

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.3324 of 2022
(Through Hybrid mode)

Dr. Sujog Kumar Nayak

....

Petitioner

Mr. Suryakanta Dash, Advocate

-versus-

Bandita Das and another

....

Opposite Parties

Mr. Manoj Kumar Mohanty (2), Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER
24.08.2022

Order No.

05.

1. Mr. Dash, learned advocate appears on behalf of petitioner, who is a doctor. On 24th June, 2022, he had moved the petition to submit, his client performed operation on private opposite party, who thereafter complained of medical negligence and the Permanent Lok Adalat (PLA), by impugned award dated 9th November, 2021, found in her favour. By order made that day Court had posed queries to Mr. Mohanty, learned advocate appearing on behalf of said private opposite party. Paragraph 3 in said order, containing the queries, is reproduced below.

“3. Court requires satisfaction that medical

negligence is covered by entry (v) under clause (b) of section 22A in Legal Services Authorities Act, 1987. Furthermore, cursory glance at impugned award does not reflect evidence was laid before the PLA that corrective procedure was performed, for finding of mistake amounting to medical negligence.”

2. Mr. Dash relies on following judgments of the Supreme Court.

(i) **Dr. Harish Kumar Khurana v. Joginder Singh**, reported in **(2021) 10 SCC 291**, paragraphs 25 and 27. Paragraph 25 is reproduced below.

“The extracted portion would indicate that the opinion as expressed by NCDRC is not on analysis or based on medical opinion but their perception of the situation to arrive at a conclusion. Having expressed their personal opinion, they have in that context referred to the principles declared regarding Bolam test and have arrived at the conclusion that the second surgery should not have been taken up in such a hurry and in that context that the appellants have failed to clear the Bolam test and therefore, they are negligent in performing of their duties. The conclusion reached to that effect is purely on applying the legal principles, without having any contra medical evidence on record despite NCDRC itself observing that the

surgeon was a qualified and experienced doctor and also that the anaesthetist had administered anaesthesia to 25,000 patients and are not ordinary but experienced doctors.”

(ii) Judgment dated 20th April, 2022 in Civil Appeal no.6507 of 2009 (Dr. (Mrs.) Chanda Rani Akhoury v. Dr. M.A. Methusethupathi), paragraphs 23, 26 and 27 (Live Law print). A passage from paragraph 23 is reproduced below.

*“23. In the case of medical negligence, this Court in **Jacob Mathew v. State of Punjab and Another, (2005) 6 SCC 1** dealt with the law of medical negligence in respect of professionals professing some special skills. Thus, any individual approaching such a skilled person would have a reasonable expectation under the duty of care and caution but there could be no assurance of the result. No doctor would assure a full recovery in every case. At the relevant time, only assurance given by implication is that he possessed the requisite skills in the branch of the profession and while undertaking the performance of his task, he would exercise his skills to the best of his ability and with reasonable competence. Thus, the liability would only come if (a) either a person (doctor) did not possess the requisite skills which he professed to have possessed; or (b) he did not exercise with reasonable competence in given case the skill*

which he did possess. It was held to be necessary for every professional to possess the highest level of expertise in that branch in which he practices. It was held that simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of the medical professional. xx xx xx”

3. Relying on above authorities Mr. Dash submits, the PLA did not have any tangible medical evidence to find negligence against his client. On the contrary, in paragraph 8 of impugned award, finding was that problems of private opposite party were not the outcome of negligence or carelessness of the doctor but due to some unknown, unintentional and unwilling but curable mistakes during the operation.

4. Mr. Mohanty relies on judgment of the Supreme Court in **Bar Council of India v. Union of India**, reported in (2012) 8 SCC 243, paragraphs 24, 26 and 32. A passage from paragraph 24 is reproduced below.

