

(1993) 06 NCDRC CK 0058

In the National Consumer Disputes Redressal Commission

BIRBAL SINGH And OTHERS

APPELLANT

Vs

EMPLOYEES STATE INSURANCE CORPORATION

RESPONDENT

Date of Decision : 10-06-1993

Acts Referred:

Citation : 1993 2 CPJ 1028

Hon'ble Judges : S.S.Sandhawalia , Basanti Devi , S.Kulwant Singh J.

Final Decision : Complaint dismissed

Judgement

1. THIS case is concluded against the complainant at the very threshold by I (1991) CPJ 309 "Smt. Ram Kali & Others v. Delhi Administration & Others" and a string of other authorities.

2. FOR the limited purpose of adjudicating on the preliminary jurisdictional objections strenuously pressed on behalf of the opposite parties, it is unnecessary to delve into the facts too deeply. It suffices to mention that Birbal Singh, complainant and his children claim to be primarily aggrieved by the poor medical attention, received by the Late Smt. Omwati (wife of the Birbal Singh, complainant) at the E.S.I. Hospital and All India Medical Institute of Science, Delhi. The case laid was that Birbal Singh, complainant being an industrial worker was a member of the Employees State Insurance Corporation and both he and his deceased wife Smt. Omwati were fully covered under the State Employees Insurance Scheme with regard to medical aid. Despite such aid Smt. Omwati expired in the Hospital on the 8th of December, 1991 and the complaint has been preferred to seek compensation to the tune of Rs. five lacs only. In the written statement filed by opposite party No. 1, a firm preliminary objection was taken that the complainants were not consumers as defined under the Act and an identical objection was raised by opposite party No. 2 in paragraph 3 of its preliminary objections. These were strenuously pressed on behalf of the opposite parties at the very out-set.

Both the learned Counsel for the opposite parties No. 1 and 2 have first placed firm reliance on "Smt. Ram Kali & Others v. Delhi Administration &

Others" (Supra). Thereinafter a detailed discussion, in the particular context of an E.S.I. Hospital, it was concluded as under : "The above observations are equally and fully applicable to the present case. We are, therefore, of the opinion that the complainants are not consumers within the definition of the said word as defined in the Act and they are not entitled to file the present complaint against the respondent-hospital."

3. IT is somewhat manifest from the above, that the aforesaid ratio poses an impossible bar against the complainant. Mr. Harsh Aggarwal, their learned Counsel could neither distinguish nor pose any meaningful challenge thereto and it, therefore, suffices to say that we are equally inclined to agree with the said view. Apart from the above, there are equally weighty observations of the Orissa State Commission in II (1992) CPJ 891 *Govinda Chandra Mohanty v. Director Medical & Health Services, Sail, Rourkela & Ors*" and again of the Delhi State Commission in 1992 CPC 543 "*Prem Chand Sharma v. The Director, Central Government Health Scheme*. To crown it all is the binding precedent of the National Commission in I (1992) CPJ 259 (NC) "*Consumer Unity & Trust Society, Jaipur v. The State of Rajasthan & Ors*."

4. IN view of the unchallenged weight of precedent, the preliminary objection raised on behalf of the opposite parties has to be upheld and it is concluded that the complainants do not come within the ambit of the definition of a consumer under the Act because of the gratuitous nature of the medical services provided to them. The complaint is thus not maintainable and has to be dismissed on the said ground. We however, leave the parties to bear their own costs. Complaint dismissed.