
(2000) 11 NCDRC CK 0004

In the National Consumer Disputes Redressal Commission

K.V. NARAYANI

APPELLANT

Vs

P.GOPINATHAN

RESPONDENT

Date of Decision : 21-11-2000

Acts Referred:

Citation : 2001 3 CPJ 498

Hon'ble Judges : L.Manoharan , R.Vijayakrishnan J.

Final Decision : Appeal dismissed

Judgement

1. COMPLAINANT in O.P. No. 218/98 on the file of the Consumer Disputes Redressal Forum, Kasaragod is the appellant. COMPLAINANT's case in brief is as follows. She consulted the opposite party doctor during September, 1996 due to fever and chest infection. During the course of the treatment she developed itching and other discomforts in the mouth and eyes. She reported the matter to the opposite party, who stated that the same was due to lack of vitamin-B-complex and he prescribed vitamin B complex and asked her to report back after three days which she did when was directed to continue the medicine. The ailment did not subside; on 14.10.1996 she went to the Govt. Hospital, Kanhangad where she consulted R.W. 3, ENT specialist and he referred her to R.W. 4 Eye Specialist. Though they attended her there was no improvement. They referred her to SDM Eye Hospital, Mangalore where P.W. 2 diagnosed her ailment as Steven Johnson Syndrome due to sulpha reaction. She was also attended by P.W. 2 skin specialist. He issued Exts. A2, A3 and A4 prescriptions, whereas P.W. 3 issued Ext. A1 prescription. Due to Steven Johnson Syndrome the glands supplying tears to the eyes were destroyed, the eyes became dry and she developed photo phobia and became blind as she cannot open her eyes sufficiently. This has affected her work as a Beedi maker, she could not attend her work and this was the result of the failure of the opposite party to treat her with the care and diligence expected of a physician. He administered antibiotic containing sulpha without conducting the test as to sensivity. Though she had sent notice to the opposite party stating the cause of her ailment, he sent reply denying the same. She alleges that since she suffered injury due to the

negligence of the opposite party, doctor, herself is entitled to the compensation claimed.

2. IN the version filed by the opposite party, doctor, though he admitted that the complainant approached him for treatment for chest infection and fever and had put on a short course of antibiotic and anty phytic drugs, she had signs of conjunctivitis and glossitis. She had no ailment due to drug reaction. During the course of the treatment he asked her to stop the treatment and report after three days. Since she reported that there was improvement he asked her to continue the treatment and though he wanted to report back after a week she did not turn up. He denied the allegation of negligence. He maintained that during the course of his treatment there was no signs of Steven Johnson Syndrome or any allergic disorder. He wanted dismissal of the complaint. On behalf of the complainant Exts. A1 to A12 were produced. The case sheet of Govt. Hospital, Kanhangad was produced and marked as Ext. X1. On the side of the complainant, complainant gave evidence as P.W. 1 and examined P.Ws. 2 and 3 the doctors of the SDM Hospital, Mangalore. On the side of the opposite parties the opposite party examined himself as R.W. 1 and he also examined R.Ws. 2 to 4. On a consideration of the said evidence the District Forum found that the complainant failed to establish deficiency alleged by her and in that view dismissed the complaint. It is the said dismissal that is under challenge in this appeal by the complainant. Learned Counsel for the complainant maintained that the District Forum failed to appreciate the fact that there was a specific plea that the opposite party prescribed medicine containing sulpha which resulted in sulpha reaction. When the opposite party was approached he tried to console her by saying that the same was due to want of vitamin B complex. In the version filed by the opposite party he did not specifically deny the same. Thus the learned Counsel highlighted as according to him the reaction which the complainant suffered was due to administration of medicine containing sulpha. The point urged by the learned Counsel is applying Order VIII Rules 3 and 5 since there is no specific denial, the fact that the opposite party administered medicine containing sulpha has to be taken to have been admitted and since an admitted fact need not be proved, the District Forum should have found as a matter of fact the opposite party during the course of treatment had administered such medicine which ultimately resulted in the present disability of the complainant. The learned Counsel also sought to maintain that the said aspect is seen to have been reinforced, as according to the learned Counsel when the complainant visited the opposite party, the opposite party got the prescription from her and substituted it with another prescription. This itself would demonstrate that the opposite party was aware as to the defect in his treatment which ultimately resulted in the injury to the complainant. He relied on the evidence of P.Ws. 2 and 3 in support of his argument that the doctors who attended the complainant at Mangalore and Exts. A1 to A4 would show that the complainant suffered from Steven Johnson Syndrome and that the same was drug reaction. It is urged by the learned Counsel, the fact that the opposite party

had administered medicine containing sulpha medicine is also mentioned in the notice sent by the complainant on behalf of the complainant. The cumulative effect of the attending circumstance would corroborate the evidence of P.W. 1 and according to the learned Counsel had the evidence been appreciated in the proper perspective the District Forum could not have reached the conclusion it did. According to him the opposite party did not take the care expected of him, and because of the failure in taking the said care the complainant suffered injury consequently the complainant was entitled to the relief prayed for.

