
(1997) 09 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

NARAYAN CHOWDHURY

APPELLANT

Vs

RITA PODDAR

RESPONDENT

Date of Decision : 16-09-1997

Acts Referred:

Citation : 1997 3 CPJ 557

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

Final Decision : Appeal dismissed

Judgement

1. THIS appeal against an order dated 25.9.1996 of the Calcutta District Forum holding that the case against the opposite parties No. 1 & 2, namely, two doctors attached to a Nursing Home named North Land Nursing Home (opposite party No. 3) was not maintainable, as their services were not hired for consideration. In this case the complainant, Mrs. Rita Poddar is a doctor attached to Bijoygarh State Medical Hospital as Medical Officer and her husband Dr. S.C. Podder is also a Medical Officer attached to the R.G. Kar Medical College & Hospital. The petitioner's case is that her first child was born with congenital albinism and when she conceived again she took special care to have prenatal diagnosis and for this purpose had consulted with opposite party No. 1, Dr. Chowdhury. On the advice of Dr. Chowdhury he consulted Dr. Kamal Bakshi of the All India Institute of Medical Science, New Delhi. Earlier she had on the advice of Dr. Chowdhury an Ultrasonography test at the R.G. Kar Medical College Hospital. Ultimately with full precaution she was admitted for delivery in the North Land Nursing Home, 133 Bidhan Sarani, Calcutta 4, under the treatment of Dr. Chowdhury. Opposite party No. 2 Dr. D.R. Bose was working as the Assistant to Dr. Chowdhury. The complainant had paid a sum of Rs. 5,529 /- to the Nursing Home under a receipt. It has been alleged that at the Nursing Home when she was under labour pain she was not given proper medical aid by Dr. Chowdhury and Dr. Bose under whose care she was and that the Staff Nurse of the Nursing Home also failed to inform the Doctors to appraise them of the actual condition of the patient. Ultimately the patient had to undergo a caesarean operation under one Dr. Pal and a dead male child was brought by him from her womb. The complainant has

accused the aforesaid doctors and also the Nursing Home for this disaster as according to her they showed utmost negligence in her treatment when their attention was most necessary.

2. THE opposite parties Nos. 1, 2 & 3 have appeared and filed written objections denying the accusation against them. A preliminary objection has been raised by opposite parties No. 1 and 2 that the medical service rendered by them were free of charge and they demanded no fees from the complainant who herself was a doctor and whose husband was also a doctor. As no mention of the payment of fees to the doctors was made in the petition of complaint, the complainant subsequently filed affidavits claiming that she had paid fees to them. A preliminary issue was accordingly raised by the District Forum as to whether any fees were paid to opposite parties No. 1 & 2. Oral evidence was also taken of the two doctors and the Nursing Home. THE District Forum after shifting the evidence and on an analysis of the whole case held that no fees were paid by the aforesaid two doctors and that as such the case was not maintainable against them. THE Forum, however, held that the case was against the Nursing Home was maintainable and proceeded accordingly. THE present appeal is against the said finding of the District Forum. The learned Forum has mentioned in its order that the complainant had filed no mention of the payment of fees to the doctors in her petition of complaint. Subsequent, attempt to adduce evidence an affidavit on this point was practically a new story introduced and that it was not permissible. The Forum further sifted the evidence and accepted the version of the opposite parties 1 & 2 that they did not demand any fees from the complainant as she and both her husband were Medical Officers working in Hospitals and payment of fees against such doctors was against medical ethics. The point for determination is whether the Forum's decision is a correct one.

We have perused the evidence adduced in this case and also the petition of complainant and the written objections. It is true that no mention of the payment of fees has been made in the petition of complaint. The version of the complainant in her evidence in this regard is that it was not purposely mentioned in the petition of complainant as there was no receipt available at that time. The receipt was not available even at the later stage and the version of payment of fees was made only after an objection was raised by the opposite parties that they were not taken any fees from a doctor. The version of the opposite parties is that they did not demand any fees in this case on account of medical ethics. There is no doubt that in cases of this type a doctor may not demand fee from doctors of fellow profession but the complainant's case is that fees was actually demanded and paid. As this fact gives jurisdiction to a Consumer Forum to adjudicate a case of medical deficiency, the fact ought to have been mentioned in the petition of complaint particularly when the complainant was herself a doctor. There is no collateral evidence also to prove that fees were paid by the doctors. The complainant has produced a receipt showing the payment of money to the Nursing Home but there is no ultimate receipt analysing how this money was spent by the Nursing Home. Generally, in the ultimate receipts the different

expenses out of the initial deposit are detailed. But in the absence of any such ultimate receipt it is not possible to hold that any amount was actually paid to the doctors. The story of making sporadic payments to doctors of a Nursing Home is not usual. The oral evidence given in this regard is also not supported by any supportive evidence. So considering the evidence and the reasonable inference out of it we are of the opinion that the District Forum's finding is correct. The appeal is accordingly dismissed without costs. Let the record be sent down to the Lower Court for proceeding further with the case. Appeal dismissed.