“xx xx xx The establishment of Permanent Lok Adalats and conferring them jurisdiction up to a specific pecuniary limit in respect of one or more public utility services as defined in Section 22-A(b) before the dispute is brought before any court by any party to the dispute is not anathema to the rule

of law. Instead of ordinary civil courts, if other institutional mechanisms are set up or arrangements are made by Parliament with an adjudicatory power, in our view, such institutional mechanisms or arrangements cannot be faulted on the ground of arbitrariness or irrationality.”

Regarding above queries put by Court Mr. Mohanty submits, service rendered by petitioner as a practising doctor and surgeon is covered by entry (v) under clause (b) in section 22A. He submits further, parties had filed their respective evidence before the PLA and there was adjudication, upon failure of conciliation. In the circumstances, there should be no interference in writ jurisdiction.

5. It appears from impugned award that it was made against petitioner, who was respondent no.2 in the proceeding before the PLA. Respondent no.1 was Proprietor, Jaya Hospital Private Limited. Against said respondent the grievance petition of private opposite party was dismissed. Section 22A provides for ‘service in hospital or dispensary’ by entry (v) under clause (b). It appears, the grievance of private opposite party against the hospital stood dismissed but compensation directed against the doctor. The entry in question does not give distinction or amplification in the

meaning of public utility service of hospital given thereunder, to include separately and in addition, services rendered by doctor(s). The PLA having had the grievance of private opposite party before it, against the hospital and the doctor, found that there was no deficiency in service by the hospital. It is clear that thereafter adjudication and finding against the doctor is clearly beyond the meaning of public utility service in respect of, in this case, service in hospital, wherein the operation was performed.

6. It will appear from paragraph 25 in **Dr. Harish Kumar Khurana** (supra) reproduced above that the Supreme Court found therein, opinion expressed by National Consumer Disputes Redressal Commission (NCDRC) was not on analysis nor based on medical opinion but their perception of situation to arrive at conclusion. In context of expressing the opinion there was reference to principle declared regarding Bolam test. The Supreme Court found the conclusion reached on the opinion was purely on applying legal principles, without having any contra medical evidence on record despite NCDRC itself observing that the surgeon was qualified and experienced doctor and so also the anaesthetist. In **Dr. (Mrs.) Chanda Rani Akhouri** (supra) the Supreme Court interpreted

its earlier judgment in **Jacob Mathew v. State of Punjab**, reported in **(2005) 6 SCC 1** to say that by the earlier judgment the Court had said, the liability (on medical negligence) would come only if (a) either a person (doctor) did not possess the requisites skills, which he professed to have possessed; or (b) he did not exercise with reasonable competence in given case, the skill which he did possess.

7. By impugned award the PLA disbelieved petitioner's denial that private opposite party had not got in touch with him post operation. It went on to find that a corrective procedure was undergone by private opposite party from a separate facility. In that context a passage from paragraph 8 in impugned award is extracted and reproduced below.

“xx xx xx The contract of the doctor with the patient or his professional duty was not over soon after discharge of the patient but continued for some more time till it is finally found okay. So, Respondent No.2 was certainly negligent as he did not take any action when the Applicant complained of some problems after the surgery, even though her problems were not the outcome of any negligence or carelessness of the doctor but due to some unknown, unintentional and unwilling but curable mistakes during the operation. The patient

had no earlier history of such problems as the discharge certificate is silent about the same.”

(emphasis supplied)

On query from Court nothing could be shown from impugned award regarding reliance on documentary evidence regarding the second, said to be corrective procedure undergone by private opposite party. In the circumstances the finding is clearly an opinion not based on medical evidence and covered by aforesaid interpretation of the Supreme Court in **Dr. (Mrs.) Chanda Rani Akhouri** (supra).

8. In view of aforesaid, it is clear that the PLA acted illegally in awarding against petitioner, upon having dismissed the grievance against the hospital, inasmuch as its jurisdiction to adjudicate was confined to services rendered by the hospital and having discharged it, could not have gone any further. It also acted with material irregularity in rendering opinion to indict petitioner without any basis of medical evidence.

9. Impugned award is set aside and quashed and the writ petition, disposed of.

(Arindam Sinha)
Judge

RKS