

(2009) 07 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

Randhir Garg

APPELLANT

Vs

Inscol Tertiary Care Hospital And Anr.

RESPONDENT

Date of Decision : 15-07-2009

Acts Referred:

Citation : 2009 4 CPJ 110

Hon'ble Judges : R.K.BATTA , S.K.NAIK J.

Final Decision : R.P. partly allowed.

Judgement

1. THIS revision petition has been filed by the complainant Shri Randhir Garg for enhancement of the compensation awarded by the State Consumer Disputes Redressal Commission UT, Chandigarh. Brief facts of the case are that the petitioner/complainant had sustained multiple fractures on the upper part of the left arm in a motor vehicle accident. After receiving first -aid from the Govt. Medical College and Hospital, Chandigarh, he went to Inscol Hospital -respondent No. 1 and was treated by Dr. Kuldip Singh - respondent No. 2 who operated upon the complainant and inserted a Rush Nail in the fore left arm. Despite, the complainant remaining under the treatment of respondent No. 2 from 3.3.2009 until 4.6.2009, his condition did not improve. There was no progress with regard to proper formation of bone which remained infected. Suspecting serious doubt on the treatment given by opposite party No. 2, he consulted Dr. O.N. Negi of PGI, Chandigarh who advised a second operation and was, therefore, admitted in the PGI on 19.7.1999. With a second operation conducted on him by doctors of PGI, the complainant subsequently recovered. Alleging that a second operation was necessitated solely on account of the negligence in the treatment given by the respondent - hospital - opposite party No. 1 and in particular the out -moded method of treatment adopted by Dr. Kuldip Singh - respondent No. 2; a complaint was filed before the District Forum seeking a compensation of Rs. 4,90,000.

2. THE District Forum, however, dismissed the complaint holding that the adoption of implant Rush Nail instead of another locking nail was an option

available to respondent/opposite party No. 2 as per his best professional assessment which did not constitute any deficiency in service or medical negligence.

3. DISSATISFI ED with the dismissal of his complaint before the District Forum, the complainant filed an appeal before the State Commission who reversed the order of dismissal of the complaint passed by the District Forum and held the respondent/opposite parties negligent vide its order dated 3.12.2004 and awarded a compensation of Rs. 67,617. The amount was ordered to be paid within a period of two months failing which it was to attract an interest @ 6% p.a. till the date of payment. A sum of Rs. 3000 too was awarded as cost of litigation. It is this amount of compensation on which the petitioner/complainant is aggrieved and has filed this revision petition for its enhancement to Rs. 4,90,000. Learned Counsel for the petitioner has referred to the order of the State Commission in which it has been held that "the complainant has successfully proved it to be a case of medical negligence on the part of the respondents and due to which he suffered and which also led to the second surgery, which was performed on the complainant at PGIMER on 22.7.1999"; and has contended that once the State Commission arrived at such a definite finding of negligence, it should have awarded adequate compensation on the basis of the claim made by the complainant but the State Commission has failed to properly apply its mind in this regard and has disposed of the appeal with a meagre compensation of Rs. 67,617.

4. CONTENDING that the complainant was a qualified Architect and he was forced to abandon his profession from 3.3.1999 to 29.5.2000 because of the negligence on part of the respondent/opposite parties, he suffered huge losses and even had to leave very attractive paying projects. This was not considered by the State Commission. Further, because of the disability suffered by him, the complainant had to incur expenses on engaging the service of a driver. Contending that the compensation awarded by the State Commission was too meagre, as it did not even meet the expenditure incurred in his treatment, the Counsel submits that it be enhanced to Rs. 4,90,000 along with interest @ 12% p.a.

5. AS against this, learned Counsel for the respondent/opposite parties has contended that there was no negligence whatsoever on part of the respondent/opposite parties in the treatment of the petitioner/complainant. He has tried to persuade us with the support of medical literature that the Rush Nail implant method adopted by respondent/opposite party No. 2 was the best option available to the doctor in order to get the broken pieces of fractured bones together. It was his professional judgment which cannot be termed as negligence. He has further contended that even with the best of treatment in such cases, there are occasions when a second operation and bone grafting becomes necessary. In fact the respondent/opposite party No. 2 had advised the complainant in this regard who, however, opted for the second operation in the

PGI.

6. SINCE the opposite parties have not filed any counter revision petition challenging the findings of medical negligence as held by the State Commission which has since acquired finality, the Counsel for the respondent was asked as to whether he has any locus standi to question the findings of the State Commission on this aspect to which he had no answer.

