

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

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ADVANTAGE - XI

Queries & Answers through the Web

(www.advantageconsumer.com is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

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British Airways and Lufthansa German Airlines penalised for their lack of diligence, which resulted in the physical and mental ordeal of its passenger.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

FIRST APPEAL NO. 366 OF 2020

(Against the Order dated 29/01/2020 in Complaint No. 95/2019 of the State Commission Chandigarh)

BRITISH AIRWAYS

DLF PLAZA TOWER, PHASE-I, DLF CITY, BLOCK-B, SECTOR-26-A, SIKANDERPUR GHOSH, GURGAON-122002. HARYANA

.....Appellant(s)

Versus

HARSHARN KAUR DHALIWAL & 3 ORS.

W/O. PARAMJEET SINGH DHALIWAL, R/O. HOUSE NO. 2254, SECTOR-35-C,

CHANDIGARH-160022

.....Respondent(s)

BEFORE:

HON'BLE MR. DINESH SINGH, PRESIDING MEMBER

HON'BLE MR. JUSTICE KARUNA NAND BAJPAYEE, MEMBER

Dated : 16 Jan 2023

ORDER

26 Curtailment of liberty of an innocent person anywhere is injury to liberty everywhere, just as injustice to one is injustice to all. In matters where the damage has already been done and the injury or loss already inflicted, the least that can be done is to award condign reparations as an anodyne of justice. The provisions of the Consumer Protection Act to award adequate compensation and even punitive damages in appropriate cases take care to ameliorate the grievances of consumers befittingly when they have been made to suffer by the deficient acts or unfair practice of the service providers.

An innocent lady who spent her life in keeping with law had to undergo a harrowing experience for no fault on her part when she was treated as an insidious suspect for having committed a trespass in foreign land, where she was kept under the hawking eyes of surveillance of police guard even when she attended the calls of nature, where she remained unheard and understood for long hours thousands

of miles away from her home and family and where the importuning of the sobbing lone elderly lady did not yield any compunction in the authorities and she feared the worst, and where the prospects of an impending trial or even internment for the alleged breach loomed large. She was pushed into this precarious situation by the negligent apathy and deficient conduct of the two airlines regarding which we have already given our reasons while upholding the findings arrived at by the State Commission against them.

27. In our considered view, Lufthansa German Airlines, whose ticket the Complainant originally held and who did the re-routing at San Francisco, ought to and therefore shall pay a total sum of Rs. 30 lakhs as compensation and British Airways, on whose flight the Complainant was put on at San Francisco in re-routing and who put the Complainant on a later flight at London, ought to and therefore shall pay a total sum of Rs. 20 lakhs as compensation to the Complainant, both with interest at the rate of 5% per annum from the date of the suffering i.e., 19.03.2018 till realisation. The respective sums of Rs. 10 lakh each already paid shall be duly adjusted therein. The balance awarded amount shall be made good by the two airlines within eight weeks from today, failing which the State Commission shall undertake execution, for 'enforcement' and for 'penalty', as per the law.

Compensation against Surya Travels & Associates is dispensed with as not pressed by the Complainant.

28. The two airlines, through their respective senior-most officials stationed in India, shall be better advised to introspect into the facts and happenings of the present case with all seriousness, and, while fixing responsibility and accountability, also inculcate and imbibe systemic improvements for future so that such trouble and trauma are avoided to passengers at large in future.
29. So disposed.
30. The Registry is requested to send a copy each of this Order to the parties in the appeals and to their learned counsel as well as to the State Commission immediately. The stenographer is requested to upload this Order on the website of this Commission immediately.

'Dasti', in addition, to facilitate timely compliance. ■

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“There are inherent risks and complications involved in major cancer surgery. It is well known that even the best professionals, sometimes have failures. When the duty of care was appropriate from the treating doctors and the hospital, there is no medical negligence.”

