

(2014) 11 NCDRC CK 0076

In the National Consumer Disputes Redressal Commission

MITHLESH

APPELLANT

Vs

Medical Officer (Incharge) Primary Health

RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Citation : 2015 1 CPJ 15

Hon'ble Judges : AJIT BHARIHOKE , Rekha Gupta J.

Judgement

1. THE present revision petition no. 3997 of 2014 has been filed against the order dated 10.09.2014 passed by the Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow ("the State Commission ") in Appeal no. 2278 of 2011.

2. THE brief facts of the case as per the petitioner/ complainant are that the petitioner is a married woman aged about 30 years; she is having four small children. The petitioner with on the misguided advice of the respondents/ opposite parties had got done her family planning operation by microscopic stitching on 12.12.2003 at Primary Health Center, Dholana. The said operation was done by the respondents with the help of another doctor and the operation fee of ₹65/- was charged from the petitioner and ₹350/- was granted to her by UP Government and which with her consent was received by them. Hence, the respondents provided service of family planning to the petitioner after receiving the regular fee and money from her.

3. AFTER the operation, the petitioner was assured that in future no child would be born to the petitioner. Sometime after the operation, she fell ill and experienced the symptoms of pregnancy. Pathology test and other necessary test reports dated 28.03.2004 and 01.04.2004, confirmed the pregnancy of the petitioner. At that time the doctors informed the petitioner that she was 9 weeks pregnant. The petitioner after learning of her pregnancy suffered great mental agony and fell ill, because of which, she had to spend ₹15,000/- for her treatment and protection of her pregnancy. The petitioner due to acute physical weakness and illness was not in a position to sustain her pregnancy, therefore,

with the advice of the doctors, to escape pregnancy she had obtained the services of the respondents by getting operated on 12.12.2003. The petitioner suffered acute financial and physical agony because of this pregnancy. Because of this pregnancy, the petitioner has feared for her life. The respondents have caused great mental shock and distress because of the negligence of the respondents in her operation, due to which she had to spend Rs.30,000/- for her delivery and incur other medical expenditure. Further, she would have to spend lakh of rupees for the rearing and maintenance of her child. Therefore, the respondents is liable to pay for mental agony, medical expenses, risk of her life, delivery etc. ₹2,50,000/- as well as ₹45,000/- to the petitioner. Because of the deficiency in service, the respondents have caused a consumer dispute. Hence, the present complaint is filed.

4. IT is, therefore, prayed that the petitioner be awarded ₹2,50,000/- for compensation and Rs.45,000/- for medical treatment, delivery expenses etc., from the respondent.

5. IN their written statement before the District Consumer Disputes Redressal Forum, Ghaziabad ("the District Forum "), the opposite parties no. 2 & 3 have stated that the petitioner Mithlesh was a women of 35 years of age and at the time of operation she was having five children. The same was mentioned in the new revision form of sterilization operation and application on which the petitioner has put her thumb impression.

6. ALL information was given regarding the operation after understanding the same, she had given her independent consent for sterilization operation, by affixing her thumb impression on the application. It included an understanding which read as follows: ""I have independently taken the decision for sterilization operation and there is no outside pressure, inducement or compulsion on the petitioner for the same. She knew that there are other family planning means available to her, she knew that the operation is permanent in comparison to other methods. I knew that some time the said operation may become unsuccessful, for the same the surgeon will not be held responsible by me or relatives or by any other person "".

7. THE family planning operation was conducted by Dr Manju Sharma, PFS Pilakhua in the family planning operation camp without any charge. No fee was charged from the petitioner for the operation and the grant which was to be paid to the petitioner for the sterilization operation, was not taken by the respondents and the same was paid to the petitioner on the same day. The details for the same was mentioned in the register. ₹350/- was not paid to the petitioner but ₹150/- was paid to her, because the grant of ₹150/- was paid by the government. The sterilization operation was conducted free of charge and this service was provided to the petitioner free of charge.

8. THE operation of the petitioner was conducted by Dr Manju Sharma at Primary Health Centre, Dhaulana on 12.12.2003 with full precaution and the same was in

accordance with medical standards. However, after the operation, the child was born to petitioner on 28.08.2004, the details of the same are mentioned in the Ánganwadi and family planning register. The petitioner gave birth to the child 35 weeks and 5 days after the operation, while the normal period for the birth of a child is 37 weeks to 42 weeks. From the same it was clear that the petitioner had conceived the child prior to the operation. Though at the time of operation, it has to be enquired from the women as to whether they were pregnant and regarding the last period cycle and after getting the information, operation is conducted and advise given that if in the next month menses is not there then she should immediately contact to the health center. But the petitioner, at the time of inquiry, had given wrong information regarding pregnancy and she did not contact the doctor nor to A N M for not having menses thereafter. As per medical guide if the pregnancy is less than six weeks then it is not possible to know the pregnancy by the normal vaginal test.

