

(2003) 07 NCDRC CK 0037

In the National Consumer Disputes Redressal Commission

GARIMA GUPTA

APPELLANT

Vs

SINGHAL HOSPITAL AND FAMILY WELFARE CENTRE

RESPONDENT

Date of Decision : 10-07-2003

Acts Referred:

Citation : 2004 1 CPR 507 : 2004 4 CPJ 635

Hon'ble Judges : M.A.A.Khan , Ratan Prakash J.

Advocate : Ram Avtar Tamoliya , Mahavir Singh

Judgement

1. THIS complaint under Section 12 of C.P. Act, 1986 has been originally filed by Smt. Garima Gupta @ Hemlata Gupta along with her husband Shri Satish Kumar and her minor daughter Harshita Gupta against the O.Ps. Singhal Hospital and Family Welfare Centre (for short Singhal Hospital) and Dr. (Smt.) Uma Singhal as owner of Singhal Hospital, to claim a total amount of Rs. 34,05,000/- and also to award litigation cost at Rs. 11,000/-.

2. THE grievance of the complainants is that Smt. Gupta was having a pregnancy. On 3.9.1996 she got herself checked by O.P. No. 2 Dr. Uma Singhal who opined that everything is alright and that a child would be born around 8.10.1996. She was also prescribed certain medicines. Smt. Gupta got herself medically checked again on 25.9.1996 and the concerned doctor repeated the same version and medicines. On 5.10.1996 Smt. Gupta had severe pain in the abdomen whereupon her relatives brought her to the Singhal Hospital at about 12.00 - 12.15 mid-night. According to the complainant at that time no doctor was available and she was admitted in the Hospital by the duty Nurse. Smt. Gupta alleged that she remained throughout the night under acute pain and discomfort and on 6.10.1996 gave birth to a female child, at about 5.25 a.m. It is alleged by the complainant that the Nurse on duty did not pay any attention to her nor took requisite precautions at the time of the delivery of the child. According to her; because of the non-supply of oxygen immediately the child suffered from the illness of Birth Asphyxia and also suffered from a number of disabilities including that her neck could not stay at rest; her limbs could not be

controlled, her body became senseless and that her brain became retarded. It is also the case of the complainant that right from that moment onwards, she consulted Dr. Ashok Lodha of Astha Children Hospital, Alwar; Dr. Sunil Rastogi of Alwar Nursing Home as also Dr. Ashok Panagariya of SMS Hospital, Jaipur between 6.10.1996 and 14.10.1996, though she was discharged from the Singhal Hospital on 11.10.1996. Smt. Gupta did not sit idle and consulted once again Dr. Sunil Rastogi of Alwar Nursing Home on 26.10.1996, Dr. Ashok Lodha of Astha Children Hospital, Alwar on 26.8.1997; on 16.12.1997 to Dr. Deepak Tak of Deepak's K.M. Institute, Ajmer and on 20.2.1998 to Ashok K. Singhal (Psychiatrist), Asstt. Professor of P.B.M. Hospital, Bikaner but each of these doctors opined that there has been negligence at the time of the delivery of the child and because of the non-supply of proper quantity of oxygen at that point of time; the child suffered from the disease of Birth Asphyxia.

The complainants, therefore, have alleged that due to unskilful and negligent treatment accorded to her at the time of birth of her child on 6.10.1996, the newly born child had become a live "dead-body" which has resulted in severe mental agony, discomfort and inconvenience not only to the complainants but also to all their family members. She accordingly blamed the O.Ps. for all these deficiencies and negligence on their part for not making efficient services available in the hospital which culminated to this state of affairs and that the child became disabled and mentally retarded right from that day. The complainants originally claimed an amount of Rs. 34,05,000/- as per details given in para 18 of the relief cause under different heads. This amount was subsequently desired by the complainants to be reduced by 15 lakhs vide their application moved on 3.11.1998. It appears from the record that this application remained undisposed of till the final hearing of the matter. Be that as it may, since the complainants have already made a request as early as on 3.11.1998 for restricting their claim and reducing it by Rs. 15 lakhs, the Commission heard the matter as being within its pecuniary jurisdiction.