7. LEARNED Counsel, thereafter, has made his submissions on the quantum of compensation awarded by the State Commission and has argued that the State Commission has thoroughly considered the claim of compensation, including the claim of medical expenses, loss of business and expenditure on continuing the treatment and has correctly awarded a sum of Rs. 67,617 which already stands paid to the complainant. The order of the State Commission is very well reasoned and needs no interference on this count, he submits.

8. WE have heard the learned Counsel for both the parties as also have perused the records of the case.

9. SINCE the opposite parties have not challenged the findings and order of the State Commission on the point of medical negligence, we confine our decision to the limited question of compensation which is under challenge. In order to appreciate this point in proper perspective, it would be useful to refer to the order of State Commission on this point, which reads as under: "Now coming to the compensation claimed by the complainant, a sum of Rs. 4.21,789.20 has been prayed to be awarded against the respondents on account of loss to the complainant for gross negligence and reprehensible deficiency of service on the part of opposite party No. 2. Apart from this amount, which is claimed as medical expenses, loss of business and getting treatment, which is still continuing, a sum of Rs. 25,000 has been claimed on account of expenditure on petrol and other various items during the treatment. The total amount claimed in the relief is Rs. 4,90,000. Annexure C -1 contains particulars of the expenses incurred by the complainant over the treatment, A sum of Rs. 9,170 has been charged by the respondent -Inscol Hospital on 6.3.1999 besides another sum of Rs. 17,000. On 4.3.1999, the respondent - Inscol Hospital charged a sum of Rs. 10,000. The respondent - Inscol Hospital thus charged a total sum of Rs. 36,170. Besides this amount, a sum of Rs. 3,518 was charged at S.K. Diagnostic Centre, Verma Dental Clinic, Chandigarh, Ramesh Medical Hall and Jindal Medical Hall. The remaining expenses were incurred over the treatment at PGIMER, Chandigarh and the amount paid at PGIMER is of a sum of Rs. 100 (Rs. 25 on 22.7.1999, Rs. 50 on 19.7.1999 and Rs. 25 on 14.9.1999). The medicines were purchased during the treatment at PGIMER from different shops and the total of these medicines purchased for treatment is Rs. 27,529 (from Sr. Nos. 13 to 21, 25, 29 and 30). A total sum of Rs. 67,617 comprising the aforesaid amounts was spent over the treatment at the respondent No. 1 - Inscol Hospital and subsequently at PGIMER, Chandigarh. The amounts, which were spent at GMCH, Sector - 32, Chandigarh prior to the operation at respondent No. 1 - Inscol Hospital are not

admissible to the complainant as the same were not spent as a result of any involvement in the treatment of the complainant at the respondent No. 1 - Inscol Hospital. Apart from it, the amount of Rs. 24,000 claimed as the amount paid to the driver and a sum of Rs. 25,000 spent on petrol and other miscellaneous expenses up to 30.9.1999 and a sum of Rs. 1 lakh as loss of projects in pipelines and Rs. 2,000 on account of loss of income cannot be awarded to the complainant as they have no nexus to the medical negligence on the part of the respondents...."

10. IT is, thus, clear from this order of the State Commission that it has awarded a total sum of Rs. 67,617 which was the amount spent by the complainant on the treatment at the hospital - respondent No. 1 and subsequently at PGIMER, Chandigarh. In our view, this amount is only a reimbursement of the expenditure incurred by the complainant on the treatment. Since, the State Commission has given a categorical finding that there has been medical negligence, it ought to have awarded some compensation which, it has failed to do. In order to arrive at an adequate and just compensation, we have scanned the available records. Despite our order dated 11.11.2008, directing the petitioner to file the entire set of pleadings and evidence filed before the District Forum, we notice that the petitioner/complainant has not filed the complete details as to how he arrived at the claim of Rs. 4,21,789.20. There are no supporting documents such as income tax return, turnover of business/professional income to make any estimate of the probable income which he would have forgone during the few months, he was under treatment. Under the circumstances, we are of the view that, in addition to the reimbursement of an expenditure incurred on his treatment as assessed by the State Commission at Rs. 67,617, the petitioner should be awarded a lump sum compensation of Rs. 50,000 for the misery suffered by him on account of the medical negligence. The respondents, under the circumstances, are directed to pay an amount of Rs. 67,617 + Rs. 50,000=1,17,617 within a period of two months from the date of this order. Any amount already paid to the petitioner/complainant, however, will be allowed to be adjusted/reduced from this amount.

11. THE revision petition, accordingly, is partly allowed with no order as to cost. R.P. partly allowed.