9. THE urine test report filed by the petitioner only gives information of pregnancy, but not how many weeks old child is there. On this basis, it is wrong to say that there was a nine weeks pregnancy in the tests dated 28.03.204 and 01.04.2004 got done by the petitioner.

10. THE defendant had conducted sterilization operation with due caution and with full precaution and as per the medical standard. Further, as per the medical books and literature after a sterilization operation, due to natural reasons, women may conceive, but after the operation, the petitioner had neither gave any information to the primary health center nor to the doctor and neither her name was entered in the register. If the petitioner would have provided information to the doctor or primary health center the termination of pregnancy would have done within 20 weeks. Due to omission to do so and the carelessness of the petitioner the child was born.

11. HUSBAND of the petitioner is a criminal and a fraudulent person; he had demanded ₹2.00 lakh from the defendant no. 3 after giving call from mobile number and threatened that he will take his service if money is not paid. Respondent no 2/ Opposite party no. 3 had informed the District Magistrate on 07.10.2005 action has been taken by the police against him.

12. DISTRICT Consumer Disputes Redressal Forum, Ghaziabad vide its order dated 22.07.2011 while allowing the complaint has observed that: ""There is no dispute that the operation of sterilization of the complainant was done by the opposite party and the same was unsuccessful, due to which she again became pregnant. The opposite party doctor has referred the case law of ""State of Haryana vs Rajrani 2006 P N Page 578 (Civil) and stated that in the medical books, the recognition was given to some limited percentage of unsuccessful due to some natural reason, hence, due to this, state is not responsible. The opposite party has stated on behalf of the complainant that when she made then the CMO Ghaziabad has issued a letter dated 23.07.2010 by which direction was given to District Planning Officer, Family Planning, Ghaziabad for taking appropriate action

on the same, but no compensation was given to the complainant. In similar facts of the case Director of Health Services vs Ramliya - 2011 CTJ 73 (CP) (SCDR), the Hon "ble State Commission has laid down that if any person got free services from a doctor, then it also comes under the category of consumer. In this case, the State Commission has found that if due to unsuccessful operation of sterilization, the women become pregnant again then this will be the negligence of the doctor. The aforesaid ruling given by the State Commission is applicable in the facts and circumstances of the present case. In the present case the complainant has proved that she is poor and she has already four small children, hence in this regard she is entitled for compensation. This is an admitted fact that the opposite party no. 2 Smt Chandra Kanta A N M had not conducted the operation, the opposite party no. 3 in this reply has admitted to get done the operation, therefore, the opposite party is guilty. He has committed deficiency in his service. The District Forum has ordered as under: DrPrabhat Kumar Chaurasia, the then Medical Office in Charge, Primary Health Center, Dholana, Ghaziabad is directed to pay ₹1.00 lakh as compensation. ₹5000/- for mental agony and ₹2000/- as cost of litigation to the appellant. If the above entire payment is not made within three months then interest at the rate of 6% per annum shall be payable on the aforesaid amount from the date of the child born dated 30.11.2004 after the operation till the date of payment "".

13. AGGRIEVED by the order of the District Officer, the opposite parties no. 1 and 3 filed an appeal before the State Commission. The State Commission allowed the appeal and set aside the order of the District Forum. The State Commission in their order dated 10.09.2014 has stated that: ""We have heard Shri Anupam Divedi the learned counsel for the appellant and Sri Sanjay Kumar Verma, the learned counsel for the opposite party. As per our opinion the impugned order is erroneous because this is a case of sterilization of the opposite party, which comes under the policy of free service under National Family Planning, hence, if the operation of sterilization remained unsuccessful, even then the complainant does not come under the category of consumer. For the unsuccessful operation of sterilization following principle of law is for perusal: (2005) 7 SCC State of Punjab vs Shiv Ram which has also been referred by learned State Commission in its judgment in which it was observed as under:

28. The methods of sterilization so far known to medical science which are most popular and prevalent are not 100% safe and secure. In spite of the operation having been successfully performed and without any negligence on the part of the surgeon, the sterilized woman can become pregnant due to natural causes. Once the woman misses the menstrual cycle, it is expected of the couple to visit the doctor and seek medical advice. A reference to the provisions of the Medical Termination of Pregnancy Act, 1971 is apposite. Section 3 thereof permits termination of pregnancy by a registered medical practitioner, notwithstanding anything contained in the Indian Penal Code, 1860 in certain circumstances and within a period of 20 weeks of the length of pregnancy. Explanation II appended to subsection (2) of Section 3 provides. Explanation II - where any pregnancy

occurs as a result of failure of any device or method used by any married women or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

29. And that provides, under the law a valid and legal ground for termination of pregnancy. If the women has suffered an unwanted pregnancy, it can be terminated and this is legal and permissible under the Medical Termination of Pregnancy Act, 1971.

