
(2015) 01 NCDRC CK 0065

In the National Consumer Disputes Redressal Commission

P Kandasamy

APPELLANT

Vs

STATE OF TAMIL NADU

RESPONDENT

Date of Decision : 02-01-2015

Acts Referred:

Citation : 2015 1 CPR 271

Hon'ble Judges : J.M.MALIK J.

Advocate : R.Sharath

Judgement

1. THE complainant filed a complaint before the State Commission on 27.11.2003 against doctors/opposite parties 2,3 and 4, as mentioned in the title of this case.

2. THIS petition was filed by Shri P. Kandasamy, Advocate, the younger brother of Late P. Thirumeni, who passed away on 27.11.2001. The deceased had back pain and he approached one renowned neurologist, Dr. P.A. Bhasker. Dr. Bhaskar advised the deceased to conduct Mylogram test and that the said Mylogram facility is available only with the Thanjavur Medical College/Hospital and further advised to take treatment from the hospital. On 9.11.2001, Mylogram test was conducted on the deceased and before conducting that, a liquid from backbone was taken. While taking so, only twice, needles were to be used as it is a sensitive area. However, it is alleged that in the case of deceased, needle was used three to four times and the deceased could not bear the pain. He suddenly died.

3. THE present complaint was filed before the State Commission with the following prayer: "13. In the circumstances stated above the complainant prays that this Hon'ble Commission may be pleased to direct the Opposite parties to pay the complainant a sum of Rs.25 lakhs with further interest of 15% from the date of complaint till the date of reimbursement of the entire amount and the cost of the application fee and such other payments as this Hon'ble Commission may deem fit and proper to grant in the circumstances of the case and thus render justice."

After a lapse of 14 years, an application was moved for leading additional evidence by the complainant, when the case was fixed for final disposal.

4. I have perused the application moved for leading the additional evidence. It is contended that since the fourth respondent did not state whether he had participated in the test in order to fix the responsibility, therefore, it is necessary to implead the department of radiology for proper adjudication in order to expose what actually was done and what happened to the said deceased, while conducting Mylogram test and on how many patients, the Mylogram test was conducted, the duration of the test, the time of the test conducted to the patients and the medicines and dyes given to the patients in the test and to call for records from the second opposite party's radiology department and for this purpose, to cross examine the fourth opposite party and subsequently, proposed 5th opposite party also.

5. THE respondents have contested this application hotly. The State Commission dismissed the application.

6. I have heard the learned counsel for the petitioner. He submitted that this is a medical case and application should be allowed.

7. FOR the following reasons, I am unable to countenance the arguments canvassed by the learned counsel for the petitioner. (a) the case is pending for the last 14 years" and in case this application is allowed, with the request to cross examine the witnesses as well as rebuttal evidence, it will entail 4 -5 years" more. This would be against the concept and object of the Consumer Protection Act, 1986, which requires that the complaint must be disposed of within six months.

(b) OP -4 filed the written statement on 14.6.2006 wherein he has contended that the Mylogram test was conducted by the radiology department and his role was only to advise the patient to undergo Mylogram test and there was no other participation of OP 4. It is, thus, clear that the petitioner was aware of the facts and circumstances as back as in the year 2006. He took time of eight years in moving this application at a belated stage, i.e. at final stage, perhaps to fill up the lacunas in this case.

(c) The State Commission rightly held in para 5, which runs as under: "5. At this stage, by allowing these petitions would cause unnecessary complications to the opposite parties especially when the proposed party Radiology Department if allowed to be impleaded the question of limitation will also arise and as far as the proposed party is concerned since the occurrence took place during the year 2001 and since the impleadment is sought for after 12 years which is certainly barred by limitation when there is no mention or averment in the original complaint filed against Department of Radiology and the impleading the proposed party would itself give new cause of action for which, once again the case has to be enquired from the beginning afresh and thereby we are of the view that the proposed party to implead them at this stage is not necessary and

also it is barred by limitation and the petition is belated one in this regard."

(d) The State Commission placed reliance on two authorities 2014 1 CPJ 36 and the National Commission's decision in the case of Rachna Shah and Another vs. Society of St. Francis Hospital Nursing and Ors., 2013 1 CPJ 186 .

(e) Last but not the least, the State Commission has to be empirical and practical in confronting reality. It is well settled that justice delayed is not only justice denied, it is also circumvented, justice mocked and system of justice undermined.

8. THE revision petition is without force and the same is hereby dismissed. The State Commission is directed to decide the case expeditiously without any further delay.