

(1998) 01 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

LAKSHMI JOY PRASAD

APPELLANT

Vs

CAMEROON

RESPONDENT

Date of Decision : 08-01-1998

Acts Referred:

Citation : 1998 1 CPC 682 : 1998 1 CPJ 336 : 1998 2 CPR 304

Hon'ble Judges : A.K.Bhattacharjee , Monoranjan Ghosh , S.Dutta J.

Final Decision : Appeal allowed

Judgement

1. THIS is a petition of complaint under Section 17 of the Consumer Protection Act, 1986. The petitioner is one Smt. Lakshmi Joy Prasad mother of one Master Ashish Prasad and the wife of Sri Parameswar Prasad. The petitioner's case is that her son was admitted as a student of Class-1 through the Assembly of God Mission of 125/1, Park Street, Calcutta-17 at St. Andrews School, Ranchi for prosecution of studies for the session 1994-95. The boy was 7 years of age and lie was admitted as a boarder of the hostel of the said School. The opposite party No. 1/Mr. D.R. Cameroon is the Principal and proprietor as well as over all incharge of the School Cum-Hostel. On 4th May, 1995 the complainant got an information from the Office of the Assembly of God Mission that her son faced an accident at the hostel and received an injury in his right eye on 2.5.1995 and that an operation was made on his eye on 4.5.1995 by the opposite party No. 2/ Dr. Brindaban Prasad Kashyap alias Dr. B.P. Kashyap at his own hospital i.e. Kashyap Eye Hospital at Purulia Road, Ranchi. On the following day i.e. 5.5.1995 all on a sudden at about 8.00 a.m. the petitioner's son was handed over to her by opposite party No. 1 who came to Calcutta with the child by leaving Ranchi on 4.5.1995 and reaching Calcutta by Hatia-Howrah Express train on 5.5.1995. It has been alleged that the opposite party No. 1 hurriedly left Calcutta after handing over the child to the petitioner. It was noticed that the right eye of the petitioner's son was profusely bleeding and during the transit woozing out of blood from the affected eye increased on 5.5.1995. Condition of the child was further deteriorated and he was admitted in the Assembly of God Hospital and Research Centre at 125/1, Park Street, Calcutta where he was treated till

22.5.1995 and on the said day the boy was discharged without any further development of the injured eye, although the doctor and the staff there did their utmost to cure the eye of the child. In the Assembly of God Hospital and Research Centre an ultrasonography of the right eye of the boy was done on 12.5. 1995 and the doctor gave a discharge certificate with the following report : "D/o Disness of vision RE Ultrasonography "A" and "B" scan reveals : RE Low level echoes noted at the vitreous cavity, its after movements and returning small and medium spikes in "A" mode suggest organising vitreous haemorrhage and membrane formation. There is no evidence of retinal detachment. The xerox copy of the Ultrasonography Report is annexed herewith and marked with the letter "B"

2. THEREAFTER the petitioner and her husband moved every nook and corner for proper treatment of the injured eye of their son but no remedy was available from any quarter. Due to their poverty they could not approach any modern eye clinic for treatment by a more sophisticated instrument. According to the petitioner it was a negligence on the part of both the opposite party Nos. 1 & 2 to discharge the boy at that stage and to bring him back to Calcutta in a most uncomfortable and cruel condition and on account of their negligence the unfortunate boy is going to lose his vision. The petitioner has accordingly made a claim of Rs. 4,00,000/- each from each of the opposite parties in her petition of complaint. The opposite party No. 3, namely, the Medical Officer of Assembly of God Hospital and Research Centre was also made a party, but his name was ultimately deleted by the petitioner.

The case is contested by both opposite party Nos. 1 & 2 by filing two separate written statements. The opposite party No. 1's first contention is that he is not the proprietor as well as the over all in-charge of the School-cum-Hostel and that there are other trustees of St. Andrews Trust alongwith him. Opposite party No. 1's version is that the unfortunate incident occurred in his absence and that at that time he was residing at Calcutta. It has been further stated that during the games hour in the evening on 2.5.1995 when the students of the School were playing all on a sudden Master Ashish Prasad was injured in his right eye and as soon as the School Authority came to know about the incident they took the boy to a private Nursing Home at Khelary for first aid and thereafter to a doctor named Rajiv Dubey, an Eye Specialist of Regional Hospital, C.O.L. Dakra, who treated the boy and advised the School authority to take the boy to Ranchi and on 3.5.1995 a surgical operation was held by Dr. B.P. Kashyap who was a leading Eye Surgeon at Ranchi. The opposite party No. 1 further states that on receiving a STD communication at 5.30 p.m. on 3.5.1995 he left Calcutta by Howrah-Hatia Express and reached the Eye Hospital of Dr. Kashyap at 8.00 a.m. Thereafter on the advice of Dr. Kashyap the child was immediately taken to Calcutta by Sleeper Coach. On reaching Calcutta the boy was immediately admitted to the Assembly of God Hospital for further treatment and the expenses for the treatment were born by the opposite party No. 1. The opposite party No. 1 denies the allegation of negligence in the treatment of the boy and states that he had done everything

to make a proper treatment of the boy and was not negligent in the matter.