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 3375 OF 2017

(Against the Order dated 01/08/2017 in Appeal No. 307/2015 of the State Commission Bihar)

RAM KUMAR PRASAD

S/O. RAMASHISH PRASAD MOHALLA MANSHA PANDEY
BAGH, (HIRA NIWAS JALPURA KOTHI) POLICE STATION
ARA TOWN

DISTRICT-BHOJPUR

BIHAR

.....Petitioner(s)

Versus

MAHAVIR CANCER SANSTHAN (MCS)

THROUGH ITS DIRECTOR, PHULWARI SARIF PATNA,
DISTRICT-PATNA

BIHAR

.....Respondent(s)

BEFORE:

**HON'BLE DR. S.M. KANTIKAR, PRESIDING MEMBER
HON'BLE MR. BINOY KUMAR, MEMBER**

Dated : 16 Jan 2023

OR Pronounced on: 16th January 2023

DR. S. M. KANTIKAR, PRESIDING MEMBER

1. This Revision Petition has been filed under section 21 of the Consumer Protection Act, 1986 by the Petitioner Ram Kumar Prasad (hereinafter referred to as the “Complainant”) against the impugned Order dated 01.08.2017 passed by Bihar State Consumer Disputes Redressal Commission (for short “the State Commission”) in Appeal No. 307/2015 for setting aside the impugned Order dated 01.08.2017, wherein the State Commission allowed the Appeal filed by the OP – Hospital and set aside the Order dated 04.09.2015 passed by District Consumer Disputes Redressal Forum, Patna (for short the ‘District Forum’) in Consumer Complaint No. 180/2008.

2. The facts in brief are that the Complainant got her mother Hiramani Devi (hereinafter referred to as the ‘patient’) admitted at the OP- Hospital on 28.05.2007 for the complaint of abdominal pain. It was diagnosed as an abdominal cancer. She was operated by the Respondent (hereinafter referred to as the ‘OP’) on 13.06.2007, but she never regained consciousness after operation. Subsequently she died on 15.06.2007. The Complainant alleged that his mother died due to overdose of anaesthesia and transfusion of high volume of blood during surgery. He further alleged that the Complainant could not receive original treatment papers from the OP. Being aggrieved, the Complainant filed the Consumer Complaint before the District Forum, Patna.

3. The OP, in its reply, denied negligence during treatment. It was submitted that the attendant of patient has taken away all treatment file but the Opposite Party asserted that "all investigation report related to the patient are preserved in the software of Mahavir Cancer Sansthan, therefore any misuse of the original treatment file will make the Complainant liable for criminal prosecution".

4. The District Forum held that the OP has committed deficiency in treatment of mother of the Complainant and allowed the Complaint. It awarded compensation of Rs. 7,00,000/- plus Rs. 50,000/- as litigation charges to the Complainant.

5. Being aggrieved, the OP- Hospital filed the First Appeal before the State Commission.

6. The State Commission allowed the Appeal and set aside the Order passed by the District Forum with the following observations:

“6.1 We have considered the case of the parties, material on the record as also impugned order. The District Forum has passed the order on the basis of report of the Civil Surgeon. However, on perusal of the report it would appear that is a presumptive report as it is stated that the required documents were not made available and as such held requiring large quantity of blood transfusion in a day necessitates re-exploration at the wound site which was not done. It further appears from the reply of the appellant that on his request Medical Board Bound agreed to visit the Hospital for inspection and verify the treatment given as recorded in the system since the manual record of the treatment was reported to have been taken away by complainant / relatives. The Medical Board did not visit to the Hospital. Be that as it may it is not in dispute that the relevant materials were not available with the Medical Board the appellant as it appears made a request before the District Forum refer and obtain report from specialised Superior Medical Board which was not done as mentioned in notes of Argument. The appellant has annexed the detailed opinion of Dr. (Professor) U.P. Singh retired H.O.D of General Surgery, Patna Medical College Hospital having long experience of 46 years, who has explained in detail with respect to surgical aspect of the matter for our consideration. Dr. Singh in his opinion did not find any negligence either on the part of Surgeon of Authentic who were complainant doctor.

6.2 District Forum mainly relied upon report by the Civil Surgeon, Patna but as noticed above the report is not based upon relevant material. In such circumstance for want of adequate material the report could not be acceptable evidence / material for holding medical negligence and deficiency in service on the part of the appellant Hospital doctors in question.

