

(2004) 01 NCDRC CK 0066

In the National Consumer Disputes Redressal Commission

NEEL KAMAL

APPELLANT

Vs

VIDYA NIKETAN BIRLA PUBLIC SCHOOL

RESPONDENT

Date of Decision : 29-01-2004

Acts Referred:

Citation : 2004 3 CPJ 438 : 2005 2 CPR 64

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

Advocate : Manish Sharma , H.S.Khandelwal

Judgement

1. THIS complaint has been filed by a minor Neel Kamal through his guardian and Kishan Lal his father and Smt. Alka, his mother under Section 12 of the Consumer Protection Act, 1986 against the opposite parties claiming a total compensation of Rs. 19,10,000/- as detailed in para 22 of the complaint.

2. THE case of the complainants is that Neel Kamal was admitted in the O.P. educational institution i.e., Vidya Niketan Birla Public School, Pilani in the year 1995 in Class I Junior. After being declared passed in the said class, he was promoted and admitted to the Class I Senior in the teaching session of 1996-97. That for getting the education in the aforesaid two classes, he was charged by the OPs a total amount of Rs. 41,350/- in the teaching session of 1995-96 and Rs. 23,000/- in the teaching session of 1996-97. It is further the case of the complainants that Neel Kamal was also admitted in the hostel of the said institution and that it was the duty of the management of the institution to teach as well as of the hostel; to look after his welfare and also of his boarding and lodging arrangements. According to the complainants, Neel Kamal fell sick on 18.8.1996 whereupon he was taken to the sick-room of the Hostel and there he was given an injection in one of his legs. THE complainants alleged that after the injection, Neel Kamal felt severe pain but the attendants and management-personnel of the O.Ps. did not pay any attention to the severity and illness of the child and when after 7 days, an information was received by some employee of the O.Ps. on telephone; to the effect that some injury has been caused to Neel Kamal, they should, therefore, meet on 26.8.1996 in J.K. Lon Hospital (Mother

and Child Hospital), Jaipur. It is the grievance of the complainants that when they reached J.K. Lon Hospital, they found the child Neel Kamal in severe pain and crying and was told that the OPs have not paid any attention and heed to his illness and that no proper treatment was made available to him. THE parents of Neel Kamal i.e., complainant Nos. 2 and 3 thereupon took the matter of the treatment of their child in their hands and got him treated in SDM Hospital, Jaipur. According to the complainants, it was opined by the SDM Hospital's Doctors that Neel Kamal was not given proper and adequate medical treatment and that has resulted into the deterioration of the condition of the child and ultimately resulted in his inability to even walk properly whereas he has been an intelligent and athletic child and has won many prizes. THE complainants, therefore, alleging that not only they have to spend lakhs of rupees on the treatment of their child Neel Kamal but also that child has become virtually incapable for whole of his life because of the carelessness, negligence and improper treatment afforded by the OPs to him at Pilani and also not giving timely intimation to them about the illness of the child on 18.8.1996 itself. THE complainants, therefore, have sought a compensation at Rs. 10 lakhs on account of physical suffering and mental agony for the rest of the life of the child Neel Kamal ; 4 lakhs on account of physical and mental agony suffered by the parents i.e., complainant Nos. 2 and 3; Rs. 1 lakh spent as Misc. expenses for travelling and stay in the hotels, etc. and Rs. 10,000/- as cost of litigation to be realised from the O.Ps. The O.Ps. have resisted the complaint by filing a written version. The stand of the O.Ps. has been that the child Neel Kamal was properly attended to and treated after he complained of his illness on 18.8.1996 itself and when even after being admitted in the local hospital at Pilani, he could not be cured he was directed to be taken to J.K. Lon Hospital, Jaipur and due intimation was sent to the parents of the child through one of the friends of the child since in the admission form of Neel Kamal, there was no Telephone No. given by the guardians. It has also been denied that the complainants are entitled for the compensation sought for by them in the complaint mainly because as per terms of agreement particularly term No. 4 of the agreement entered into between the parties at the time of getting the child admitted, the O.Ps. could not be held responsible for indemnification in case of any injury, illness, accident or loss to the child. It has, therefore, been urged that the complaint is false and baseless and should be rejected with costs in their favour.