3. IT may also be noted that the O.Ps. had not filed their written version within time. However, it was taken on record vide order dated 24.10.2002 on payment of Rs. 500/- as cost to the complainants. The stand of the O.Ps. is that the complainant Smt. Gupta was medically checked on 3.9.1996 and on 25.9.1996 by Dr. Uma Singhal (O.P. No. 2). However, in spite of refusal of the Nurse on duty not to admit Smt. Gupta in the Singhal Hospital on 5.10.1996 during the mid-night as Dr. Uma Singhal was out of station; the complainants insisted to be admitted in the Hospital. The Nurse on duty attended to the complainant Smt. Gupta as per her limitations and capabilities but neither Singhal Hospital nor Dr. Uma Singhal is in any way liable or responsible for the alleged disablement of the newly born child. It is averred that none of the O.Ps could be held responsible for the alleged disease of Birth Asphyxia as at the time of delivery of the child, Dr. Uma Singhal (O.P. No. 2) was not present. Further, it is also averred that the disease of Birth Asphyxia occurs very rarely due to a number factors, and that the O.Ps. cannot be held liable in any manner whatsoever. The claim advanced is

without any substance and has been highly exaggerated simply to pressurise the O.Ps. to part with some money. Lastly, it has been urged that the complaint be dismissed with costs.

4. WE heard the learned Counsels for the parties at great length and have examined the record carefully. The only question for consideration in this complaint is whether the O.Ps. i.e., Singhal Hospital and Dr. Uma Singhal have been deficient in rendering services to the complainants. It is an admitted position that the complainant Smt. Gupta was medically checked by Dr. Uma Singhal on 3.9.1996 and also on 25.9.1996 and was prescribed certain medicines and advised to take certain precautions. It is also not in dispute that Dr. Uma Singhal was out of station on 5.10.1996 when the complainant Smt. Gupta was admitted in the mid-night of 5.10.1996 in the Singhal Hospital, though on the insistence of the complainant and her relatives by the Nurse on duty. From the material made available on the record as per the version of the complainant and the O.Ps. it is also made out that when the Nurse on duty observed that the newly born child did not cry, she immediately called a child specialist Dr. Dilip Sethi on telephone who reached the hospital within 10 minutes and examined the child and advised certain tests of the child in question and referred the case to Astha Children Hospital, Alwar. It is to be noted that neither the Nurse on duty has been made party to this complaint nor Dr. Dilip Sethi, the Child Specialist called for emergency has been made a party to this complaint. It is also made out that Dr. Uma Singhal came back to the station in the afternoon of 6.10.1996 and attended to the mother and the child right up to 10.10.1996 and thereafter discharged them on 11.10.1996. There is no allegation against Dr. Uma Singhal that she did not attend properly to the newly born child from 6.10.1996 till the date of discharged from the Hospital i.e., 11.10.1996. The complainants have made the allegations of deficiency in service on the part of the O.Ps. mainly on the basis that no proper and efficient arrangement was made by the O.Ps. to attend to any maternity case in absence of Dr. Uma Singhal. It is also to be noted that Nurse on duty had declined to admit Smt. Gupta in the mid-night of 5.10.1996 as Dr. Uma Singhal was out of station and this fact was duly communicated to the complainant and her relatives on that time. Yet it appears that the complainants were adamant to get Smt. Gupta admitted in the Singhal Hospital only; even after it was made clear to them that Dr. Uma Singhal was out of station. Even if it is believed; though it is not made out; that Nurse on duty refused to admit Smt. Gupta in absence of Dr. Uma Singhal, we fail to understand how could a person finding that the pregnant woman was complaining of agonizing pain in her abdomen, take a chance to admit her in a Hospital where there is no child specialist or Gynaecologist available at that point of time. In the present case, the version of the O.Ps. appears to be true that the Nurse on duty had declined to admit Smt. Gupta in absence of Dr. Uma Singhal but she had to give way because of the insistence and adamancy of the complainant and her relatives to admit Smt. Gupta even in this situation.

5. BE that as it may, in the facts and circumstances as have been brought on

record, there is no material to substantiate the version of the complainants that the O.Ps., Singhal Hospital or for that matter Dr. Uma Singhal, were in any way responsible for the sufferance of the newly born child by the disease of Birth Asphyxia as was found later on by the other doctors which was consulted by the complainants. The reason is that neither Dr. Uma Singhal was present at the time of admission of Smt. Gupta in Hospital nor at the time of delivery of the child on 6.10.1996 at about 5.25 a.m. Further, there is no material on record to substantiate the allegations of the complainants as to who actually was the Nurse on duty who attended upon Smt. Gupta during the aforesaid period or that she was lacking in any skill of nursing? Merely because a pregnant woman gets medically checked prior to the birth of a child would not make the Hospital or the concerned doctor liable for any untoward happening at the time of delivery of a child when the doctor was not available at all; not only at the time of admission of the expectant mother but also at the time of delivery of the child.

6. FOR all aforesaid reasons, we are of the firm view that the complainants have miserably failed to establish that the O.Ps. in any way rendered deficient services to them in any manner whatsoever. Had it been that Dr. Uma Singhal could have admitted Smt. Gupta in the Hospital or could have been available at the time of delivery, the things could have been different; which in fact has not been the position. The complaint, therefore, deserves dismissal and is hereby dismissed with cost on parties. Complaint dismissed.