

(2004) 12 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

C.R. JOSE

APPELLANT

Vs

MOTHER HOSPITAL (P) LTD.

RESPONDENT

Date of Decision : 16-12-2004

Acts Referred:

Citation : 2005 3 CPJ 679

Hon'ble Judges : T.M.Hassan Pillai , A.Radha J.

Final Decision : Appeal allowed

Judgement

1. DISSATISFIED with the relief granted by the CDRF, Thrissur in O.P. No. 292/1998 (lower Forum directed the opposite party to pay Rs. 5,000/- as compensation and Rs. 500/- as cost of the proceedings to the appellants within one month from the date of passing of that order) this appeal has been preferred by the complainants/appellants.

2. COMPLAINANTS approached the Forum below (2nd complainant is the wife of the 1st complainant) putting forth a case that the 2nd complainant was admitted to the opposite party hospital for undergoing an operation (Fibroid Uterus Laparoscopic Myomectomy) on 21.1.1998 and after operated upon she was discharged from the hospital on 24.1.1998. On the date of discharge (24.1.998) the opposite party received from the complainants by way of professional charge Rs. 10,000/- evidenced by Ext. A3 and on the same day the opposite party also received Rs. 15,500/- as professional fee evidenced by Ext. A5. It is also their case that opposite party hospital received from them Anaesthetist's fee of Rs. 1440/- evidenced by Ext. A4 and also received from them Rs. 1200/- as anaesthesia charge. According to the complainants by way of professional fee the opposite party collected Rs. 15,000/- which they are not liable to pay and their case is that they are liable to pay professional fee of only Rs. 10,000/-. Their case is also that Rs. 1440/- received from them by the opposite party by way of Anaesthetist's fee is also not realisable from them on the ground that anaesthesia charge of Rs. 1200/- has been collected from them evidenced by Ext. A4. The contention of the opposite party raised in the written version filed

by it resisting the claim is that Ex. A5 receipt is only a provisional receipt and the amount of Rs. 1200/- covered by Ext. A4 was received from the complainants by the opposite party as anaesthesia charge i.e., the charge for medicines and the instruments used by the Anaesthetist for administering anaesthesia. Rs. 1440/- is the fee paid to anaesthetist. Opposite party contended that Rs. 33,240/- was collected from the complainants by way of charges for conducting operation including professional fee on the 2nd complainant and there was deficiency in service on its part as alleged in the complaint.

After hearing the learned Counsel for the appellants we are satisfied that the lower Forum ought to have passed an order direction the opposite party to return to the complainants Rs. 15,500/- collected from them on the same day of discharge (that amount was received by the opposite party from the complainants by way of professional fee evidenced by Ex. A5). Opposite party has not set up a case in the written version that for performing the operation complainants had agreed to pay Rs. 15,500/- to Dr. Rajan as professional fee or charge and Rs. 10,000/- as professional fee or charge to other doctors who were consulted by the complainants or who assisted Dr. Rajan in performing the operation. No such specific case is set up in the written version or in the reply notice. The case set up in the written version is that appellants were told out the charges payable for conducting operation by opposite party and the appellants agreed to meet all the expenses required for conducting the operation. As no case is set up in the written version that the complainants agreed to pay professional fee of Rs. 15,500/- to Dr. Rajan and also agreed to pay Rs. 10,000/- as fee or charge for the Gynaecologists who assisted Dr. Rajan in performing operation we are of the view that for operation performed only one professional fee need be paid by the complainants. Ex. A5 shows that Rs. 15,500/- was received by the opposite party on 24.1.1998 as professional fee for Dr. Rajan. Ex. A3 evidenced the fact that opposite party also collected Rs. 10,000/- by way of professional charge. Evidence given by R.W. 1 proved that professional fee and professional charge are one and the same. Even if we accept the case of the opposite party that 2nd complainant consulted Dr. Rajan and a team of doctors (Dr. Vasanthi, Dr. Anitha, Dr. Reena and Dr. Sudheendran who are the doctors attached to the opposite party hospital) it is not possible to accept the case of the opposite party attempted to be proved during the course of trial that Rs. 10,000/- received by the opposite party was the fee or charges payable to the Gynaecologists who assisted Dr. Rajan in performing operation on the 2nd complainant. We are not prepared to accept the case trotted out during the course of trial on the ground that no such case is pleaded either in the written version or in the reply notice sent by the opposite party. The contention raised in the version is that Ext. A5 is only a provisional receipt and in the reply notice the opposite party asserted ("vernacular matter omitted"). It is shown in Ex. A3 and A5 respectively that Rs. 10,000/- and Rs. 15,500/- were received on the same day by the opposite party one as professional charge and the other as professional fee. We cannot accept the case of the opposite party trotted out

