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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 6/2024

BALJIT SINGH

..... Appellant

Through: Mr. Afesh Kumar, Advocate

versus

DELHI MEDICAL COUNCIL & ANR.

..... Respondents

Through: Mr. Praveen Khattar, Advocate for R-/DMC
Mr. T. Singhdev, Mr. Aabhaas Sukhramani,
Mr. Abhijit Chakravarty, Mr. Bhanu Gulati,
Ms. Anum Hussain, Advocates for R-2/NMC

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Date of Decision: 05th January, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T(ORAL)

1. This appeal filed under clause 10 of the Letters Patent impugns the order dated 06.11.2023 passed in W.P.(C) 10845/2022, titled as '**Baljit Singh v. Delhi Medical Council and Anr.**', whereby the learned Single Judge of this Court has dismissed the said petition.

1.1. The Appellant had filed the said writ petition against order dated 13.01.2022 passed by the Respondent No.1 i.e., the Delhi Medical Council, dismissing the Appellant's complaint filed against one Dr. B.B. Chanana alleging medical negligence.

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2. Briefly put, the Appellant's case is that his father, late Sh. Inder Singh ('patient'), who had a history of cardiac disease was taken for treatment to Dr. B.B. Chanana, Senior Heart Specialist, MBBS, MD's, clinic on 26.07.2020; as the patient was complaining of breathlessness, uneasiness, headache and vomiting sensation. It is stated that Dr. B.B. Chanana without conducting any tests on the patient, prescribed certain medicines. It is stated that Dr. B.B. Chanana assured the Appellant on the said date that the patient was not suffering from any heart related issues. It is stated that since patient's breathlessness persisted in the evening, the Appellant spoke again on telephone with Dr. B.B. Chanana and apprised him of the same, but the said doctor advised him to continue with the prescribed medication.

2.1. It is stated that the patient again suffered breathlessness on 31.07.2020 and was taken for review to Dr. B.B. Chanana, who after conducting an ECG, informed the Appellant that the patient is in a serious condition and needs to be urgently taken to a hospital. It is stated that the patient was immediately taken to Saroj Hospital, Rohini, and was granted admission, however, the patient suffered a cardiac arrest and could not be revived.

2.2. The Appellant subsequently on 06.11.2020, lodged a complaint before the Respondent No.1 alleging medical negligence on the part of Dr. B.B. Chanana in the treatment of Appellant's father i.e., the patient, on 26.07.2020. The Appellant alleged that Dr. B.B. Chanana was apprised that the patient had undergone a by-pass surgery for his heart in the past and in light of said information, if the requisite tests had been conducted by Dr. B.B. Chanana on 26.07.2020, the patient could've been saved.

2.3. The Respondent No.1 issued a notice to Dr. B.B. Chanana seeking his reply to the Appellant's complaint. Dr. B.B. Chanana replied to the said notice stating that there was no negligence on his part. He stated that the patient was in a stable



condition on 26.07.2020, his blood pressure (BP), pulse, ejection fraction (EF), were normal for his age and he was accordingly, prescribed certain medicines on the basis of symptoms then exhibited by the patient. He stated that however, on 31.07.2020, the patient was detected with features of a complete heart block, which required urgent medical intervention; and the Appellant was accordingly advised to take the patient to the nearest health facility equipped with emergency cardiac care. He asserted that there was no negligence on his part in the treatment given to the patient on 26.07.2020.

2.4. The Disciplinary Committee of Respondent No.1, comprising of four (4) doctors, after perusal of the record, vide its order dated 13.01.2022 concluded that the treatment met out to the patient on 26.07.2020 by Dr. B.B. Chanana was appropriate. The said Committee concluded that since (on the said date) the ejection fraction was 50%, for a patient with history of CABG, there was no pressing requirement for further cardiac evaluation on the said date. The Committee also noted that the advice given by Dr. B.B. Chanana subsequently on 31.07.2020 on the basis of ECG was correct.

2.5. However, the Disciplinary Committee observed that the prescription issued by Dr. B.B. Chanana on 26.07.2020 suffered from short comings in recording facts, which are discussed in the said order. On this account, the said Committee recorded its dissatisfaction and expressed its disapproval. The Committee advised Dr. B.B. Chanana to be mindful of the observations made in the said order while writing future prescriptions.

2.6. In view of the aforesaid findings, the said Committee held that no case of medical negligence has been made out against Dr. B.B. Chanana in his treatment of the patient on 26.07.2020 and disposed of the complaint.



3. The Appellant challenged the said order dated 13.01.2022 in appeal before the National Medical Council, however the same was held to be non-maintainable in view of the provisions of the National Medical Council Act, 2019.

