

(2017) 01 NCDRC CK 0017

In the National Consumer Disputes Redressal Commission

Case No : 294 of 2016

DR. ALOK KHAN & ANR.

APPELLANT

Vs

SHYAMALI SIKDAR W/O. LATE SH. ANANDA KUMAR SIKDAR

RESPONDENT

Date of Decision : 05-01-2017

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 19](#) - Appeals

Citation : 2017 1 CPR 166

Hon'ble Judges : D.K. Jain, M. Shreesha

Advocate : Rabin Majumder, Antima Bazaz, Kunal Saha

Final Decision : Appeal Disposed

Judgement

IAs No.3277, 3278, 3279, 4713 and 7203 of 2016

1. These Applications are allowed subject to all just exceptions. Appeal
2. This Appeal, under section 19 of the Consumer Protection Act, 1986 (for short "the Act"), is directed against the order dated 26.02.2016 passed by the West Bengal State Consumer Disputes Redressal Commission at Kolkata (for short "the State Commission") in Complaint No.90 of 2013. By the impugned order, while accepting the Complaint filed by the Respondent herein, alleging medical negligence on the part of the Appellant No.1, i.e., the treating Doctor, and deficiency in service on the part of the Appellant No.2 Hospital, in the procedure conducted by the treating Doctor for the ailment diagnosed as "vestibular schwannoma" which is ultimately alleged to have resulted in the death of the husband of the Complainant, the State Commission has directed the Appellants to pay to the Complainant, jointly and severally, a compensation of 25,00,000/- along with the litigation costs, quantified at 50,000/-. The said amount had been directed to be paid within 60 days of the date of passing of the order, failing which it was to carry interest at the rate of 9% p.a. from the date of default till realization.

3. Upon notice, the Complainant is represented by Dr. Kunal Saha, her Authorised Representative.

4. Having heard learned Counsel for the Appellants and the learned Authorised Representative of the Complainant, and having regard to the issue involved in the Appeal, we are of the view that it is a fit case where the Appellants deserve to be granted an opportunity of having their say in the Complaint, inasmuch as they were unable to file their Written Versions in the Complaint. We may however add that having recorded its satisfaction that the Appellants had been duly served with the notice in the Complaint, we do not see any illegality in the order of the State Commission in taking ex parte proceedings against them.

5. In view of the above, we set aside the impugned order with a direction that if the Appellants file their respective Written Versions within 30 days from today, the same shall be taken into consideration by the State Commission. If so advised, both the parties shall be permitted to lead evidence by way of affidavits in support of their rival stands. However, the Written Versions shall be taken on record subject to the Appellants paying jointly and severally to the Complainant a sum of 1,00,000/- as costs for their absence before the State Commission as well as for the delay in the Complaint attaining finality. The costs shall be paid before the State Commission.

6. Bearing in mind the fact that the Complaint was filed as far back as in the year 2013, we request the State Commission to try to take a final decision therein as expeditiously as practicable and in any case, not later than six months from the date of receipt of a copy of this order.

7. At this stage, it is submitted by the Authorised Representative of the Complainant that since he is based in the United States and would be travelling to India only for assisting the Complainant in the present case, the State Commission may be requested to accommodate him while fixing the dates of hearing. We have no doubt that the request of the A/R shall be kept in view by the State Commission while dealing with the Complaint.

8. When the Appeal had come up for motion hearing, while issuing notice to the Complainant, we had directed the Appellants to deposit in this Commission 50% of the amount as awarded the State Commission. It is stated that the requisite deposit had been made within the time granted. If that be so, the said amount shall be put in a Fixed Deposit Receipt initially for a period of six months. The release of the said amount along with the interest, accrued thereon, if any, shall abide by the final result in the Complaint by the State Commission.

9. The parties have assured us that till a final decision is taken by the State Commission in the Complaint, they shall not pursue criminal cases stated to have been instituted against each other.

10. The parties/their representatives shall appear before the State Commission on 09.02.2017 for further proceedings.

11. It will be open to the Appellants to withdraw the statutory deposit made by them at the time of filing of the Appeal.
12. The Appeal stands disposed of in the above terms. Order dasti.