

(1997) 09 NCDRC CK 0076

In the National Consumer Disputes Redressal Commission

MAURICE DUMPY

APPELLANT

Vs

HANDE HOSPITAL

RESPONDENT

Date of Decision : 03-09-1997

Acts Referred:

Citation : 1998 3 CPJ 567

Hon'ble Judges : E.J.Bellie , Pulavar V.S.Kandasamy , Angel Arulraj J.

Final Decision : Petition dismissed

Judgement

1. THIS petition has been filed under Section 24(a)(2) for condoning a delay of 1087 days in filing a complaint. The complaint has been filed by legal representatives of one lady who died during the course of an operation performed on her by the opposite party doctors on 20.9.1990. According to the complainants they filed O.S. No. 208/91 against the opposite party for compensation with an application to permit them to sue as indigent persons but that application was dismissed. The matter was taken on appeal in O.S.A. No. 78/96. At that time the Supreme Court rendered a judgment holding that the medical service is also included in the definition of service under Section 2(1)(o) of the Consumer Protection Act. Thereupon the petitioner wanted to file a complaint in the Consumer Court and they sought permission of the High Court for the same. The permission was granted and now the complaint has been filed, but by the time the complaint was filed there occurred a delay of 1087 days and this delay is not due to the fault of the complainants and hence it deserves to be condoned.

2. THE opposite parties contested the complaint contending that the complainants have not shown sufficient cause for the inordinate delay in filing the complaint and therefore the complaint is liable to be dismissed. The point that arises for consideration is whether the complainants have shown sufficient cause for the long delay of 1087 days in filing the complaint.

Point: The case of the complainant appears to be that originally the medical services was not included as service as defined under Section 2(1)(o) of the

Consumer Protection Act and therefore the complainants filed a suit in the High Court with a petition to declare them as indigent persons but that petition was dismissed and during the course of the appeal O.S.A. No. 78/1996 filed against the said order the Supreme Court rendered a decision stating that the medical services comes within the purview of services defined under Section 2(1)(o) of the Consumer Protection Act and thereupon the complainant withdrew the appeal and filed this complaint. For these reasons the delay of 1087 days has occurred and under the circumstances it would be just and necessary that the delay is condoned.

3. FIRST of all there is no point in the submission of the complainants that originally the medical services did not come within the purview of services defined in Section 2(1)(o) of the Consumer Protection Act. The Supreme Court has only held that medical services also will come within the purview of Section 2(1)(o) of the Consumer Protection Act. Therefore the complainants could have filed the complaint in the Consumer Court earlier to the Supreme Court decision. One important fact that has to be considered is that the lady died on 20.9.1990. At that time there was nothing according to which the medical services will not come within the purview of Section 2(1)(o) of the Act. It was only on 17.2.1994 there was an order passed by the High Court stating that die medical services will not come within the purview of Section 2(1)(o) of the Act. There will be some merit if it is submitted that after this order of the High Court the complainants thought that they could not file the complaint in the Consumer Court. But as seen supra the lady died on 20.9.1990 and the High Court order was passed only on 17.2.1994 i.e., long after 3 years. As per some of the orders passed by the National Commission before the introduction of Section 24(a) of the Consumer Protection Act under which the complaint shall be filed within two years" time, the limitation had to be taken as 3 years under the General Law of Limitation. Thereupon the limitation being, if the relevant time, 3 years for filing complaint from the date of cause of action, the complaint should have been filed earlier to the said order of the High Court. This shows that already before the order of the High Court was passed, the limitation period was over. Considering all these, we are clearly of the view that there is no sufficient cause shown for the long delay of 1087 days in filing me complaint.

4. IN this view of the matter the petition is dismissed. Petition dismissed.