
(2015) 05 NCDRC CK 0083

In the National Consumer Disputes Redressal Commission

Case No : 1207 of 2009

Priti Vaish

APPELLANT

Vs

Raboo

RESPONDENT

Date of Decision : 05-05-2015

Acts Referred:

Citation : (2015) 05 NCDRC CK 0083

Hon'ble Judges : J.M.MALIK , S.M.Kantkar J.

Advocate : NIKHIL JAIN , DHAN MOHAN

Judgement

1. THE brief facts are that the patient Smt. Raboo consulted the OPs at Budaun, thereafter she underwent hysterectomy operation at A. P. Nursing Home (OP -3) which was owned by the OP -1 and 2 i.e., Dr. Priti Vaish and Dr. Ajay Vaish, Bareilly. It is alleged that the Complainant suffered Visico Vaginal Fistula (VVF). The Complainant refused to give the medical records. Thereafter, Complainant consulted Sangam Nursing Home in Bareilly and again she was investigated for ultrasound (USG) in Sudhir Nursing Home in Budaun, by Dr. Anjana Gupta and diagnosed that the patient was suffering from VVF due to negligence of OP. Therefore, the Complaint (CC/311/2009) was filed on 07.12.1999 in the District Consumer Disputes Redressal Forum, Budaun, UP (in short, "District Forum"). The District Forum passed an ex -parte order and held the OP liable for negligence and directed it to pay Rs.40,000/- along with Rs.20,000/- for mental agony and Rs.5,000/-.

2. THE OP preferred first appeal before the State Commission which was also dismissed on the ground of limitation.

3. WE have heard the Counsel for the parties. The Counsel for the Petitioner argued on following three points; Lack of Territorial Jurisdiction The medical service in question is alleged to have been provided in 1999 at Bareilly i.e. before the amendment of C.P. Act, in the year 2003, in Section 11, cause of action, if any, and arose at Bareilly. The District Forum at Badaun had no territorial jurisdiction to try the case because of the admitted fact that whole cause of

action arose at Bareilly and not at Budaun where the Complaint has been filed, as is clear from the law laid down in *Sonic Surgical vs. National Insurance Co.*, 2009 4 CPJ 40.

4. NO Medical Service Provided to Complainant No Medical services were provided to the Complainant. The Counsel argued that there is no record that the OP performed hysterectomy in their Bareilly Hospital on 20.07.1999, even the patient has not mentioned the date of admission and discharge in the hospital in her complaint, not filed any treatment records, prescriptions, etc. and despite this, the District Forum passed an ex -parte order.

5. HE also argued that there is no proof of patient suffering from VVF. No supporting documents. Dr. Sudhir did not opine about the sufferings of VVF. He also brought our attention towards the authority as per the report of Dr. Anjana dated 16.09.1999, the patient had complaints of continuous dribbling of urine from the last 5 months. Hence, it means she was subjected to hysterectomy, somewhere in June, 1999. Dr. Gupta advised cystoscopy to confirm VVF.

6. IT was not a case of medical negligence The Counsel submitted that the VVF occurs as a result of hysterectomy operation, the Surgeon cannot be held negligent because in 85% cases of hystrectomty, VVF develops and cures subsequently. In this regard, he relied upon *Kusum Sharma vs. Batra Hopsital*, 2010 CPJ Supreme Court. We have perused the medical records which are available on file. It is very questionable and important to locate whether, the Budaun District Forum had any jurisdiction to try this case and secondly, whether the OP performed hysterectomy ?

7. REGARDING jurisdiction, no doubt the patient was a resident of Budaun. As per her statement, she had undergone hysterectomy in Bareilly. It is apparent from the photographs filed by the Complainant that the OPs have clinic in Budaun also. Therefore, the Budaun District Forum has jurisdiction. It is pertinent to note that the case has travelled long, since 1999. Almost 16 years" have elapsed. The question of jurisdiction at this point appears to be just a technical one. In this context, we relied upon the Hon"ble Supreme Court judgment in *Ganesh Polytex Ltd. vs. Transport Corpn. Of India Ltd.*, 2000 10 SCC 418, in which it was observed as: Para 2. During the pendency of the case before the National Commission, the parties had filed their pleadings, documents and their affidavits. The Commission had also heard the arguments and had also obtained the written synopsis from the parties. It was at this stage that the Commission held that the parties may better institute a suit in the civil court as the case involved complicated questions of fact.

Para 3. Such a controversy was also involved in *Amar Jwala Paper Mills (India) vs. State Bank Of India* in which this Court, inter alia, held that: (SCC p. 388, para 4) "4. While we would be reluctant to interfere with an order of the Commission that decided at an initial stage of a complaint that complicated questions of fact and law arise and that, therefore, the fact that in this case four

years have passed and all the evidence has already been led by both sides before the Commission. In the circumstances, we think that the Commission must itself proceed to hear and decide the Complaint".

Para 4. The above observations apply on all the facts of this case where too, after a lapse of three years, the Commission relegated the parties to the remedy of a civil suit. Para 5. In view of the above, the judgment passed by the National Commission cannot be sustained and is set aside. The appeal is allowed and the case is remanded to the National Commission to decide it on merits in accordance with law.

8. THE next point is, whether, the OP performed hysterectomy or not?. Both the Fora have given concurrent findings. Therefore, we are not inclined to enter into the facts. The patient suffered VVF, i.e. 5 months after hysterectomy operation. We have gone through the medical literature and it is stated that, in few patients due to avascular necrosis, VVF can occur at the late stage. Therefore, we do not think the patient had proved the negligence committed by OPs. The patient has not filed any cogent evidence to prove that she got operated by the OPs, no medical records are placed, and therefore we do not find any medical negligence. Therefore, on the basis of entirety, we set aside the order passed by both fora and allow this Revision Petition and dismiss the Complaint.