

(1998) 09 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

ASHOK THAKUR

APPELLANT

Vs

G.M.MODI HOSPITAL And RESEARCH CENTRE FOR MEDICAL
SCIENCES

RESPONDENT

Date of Decision : 14-09-1998

Acts Referred:

Citation : 1999 1 CPJ 190

Hon'ble Judges : A.P.Chowdhri , Desh Bandhu J.

Final Decision : Complaint allowed

Judgement

1. BY this order we propose to dispose of: (i) Preliminary objection regarding maintainability of the complaint raised by the opposite party, and (ii) A Misc. Application made by the complainant for the production of record specified therein by the opposite party.

2. THE present complaint has been filed by Dr. Ashok Thakur, s/o Mr.S.K. Thakur, deceased. THE case of the complainant is that his father S.K. Thakur went to G.M. Modi Hospital, on 1st April, 1996 with minor throat infection. Various tests including Biopsy were carried out. THE case of the complainant is that while carrying out Biopsy, the patient's tongue was punctured which was discovered in later test and which ultimately resulted in his death on 1st May, 1996. THE complainant instituted this complaint on 6.9.1996 claiming compensation against the Hospital as well as Dr. Rajesh Bhatia, ENT Specialist, impleaded as opposite party No. 2. In the written version filed by respondent No. 1, a preliminary objection was taken that the complainant had no locus standi to file the present complaint as the complainant is not covered under the meaning of "Beneficiary" in terms of definition of the "Consumer" contained in the Consumer Protection Act.

To the above preliminary objection, the complainant filed a reply in which reliance has been placed on a number of decisions of the National Commission as well as State Commissions. To the reply, a rejoinder has been filed by the opposite parties.

3. WE have heard learned Counsel for the both the parties and in our view, the matter needs no elaborate discussion and is covered by various decisions relied on by Mr. Dwivedi. It will be sufficient to make a brief reference to these decisions. (1) Dr. S.R. Louie and Anr. v. Kannolil Pathumma & Anr., I (1993) CPJ 30 (NC). The question before the National Commission was whether mother of the deceased was competent to file a complaint as "Consumer" under the Consumer Protection Act and the answer given by the National Commission was in the affirmative.

(2) M/s. Cosmopolitan Hospital & Anr. v. Smt. Vasantha P. Nair & Anr., I (1992) CPJ 302 (NC)=1986-96 CONSUMER Part II 1604 The question was whether the complainant who was widow of the deceased patient was a "Consumer" entitled to invoke the redressal machinery. It was held by the National Commission that as widow, the complainant was legal representative of the deceased and in the eyes of law she stood in the shoes of the deceased as his representative to enforce the cause of action which the deceased had and in respect of which the right to seek legal remedies had survived and became part of his estate. It was observed that in the definition of expression "Consumer" though there are no express words indicating that his legal representative is also included within its scope, it was only consistent with the object and scheme of the Act and conducive for achievement and promotion of the legislative purpose underlying the Statute to give extended meaning to the expression "Consumer" defined in Section (2)(1)(d) of the Act so as to include legal representative of deceased consumer. It was further observed that unless such a broad and pragmatic view is taken, the result that would follow is that even a case of gross negligence or deficiency in the performance of service leading to the death, the family of the deceased will be left without any remedy under the Act for the redressal of their grievance arising out of the said deficiency.

(3) Mumbai Grahak Panchayat v. Dr. (Mrs.) Rashmi Fadvaniv & Others I (1998) CPJ 49 (NC)=1986-96 CONSUMER Part II 1959. The question before the National Commission was whether the Anesthetist, who participated in the process of delivery of medical services to the beneficiary was as much liable as the main Surgeon himself if her negligence had been established. It was held that even if the services of the Anesthetist were hired by the main surgeon, then also the deceased happened to be the beneficiary of the medical services of the Anaesthetist and hence a consumer. It was further observed that the words "in pursuance of a contract or otherwise" in that context made it amply clear that a privity of contract was not needed for a claim to be made under Consumer Protection Act so long as there was hiring or availing of service for a consideration.

It is unnecessary to refer to the other authorities relied on by the complainant. Mr. Mallik, learned Counsel for the opposite parties tried to distinguish these authorities mainly by pointing out that "heirs", as a class, as distinguished from a "single heir", as in the present case, had been held to be entitled to file a

complaint as a consumer in the facts of those cases. In our view, this distinction does not make any difference to the question of principle. The main question to be decided being whether any one or more or all the legal representatives of the deceased had a right to institute a complaint for compensation on the ground of alleged deficiency in service. Once it is found that the legal representatives have such a locus standi, it is of no consequence whether he has impleaded the other LRs of the deceased or not. If at all, that may effect the quantum of compensation and not his right to file the complaint.

4. FOR these reasons, we decide the preliminary objection against the opposite parties and hold that the complainant is entitled to file the present complaint. With regard to the production of documents, the main objection put-forward is that the documents are voluminous running into more than 900 pages. The said objection can be taken to mean that some costs are involved in preparing the requisite copies i.e. cost of paper and the labour. This question stands covered by a recent decision of the Madras High Court in *Mala Ravan & Another v. K. Raghupathy and Anr.*, 1998 CTJ 482 Madras High Court (CP). In that case the consumer applied for production of certain records by the opposite party. The application was rejected by the District Forum on the ground that neither the Procedure of Civil Court applied nor the Consumer Protection Act contemplated production of any records nor could there be any question of drawing adverse inference in case of failure of party to produce the same. The aggrieved complainant filed a revision before the High Court and it was held that principles of natural justice do apply to quasijudicial Tribunals like the Consumer Forums. As a result, the petitioners were entitled to the assistance of the Court to call for the documents having bearing on the case and in case of failure of the party to produce the same, the quasijudicial Tribunal was entitled to take an adverse note thereof. The revision petition was accordingly allowed and suitable directions given. We are in complete agreement with the reasoning in the above judgment and accordingly allow the complainant's application and direct the opposite party to furnish copies of the record. The opposite party shall, however, be entitled to charge for the cost of paper and labour involved in preparing the copies. The amount shall be deposited by the complainant, in case, the opposite party intimates to the complainant in writing within two weeks. The order to supply the copies shall be complied within four weeks on the receipt of a copy of this order. A copy of the order be furnished to the parties, free of costs. Complaint allowed.