

(2004) 08 NCDRC CK 0070

In the National Consumer Disputes Redressal Commission

MADHU GOYAL

APPELLANT

Vs

VIMAL MEDICAL HALL

RESPONDENT

Date of Decision : 23-08-2004

Acts Referred:

Citation : 2004 3 CLT 568 : 2004 3 CPR 649 : 2004 4 CPJ 288

Hon'ble Judges : M.A.A.Khan , Ratan Prakash J.

Final Decision : Appeal partly allowed

Judgement

1. FOR the sprain of her left ankle Smt. Madhu Goyal, the complainant respondent, consulted Dr. Anil Chaudhary of Alok Nursing Home and Fracture Clinic at Jaipur on 23.6.1995. Dr. Chaudhary, inter alia had prescribed tablet "Seraim-5" for her ailment. She purchased the said medicine from the respondent on that very day, but it is alleged by the appellant, that, instead of selling the aforementioned tablets to her the respondent delivered "serinace-5" to her. When she consumed the aforesaid drug/medicine her face got swelled and she also felt uneasiness. On consulting the physician she came to know that she had consumed a wrong medicine. Alleging such facts she filed her complaint against the respondent. The FORum accepted her version and directed the respondent to pay a sum of Rs. 1,000/- as compensation for mental agony and Rs. 400/- as cost of litigation to her. The appellant, who is complainant in the case, has come before the Commission for enhancement of the amount of compensation and/or cost. No appeal is reported to have been filed by the respondent against the impugned order.

2. THE learned Counsel for the appellant took us through the material on the record of the Forum and highlighted the fact that the case was also investigated by the police at the instance of the Drug Inspector, who had inspected the business premises of the respondent and found that the respondent was in the habit of keeping such medicines also whose date of effectivity and usability had expired. It was also known that the respondent was a retailer as well as wholesale dealer in drugs like the one sold by him to the appellant. THE learned

Counsel, therefore, urged that taking into account all the facts and circumstances attending upon the act of the respondent in selling a totally wrong medicine to a patient, the amount of compensation awarded by the Forum should suitably enhanced. We find force in the argument of the learned Counsel. It is a matter of common knowledge that patients usually go to the medical store for purchase of such medicines which are prescribed by the doctor for treatment of their ailment. Ordinarily a majority of the patients are unable to decipher the name of the medicine, as prescribed by the medical practitioner, but the names at such medicines are deciphered by the persons engaged in selling such medicines. It was not the case of the respondent that he had not been able to decipher the name of the medicines as prescribed by the doctor. Their version was that it was purely by mistake that a wrong medicine was delivered by them. Since the goods required to be sold by the respondent related to the health condition and disease of the patient, the respondent should have exhibited a hire degree of care and caution in selling the medicine. In case he was not having the medicine prescribed by the doctor and he possessed another medicine of another company being sold under another name, he should have disclosed such fact to the patient-purchaser and after having obtained his consent, he should have sold the changed medicine to him. That was not done in the present case. Above all, by respondent's conduct in not challenging the finding of the Forum, holding him guilty of selling wrong goods /medicine to the patient and thus rendering deficient services to her, his act amounts to acceptance of the order of the Forum.

Now in so far as the question of enhancement of the compensation to be awarded to the appellant is concerned we are of the opinion that it should be proportionate to the degree of negligence and/or absence of care and caution on the part of the respondent. Since the medicine sold by him was to be used in the treatment of person suffering from insanity or mentally retarded persons, which was not the present case, the respondent was required to exhibit a greater decree of care and caution in selling the medicine to the patient. The medicine could have and did have adverse effect on the health of the appellant as has been solemnly affirmed and deposed by her in her affidavit. There is no reason to disbelieve the appellant in that behalf. She was a married woman visiting her father's house and of course her having suffered from re-action of a medicine could have been also caused much agony to her parents and other relatives, besides her. Looking to all these facts we are of the opinion that the amount of compensation awarded by the Forum to her should be suitably upwardly revised.

3. IN the result, we modify the impugned order and award a sum of Rs. 5,000/- as compensation for mental agony to the appellant. The aforesaid amount shall be payable to her by the respondent with interest @ 9% p.a. from 1.9.1995 through demand draft sent to her at the address given by her in her complaint and memorandum of appeal within a period of two months from the date of receipt of the impugned order failing which the rate of interest shall get enhanced to 12% p.a. from the date mentioned above. The appeal stands partly allowed. Appeal partly allowed.