

(2006) 10 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

E S I HOSPITAL MEDICAL OFFICER

APPELLANT

Vs

Ranjit Kumar Das

RESPONDENT

Date of Decision : 11-10-2006

Acts Referred:

Citation : 2006 3 CPR 284 : 2007 1 CLT 508 : 2007 1 CPJ 61

Hon'ble Judges : S.N.Kapoor , B.K.Taimni J.

Advocate : A.Subhashini , Sanjay Kumar Ghosh

Judgement

1. -APPELLANTS were the opposite party before the State Commission, where the respondents/complainants had filed a complaint alleging medical negligence and deficiency in service on the part of the appellants.

2. BRIEFLY put, as per the complainant, his deceased wife who was working in Westing House Farmer Ltd. , in Kolkata and by virtue of which she was a card holder of E. S. I. Hospital, went to the respondent Hospital at about 6. 30 a. m. on 4. 7. 1993 with complaint of severe pain in her abdomen. She was not examined till 11. 30 a. m. and at this hour she was diagnosed with having pain in abdomen which was acute. However, the hospital authority refused to admit her as there was no "bed" available. At about 12. 30 p. m. she was advised to seek medical assistance from any other E. S. I. Hospital. According to the complainant, he took his wife to E. S. I. Hospital at Grant Lane and Ganesh Chandra Avenue, Kolkata, where she met with the same fate and was not attended to and finally she was admitted in a private nursing home (Bliss Nursing Home), where she died on 5. 7. 1993. It is in these circumstances that a complaint was filed alleging deficiency in service and medical negligence, praying for a compensation of over Rs. 7 lakh on the ground that the deceased was working lady, she was aged 34 years and she would have worked for another 24 years. The appellants filed the written version before the State Commission and stated that the deceased came to the Hospital at 1. 00 p. m. where she was treated at the earliest and as no bed was available for admission, they advised her to seek admission in some other E. S. I. Hospital. After the evidence was

filed by the parties, the deponents were cross-examined and after hearing the parties and length, the State Commission allowed the complaint and directed the appellant to pay Rs. 2,00,000 to the complainant and for the children of the deceased wife along with cost of Rs. 5,000. Aggrieved by this order this appeal has been filed before us. We heard the learned Counsel for the parties at some length. Two things emerge very clear-one that the attending doctor, Dr. Debashish Chaudhary, whose affidavit was filed on behalf of the appellants, admits that he was on duty from 8. 00 a. m. to 2. 00 p. m. No other material has been shown to us if there was any doctor on duty at 6. 30 a. m. for attending to any "medical-emergency" cases. Secondly, as per material produced before the State Commission in the form of "out-door patient ticket", it does not show any treatment or medicine administered on the deceased despite her being diagnosed with severe abdomen pain. Instead she was directed to approach some other E. S. I. Hospital as there was no bed available. Like State Commission, we fail to understand as to what a hapless patient in such a condition of acute pain could have done? As per material on record and reply filed before the State Commission by the appellant, we are satisfied that there was no doctor on duty when the deceased with her husband reached the hospital as duty doctor came only from 8. 00 a. m. onwards and she was attended to only at about 1. 00 p. m. though the complainant states that she was attended by the doctor at about 11. 30 a. m. A flimsy defence was sought to be taken before the State Commission that she was not a "consumer" despite law having been settled by that time, that she would fall within the category of "consumer" as being an E. S. I. Card-holder, she was entitled to facilities from the hospital.

A vain attempt is also made in the "memo of Appeal" and also in the oral arguments advanced before us that there is no E. S. I. hospital in Ganesh Chandra Avenue or Rajarhat. In our view, this has no bearing in the case, as in our view, as rightly held by the State Commission, the appellant was obliged to entertain and treat the E. S. I. Hospital Card-holder. Instead of treating the deceased, as per OPD Ticket, complete apathy has been shown by the appellants by not only not treating her with any medicine jeopardising her life and leaving the patient to fend for herself by merely recording that patient is suffering from acute pain in abdomen. The "duty of care" expected from a doctor is to attend on a patient, more so, in a case of "emergency", i. e. , in this case the deceased with acute pain, at the earliest and not adopting a mechanical approach of referring or "forwarding" the case or pushing out the patient to some other hospital in city like Kolkata and that too in the case of a lady patient, admittedly, having acute abdomen pain. There has been a complete failure on the part of the appellant to perform the "duty of care" expected from a professional doctor as well as the hospital. We are in full agreement with several observations made about plight of an ordinary human being in such hospitals, where a medical ethic is given a "good-bye" at the cost of patient as happened in this case, of life of the patient. We are also in full agreement with the reasoning advanced by the State Commission based on material on record that this was case of deficiency in

service as also medical negligence on the part of the appellants. No ground has been shown to us by the learned Counsel for the appellant to take any other view than the one taken by the State Commission.

3. HOWEVER, coming to the quantum of compensation, we are of the view that applying/adopting a formula in such cases, based on monthly salary as also likely increase, the respondents/complainants shall be entitled to a sum of Rs. 1,25,000 along with interest @ 9% p. a. from 1. 8. 1994 till the date of payment along with cost of Rs. 5,000 awarded by the State Commission. This payment shall be made within a period of 6 weeks from the date of passing of this order. The appeal stands allowed in above terms and the order of the State Commission stands modified to that extent. Appeal partly allowed.