

(2006) 07 NCDRC CK 0053

In the National Consumer Disputes Redressal Commission

JAWAHAR LAL NEHRU HOSPITAL

APPELLANT

Vs

Harnath Singh

RESPONDENT

Date of Decision : 13-07-2006

Acts Referred:

Citation : 2007 1 CPR 343 : 2007 2 CPJ 313

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

Final Decision : Revision Petition dismissed

Judgement

1. PETITIONER was the opposite party before the District Forum where the respondent filed the complaint alleging deficiency in service on the part of the petitioners by not reimbursing the total amount of expenditure incurred relating to the ailment of his wife.

2. UNDISPUTED facts of the case are that the respondent/complainant is a retired Government servant and is a beneficiary of the Rajasthan Pensioners Medical Concession Scheme, 1981. Some time in May, 1999, his wife faced some neurological disorder wherein she was taken to some local Government hospital in Ajmer, from where she was referred to Jawaharlal Nehru Hospital, Ajmer (hereinafter referred to as JLN Hospital for short) who in turn referred the patient to SMS Hospital, Jaipur, wherein she was admitted to the Intensive Care Unit (ICU) of Neurology Department. At SMS Hospital, Jaipur, she was operated upon for the first time on 31.5.1999 and, thereafter on 12.6.1999 and unfortunately she died on 9.9.1999. During the course of the above treatment, the respondent incurred an expenditure of Rs. 76,141.68 on purchase of medicines and when the claim was preferred in this regard with the petitioners, it was admitted only for a sum of Rs. 45,286.25 and the balance amount was disallowed on the ground that the medicines for the remainder of the value were purchased by the respondent from open market without getting "Non-availability Certificate" (NAC) from the concerned doctors and also from the authorised medical shops and without getting the relevant entries in the Patient's Diary, which is violation of Rule 4 of the Rajasthan Pensioners Medical Concession Scheme, 1981. It is in these

circumstances that a complaint was filed before the District Forum who, after hearing the parties, allowed the complaint and directed the petitioners to pay, in all, an amount of Rs. 76,141.68 with interest at the rate of 12% from 30.12.2000 till the date of payment along with cost of Rs. 1000. Aggrieved by this order, the petitioner filed an appeal before the State Commission, who after due consideration and hearing both the parties, dismissed the appeal. Hence, this Revision Petition before us.

We heard the learned Counsel for the parties and also perused the material on record.

3. A preliminary objection was taken by the learned Counsel for the petitioner about the jurisdiction of the Consumer Fora on the ground that the respondent/complainant has not hired the services and will not come within the purview of the "consumer" as defined in the Consumer Protection Act. We need not traverse any further on the issue except rely upon the judgment of the Hon'ble Apex Court in the case of *Laxman Thamappa Kotgiri v. G.M. Central Railway & Ors.*, III (2006) CPJ 6 (SC)=II (2005) SLT 387, Civil Appeal No. 171/2005 decided on 6.1.2005. Thus removes any doubt whether the pensioners would fall within the category of a "consumer" when they obtain services from Government hospital. It was clearly a case of the complainant availing the services of the petitioners as part of conditions of services including the facility available to him and his family after superannuation. Hence, he would be a "consumer" within the definition of "consumer" as given in the Consumer Protection Act, 1986. Hence, we see no merit in this preliminary objection. Coming to the merits of the case, there is no dispute that the wife of the respondent/complainant had suffered neurological disorder and she was under treatment at JLN Hospital, Ajmer as also SMS Hospital, Jaipur and largely in the ICU of Neurology Department. There is also no dispute that the requisite bills have been produced by the respondent/complainant amounting to Rs. 76,141.68 on purchase of medicines for the treatment of his deceased wife. The only objection of the petitioner is that NAC was not obtained from the concerned doctors authorising the complainant to buy it from open market; secondly, he did not purchase the medicines from the authorised medical shops; and thirdly, relevant entries were not made in the Patients Diary.

4. ADMITTED position of real life is that Rules are there to guide us. They are not an end in itself and are meant to be followed in normal conditions. They cannot come in the way when someone's close relation is fighting for her/his life. It is not the case of the petitioners that the medicines for which bills have been presented to them, were not administered and were not on the prescription of the doctor. What could have proved thus, or otherwise, was the bed-head ticket of the hospital concerned where those medicines were administered. When the medicines were administered by the staff of the hospital, we cannot but deduce that those medicines were prescribed by the competent doctor of the hospital. In order to rebut this, what the petitioner could have done was to produce the bed-

head ticket relating to the deceased. This was never produced either before the District Forum, the State Commission and nor for that matter before us. We are constrained to draw an adverse inference to the effect that all the medicines were purchased on the advice of the treating doctor and were administered to the deceased. To expect from the complainant in the condition in which he was in, to look to the formalities of getting the NAC or relevant entries made in the Patients Diary, would be taking a very insensitive view about our concern for the life of human being. It is not the case of the petitioner that the medicines for which reimbursement is being sought were in stock of the hospital, yet the complainant went on to buy from the open market. The complainant's only concern was the welfare of his wife and to ensure that directed medicines are administered on the deceased and, if they were not available, to get it from outside and supply them for use by the staff. In any case, who else would have prescribed the medicines, but the concerned doctor attending on the deceased? It was a case of urgency when medicines had to be given to the deceased. Even if we see, that it was Dr. R.S. Mittal, on whose letter the petitioner wishes to rely upon in support of his contentions, we also see that he has not filed any affidavit in support of his contention. It is some other doctor who has filed his affidavit. We are again constrained to draw an adverse inference by non-availability of any affidavit of Dr. R.S. Mittal in support of what he had to contend. In the aforementioned circumstances, what we see is a denial of "medicine bill" reimbursement to the complainant-an erstwhile employee of the State, we would only mildly say that it is height of insensitivity shown by an indifferent officials of the Government to one of its own erstwhile employee. More so, when there is no denial on record that these medicines were not purchased by the complainant, on the advice of the concerned doctor and were not administered on the deceased.

5. IN the aforementioned circumstances, we find no merit in this Revision Petition and the same is dismissed accordingly. Revision Petition dismissed.