during the course of trial that the amount covered by Ex. A5 was collected by the opposite party hospital for payment of fee of Dr. Rajan who had performed the operation (according to the opposite party Dr. Rajan is a famous Gynaecologist well known all over India and he is only a Visiting Consultant of opposite party and not a Doctor attached to that hospital) on the ground that no such case is pleaded in the written version or in the reply notice, though in Ex. A5 it is shown that the amount is the professional fee of Prof. Rajan. It is well settled by the authoritative pronouncement of Apex Court that in the absence of a plea no amount of evidence led in relation thereto can be looked into, *Bondar Singh v. Nihal Singh*, II (2003) SLT 649=2003 AIR SC 1383. Supreme Court held in *Rajgopal v. Kishan Gopal*, V (2003) SLT 691=2003 AIR SC 4986, that no amount of evidence can be looked into upon a plea which was never put forward. Supreme Court observed that where no plea was taken it cannot be said that there was any lis between the parties thereon. See also *Siddik Mohammed Shah v. Mr. Saran*, AIR 1930 PC 57. So we cannot accept the case of the opposite party that Rs. 15,500/- was collected from the complainants by way of fee payable to Dr. Rajan. So on that ground we are not inclined to place any implicit reliance on Ex. B1 receipt said to have been given by Dr. Rajan dated 29.1.1998 stating that he had received Rs. 15,500/- for performing operation on the 2nd appellant. If the case attempted to be proved by the opposite party is true it is beyond our comprehension as to why the opposite party has contended in the written version and reply notice that Ex. A5 is only a provisional receipt and why it is not contended by it specifically in its pleadings and reply notice that Rs. 15,500/- was the fee collected from the complainants for payment to Dr. Rajan who performed the operation on the 2nd complainant. The lower Forum also rightly not placed reliance on Ex. B1 nor was it prepared to reject or discard the case of the complainants relying on Ex. B1. There is no whisper either in the complaint or in the reply notice that Ex. B1 was issued by Dr. Rajan and it was issued by him on receipt of Rs. 15,500/- as professional fee. Lawyer notice was issued on 10.2.1998 much after the date shown in Ex. B1.

3. IT is evident from the materials available on record that professional fee was collected twice on the same day from the complainants and the fee payable for the operation conducted was only Rs. 10,000/- as shown in Ex. A3. IT is to be pointed out that in his evidence R.W. 1 clearly stated that if fee is collected towards consultation charges, etc. for consulting a doctor the name of the doctor will be mentioned in the bill. In Ex. A3 it is nowhere shown that Rs. 10,000/- was collected from the complainant as professional charge or fee of the three Gynaecologists who assisted Dr. Rajan in performing the operation. No doubt in Ex. A5 it is shown that an amount of Rs. 15,500/- was collected from the complainants towards professional fee payable to Dr. Rajan and as no such case is pleaded we cannot look into evidence adduced by the opposite party on that aspect. So it is evident that Rs. 15,500/- was collected from the complainants by the opposite party without any justification and our conclusion is that professional fee for performing operation was collected twice from the

complainants on the same day i.e. Rs. 10,000/- as per Ex. A3 and Rs. 15,500/- as per Ex. A5. Therefore, the opposite party is liable to return that amount of Rs. 15,500/- to the complainants on the ground that it was collected without any justification from the complainants. IT is admitted that the amount covered by Ex. A5 was collected by the opposite party from the complainants. The lower Forum rightly accepted the case of opposite party that Rs. 1200/- collected from the complainants by way of anaesthesia charge was collected towards charges for medicines and charges of instruments used by Anaesthetist and Rs. 1440/- was collected for payment of fee to Anaesthetist. We find no material to discard the evidence given by R.W. 1 that Rs. 1440/- was the fee collected from the complainants towards the fee of Anaesthetist's and no relief can be granted to the complainants for collection Rs. 1200/- by way of anaesthesia charge and Rs. 1440/- by way of fee to the Anaesthetist.

4. LOWER Forum awarded compensation of Rs. 5,000/-. The complainants are entitled to refund of Rs. 15,500/- collected by the opposite party and it is also entitled to interest on Rs. 15,500/- at the rate of 12% per annum (interest is awarded in lieu of compensation) from 24.1.1998 till realisation. As we are awarding interest on Rs. 15,500/- from the date of receiving that amount from the complainants by the opposite party in lieu of compensation we are of the view that no further compensation need be awarded to the complainants. Opposite party/respondent is directed to return to the complainants Rs. 15,500/- (Fifteen thousand five hundred only) received from them on 24.1.1998 with interest at 12% per annum on that amount from 24.1.1998 till realisation (interest is awarded in lieu of compensation). We make it clear that as we have directed return of Rs. 15,500/- with interest opposite party is not liable to pay the compensation of Rs. 5,000/- awarded by the Forum below. Respondent is also ordered to pay a cost of Rs. 750/- (inclusive of the cost of Rs. 500/- awarded by the Forum below). In the result the appeal is allowed and the respondent is directed to pay to the complainants Rs. 15,500/- received from them on 24.1.1998 with interest at 12% per annum on that amount from 24.1.1998 till payment (interest is awarded in lieu of compensation). We make it clear that opposite party/respodent is not liable to pay compensation of Rs. 5,000/- awarded by the Forum below. Respondent is also liable to pay cost of Rs. 750/- to the complainants inclusive of the cost awarded by the Forum below. Appeal allowed.