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**(2015) 07 NCDRC CK 0131**

**In the National Consumer Disputes Redressal Commission**

**Case No : 4344 of 2014**

RANIBALA & ANR

APPELLANT

Vs

DR. SATYAPRAKASH BANSAL

RESPONDENT

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**Date of Decision : 13-07-2015**

**Acts Referred:**

**Citation : 2016 1 ALD 5**

**Hon'ble Judges : J.M. Malik, S.M. Kantikar**

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## **Judgement**

1. The petitioner/complainant Ranibala underwent tubectomy operation on 21.07.1998 in Community Health Centre, Tanda, by Dr. Satya Prakash Bansal, the OP. She had persistent pain at the operated site and developed a small lump. Thereafter, the OP treated her till 18.01.2001, also patient took treatment from other doctors till 17.01.2002, almost incurred Rs.80,000/- expenses, but she was not cured. Thereafter, the patient took treatment from District Hospital, Ambedkar Nagar. Ultrasound was performed there, which revealed a lump at operated site, the doctors there stated that the lump was due to improper treatment in tubectomy operation and it was negligence of OP. The complainant approached Directorate of Health & Family Welfare Department and the District Consumer Disputes Redressal Forum, Ambedkar Nagar (hereinafter referred to as "District Forum").

2. The District Forum, Ambedkar Nagar, allowed the complaint, directed the OP to pay Rs.1 lac and also sent the order to the Health & Family Welfare Department about taking action against the doctor, who had violated the private practice norms. The State Commission, reversed the order in the Appeal No. 3015/2003 and dismissed the complaint. Hence, this revision petition.

3. At the admission stage, we have perused the file. The petitioner/complainant failed to cure the defects in the file. She was unable to file the translated copies of documents in English. We have perused the evidence and medical record on the file. It was admitted that OP performed said tubectomy operation. During July, 1998 to December, 2000, under National Family Welfare Program, number

of such operations were performed and almost all, were successful. None of the patients had complications, there was no negligence in the operation and it was performed as per standard norms. It is also submitted that, OP was a Government servant, operation was done free of cost and the complaint was filed after five years of cause of action. Therefore, there is no jurisdiction to entertain this case.

4. After thoughtful consideration and taking reference from medical and surgical text books on tubectomy operation, the development of lump appears to be misconceived to the patient/complainant. As per medical literature, the healed surgical wound will go into fibrosis and it appears as a hard lump or nodule. No explanation is forthcoming from the complainant about the size of the lump and treatment she had taken for that lump after the operation. It was just a bald submission, that she incurred a huge expenditure and nothing is on record to prove it. The treatment was done at Government Hospital and District Hospital, which was free of cost. Therefore, the development of lump was not due to negligence of the doctor or by the surgery. The complainant neither produced any expert evidence nor produced any affidavit from the doctors, who treated her lump.

5. The Hon"ble Apex Court observed in case titled as Jacob Mathew Vs. State of Punjab & Anr. ( 2005) 6 SCC 1 observed that,

when a patient dies or suffers some mishap, there is a tendency to blame the doctor for this. Things have gone wrong and, therefore, somebody must be punished for it. However, it is well known that even the best professionals, what to say of the average professional, sometimes have failures. A lawyer cannot win every case in his professional career but surely he cannot be penalized for losing a case provided he appeared in it and made his submissions."

1. Medical negligence case cannot be decided without cogent evidence. The complainant has to prove the case. There is no merit in the revision petition; hence, the same is dismissed. However, there shall be no order as to costs.