

(2010) 08 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

Preetam Lal S/o Janakuram Verma

APPELLANT

Vs

Prem Singh Verma S/o Chatilal Verma

RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Citation : 2010 0 NCDRC 150 : 2010 4 CPJ 61

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Advocate : Sangeet Sondhi , Vikrant Singh Bais

Judgement

1. THE present revision petition has been filed by Shri Preetam Lal (hereinafter referred to as Petitioner), who is aggrieved by the order of the State Commission, which while substantially upholding the order of the District Forum reduced the amount to be paid to Petitioner as compensation by the Respondent in this case - Dr Prem Singh Verma.

2. ACCORDING to the Petitioner, his wife Smt Pramila Verma became very weak after the delivery of a child on 20.02.2002, and he therefore, requested the Respondent to give her a medical check-up. The Respondent gave her an injection and charged Rs.80/- for the service. Because of this injection, Petitioner's wife developed severe pain in her leg. Petitioner therefore, immediately contacted the Respondent for further medical advice. The Respondent, however, informed him that there was no need to worry or give any further medication. When the pain in the leg increased, Petitioner requested the Respondent to examine her but he did not turn up despite assurances to do so. Petitioner, admitted his wife to Government District Hospital on the night of 28.02.2002, where the doctors informed him that her medical condition was the result of reaction due to wrong medicine injected in her. Petitioner was then advised to take his wife to a specialized medical center. She was taken to Christian Fellowship Hospital, Rajnandgaon, from where she was referred to Sector 9 Hospital, Bhilai, where she expired on 22.03.2002. The cause of death was certified as Septicemia and Rt. Lower Limb Necrotic Fungus (death of areas of tissues or bone surrounded by healthy parts). Even during the period of

hospitalization, the Respondent did not cooperate but wrote a letter that he would bear all the expenses for the treatment. The deceased is survived by four very small children between the ages of 1 month to 8 years old. Petitioner filed a complaint before the District Forum against the Respondent seeking a total compensation of Rs.5.00 lakh for deficiency in service. In reply to the above contentions Respondent in this case, Dr Prem Singh Verma has stated that he is an Ayurveda Ratna and was working as a compounder with one Dr R K Mahobe, MD for the last 10 years. Because of this experience people sought his medical advice. It was under these circumstances that he was called by the Petitioner to treat his wife following the delivery of her child. The Respondent advised the Petitioner to take her to a gynecologist and denied that he gave her any injection or took any fees from her. Therefore, there was no deficiency on his part. The Respondent further stated that the letter purportedly written by him offering to meet the hospital expenses of the Petitioners wife was actually written under duress, because, he was threatened by the Petitioner and some others to make this offer. He has also filed a report to this effect with the police.

The District Forum after considering the evidence produced before it by both the parties including the affidavits of witnesses, reached a finding that, the complaint of the Petitioner is based on credible evidence and therefore District Forum admitted the complaint. The operative portion of the District Forums order is as follows:

3. THE complaint filed by the complainant under Section 12 of Consumer Protection Act, 1986 is partly allowed and damages of Rs.2,25,000/- has been awarded along with 9% interest from 01.05.2002. That non-applicant shall bear his own expenses and shall pay Rs.300/- to the complainant within two months. If he fails to do so he shall be liable to pay 12% interest from 01.05.2005 and action shall be taken against him under Section 27 of Consumer Protection Act, 1986. Aggrieved by the order of the District Forum, the Respondent filed an appeal before the State Commission which after considering the evidence on record, concluded that the findings of the District Forum holding the opposite party liable for deficiency in service is based on sound reasoning and deserves to be upheld. However, since the medical certificate mentions the cause of death of the Petitioners wife as Septicemia (which is attributed to the complications of delivery), as well as Rt Lower Limb Necrotic Gangrene (caused by wrong injection) the later was not the sole but a contributory cause of the death. Therefore the State commission reduced the compensation amount from Rs.2,25,000/- to Rs.35,000/- with interest @ 9% per annum from 01.05.2002 and Rs.300/- as cost to the Petitioner.

4. AGGRIEVED by this order, the Petitioner has come up in revision before us. Learned Counsel for both the parties appeared before us. On the basis of their oral submissions and evidence on record we find that there is enough evidence on record that the Respondent who was not a qualified doctor in Allopathic Medicine in contravention of the law gave an injection to the Petitioners wife,

because of which she became very unwell and eventually expired. This is also confirmed by the fact that the Respondent realizing that the injection given by him had resulted in hospitalization of the patient, wrote a letter that he would bear all the medical expenses for her treatment. Respondents subsequent contention that this was written under duress seems hard to believe, because in one statement he denied that he ever wrote such a letter and again in his complaint before the police, he has stated that among the people who threatened him was the Petitioners wife, this is hard to believe since the Petitioners wife was in a critical condition in hospital at that time. The State Commission has therefore, rightly rejected the Respondents contention in this regard. Even if Septicemia developed as a result of complication in the delivery, the fact that Rt. Lower Limb Necrotic Fungus also occurred clearly indicates that the injection given by the Respondent (who was not qualified to do so also contributed directly to the death). Under these circumstances, the death of the Petitioners wife is also attributable to the wrong injection given by the Respondent to the Petitioners wife by illegally passing himself off as a doctor. It may also be relevant to mention here that the Respondent has already been convicted by a lower Court in this case for causing death through criminal negligence(Under Section 304 A IPC), although the matter is under appeal in the High Court. Viewing all these facts in their totality, we conclude that the cause of death of the Petitioners wife is indeed directly attributable to the Respondent by giving her a wrong injection. Petitioners wife was just 28 years old at the time of her death and she has left behind four very young children. Under these circumstances the District Forum was justified in awarding Rs.2,50,000/- alongwith 9% interest. We therefore, modify the order of the State Commission and uphold the order of the District Forum in toto. The Respondent is therefore, directed to pay the Petitioner Rs,2,50,000.00 plus 9% interest and Rs.300/- cost within a period of eight weeks from the date of pronouncement of this order. Counsel for the Petitioner has stated that he has already deposited Rs.50,000/- in the District Forum and Rs.35,000.00 in the State Commission. If that be so, this amount be released directly to the Petitioner and adjusted against the amount that remains to be paid.