
(2005) 03 NCDRC CK 0043

In the National Consumer Disputes Redressal Commission

H.V. VENKATASUBBAIAH

APPELLANT

Vs

K. HANUMANTHAIAH

RESPONDENT

Date of Decision : 04-03-2005

Acts Referred:

Citation : 2005 2 CPC 158 : 2005 2 CPR 3 : 2005 4 CPJ 77

Hon'ble Judges : M.B.Shah , P.D.Shenoy J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal has been directed against the order dated 27.5.2004 passed by the State Commission Karnataka, Bangalore dismissing the complaint No. 18 of 2000.

2. THE State Commission after going through the records of the case and hearing the complainant and Counsel for the respondents came to the conclusion that: "THE failure on the part of the complainant in not controlling the diabetes, and failure to follow the medical advice not to walk without the support of the stick, not to put load on the left leg, and not coming for checking to the O.Ps. 1 and 2 and not complaining anything about his suffering to them, and the long gap between the treatment of O.Ps. 1 and 2 and Shekhar hospital doctor, does not help the complainant to substantiate his case. On the other hand, the facts and circumstances of the case revealed in the cross-examination and the affidavits and the pleadings and exchange of notices show that the complainant has no clear stand in support of the allegation of negligence and deficiency in service against O.Ps. 1 and 2 with any corroborative expert views."

The complainant, Sh. H.V. Venkatasubbaiah (Advocate) argued his case in person. He alleged deficiency and medical negligence by respondent Nos. 1 and 2, Dr. K. Hanumanthaiah and Dr. Anil Kumar, of the Jayanagar Orthopaedic Centre, Bangalore. According to the appellant, he suffered a fracture to his left leg ankle joint on 29.8.1998 he approached the respondent Nos. 1 and 2 on 5.9.1998 for treatment.

On 8.9.1998 the respondents performed an operation for implantation of the screws of about 1" on either side of the left leg ankle joint in order to correct the fracture. He was seen by the respondent at their Nursing Home on subsequent dates to check the progress of the connection of the fracture and also to ensure followup action was taken by looking at the X-rays of the ankle from time-to-time.

3. THE complainant alleged that though the respondent told him that the fracture had united well and he was all right, there was swelling and black mark seen on the operated portion of the left leg and this fact was brought to the notice of the respondents. THE respondent issued a slip clearly mentioning that the fracture was united well and advised to walk with a support and do some exercises. THE appellant further argued that the doctor at Jayanagar Orthopaedic Centre was not a well qualified doctor. Thereafter on 3.12.1998, the appellant got himself admitted in Shekhar Nursing Home. The doctors at the said hospital operated him and treated him upto 29.12.1998 and finally on 16.11.1999 he was operated for amputation of his left leg below knee. Accordingly, he claimed compensation and cost as mentioned in his complaint.

4. THE learned Counsel for the respondent argued that Jayanagar Orthopaedic Centre is a reputed Hospital in Bangalore and respondent No. 1 is MS for Orthopaedics. Respondent No. 1 had performed the operation of fractured knee of the complainant properly and he was asked to come back after 15 days but the appellant did not turn up at all. THE appellant's leg was amputated in a different hospital after one year for which respondent No. 1 is not responsible and the allegation of negligence is baseless. It is contended that the appellant was diabetic and had not taken adequate care to control the same. Learned Counsel for respondent No. 3 argued that there is no privity of contract between respondent No. 3 and the appellant. R-3 had issued Professional indemnity policy to R-1. The learned Counsel for R-3 supported the arguments of the learned Counsel for R-1. The surgery conducted by R-1, whereas the subsequent treatment of the appellant is in respect of a distinct bone structure. He also quoted the judgment of this Commission in the case of Pasumarthi Narayana v. Apollo, IV (2004) CPJ 19 (NC). It is contended that the best person in this case was Dr. P.V. Aithal of Shekhar Hospital who had treated the appellant and was not examined by the appellant. We have heard the arguments of the appellant's Advocate and the learned Counsel for the respondent. Jayanagar Orthopaedic Centre is a well known hospital at Bangalore and respondent No. 1 is fully qualified to treat the case of the appellant. Undisputedly the appellant is a diabetic and was asked to control the diabetes before the first operation was performed by R.1. They very consistently advised to control this disease at Jayanagar Orthopaedic Centre and also at the Shekhar Hospital.

5. ONE of the major allegations made by the complainant is about wrong handling by R-1 and R-2 on the left leg ankle of the complainant to reset the same on 29.9.1998. The complainant has not produced extracts from any medical text to corroborate this contention. The subsequent X-ray's result shows

that the fracture has well united. Further the complainant has not produced any affidavit from any Orthopaedic Surgeon. In support of his stand, he has also not produced any affidavit from Dr. P.V. Aithal of Shekhar Hospital who subsequently treated him to buttress his arguments.

6. THE discharge summary of Jayanagar Orthopaedic Centre dated 24th November, 1998 reads as follows : "X-ray was performed. Fracture was united well. Adv. active exercises. To walk with a support of a walking stick. To come after 15 days. There is nothing on record to establish that fracture was not well united and that nothing of the aforesaid discharge summary is in any way erroneous. Further the complainant disregarded the advice and never came up to this Hospital. Nearly an year afterwards a portion below his knee was amputated at Shekhar Hospital. Further, the complainant was discharged from the hospital of respondent Nos. 1, 2 on 24.11.1998. Thereafter, he had not consulted respondent Nos. 1 and 2 at any point of time. Admittedly he took treatment in the other hospital.

Considering the facts and the law relating to medical negligence, we do not find any infirmity in the order passed by the State Commission and hence it does not call for any interference. The State Commission has rightly rejected the complaint. The First Appeal is dismissed accordingly. Parties to bear their own costs. Appeal dismissed.