4. In these circumstances, the Appellant filed the writ petition before this Court, wherein the learned Single Judge as well after perusing the record concluded that the decision taken by the Disciplinary Committee required no interference as the Appellant herein had failed to show any perversity in the said order dated 13.01.2022. The operative portion of the impugned order reads as under:

“7. The Disciplinary Committee of the Delhi Medical Council consisted of four doctors who are experts in their field. It is well settled that High Courts cannot enter into the thicket of facts while considering the allegations of medical negligence. The Committee has looked into the facts and has found that the treatment given by Dr. Chanana to the late father of the Petitioner herein was in accordance with the established medical practice. It is well settled that so long as a Doctor follows a practice acceptable under the Medical Practice on that day, he cannot be held liable for negligence merely because some other alternative course or method of treatment could have been resorted to save the life of the patient instead of the practice that was followed by the concerned Doctor. A professional can be held liable for negligence only when he is not possessed with requisite skill which he has professed to have possess. In the present case, Dr. B B. Chanana is a Cardiologist with experience of over 30 years. There is nothing on record to show that Dr. Chanana was involved in the earlier by-pass surgery of the late father of the Petitioner. There is also no record to show that Dr. B. B. Chanana had interacted with the patient prior to 26.07.2020. When Petitioner’s father visited Dr. Chanana on 26.07.2020, looking at his age and the symptoms medicine was prescribed by Dr. Chanana, which, according to the Committee, was appropriate and since ejection fraction was 50% in a patient with history of coronary artery bypass grafting, there was no pressing requirement for further cardiac evaluation. On 31.07.2020 when the patient presented himself with a more serious condition, Dr. Chanana advised him to be admitted to the nearest health facility equipped with emergency cardiac care. Since the prescription of Dr. Chanana suffered from certain shortcomings he has been asked to be more careful in future. This Court, under Article 226 of the Constitution of India, cannot substitute its own conclusions to the one arrived at by the experts unless the decision taken by the experts is perverse and unconscionable and has the effect of shaking the consciousness of this Court.”

(Emphasis Supplied)

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Submissions of learned counsel for parties

5. Learned counsel for the Appellant states that the Disciplinary Committee and the learned Single Judge failed to appreciate that the medicines prescribed by Dr. B.B. Chanana on 26.07.2020 to the patient were not appropriate. He states that the patient was prescribed Vertin – 16, which is to be prescribed for vertigo; however, the patient was not suffering from the said complaint. He states that the Appellant is aggrieved by the misdiagnosis of the patient on 26.07.2020. He states that if Dr. B.B. Chanana had carried out an ECG test on 26.07.2020 itself, maybe the patient could've been saved. He states that the patient was deprived of correct medical advice despite having approached a doctor immediately, due to the lack of care shown by Dr. B.B. Chanana. He states that the Appellant has learnt that there are several other complaints of medical negligence pending against Dr. B.B. Chanana and in view of the findings returned by the Disciplinary Committee on the shortcomings in the prescription, atleast a censure should've been issued to Dr. B.B. Chanana.

6. In reply, learned counsel for the Respondents states that the Disciplinary Committee comprising of four (4) doctors have after perusing the record concluded that there was no medical negligence. He states that the said opinion rendered by the experts cannot be substituted by this Court in exercise of its jurisdiction under Article 226 of Constitution of India. He states that the learned Single Judge after perusing the record has not found any perversity in the decision of the Disciplinary Committee. He states that this Court in its limited jurisdiction ought not to interfere with the conclusion of the learned Single Judge and the order of the Disciplinary Committee.

Findings and analysis

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7. This Court has heard the learned counsel for the parties and perused the record.
8. The Appellant has alleged that Dr. B.B. Chanana failed to render proper medical treatment to the patient on 26.07.2020, which led to his deteriorating heart condition going undetected, leading to a cardiac arrest on 31.07.2020, and ultimately his untimely demise. In these facts, the Appellant alleged that Dr. B.B. Chanana had been negligent and filed a complaint against him for medical negligence before the Respondent No.1. The Disciplinary Committee constituted by Respondent No.1 and comprising of four (4) doctors, after perusing the record returned a finding of fact that the medical treatment given to the patient on 26.07.2020 was appropriate and rejected the allegation of medical negligence.
9. The Appellant neither in his arguments nor in the grounds set out in the memorandum of appeal has been able to show any infirmity in the findings of the Disciplinary Committee's order dated 13.01.2022.
10. The Appellant's grievance is to the effect that if Dr. B.B. Chanana would have carried out an ECG test of the patient on 26.07.2020 itself; the blockage of the heart would have been detected and it would have probably saved the life of the patient. The said contention shows that the Appellant is aggrieved by the medical treatment given by Dr. B.B. Chanana to the patient on 26.07.2020. This contention of the Appellant has been duly considered and rejected by the Disciplinary Committee by a reasoned order. The said Committee consisting of four (4) doctors after perusing the record has concluded that considering the ejection fraction of 50% in a patient with a history of CABG, the medical treatment given by Dr. B.B. Chanana to the patient on 26.07.2020 was appropriate. The said Committee categorically concluded that no medical negligence can be attributed to the said doctor for the medical treatment met out on the said date i.e., 26.07.2020.