The learned Counsel for the respondent endeavoured to support the conclusion of the District Forum maintaining that the allegations as to the failure to take the required case on the basis of the case that the opposite party administered medicine containing sulpha without taking the precautionary sensitivity test has been effectively replied the version filed by the opposite party. He would maintain that even in the reply sent by on behalf of the opposite party this aspect has been denied. According to him the failure of the complainant to produce the prescription which allegedly advised the complainant to take medicine containing sulpha ordinarily should be with the complainant necessarily would lead to an adverse inference and to escape from the adverse inference, now the complainant seeks to maintain a case that the opposite party/respondent got the prescription from the complainant and substituted with another prescription. It is also urged that though the respondent wanted her to report back after taking medicine prescribed by him the respondent went to the Govt. Hospital, Kanhangad where neither R.W. 3 or R.W. 4 could see any symptom of Steven Johnson Syndrome. She was in the hospital for sometime only from there she proceeded to SDM Hospital, Mangalore as instructed by R.Ws. 3 and 4 of the Govt. Hospital, Kanhangad. This aspect according to him has to be taken into consideration in appreciating the evidence of P.Ws. 3 and 4. So appreciated, according to him, it cannot be said that it was because of the failure of the respondent opposite party that the complainant suffered the injury. In such circumstance according to the learned Counsel the view taken by the District Forum cannot be faulty.

3. FROM the evidence what could be notice is that as per Exts. A1 to A4 the complainant suffered injury on account of a reaction from sulpha contained medicine; to be specific the complainant was afflicted with itching, redness of eyes which was diagnosed by P.Ws. 2 and 3 as due to the reaction of her taking medicine containing sulpha. If this evidence of P.Ws. 2 and 3 is accepted it is necessary for the complainant to prove that the respondent opposite party had administered such a medicine. The best evidence for establishing the same is the prescription given by the opposite party/respondent. The complainant could not produce the prescription. The complainant seeks to maintain the non production of the same prescription cannot effect her case. As has noticed the first point raised by the learned Counsel is, though the complainant alleged in the complaint para 5 that the respondent had prescribed medicine containing sulpha, the said allegation is not specifically denied; therefore, invoking the principal

Order VIII Rules 3 and 5 it has to be held that the said allegation as admitted. The question, therefore, is whether the said allegation is denied by the opposite party in his version. It is true that the version does not answer the allegation in the complaint specifically, but a reading of para 3 of the version would bring out the case of the opposite party as to the allegation in this regard. He states that the averment in the complaint that while taking the medicine prescribed by the opposite party the complainant developed itching and other discomforts in the mouth and eyes and that the opposite party told her that her complaint was the result of vitamine B, that the complications were due to sulpha reaction etc. are absolutely baseless contrary to truth and hence denied. The purpose of pleading is to convey to the opposite party as to the case of the complainant. Once the same is contended that would be enough. This is more so in a proceeding before the authority like the Consumer Commission. What could be discerned from para 3 of the version is, respondent opposite parties specifically states that the case of the complainant that on taking the medicine prescribed by the opposite party the complainant developed discomfort and disorder to mouth and eyes is not true. He proceeded to contend that the complications were due to sulpha reaction also is not true. When so much is contended it is not necessary that there could have been a specific statement that para 5 of the complaint is denied. Para 5 is effectively necessary in para 3 of the version. Then it was attempted to bring out in the notice, copy of which is produced by the complainant, the complainant has stated as to the facts mentioned in para 5 of the complaint; the reply though was produced is not seen marked. What is to be noted is, in the reply notice also the complainant states that the symptoms and signs could not be attributed to drug reaction. The question is whether the evidence on record could support the case of the complainant. As has noticed the best piece of evidence to establish as to what are the drugs prescribed by the opposite party is the prescription. But the prescription was not produced. As noticed the explanation is the respondent got the prescription from the complainant when she reported before him as required, he withheld the prescription and issued a new prescription that is why she could not produce the same. In the complaint the complainant made an allegation in para 8 to that effect. In para 6 of the version the opposite parties specifically denied the said allegation. Though there was such an allegation in the notice sent by the complainant that too is seen denied in the reply. There is no independent evidence or attending circumstance to support the case of the complainant in that regard. In evaluating the evidence in this regard it is important to bear in mind that the burden of proof to establish negligence is on the complainant. The negligence, as has already noted, alleged by the complainant is that without resorting to the necessary tests the respondent prescribed sulpha containing medicine which resulted in the Steven Johnson Syndrome. When there was the best evidence in the position of the complainant unless the complainant produces the same the complainant will not be able to establish her case. Having regard the plea now raised does not find support from other sources or attending circumstance, the mere version of P.W. 1 in that regard cannot be stated to be sufficient.

4. THERE is still another aspect, the evidence of R.Ws. 3 and 4 would show that they did not notice any symptom of Steven Johnson Syndrome, they are the two doctors who had the occasion and opportunity to see the complainant after she left the respondent. She underwent treatment and under them then only there after that she went to the SDM Hospital, Mangalore where she was attended by P.Ws. 2 and 3. They diagnosed that she had Steven Johnson Syndrome unless there is evidence to connect the said complication that the treatment by the opposite party. It cannot be said that she had suffered the injury because of the failure of the opposite party when he initially attended her. The point urged by the learned Counsel for the respondent is that in his cross-examination he did not deny that he administered sulpha contain medicine. It is necessary to note the said part of the evidence of R.W. 1. He said "I might have prescribed medicines containing sulpha which is a widely used and cheap antibiotic. I can say about that prescription only after seeing the chit". The question for consideration is whether the said part of the evidence of the opposite party/ respondent would be given any aid to the complainant to established her case. He says that he might have administered such medicine but he cannot without seeing the chit containing the prescription. It will be noted he was examined on 16.4.1998 whereas the complainant consulted him in September, 1996. He is a physician within this span of two years, he might have treated several patients. In such circumstance one cannot accept that a physician would remember all that medicine he has prescribed. The conclusion reached by the District Forum, therefore, cannot be said to be in any way faulty. We see nothing to interfere, appeal fails, dismissed. Appeal dismissed.