

(2002) 04 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

JOT MATERNITY AND CHILDREN HOSPITAL

APPELLANT

Vs

SANJOGITTA

RESPONDENT

Date of Decision : 30-04-2002

Acts Referred:

Citation : 2002 3 CLT 455 : 2003 1 CPC 543 : 2003 1 CPR 171 : 2003 3 CPJ 136

Hon'ble Judges : H.S.Brar , Jasbir Singh , Davinder Kaur Bhamrahs J.

Final Decision : Appeal No. 1186 of 2000 allowed

Judgement

1. BOTH these Appeal Nos. 1186 of 2000 and 1165 of 2000, one filed by Jot Maternity and Children Hospital and the other filed by Sanjogitta are being disposed of by a single order as they have been filed against the same order of the District Consumer Disputes Redressal Forum, Ropar (hereinafter called the District Forum) dated 1.9.2000.

2. FACTS are being taken from Appeal No. 1186 of 2000. The main grievance of the complainant before the District Forum was that on 24.1.2000 at about 10.00 a.m., the respondent/complainant (hereinafter called the complainant) had developed gynaecological problem and was taken to the hospital run by the appellants/respondents (hereinafter called the respondents) and she was given intravenous injection which was wrongly injected and immediately after the complainant developed swelling and pain in left(L) fore-arm but the respondent did not care to take further medical steps inspite of the complaint made by the complainant but instead thereof the complainant was sent home and it was told by the respondent that the pain and swelling would automatically subside. The complainant developed severe pain at night and she was again taken to the respondent on 25.1.2000 at about 9.00 a.m. but they again overlooked the problem of the complainant and told her to come the other day. After hearing the un-satisfactory reply and response of the respondents the complainant was then taken to E.S.I. Dispensary at Mohali. The complainant was referred by them for further necessary treatment at P.G.I., Sector 12, Chandigarh, where she was admitted in P.G.I., Sector 12, Chandigarh. She was treated there and dis-charged

on 1.2.2000 with the advice of follow up treatment and regular limb physiotherapy exercise. It was further the case of the complainant that she was still under treatment and she had spent Rs. 20,000/- on her treatment and transportation and she had further developed immobility and disability in her left arm. She had also suffered loss in her business to the tune of Rs. 10,000/-. It was further alleged by the complainant that the respondent had shown utter negligence in performance of their duties and they were deficient in service and thus, they were liable to pay damages etc. to the complainant.

Respondents in their reply completely denied the allegations of the complainant. Reply to para No. 4 of the complaint reads as under : "In reply to para-4 of the plaint it is submitted that it is altogether wrong that the complainant developed any gynaecological problem as alleged. In fact the correct position is that the complainant did visit Jot Maternity and Children Hospital, Phase-2, Mohali on 24.1.2000. The complainant at that time was not suffering any gynaecological problem, rather she complained of a swelling and pain in the left hand and forearm for which, the answering respondent No. 2 prescribed oral medication and a slip was prepared in this regard which was given to the patient. The medicines which were required were duly mentioned in the prescription slip and the complainant-patient was advised to get herself examined from some surgical specialist. It is altogether wrong that any intravenous injection was wrongly injected and thereafter the complainant developed swelling and pain as alleged. The prescription slip if got produced will go a long way to prove that the complainant was never given any intravenous injection. It is also wrong that the complainant developed a severe pain in the night and she was again taken to the respondents on 25.1.2000 at 9 a.m. as alleged. It is worth submitting here that the respondent No. 1 is a child specialist and as such he has not examined the complainant. The respondent No. 1 is maintaining his separate cabin and only looks up the ailing children. The complainant has falsely involved the respondent No. 1 for blackmailing the respondents. The respondents were not even in Mohali from 25.1.2000 to 31.1.2000, because they were away to Hyderabad for attending a medical conference in Osmania Medical College. The answering respondents stayed in Central Court Hostel Hyderabad from 25th to 31st morning. The copies of the bills and certificate certifying the participation in the conference are enclosed for the kind perusal of the Court. The respondents left Mohali at about 5 a.m. for going to Hyderabad. The respondents boarded the train from Ambala at 7.40 a.m. on 25.1.2000 and reached Hyderabad at about 10 p.m. and hired the accommodation in Central Court Hotel, Hyderabad. So in this way it is altogether wrong that the complainant visited the hospital of the respondent on 25.1.2000. Copies of the OPD register showing that no work was done from 25th to 31st January, 2000, is enclosed for the kind perusal of the Court. It is further denied for want of knowledge that the complainant was taken to ESI Dispensary at Mohali and was further referred to PGI as alleged."

All other allegations were totally denied by the respondents.

3. THE only question which needs to be determined in this case is as to whether the complainant was given any intravenous injection due to which the complainant developed swelling and pain in the left fore-arm and her left fore-arm was damaged to the extent as mentioned in the complaint. In order to substantiate her allegation the complainant did not produce any evidence except the identity card/certificate of disability annexed as Annexure A-2 with the complaint. The oral allegation made by her in the complaint was denied in the reply as well as in the affidavit filed by the respondents. In these circumstances, it is not possible to reach at a conclusion about the truthfulness of the allegations made by the complainant particularly when it has been denied by the respondent by way of affidavit. Lot of evidence oral as well as documentary was required to establish the allegations made by the complainant in his complaint. Such a type of evidence could be produced only in a Civil Court of competent jurisdiction. District Forum could not decide such a matter in a summary manner without the requisite evidence produced by the parties under the Consumer Protection Act.

4. DISTRICT Forum has not given any cogent reasons and has not referred to such evidence documentary or oral evidence on the basis of which it could be held that the respondents had given intravenous injection to the complainant wrongly which had led to immediate pain and swelling in the left arm. Simple visit of complainant to the hospital of the respondent for some other ailment does not prove that she was given intravenous injection which resulted into the disability mentioned by the complainant in her complaint. In reply which is supported by an affidavit of the respondent, it has been specifically stated that at the time of her visit she was not suffering from any gynaecological problem; rather she had complained of swelling and pain in the left fore-arm for which respondent No. 2 had prescribed oral medication and a slip was prepared in this regard which was given to the patient. It has been specifically denied that any intravenous injection was injected and thereafter the complainant developed swelling and pain as alleged. Respondents have placed on the record photostat copy of the register of out-door patients Ex. R-5 which shows the name of the complainant at Sr. No. 4 below the column of diagnosis and treatment. It is written therein that there was swelling and pain in the left hand fore-arm. We have compared this photostat copy with the original which is correct according to the original. This corroborates the version of the respondents that the complainant had gone to respondents for cure of swelling and pain in the left hand and fore-arm. But anyhow nothing can be established unless relevant evidence is produced to substantiate the same. In these circumstances, we find that the order of the District Forum is not based upon any substantive evidence or record in holding that the respondents were deficient in performing their service and they had injected wrong intravenous injection in the left fore-arm of the complainant, which resulted into the ailment alleged. In view of our discussions made above, this appeal is allowed and the order dated 1.9.2000 of the District Forum is set-aside. In view of our discussion in Appeal No. 1186 of 2000, Appeal No. 1165 of 2000 filed by the complainant is dismissed. However,

the complainant is at liberty to prove her case before the competent Court of civil jurisdiction, if so advised, in accordance with law. Observations made by this Commission with regard to the facts of this case shall not affect the decision of the Civil Court. Appeal No. 1186 of 2000 allowed.