6.3 For the reasons and discussions above we are unable to sustain the order under appeal. It is thus set aside.

6.4 In the result appeal stands allowed.”

7. Being aggrieved, the Complainant filed the instant Revision Petition.

8. Heard the learned Counsel for both the sides. Perused the material on record *inter alia* the orders of both the fora below.

9. The learned Counsel for Complainant submitted that the hospital did not provide the medical record and investigation reports to the medical board despite the same having been preserved by it in its computer software. Rather, the OP took lame excuse that the records were stolen by the Complainant.

10. We have perused the opinion of Medical Board; it is reproduced as below:

“Patient Hiramani Devi, Regn no. MCS/66522, M/O Shri Ram Kumar Prasad. Complainant reported to Mahavir Cancer Sansthan, the opposite party on 28.05.2007. She was having abdominal lump with pain. After investigation, she was admitted on 30/05/07. Provisional diagnosis was Malignant Ovarian Tumour and seeing the size of the TumourCytoreductive Surgery was planned.

She was operated on 13.06.2007 between 10 am to 2 pm. The patient went into shock at 5:30 pm repeated blood transfusions - 14 units as per complainant and 8 units as per opposite party's versions -were made. Finally, the patient expired on 15/06/2007 at 5:30 am.

The opposite party could not show the hospital record - saying that they were stolen by the complainant -seems quite convincing. Besides needing blood transfusion in such large nos. (8 as per opposite party and 14 units as per complainant) in a day -necessitates re-exploration at the wound site-which the opposite party did not do.

There is deficiency in service as negligence on the part of the opposite party.”

11. It is evident from the affidavit of the treating doctor that the patient was under Dr. B. V. Pandey, Dr. Arun Giri and Dr. Navneet Jain. After investigations, the patient was diagnosed as a case of ‘malignant ovarian tumour’. The further line of treatment was decided after discussion in the tumour board to perform Cytoreductive surgery. In the instant surgery, whole tumour, ovaries, uterus and lymph nodes were to be removed. The tumour board decision was informed to the patient and her attendants, who consented for the aforesaid surgery. After informed consent, the operation was started, which consumed four hours and 2 units of blood was transfused. The OPs denied that 40 units of blood were transfused in the Operation Theatre and the haemoglobin was zero. After the operation, the patient was haemo dynamically stable till 5.30 pm on 13.06.2007, then she went into shock and there was fall in blood pressure. The diagnosis reactionary haemorrhage was suspected and attendants were asked to arrange the blood, but the patient further went into irreversible brain damage and she could not recover despite further 4 units of blood transfusion and subsequently died on 15.06.2007.

12. We have carefully perused the record. In our considered view, the malignant ovarian tumour with involvement of other organs needs extensive major cancer surgery. There are inherent risks and complications involved. The hospital adopted correct policy to treat the malignant tumours with discussion from the tumour board. Thus, it shows the duty of care was appropriate from the treating doctors and the hospital. It was the accepted standard of practice. Moreover, there is an expert opinion of Dr. U. P. Singh, who was the Head of Department of Surgery in the Buddha Institute of Dental Sciences, which substantiates the cancer treatment of the patient.

13. Admittedly, both the lower fora have observed that after death of patient, the attendant took away the treatment file on 22.06.2007 with ulterior motive. It was clearly mentioned in the hospital register that it further observed that the case be sent to a superior board with a direction that the members of the board must be expert in the field of surgery of these type of cases, so that the actual facts should be revealed because the report neither discloses the names of the members nor the field of their expertise.

14. The Hon’ble Supreme Court in **Jacob Mathew’s case [1]** exhaustibly discussed about medical negligence. It was also observed that:

“When a patient dies or suffers some mishap, there is a tendency to blame the doctor for this.

Things have gone wrong and, therefore, somebody must be punished for it. However, it is well known that even the best professionals, what to say of the average professional, sometimes have failures. A lawyer cannot win every case in his professional career but surely, he cannot be penalized for losing a case provided he appeared in it and made his submissions.”

15. Based on the foregoing discussion, we don’t find any error apparent in the Order of State Commission. The Revision Petition is without merit, and it is dismissed.

The parties to bear their own costs.

[1] (2005) SSC (CrI) 1369



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उपभोक्ता अदालत है आपके संग।

हिंदी Pool

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