atul Sahai, has been made available now for me to substantially revise my opinion earlier. I, therefore, stand by my earlier opinion referred to above.”

- 21) The appellant on 17.9.2001, again filed an application before the Commission for referring the matter to eminent doctor for his opinion. It was stated that the expert had at many places stated that he would have been in a better position to examine the matter if he was made available the X-Rays and MRI reports etc. Inquiries from the office of Commission revealed that the office of the Commission, by mistake, forgot to forward the original record to Dr. A. K. Singh and as a result thereof, Dr. A. K. Singh was deprived of the opportunity of perusing the same before submitting his opinion in the matter. In this way, the case of the appellant was severely prejudiced as without these records it was not possible for an expert to give definite and correct opinion in the matter.
- 22) The Commission by its order dated 22.11.2001 rejected the application of the appellant stating that Dr A. K. Singh had submitted his report as far back as on 19.8.2000 and it is not understandable as to why this application should have been filed at such a later stage.

- 23) The Commission in course of its judgment has observed “that in spite of opportunity being given, the complainant and his wife did not offer themselves for the cross examination and they have failed to supply material to Dr. A. K. Singh as mentioned in his report dated 19.08.2000, which could have enabled him to give a more complete report. Also no evidence of any expert was led by the appellant. For that matter none of the parties filed any literature on the subject to support their contentions in spite of giving them an opportunity.”
- 24) In the present case, the appellant had filed all the records of the treatment before the Commission. The Assistant Registrar, due to oversight, did not send the original records and X-Ray films to the expert. Thus, it was the Assistant Registrar of the Commission who had failed to perform the duty diligently. Due to the non-availability of vital and important information, the expert was handicapped in giving his opinion on the basis of which the order of the Commission was to be passed. It is very much clear from the report of Dr. A. K. Singh dated 19.8.2000, that he would have been in a better position if certain documents would have been made available to him. The appellant had also filed an application before the Commission dated

17.9.2001, bringing to the notice of the Commission the lack of care shown by the Assistant Registrar, who had failed to forward the records of the treatment to the expert, and had requested to send the records for reconsideration. This application was rejected by the Commission holding that the reconsideration of the expert opinion at this stage is not necessary.

- 25) The Commission while rendering its judgment has failed to appreciate that in such cases expert would not be in a position to form a true opinion if all the documents pertaining to the matter, on which the opinion is desired, are made available to him. The Commission on the application made by the appellant should have again directed for the expert opinion after making all the records of the treatment available to the expert. The appellant should not suffer for the negligence of the Assistant Registrar and also when the Commission has itself stated in its judgment that supply of material to Dr. A. K. Singh could have enabled him to give a more complete report.
- 26) It is important to note that the appellant had brought to the notice of National Commission, the lack of care shown by the Assistant Registrar, who had failed to forward the records of the treatment to

the expert, by filing an application before the Commission dated 17.9.2001. This application was rejected by the Commission holding that the reconsideration of the expert opinion at this stage is not necessary. In our view, the principles of Natural Justice require that a fair opportunity should be given to the complainant to prove his claim based on the report of the expert. Since that opportunity is denied to the appellant, the impugned order passed by National Commission cannot be sustained.

- 27) In view of the above discussion, appeal requires to be allowed and, accordingly, it is allowed. The impugned order is set aside. The Registrar of the Commission is directed to forward all the records of the treatment filed by the appellant before the Commission to Dr. A. K. Singh, Neurologist, who is now working at Fortis Hospital, Noida, for his expert opinion within one month from the date of receipt of this order, with a request to give his expert opinion on the basis of the records of the treatment and affidavits filed by both the parties within two months from the date the records are made available to him. After receipt of the expert opinion, the Commission is requested to pass fresh order in accordance with law. No order as to costs.

.....J.  
[ G.S. SINGHVI ]

.....J.  
[ H.L. DATTU ]

New Delhi,  
September 11, 2009.