30. The cause of action for claiming compensation in cases of failed sterilization operation arises on account of negligence of the surgeon and not on account of child birth. Failure due to natural causes would not provide any ground for claim. It is for the women who have conceived the child to go or not to go for medical termination of pregnancy. Having gathered the knowledge of conception in spite of having undergone sterilization operation, if the couple opts for bearing the child, it ceases to be an unwanted child. Compensation for maintenance and upbringing of such a child cannot be claimed. In our view, in the above principal of law, the order passed by the District Forum is not in accordance with law and the same is liable to be set aside and the appeal is liable to be allowed. The appeal is allowed. The order dated 20.07.2011 passed by the District Forum, Ghaziabad in complaint no. 169 of 2006 is set aside "".

14. HENCE the present revision petition.

15. WE have heard the learned counsel for the petitioner and have carefully gone through the record of the case. Counsel for the petitioner stated that the respondents had been negligent while conducting the sterilization operation of the petitioner and hence a baby was born. She had incurred a lot of expenditure and has also undergone a lot of mental anguish. Learned counsel for the petitioner, however, could not explain as to why, in the circumstances, on coming to know about the pregnancy, the petitioner did not opt for MTP. More so, as the petitioner has already had four children and she was suffering from acute physical weakness and illness and was not in a position to sustain a pregnancy. The learned counsel for the petitioner also drew our attention to citation (2005) 7 SCC - State of Punjab vs Shiv Ram. The citation cited above is not relevant to the facts of this case. Hear the petitioner has failed to prove any deliberate negligence on the part of the doctor while conducting the operation.

16. IN the present case, while the petitioner has alleged negligence and deficiency of service by the OPs in the sterilization operation as she has become pregnant thereafter, the same has not been supported by any medical evidence or documents as no medical record or expert opinion has been produced/ filed to establish the negligence.

17. THE family planning operation was conducted by Dr Sharma in the Family Planning Operation Camp without any charge and no fee was charged from the petitioner for the operation. The grant of ₹150/- was to paid to the petitioner for

sterilization operation by Government was not taken by the respondent but the same was paid to the petitioner. The details are recorded in the Register. The petitioner has not given any evidence to show that she has paid ₹65/- for the operation and that the grant given by the Government was retained by the respondents.

18. A Coordinate Bench of this Commission in RP no. 1582 of 2014 decided on 15th October 2014 in DrP R Venugopal vs T K Sheena and Ors., have held that: 8. In the case on hand, Dr. Venugopal, was a qualified Gynaecologist. We do not find any negligence committed by him in conducting the tubectomy operation. He has explained about the fact of non-resection of Right fallopian tube, and asked for follow-up by HSG. The patient did not turn up for further investigations as advised by OP -2. The surgery was performed by a technique known and recognized by medical science. Therefore, in our opinion, failure, due to natural causes would not provide any ground for claim. It is for the woman who has conceived the child who has to decide whether, to go for medical termination of pregnancy or not. Once, the woman misses the menstrual cycle, it is expected for the couple to visit the doctor and seek medical advice. A reference to the provisions of the Medical Termination of Pregnancy Act, 1971 is apposite. Having gathered the knowledge of conception, in spite of having undergone sterilization operation, if the couple opts for bearing the child, it ceases to be an unwanted child.

9. On the basis of forgoing discussion, we do not find any negligence on the part of doctor and the State, therefore, we set aside the orders of both the fora below and allow this revision petition and dismiss the complaint.

19. THE same view was held by the Hon "ble Supreme Court - (2005) 7 SCC - State of Punjab vs Shiv Ram quoted in paragraph 14 above (supra), which has been relied upon by the State Commission while allowing the appeal and setting aside the order of the District Forum.

20. THE Hon "ble Supreme Court in Mrs Rubi (Chandra) Dutta vs M/s United India Insurance Co. Ltd., 2011 (3) Scale 654 has observed: ""Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the

concurrent findings of two fora. ""

21. IN view of the above, order of State Commission cannot be faulted. No jurisdictional or legal error has been shown to us to call for interference in the exercise of powers under Section 21 (b) of Act. The order of the State Commission does not call for any interference nor does it suffer from any infirmity or erroneous exercise of jurisdiction or material irregularity. Thus, the present revision petition is hereby, dismissed with no order as to cost.