We heard the learned Counsel for the parties at great length and have closely gone through the material made available on behalf of the complainants and the O.Ps.

3. THE question which goes at the root of the controversy raised between the parties centres-round about the determination of the fact whether any injection as alleged by the complainants was administered to the child Neel Kamal on 18.8.1996 through the medical personnel made available by the O.Ps. at Pilani and that has been the cause of resulting in the deterioration of the illness pertaining to the weakness in his legs thereafter. To support their case, the

complainants have filed a number of documents including the medical treatment obtained by them at J.K. Lon Hospital as also in the SDM Hospital, Jaipur besides a number of vouchers evidencing the purchase of medicines as and when perscribed by the concerned medical doctors. Besides the above; one detailed report prepared about the history of disease and treatment and as prepared by Department of Neurology of All India Institute of Medical Sciences, New Delhi has also been placed on record. From the perusal of these documents, more particularly the treatment taken at Jain Divakar Chiktsalaya, Bara Talab, Kota where the child Neel Kamal obtained the treatment under the prescription dated 5.3.1998; has diagnosed the child as suffering from Poliomyelitis (RLL). Besides this, treatment taken for Neel Kamal at Vatsalaya Children Clinic, Jaipur has also diagnosed the illness of the child as Poliomyelitis on 29.12.1996. In the detailed report of the All India Institute of Medical Sciences, New Delhi dated 19.2.1998, child has also been diagnosed to be a case of old Poliomyelitis and also indicating that the child had developed weakness of right lower limb. A diagnosis made by one Dr. Rajendra S. Jain, MD. DM(Mumbai) Neurophysician, Asstt. Professor of Neurology, SMS Hospital, Jaipur has also diagnosed the case of Neel Kamal (complainant) as a case on Meningo - encephalitis on 18.4.1997. It, therefore, appears that the complainant Neel Kamal had developed Poliomyelitis at the age of around nine years. THE argument on behalf of the complainants has been that the said illness is the result of the injection given to the child on 18.8.1996 by the O.Ps. when the child complained of pain in his leg. However, the complainants have miserably failed to establish that any injection whatsoever was administered by the O.Ps. on 18.8.1996. Even if this version of the complainants is accepted it does not tally with the certificate of the Chief Medical Officer, Birla Sarvajani Hospital, Pilani wherein there is no mention that the child was administered any injection on 18.8.1996 as alleged by the complainants. THE certificate issued by the Chief Medical Officer dated 23.7.1998 though reads as under : "Master Neel Kamal s/o Dr. Krishan Lal, Hindu, Male, aged about 8 years, resident of BPS, Pilani. THE patient was admitted in the hospital on 24.8.1996 with history of blunt injury 2 days back. No gross fracture could be detected in his X-ray thigh (Rt.) pelvis. THE patient was put on conservative treatment with antibiotic, analgesic and I.V. fluid. Since the patient did not pass urine he was catheterised and then referred to Urologist, Jaipur on 25.8.1996."

A perusal of this certificate exhibits that the Medical Officer there; finding that the child is not passing urine referred him to Jaipur. To us, it appears the case that child suffered from the illness only because of giving an injection on 18.8.1996 by the medical attendants of the O.Ps.; does not stand corroborated from any other independent and reliable evidence. Further, the extent of treatment obtained for the child at Pilani, Kota, Jaipur in SDM and SMS Hospital as also at the All India Institute of Medical Sciences, New Delhi point out only in one direction that the weakness developed; to the child is not related to any treatment administered to the child Neel Kamal at Pilani on 18.8.1996 or round about that. More particularly as per mention in the certificate dated 23.7.1998

the child was put on conservative treatment with antibiotic, analgesic etc.

4. IN view of above, we are not satisfied that the child became seriously ill on account of any negligence etc. while he was an inmate of the O.P. educational institution. Consequently, we find no merit in this complaint which is rejected with cost on parties. Complaint dismissed.