
(2006) 03 NCDRC CK 0068

In the National Consumer Disputes Redressal Commission

J.P.SWAMI

APPELLANT

Vs

KRISHAN SONI

RESPONDENT

Date of Decision : 10-03-2006

Acts Referred:

Citation : 2006 4 CPJ 219

Hon'ble Judges : Sunil Kumar Garg , T.P.Gupta J.

Final Decision : Appeal partly allowed

Judgement

1. THIS appeal has been filed by the appellants who were opposite parties before the District Forum against order dated 22.3.2003 passed by the District Forum, Hanumangarh by which the complaint of the respondent on point of compensation was allowed in the manner that the appellants were to pay in all Rs. 2,25,000 as amount of compensation for negligence on their part to the respondent while conducting the operation to the wife of the respondent.

2. THE necessary facts giving rise to this appeal are as follows : That the respondent had filed a complaint on 20.9.1999 before the District Forum, Hanumangarh against the appellants who both were doctors in the Govt. Hospital at Hanumangarh alleging that the complainant's wife Smt. Vidya Devi had felt pain in her stomach whereupon he had consulted Dr. Chandra Prakash and since Smt. Vidya Devi did not get any relief, thereafter she had consulted Dr. J.P. Swamy appellant No. 1 on 12.8.1997 who advised the respondent to get his wife operated for the stomach pain and appellant No. 1 had further told him that along with him appellant No. 2 Dr. B.R. Singh would also operate Smt. Vidya Devi in the hospital but they would charged Rs. 5,000 as their fee. THE further case of the complainant was that thereafter Rs. 5,000 were paid by him to Dr. J.P. Swami appellant No. 1 at his residence in presence of Dr. Vinod Chomal and Dr. B.R. Singh, appellant No. 2 and thereafter on 13.8.1997 the operation of gall bladder of Smt. Vidya Devi was got conducted by the appellants in the Govt. Hospital, Nohar. It was further stated in the complaint that after the operation Smt. Vidya Devi was not feeling well and the appellants had removed a nerve/vein (bile-

duck) and in fact that nerve was not removed. It was further stated in the complaint that since the condition of Smt. Vidya Devi was not well, therefore, they referred the matter to the SMS Hospital, Jaipur and instead of SMS Hospital she was got admitted in the SDM Hospital at Jaipur where on 3.9.1997 a fresh operation was got conducted and the fact that bile-duck vein was wrongly cut in the operation came to light and ultimately Smt. Vidya Devi had died on 20.9.1997 and for that negligence of the appellants compensation was sought. A reply was filed by the appellants and ultimately through order dated 11.7.2001 passed by the District Forum, Hanumangarh the complaint of the respondent was dismissed. THEREafter two Revision Petition Nos. 51/2001 and 59/2002 were filed and both were consolidated and were decided by judgment dated 28.10.2002 by which the following order was order was passed: "In view of the above we are clearly of the opinion that the learned D.F. had failed to exercise the jurisdiction vested in it in not considering the justification of payment of any compensation for mental agony to the complainant in the present case. In the result, the impugned order dated 11.7.2001 is set aside and the matter is remanded to the D.F., Hanumangarh with the direction that it would rehear the parties on the point of quantum of compensation for mental agony, cost of medicines, if any, and cost of litigation, payable to the complainant. THE parties are directed to appear before the D.F., Hanumangarh on 2.12.2002. Both the revision petitions stand disposed of accordingly."

THEafter through impugned order dated 22.3.2003 the matter was cosidered by the District Forum on point of compensation and the impugned order was passed in the manner as stated above. THE District Forum had awarded Rs. 2,25,000 after taking into consideration the following factors : (i) Rs. 48,692 the amount incurred as medicines (ii) Rs. 5,000 as amount of fees paid by the respondent to the appellants (iii) Rs. 15,000 as amount incurred by the respondent for travelling and thus total amount comes to Rs. 68,692 (near about Rs. 70,000). (iv) Rs. 1,50,000 were assessed as amount of compensation for negligence of the doctor in conducting the operation of Sm. Vidya Devi and in that amount the amount of conjugal right was also assessed and Rs. 500 as amount of costs. Thus in all Rs. 2,25,000 were ordered to be paid by the appellants to the respondent.

In this appeal the main contention of the learned Counsel for the appellants is on two folds namely : (i) There was no medical negligence on the part of the appellants. (ii) If so the amount awarded by the District Forum to the tune of Rs. 2,25,000 was not just and proper.

Regarding Point No. 1: So far as point No. 1 is concerned, it may be stated here that this argument carries no weight as though order dated 28.10.2002 passed by this Commission in revision petition and that order has been quoted above, it is very much clear that the matter was remanded back to the District Forum on the point of quantum of compenstion. Therefore, the point that there was medical negligence on the part of the appellants was found established. Hence

this argument stands rejected.

Regarding Point No. 2: The argument of the learned Counsel for the appellants is that compensation awarded by the District Forum to the complainant respondent to the tune of Rs. 2,25,000 is not just, proper and reasonable one and proper amount of compensation be ordered to be paid by the appellants.

On the other hand it has been submitted by the learned Counsel for the respondent complainant that compensation to the tune of Rs. 2,25,000 awarded by the District Forum is just, proper and reasonable one.

3. BEFORE proceeding further something should be said about the word "compensation". The "compensation " as stated in Oxford Dictionary signifies that which is given in recompense, in equivalent rendered. It is different from "damages". The compensation to be given must be just, fair and reasonable. Technicality of law should not be permitted to stand in the way in directing to pay fair compensation. "Fairness" is a rule to ensure that the vast power in the modern state is not abused but properly exercised. Fairness is also a principle to ensure that statutory authority arrives at a just decision either in promoting the interest or affecting the rights of persons. Compensation awarded includes damages for pecuniary loss suffered and damages for non-pecuniary loss suffered. So far as the loss of pecuniary loss is concerned the District Forum has come to the conclusion that it was to the tune of Rs. 70,000 and since that amount was bifurcated by the Forum in various heads. This Commission does not want to interfere on that point. So far as non-pecuniary loss assessed to the tune of Rs. 1,50,000 is concerned, it includes following four heads : (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matter, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

4. WHEN compensation is to be awarded for pain and suffering and loss of amenities of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that the different circumstances have been taken into consideration. Looking to the fact that the deceased was above the age of 50 years and operation of the deceased was got conducted by the appellants on 13.8.1997 at Nohar and looking to the fact that the deceased had died on 20.9.1997 at Jaipur after the second operation which was got conducted by the doctors of SDM Hospital, therefore, if the amount of Rs. 80,000 is allowed as amount of compensation for the negligence of the doctors in place of Rs. 1,50,000, it would meet the ends of justice and this amount would be just, equitable and reasonable. For the reasons, the appeal is

partly allowed in the manner that both the appellants would pay Rs. 1,50,000 in all in place of Rs. 2,25,000 to the respondent complainant and to that extent the impugned order dated 22.3.2003 stands modified. Out of that amount Rs. 1,00,000 has already been deposited by the appellants and that amount could be withdrawn by the complainant respondent. For rest amount it is ordered that in case the appellants did not make payment within two months from today, the respondent would be further entitled to interest @ 9% p.a. on the rest amount from the date of passing of the order by the District Forum i.e., from 22.3.2003. Appeal partly allowed.