
(2013) 05 NCDRC CK 0044

In the National Consumer Disputes Redressal Commission

Arzoo Yusuf Bagwan

APPELLANT

Vs

Dr. Prashant Pol

RESPONDENT

Date of Decision : 24-05-2013

Acts Referred:

Citation : 2013 0 NCDRC 462

Hon'ble Judges : J.M.MALIK , VINAY KUMAR J.

Advocate : KESHAV RANJAN , SUDHANSHU S.CHOUDHARI

Judgement

1. THE matter in the consumer complaint related to a 12 year old girl, who was taken to the OP, Dr. Prashant Pol with an ear complaint. She underwent surgery on 10.2.2007. But, the problem did not end with it. Her complaint before the District Forum was that she was not given proper medical treatment and therefore, had to spent over Rs.2 lakhs in further treatment elsewhere, yet never regain her hearing power. She, therefore, demanded a compensation of Rs.9 lakhs for the treatment undergone and to be undergone as also for mental and financial hardship suffered.

2. THE District Consumer Disputes Redressal Forum Satara, allowed the complaint and awarded compensation of Rs.3 lakhs. However, the Maharashtra State Consumer Disputes Redressal Commission allowed the appeal of the doctor and dismissed the complaint. Complainant Arzoo Yusuf Bagwan has now filed this revision petition against the order of the State Commission We have carefully considered the records and heard two counsels. Mr. Keshav Ranjan Advocate has been heard on behalf of the RP/Complainant and Mr. Sudhanshu S. Chaudhari on behalf of respondent/OP.

3. THE District Forum has observed that the respondent has admitted that the applicant suffered from meningitis and that he advised her to approach a pediatrician for treatment of meningitis. The Complainant was suffering from vomiting and headache, which are indications of meningitis. The District Forum has therefore, addressed the question whether there was any connection between the ear infection and meningitis in this case. The District Forum has

apparently relied upon the statement of Dr. Bokil that the problem of Meningitis was because of the presence of bacteria. It has therefore held that - "There is no doubt that the applicant since beginning has stated that the respondent removed the bandage of her ear and a strip of bandage and cotton put inside and when it was shown to the respondent it was wet and water was oozing from her ear and it was also stinky. There was septic in the ear. As per the documents at Exhibit 30 filed by the applicant regarding the information as to meningitis, it is clear that when there is infection of bacteria there is pus. There was pus in the ear of the applicant which was operated. It is established that infection of bacteria has emerged from the middle ear of the ear as a result of which the applicant suffered from meningitis. There is no doubt that before the operation of ear, there was no infection meningitis. The respondent also does not dispute that the applicant has lost hearing ability as a result of meningitis. However, his case is that there is no connection of the respondent therein. However, from perusal of the documents submitted by the applicant and the respondent, the negligence of the respondent is established. MRI of the brain of the applicant is at Exhibit 5/1. On perusal thereof, there is no reference about middle ear. The blood report of the applicant is also available at Exhibit 5 and it is clear that the infection of bacteria is not through blood. The applicant has filed the papers with respect to her examination and treatment in Hearing Health Care Service at Exhibit 5/15. There is a remark in her audiogram [no response even at highest level (2)] ear and "bill profound hearing loss ". (emphasis supplied)

4. ON the other hand, the State Commission has noted that according to the OP meningitis which the Complainant suffered from had nothing to do with the ear operation conducted by him. The Commission has referred to the affidavits of Dr. Jaywant Manohar Thoke (1.5.2008) and Dr. Shrikant Anil Bokil (also 1.5.2008). It has noted that affidavit of Dr. Bokil speaks about the pathological examinations conducted on 26.2.2007 and 5.3.2007, which confirmed that the Complainant was suffering from meningitis, which was due to bacterial infection. But his evidence does not establish any nexus of the said conditions of the Complainant with the surgery performed by the OP. Per contra, the evidence of Dr. Jaywant Manohar Thoke was that as per the report of 21.2.2007 from Jeevan Jyoti Laboratory Complainant Arzoo was suffering from meningitis. But he has categorically stated that he did not find any infection in the ear. Therefore, the Commission held that meningitis suffered by the Complainant, had nothing to do with the earlier surgery performed by the OP. It observed that - "Learned District Forum while assessing the evidence on oath given by Dr. Jaywant Manohar Thoke to the effect that on examination of the Complainant Aarzoo, he had not found any ear infection in her made on affidavit to contradict the same with the statement/observation appearing in the case-papers, supra, but without giving any opportunity to Dr. Thoke to explain the observations recorded (Obviously by somebody else other than Dr. Thoke). Thus, it would be improper to discredit the evidence on affidavit of Dr. Jaywnt Manohar Thoke on that count. Whatever it may be but as to whether there was an infection present in the Complainant

