

(2001) 04 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

RANGANNAGARI YADAV REDDY

APPELLANT

Vs

VIJAYA KUMARI

RESPONDENT

Date of Decision : 06-04-2001

Acts Referred:

Citation : 2001 2 CPJ 391 : 2002 1 CPR 132

Hon'ble Judges : P.Ramakrishnam Raju , Mamata Lakshman J.

Final Decision : Complaint dismissed

Judgement

1. THE complainant's wife late Smt. Anuradha, who gave birth to three issues, was under antenatal care and treatment of the first opposite party during her third pregnancy. Till her death she was hale and healthy. Right from the time of her conception third time she was consulting the first opposite party. On completion of her full term pregnancy, she got the labour pains around 7.00 p.m. on 16.8.1992 and was taken to the first opposite party's hospital. It was at 10.12 p.m. when she reached the hospital. Around 11.49 p.m. she delivered a male child and the delivery was normal. THE first opposite party thereafter retired into her residence which is annexed to the clinic and returned at 00.10 hours. When she returned she appeared drunk and was holding a liquor bottle in her hands and gulped the remaining liquor in the bottle after she entered the labour room. She threw the bottle on the floor and then enquired the lady nurse whether the patient delivered placenta. When the answer was in the negative the doctor remarked how long should I stay for this bitch. She thereafter waited for a couple of minutes and started making premature attempt to expel the placenta even before it was separated. In spite of the patient's mother requesting her to wait for some time for spontaneous delivery of placenta she abused her mother and asked her to get out. THE elder sister of the patient was still there. When she too requested the doctor to allow some time she too was asked to get out. Within few minutes they heard wild cry of the patient "I am dying". Immediately the mother and sister of the patient peeped into the labour room and observed that the doctor was trying to pull out the unseparated placenta manually. THEy also saw the patient lying unconscious. After a few minutes the opposite party

came out of the room and asked them to arrange a jeep to take the patient immediately to Gandhi Hospital at Secunderabad. Co-brother of the complainant by name Narsimha Reddy a para medical assistant working in CDR Hospital, Hyderabad came and asked the opposite party as to what has happened. He checked the pulse and heart beat of the patient and expressed that she is no more. THE opposite party pretended to examine the patient for a while and said Alas, she died. All this happened since the opposite party being intoxicated, feeling restless wanted to go to bed and, therefore, made premature attempt to separate placenta without even waiting even for half an hour for spontaneous delivery. This has resulted in irregular uterin contractions leading to haemorrhage. As such the husband of the complainant filed the complaint claiming a compensation, of Us. 10.00 lakhs.

2. IN the counter-affidavit filed by the 1st opposite party she denied that she was negligent or careless. She states that Smt. Anuradha was admitted in Vijaya Hospital. There was normal vazinal delivery as well as spontaneous delivery of placenta. Thereafter the patient being very weak developed uterin haemorrhage. As blood was not available at Gajwel the opposite party directed them to go to Gandhi Hospital, Secunderabad. IN fact even before admission also she suggested her to go to Gandhi Hospital, Secunderabad. The patient was shifted into the jeep when she was alive. At that time, the mother and the husband of Anuradha were present. They promised to pay her delivery charges and cost of medicines after returning from Gandhi Hospital. She does not know what has happened thereafter. But after one month the complainant came with a band of goondas and threatened her to write the case sheet and also the death certificate that the death occurred in her hospital. Out of fear she has written the case sheet in their presence. It is also stated in the counter that one Dr. V. Yadava Reddy is responsible for filing this complaint with false allegations to harass her. The complainant filed three or four documents which include the case sheet, death certificate issued by Sarpanch and also another certificate that the death was not recorded.

The point for consideration is whether the complainant has established any negligence as alleged on the part of the 1st opposite party which resulted in the death of his wife, Smt. Anuradha ?

3. ON 27.7.1999 it is observed by this Commission that the complainant has not filed affidavit evidence of himself and other witnesses in spite of several adjournments even from 24.12.1997 onwards, it is adjourned to 24.8.1999 with an observation that the matter will be disposed of on the basis of the material available on that date. On 24.8.1999 the complainant has filed his affidavit evidence. The opposite party also filed her affidavit as well as the affidavits of two other witnesses. For cross-examination of witnesses it is posted to 24.12.1999. On 31.12.1999 the complainant sought time and the matter is posted to 27.3.2000 directing the witnesses to be ready for cross-examination. On 22.2.2001 witnesses on behalf of the complainant are not present while the

opposite party is present. However, the matter is adjourned to 27.3.2001 observing that if the complainant or his Counsel is not present his right to adduce evidence as well as the right to cross-examine the witnesses of the opposite party will be forfeited. On 27.3.2001 the following order is passed : "In spite of our order dated 22.2.2001 wherein we have observed that the complainant or his Counsel are not present and since it is an old matter it is finally adjourned to today and in case the complainant or his Counsel is not present to cross-examine the opposite parties, their right to cross-examination would be forfeited. Today also they are not present. Hence their right to cross-examine the opposite parties is forfeited and they have also not produced any evidence or present for cross-examination by the opposite parties. Hence evidence of the complainant is closed. In fact on an earlier occasion, notice was also given to the complainant by this Commission intimating that either the complainant or his Counsel are not present and that they should be present for future adjournments. In spite of this there is no improvement and thereafter the complainant changed the Advocate, even then there is no improvement in the situation. Heard the learned Counsel for the first opposite party. Orders reserved."

4. AFTER the matter is reserved for orders we waited till today with the hope that the complainant may approach for reopening of the matter and seek for an opportunity. But nothing has happened during this time. Therefore, we are convinced that no useful purpose would be served while prolonging the matter any longer. As this is an old matter of the year 1993, we cannot indefinitely postpone the result. Hence the judgment is being pronounced today. The complainant has not turned up for cross-examination in spite of several opportunities. The allegations in the complaint or in his affidavit are not tested in cross-examination. The opposite party is always ready to cross-examine the complainant. The complainant is neither available for cross-examination by the opposite party nor his Counsel is available to cross-examine the witnesses on the side of the opposite parties. As such we are constrained to hold that the complainant has failed to substantiate the allegations levelled in his complaint. In the absence of proof by way of some evidence the averments of the complaint by themselves cannot be accepted. The complaint, therefore, fails for want of evidence and it is accordingly dismissed. In the circumstances, no costs. Complaint dismissed.