
(1995) 02 NCDRC CK 0025

In the National Consumer Disputes Redressal Commission

RAMJI LAL

APPELLANT

Vs

SARVODAYA MEDICAL

RESPONDENT

Date of Decision : 17-02-1995

Acts Referred:

Citation : 1995 1 CPR 833 : 1995 2 CPJ 234 : 1997 1 CPC 106

Hon'ble Judges : V.Balakrishna Eradi , S.S.Chadha , R.Thamarajakshi J.

Final Decision : Appeal dismissed

Judgement

1. -AN unfortunate death of an infant born on 21st May, 1990 and who died on 31st July, 1990 was the subject matter of the complaint before the State Commission, Rajasthan at Jaipur.

2. COMPLAINANT's wife delivered a baby boy on 21st May, 1990. When the boy was of two months old, he fell ill and was treated by Dr. Balvir Singh Tomar, a Paediatric. He prescribed certain medicines in his prescription including Darzin with Neomycine. The COMPLAINANT went to M/s. Sarvodaya Medical-Opposite Party for dispensing the prescription. The Opposite Party supplied one bottle of Darzin with Neomycin and two bottles Pectokab-MF as per the Cash Memo No. 57042 dated 29.7.90. The baby boy died on 31st July, 1990. According to the COMPLAINANT the Opposite Party is solely responsible for the cause of death of the boy because of the negligence of the Opposite Party in dispensing wrong medicine which was given to the infant. The COMPLAINANT claimed a sum of Rs. 75,000/- on account of loss of the baby boy, Rs. 25,000/- on account of mental stress and shock suffered by the wife of the COMPLAINANT, a sum of Rs. 20,000 /- on account of mental shock and loss of his son to the COMPLAINANT besides a sum of Rs. 10,000/- as compensation for the expenses which have been incurred by the COMPLAINANT. The State Commission in the Order under appeal came to the conclusion that there is nothing on the record barring averments made in the complaint and the affidavit of the Complainant that on account of supplying wrong medicine which was not prescribed by the Doctor has resulted in causing death of the baby boy. The State Commission came to the

conclusion that the cause of death was Cyanotic CHD with CHF (Cyanotic Congenital Heart Disease with Congestive Heart Failure). The State Commission invoked the settled proposition of law that compensation under Section 14(1)(d) of the Consumer Protection Act can be awarded to the consumer for the loss or injury suffered by him only when it is on account of the negligence of the Opposite Party.

Mr. Mathur who has appeared on behalf of the Appellant strenuously argued that the Opposite Party in contravention to the relevant law and rules for dispensing of drugs caused the death of the son of the Complainant. Our attention is invited to the Order of the Drug Controller which was not at all adverted to by the State Commission. The submission is that the Licensing Authority had also examined the entire matter against the Opposite Party and an inspection was carried on 21st September, 1990 and it was found that the Opposite Party was contravening the conditions of licence granted under the Act and Rules and after having received the explanation of the Opposite Party wherein the Opposite Party has admitted the contravention of the conditions of the licence under the Act and the Rules, it was found that the qualified person who is supposed to dispense the medicine was not present. It was also found by the Licensing Authority that in Bill No. 57042 dated 29th July, 1990 wrong batch number was written on the bill. The Licensing Authority because of the defaults of the Opposite Party suspended its licence for a period of 7 days with effect from 19th November, 1990 to 25th November, 1990 both days inclusive under the Rules. It is urged that it was proved by the inquiry conducted by the Competent Authority that the Opposite Party not only acted negligently put also in violation of the mandatory provisions of the Drugs & Cosmetics Rules, 1945 and the violations were found proved against the Opposite Party in the Order dated 15th November, 1990. The submission is that the Opposite Party be held responsible for the death of the son of the Complainant and further be directed to pay the amount of Rs. 1,30,000/- as compensation. Further submission is that the child was born quite healthy and normal and there was no heart disease since birth as is being alleged by the Opposite Party. The medicine Darzin with Neomycine was prescribed by the Doctor and continued as the main trouble of the child was Diarrhoea and not any heart trouble and Diarrhoea was to be controlled which could not be controlled because another wrong medicine namely PECTOKAB-MF was supplied by the Opposite Party and administered to the child.

3. WE have again gone through the record as to the cause of death. The child was admitted to Sir Padampat Mother and Child Health Institute, Jaipur on 30th of July, 1990. The child died on 31st July, 1990 at 4.00 p.m. A photo copy of the death certificate dated 16th August, 1990 has been filed and is Annexure C-3 to the appeal. The certificate shows that the child was admitted on 30th July, 1990 at 10.00 a.m. for Cyanotic CHD-RD and the final diagnosis is Cyanotic CHD-RD and expired on 31st July, 1990 at 4.30 pm. The cause of death is given as Cyanotic C.H.D.-C.H.F. The certificate clearly shows that the child was admitted to Sir Padampat Mother and Child Health Institute, Jaipur on 30th July, 1990 for

treatment of Cyanotic CHD with RD (Cyanotic Congenital Heart Disease with Respiratory Distress) and not Diarrhoea. The cause of the death of the child is not Diarrhoea but Cyanotic Congenital Heart Disease with Congestive Heart Failure. Even if there is negligence of the Opposite Party in dispensing a wrong medicine, it has no consequences because of the provisions of Section 14(1)(d) of the Act. Section 14(1)(d) has been considered by the National Commission in various decided cases. It has been laid down that the award of compensation by the Redressal Agencies established under the Act has to be made only on well recognised principles governing the quantification of damages or compensation and not arbitrarily. Compensation can be awarded to a consumer only in respect of any loss or injury found to have been suffered by him due to the negligence of the Opposite Party. It is of the essence of Section 14(1)(d) that the loss or injury for which compensation is to be adjudged and awarded should be found to have been caused by the negligence of the Opposite Party. The Complainant has to establish that there was negligence of the Opposite Party and that as a consequence thereof loss or injury was suffered by him. In this case the negligence of the Opposite Party is not the cause of the death of the child.

4. WE, therefore, uphold the reasoning and findings of the State Commission and dismiss the appeal leaving the parties to bear their own costs. Appeal dismissed.