Aarzoo "s ear or not, one thing is certain and there is no dispute about it, namely, meningitis conditions which the Complainant Aarzoo developed on 20/2/2007 or on 21/2/2007 had nothing to do with the ear operation carried out on her by the Opponent on 10/2/2007. In view of such situation and in absence of any other evidence to contradict the evidence of Dr. Jaywant Thoke, we find no reason to disbelieve the evidence of Dr. Jaywant Thoke. Reasons recorded by the District Forum to discredit the evidence of Dr. Jaywant Thoke are not only inadequate contrary to the rules of evidence and thus, can be categorized as perverse appreciation of evidence on record. " (emphasis supplied)

It is argued on behalf of the revision petitioner that the State Commission should have appointed an expert instead of adopting a hyper-technical approach. It is also contended that while the affidavit evidence of Dr. Thoke was considered by the State Commission. The affidavit evidence of Dr. Srikant Anil Bokil was not considered. He could have been examined by the State Commission to ascertain whether the Complainant suffered from meningitis and whether it was caused by bacterial infection.

5. THE central question addressed by the District Forum as well as the State Commission is whether the condition of meningitis, which the Complainant had developed, was caused by the ear infection following the operation conducted by the OP. The District Forum has held that it was caused by the bacteria in the infected ear. But this finding is based on an assumption that there was no other infection.

6. AT this point, it is significant to note that as per evidence on record the ear surgery was performed on 10.2.2007. Ten days later, the patient was found to be suffering from meningitis, as seen from the report of 21.2.2007 from Jeevan Jyot Hospital. In the case paper of this hospital, referred to by the State Commission, the record of 22.2.2007 notes "No active middle ear or mastoid infection ". But, it also says "Right Otitis Externa (infection of external ear). It would mean that infection in the external ear existed, as of 22.2.2007. Significantly, the record also carries an advice "To review patient after 48-72 hours to find out connection between ear infection and meningitis. " It is thus clear that further observation for 2 to 2 and half days was required to establish or rule out the connection between ear infection and meningitis. The State Commission has however, chosen to go by the opinion of Dr. Thoke of 22.2.2007 itself about absence of any active ear pathology/infection. The contention of the revision petitioner that the State Commission should have sought expert opinion is to be seen in the above context. However, it is not the case of the petitioner that a prayer in this behalf was made and rejected by the State Commission. The law does not require appointment of an expert in every case. It was held by Hon "ble Supreme Court of India In V. Kishan Rao Vs. Nikhil Super Speciality Hospital, (Civil Appeal No. 2641 of 2010) decided on 8.3.2010 "In the opinion of this Court, before forming an opinion that expert evidence is necessary, the Fora under the Act must come to a conclusion that the case is complicated enough to require the opinion of an

expert or that the facts of the case are such that it cannot be resolved by the members of the Fora without the assistance of expert opinion. This Court makes it clear that in these matters no mechanical approach can be followed by these Fora. Each case has to be judged on its own facts. If a decision is taken that in all cases medical negligence has to be proved on the basis of expert evidence, in that event the efficacy of the remedy provided under this Act will be unnecessarily burdened and in many cases such remedy would be illusory. "

7. THEREFORE , the decision of the State Commission cannot be faulted merely on the ground that independent medical expert opinion was not sought. But, at the same time, the State Commission should have considered the professional assessment of the treating doctors after the recommended observation of 2 to 2 and a half days. Due to this reason, the impugned order cannot be sustained.

8. THEREFORE , the order of Maharashtra State Consumer Disputes Redressal Commission in First Appeal No.A/08/1087 is set aside. The matter is remanded to the State Commission for fresh consideration and decision in the light of the observations made above. No order as to costs.