11. The Supreme Court in *Jacob Mathew v. State of Punjab*¹, while dealing with the law of medical negligence in respect of professionals professing some special skills has held that the professional can be held liable only when (a) either a person (doctor) did not possess the requisite skills which he professed to have possessed; or (b) he did not exercise reasonable competence in given case the skill which he did possess. The Supreme Court further held that a simple lack of care, an error of judgment or accident, is not proof of negligence on the part of the medical professional. The relevant extract of the said judgment reads as under:

“Conclusions summed up

48. We sum up our conclusions as under:

...

*(2) Negligence in the context of the medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. **A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed.** When it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.*

(3) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case,

¹ (2005) 6 SCC 1



the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence."

(Emphasis Supplied)

12. The Supreme Court further in ***Kusum Sharma and Ors. v. Batra Hospital and Medical Research Centre and Ors.***² has laid down the basic principles which must be kept in view while deciding whether a medical professional is guilty of medical negligence or not. The said principles are reproduced as under:

"89. On scrutiny of the leading cases of medical negligence both in our country and other countries specially the United Kingdom, some basic principles emerge in dealing with the cases of medical negligence. While deciding whether the medical professional is guilty of medical negligence following well-known principles must be kept in view:

I. Negligence is the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

*II. Negligence is an essential ingredient of the offence. **The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.***

III. The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.

*IV. **A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.***

V. In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of other professional doctor.

VI. The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater

² (2010) 3 SCC 480



chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/ her suffering which did not yield the desired result may not amount to negligence.

VII. Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.

VIII. It would not be conducive to the efficiency of the medical profession if no doctor could administer medicine without a halter round his neck.

IX. It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessarily harassed or humiliated so that they can perform their professional duties without fear and apprehension.

X. The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurising the medical professionals/hospitals, particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.

XI. The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. *The interest and welfare of the patients have to be paramount for the medical professionals.*

90. In our considered view, the aforementioned principles must be kept in view while deciding the cases of medical negligence. We should not be understood to have held that doctors can never be prosecuted for medical negligence. As long as the doctors have performed their duties and exercised an ordinary degree of professional skill and competence, they cannot be held guilty of medical negligence. It is imperative that the doctors must be able to perform their professional duties with free mind”

(Emphasis Supplied)

13. The Supreme Court in ***Jacob Mathew*** (supra) has, inter alia, held that the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available to the professional at the time of the incident, and not at the date of trial. The Court further held that failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence.

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13.1. The Disciplinary Committee in its order dated 13.01.2022 has concluded that when the patient was presented before Dr. B.B. Chanana on 26.07.2020 with the complaints of breathlessness, nausea, headache and vomiting sensation; the medical treatment advised as per the prescription was appropriate; and since ejection fraction was 50% in a patient with history of CABG it is reasonable to conclude that there was no requirement for further cardiac evaluation.

13.2. The findings of the Disciplinary Committee (comprising of medical experts) have not been rebutted by the Appellant from the material on the record. The Courts ordinarily defer to and rely upon the opinions given by the independent medical experts in matters raising claims on account of medical negligence. The Appellant has failed to show any error of fact or any error in the procedure adopted by the Disciplinary Committee while making its decision.

13.3. In light of the said law settled by the Supreme Court and findings of the Disciplinary Committee, the plea taken by the Appellant that had Dr. B.B. Chanana conducted the ECG on 26.07.2020, maybe the patient could've been saved, cannot be accepted for interfering in the decisions of the said Committee and returning a finding of medical negligence.

14. From a perusal of the Disciplinary Committee's order dated 13.01.2022, this Court is of the opinion that no case for gross or culpable negligence has been established, which is an essential ingredient for deciding the case of medical negligence as held in ***Kusum Sharma*** (Supra).

15. The averment in the memorandum of appeal that there are other complaints pending against Dr. B.B. Chanana can have no bearing in deciding the complaint filed by the Appellant which has to be considered on its own merits. Further, the facts of the other complaints have not been placed before this Court.



16. So also, the observations of the Disciplinary Committee with respect to the censure issued against Dr. B.B. Chanana for not recording factual details in the prescription dated 26.07.2020 cannot be relied upon to return a finding of medical negligence for the medical treatment given to the patient on 26.07.2020.

17. In view of the aforesaid observations and law laid down by the Supreme Court in *Jacob Mathew* (supra) and *Kusum Sharma* (supra), this Court does not find any infirmity in the impugned order passed by the learned Single Judge. Accordingly, this Court finds no merit in this appeal and the same is dismissed.

18. Pending applications, if any, stand disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

JANUARY 5, 2024/hp/aa