3. IN his written objection, opposite party No. 2 states that the case is not maintainable for want of territorial jurisdiction. He further states that the expenses for the treatment of the boy having not been borne by the petitioner, she is not a consumer in this case. This opposite party denies the allegation that there was no negligence on his part for the treatment of the boy. He claims himself to be a qualified Surgeon for eye treatment. He states that the boy was suffering from corneal perforating injury with the anterior Chamber full of blood clot. The blood clot was removed after injecting biolose to protect the removing part of the cornea. After the removal of the blood it was found that traumatic cataract had repaired. Lensectomy was done and the cataract of the central area was removed. After removal of the cataract it was found that vitreous haemorrhage. He then did vitrectomy and after removal of the blood from the vitreous he found white fungal growth and clinically he suspected it to be retinal detachment. The attendant of the patient was apprised of the serious condition of the case and injury. As no further treatment was possible in his Hospital he advised the attendant of the patient to move to a bigger Hospital like Shankar Netralaya at Madras. The opposite party No. 2 states that there was negligence on the part of the petitioner's family to avail of immediate better eye treatment and as such the eye of the boy was damaged. The opposite party No. 2 denies the allegation of negligence of medical treatment against him. The point for determination is if there is any negligence on the part of the opposite parties as alleged and if the petitioner is entitled to any compensation from them as claimed. DECISION

4. THE story of the sufferings of the poor boy as detailed above is pathetic. THE boy is the son of poor parents. He was sent to a charitable institution which was run under the principalship of the opposite party 1. THE unfortunate incident happened on 2.5.1995 at Ranchi. According to the statement of opposite party No. 1 he was not present at Ranchi at that time and he returned to Ranchi after hearing the news of the accident. THE boy was taken to a private nursing home at Khelari for first aid and thereafter to one Doctor Rajeev Dubey an Eye Specialist of the Regional Hospital C.O.L., Dakra and advised the School Authority to take the boy to Ranchi. On 3.5.1995 Dr. Kasyap, opposite party No. 2 examined him and operated on his eye. Dr. Kasyap, however, could not cure the injury of the boy and advised the School Authority to take him to Sankar Netryalaya, Madras. THE boy was thereafter brought to Calcutta by train with the bleeding injured eye by the opposite party No. 1 who arrived at Ranchi by that time and left to the custody of the poor father. The parents of the boy who were not prepared to witness such a pathetic condition of the boy were shocked. The boy was subsequently taken to the Assembly of God Hospital and Research Centre at 125/1, Park Street, Calcutta. There he was treated till 22.5.1995 and he was discharged from the Hospital without any further development of the injured eye. . . In the above background, the mother of the boy has filed this case for compensation against both the opposite parties No. 1 & 2.

5. SOME preliminary objections were raised regarding the jurisdiction and the non-joinder of parties. We have disposed of the point of jurisdiction in favour of the petitioner and we also do not find any infirmity in the case for alleged non-joinder of parties.

6. THE allegation against both the opposite parties is that they did not take proper care of the boy in the treatment of his injured eye. We have seen the poor boy who was produced before the Commission and the boy is practically going to lose the eye-sight in one eye. THERE is no doubt that had genuine and prompt efforts were made in time, his eye-sight could be saved. THE Principal under whose immediate care the boy was did not show any special interest in saving the eye of the boy. It is not understood why the boy was discharged from the Hospital without taking any positive step to ameliorate his condition. He was literally treated as a stranger boy and was carried by train at a long distance from Ranchi to Calcutta with an injured eye with a positive risk to damage the eye every moment. No doctor accompanied him. Neither was he carried in an Ambulance. To say the least, the conduct of the doctor and the Principal was inhuman. In our estimation, it is not a pure question of medical negligence, it is an ignorant negligence which has proved to be very costly. The School Authorities could have informed the parents of the boy and seek their advice. They could also take the initiative to have his treatment to a proper hospital or nursing home (they had themselves suggested the name of Sankar Netralaya of Madras for his treatment). The poverty of the boy's parents was too well-known to the Principal of the School and the boy was very cruelly treated to meet the present pathetic situation.

The matter should be viewed from a proper perspective. Under different circumstances, the conduct of the opposite parties could have been explained in the ordinary way. But in the circumstances of the present case we must hold very emphatically that utter negligence was shown to the boy, mainly due to his poverty which is the curse of our present day society.

7. CONSIDERING the entire circumstances and giving our most anxious consideration to the facts of the case we think that both the opposite parties were negligent in dealing with the boy in a most serious injured condition. We, therefore, direct them to pay an amount of Rs. 50,000/(fifty thousand only) as compensation to the complainant within a period of one month from the date of communication of this order. The opposite parties will be jointly and severally liable for this amount. There will be no separate order of cost. Appeal allowed.