

(2017) 02 NCDRC CK 0005

In the National Consumer Disputes Redressal Commission

Case No : 4377 of 2012

GEETA RANI KAKKAR & ORS.

APPELLANT

Vs

CHANDIGARH ADMINISTRATION & ORS.

RESPONDENT

Date of Decision : 01-02-2017

Acts Referred:

Citation : 2017 1 CPR 548

Hon'ble Judges : K.S. Chaudhari

Advocate : Jawahar Narang, Gaurav M. Liberhan

Judgement

1. Both these revision petitions arise out of single order of State Commission; hence, decided by common order.

2. Revision Petition No. 4377 of 2012 has been filed by the complainant and Revision Petition No. 4905 of 2012 has been filed by OP against order dated 9.8.2012 passed by the State Consumer Disputes Redressal Commission (in short, "the State Commission") in Appeal No. 195 of 2011 - Geeta Rani Kakkar & 2 Ors. Vs. Chandigarh Admn. & Ors. and Revision Petition No. 4905 of 2012 has been filed by OP against aforesaid order passed in Appeal No. 257 of 2011 - Govt. Medical College & Hospital Vs. Geeta Rani Kakkar & Ors. by which, appeals of both the parties were dismissed.

3. Brief facts of the case are that Complainant No.1 and 3 had got their son namely Hitender Kakkar admitted, in the Hospital of Opposite Party No.2 vide C.R. No. 081009131, on 26.10.2008 with history of flame burns due to fire cracker, on being referred by Pawan Goel Hospital at Kurukshetra. It was stated that initially, he was admitted in the Emergency Ward and, later on, was shifted to Burns Ward. He was allotted Bed No.1. It was further stated that his condition was gradually improving and his burn wounds had started healing. It was further stated that on 7.11.2008 at 2 A.M., Bed No.1 was allotted to another critically burnt patient namely Parveen Kumar with 80% burns and Hitender Kakkar was shifted to Bed No.8 in Room No.5, which was very uncomfortable. The room was very untidy and unhygienic, to which the attendants of Hitender Kakkar objected

to, but of no avail. It was further stated that in the early morning of 7.11.2008, the said Parveen Kumar died and Hitender Kakkar was again re-shifted to Bed No.1 at about 7:30 a.m, on the same day. It was further stated that before re-allotting Bed No.1 to Hitender Kakkar, it was neither sterilized nor disinfected, due to which his condition all of a sudden started deteriorating. The doctors in their last ditch effort tried to handle the same, but failed to do so and ultimately, Hitender Kakkar died at 10.00 P.M. on 7.11.2008. It was further stated that the patient namely Hitender Kakkar contracted infection, due to the negligence of the hospital staff and callous attitude of the doctors. Further, the hospital staff, in order to cover up their folly, manipulated the records and in the post mortem report recorded that the cause of death was Septicemia consequent upon burn injury. It was further stated that Opposite Party No.2, its concerned doctors and the staff were guilty of medical negligence. Alleging deficiency on the part of OPs, complainants filed complaint before District Forum. OPs resisted complaint and submitted that patient-Hitender Kakkar had sustained approx. 50% burns (IIInd and IIIrd degrees) involving neck, chest, both upper limbs and face. It was further stated that the Patient was immediately attended and after initial resuscitation and management, he was shifted from the Emergency Ward to Bed No.1 in the Burn Unit. It was further stated that the patient was treated with utmost care and attention, and was also given due standard treatment, as per the established protocol, while attending to such cases. It was further stated that on 7.11.2008 at around 2 A.M., one patient namely Parveen Kumar, came, in the Burn Unit, with 80% burns and was critically ill. In view of the aforesaid emergency, Sh.Hitender Kakkar was shifted to Bed No.8, in the same unit. However, the same was opposed by the attendants of the patient. It was further stated that the said Parveen Kumar died on same day at around 7 A.M. and Hitender Kakkar was again re-shifted to Bed No.1 on 7.11.2008. It was further stated that all the beds were regularly carbolized and all possible measures were taken to ensure utmost hygienic conditions. It was further stated that, as per the record till 6.11.2008, the condition of the patient was stable. However, on 7.11.2008 at around 4 PM, when Dr. Uma conducted his check up and reported respiratory distress and complaint of pain in right. Chest. ECG was instructed, which was done. It was further stated that the condition of the patient deteriorated on 7.11.2008, and due to septicemia, which was on account of the presence of multiple pus pockets, in both lungs and both kidneys, consequent cardiac arrest occurred, which was the cause of his demise. Denying any deficiency on their part, prayed for dismissal of complaint. OP No. 3 wife of deceased was proceeded ex-parte. Learned District after hearing both the parties allowed complaint and directed OP No. 1 & 2 to pay Rs. 8,00,000/- as compensation to the complainants along with Rs.10,000/- as cost of litigation. Appeals filed by both the parties were dismissed by learned State Commission vide impugned order against which, these revision petitions have been filed along with application for condonation of delay in R.P. No. 4905 of 2012.

4. Heard learned Counsel for the parties and perused record.

5. OP has filed revision petition along with application for condonation of delay of 34 days in which it has been mentioned that time was consumed in taking administrative and financial sanction and translation of documents. Learned Counsel for complainant submitted that delay cannot be condoned on account of false averments in the application that time was consumed in translation of documents whereas no document required translation and in support of his contention, he has placed reliance on judgment of Hon''ble Apex Court in 2008 (13) SCALE - Pundlik Jalam Patil (D) by Lrs Vs. Exe. Eng. Jalgaon Medium Project & Anr. In the aforesaid case, there was delay of 1724 days whereas in the case in hand, there is delay of only 34 days which normally occurs in taking administrative and financial sanctions. Complainant have also filed revision petition and in such circumstances, delay of 34 days in filing R.P. No. 4905 of 2012 stands condoned.

6. Learned Counsel for complainant submitted that inspite of proof of medical negligence and deficiency on the part of OPs, learned State Commission committed error in allowing only compensation of Rs.8,00,000/-; hence, revision petition be allowed and compensation be enhanced. On the other hand, learned Counsel for the OP submitted that learned District Forum committed error in allowing complaint without any medical negligence or deficiency on the part of OP and learned State Commission further committed error in dismissing appeal; hence, revision petition be allowed and impugned order be set aside.

7. Learned District Forum and learned State Commission after elaborate discussion rightly came to the conclusion that after death of Mr. Praveen Kumar at 7 a.m. on 7.11.2008 on Bed No. 1 deceased Hitender Kakkar was again reshifted on Bed No. 1 on the same date at about 7.30 a.m. without disinfecting bed which amounted to aggravation of infection. Complainant's other two witnesses Md. Ali Jaan and Mr. Ankur Gauba further mentioned in their affidavits that even bed sheets of bed were not changed. Learned Counsel for OP could not bring to my notice any evidence on record to dispute aforesaid factual aspect and in such circumstances, looking to the concurrent finds of Fora below it can safely be observed that after death of Mr. Praveen Kumar and before shifting Mr. Hitender Kakkar on Bed No. 1, it was not disinfected by OP which amounted to medical negligence and deficiency on the part of OPs. At the same time, it can also be observed that mere disinfection on the bed cannot be the sole ground which led to death of Mr. Hitender Kakkar in the light of Post-mortem report in which it was opined - "Cause of death in this case is septicemia consequent upon burn injury".

and it can be held that on account of not disinfecting the bed, infection aggravated which led to death of Hitender Kakkar, who was being treated in the hospital for last 12 days on account of burn injuries on various parts of his body.

8. As far compensation part is concerned, learned Counsel for complainant submitted that in the light of judgment of Hon''ble Apex Court in (2014)I SCC 384- Balram Prasad Vs. Kunal Saha and Ors. complainants were entitled to

compensation of Rs.28,90,260/- whereas they have restricted his claim to Rs. 18,00,000/- which should have been allowed instead of Rs. 8,00,000/- awarded by Fora below. On the other hand, learned Counsel for OP submitted that looking to alleged deficiency on their part, compensation of Rs. 8,00,000/- awarded by Fora below is on very high side which may be reduced.

9. Admittedly, Hitender Kakkar died on 7.11.2008 and for the assessment year 2008-09 for the financial year 2007-08, no income tax return has been placed on record. Learned Counsel for complainant has placed reliance on return of assessment year 2006-07 in which deceased's income has been shown as Rs.96,340/-, but on that basis, income for the financial year 2007-08 cannot be ascertained. Even if same income is presumed for the relevant period as claimed by Counsel for the complainant, loss of revenue to complainants was about Rs.64,000/- per annum meaning thereby, about Rs.5500/- per month and Rs.8,00,000/- awarded by Fora below will certainly generate interest more than Rs.5500/- per month and in such circumstances, amount awarded by Fora below for alleged negligence can neither said to be on higher side, nor on lower side and learned State Commission has not committed any error in dismissing appeals of both the parties for reduction as well for enhancement of compensation.

10. I do not find any illegality, irregularity or jurisdictional error in the impugned order and both the revision petitions are liable to be dismissed.

11. Consequently, revision petitions filed by both the parties are dismissed with no order as to costs.