

(2005) 10 NCDRC CK 0061

In the National Consumer Disputes Redressal Commission

R.C.PUROHIT

APPELLANT

Vs

USHA DEVADA

RESPONDENT

Date of Decision : 05-10-2005

Acts Referred:

Citation : 2006 1 CPJ 489 : 2006 2 CPR 184

Hon'ble Judges : Sunil Kumar Garg , Sushma Tanwar J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal under Section 15 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act of 1986") has been filed by the appellant against order dated 3.4.1998 passed by the District Forum, Jodhpur, in Complaint Case No. 491/97 by which the complaint filed by the complainant respondent under Section 12 of the Act of 1986 was allowed partially in the manner that the appellant was ordered to pay Rs. 10,000 as compensation for mental agony and Rs. 3,811 as expenses incurred by the respondent for purchase of Antid injection etc.

2. IT arises in the following circumstances: That the complainant respondent had filed a complaint on 24.9.1997 before the District Forum, Jodhpur inter alia stating that under advice of Dr. Vimla Kachhwaha and since she was pregnant, she approached the diagnostic centre of the appellant known as RP Diagnostic Centre (hereinafter referred to as "the centre") for purpose of test of her blood group. On 3.12.1995 the blood group of the respondent was tested by the appellant at his own centre and it was declared that the blood group of the respondent was "o")" RH negative. IT was further stated in the complaint that the blood group of her husband was RH positive. Since the centre of the appellant had declared the blood group of the respondent as negative, therefore, she had to undergo antibody test and she had to take injection Antid 350 (Vinoblin) one each before and after delivery of female child. IT was further stated in the complaint that when the blood group was tested in the unit of Dr. Vimla Kachhawaha in the Umed Hospital, Jodhpur, it was found to be of "O" RH

positive, therefore, the complainant respondent further approached the centre of the appellant again for confirmation and as per report dated 11.8.1997 it was found positive given by the appellant centre. Thus because of the earlier report dated 3.12.1995 the respondent had to take several precautionary medicines as stated above. Thus the report was wrongly given by the appellant centre and for that deficiency the claim was preferred. A reply was filed by the appellant before the District Forum inter alia stating that the sample which was brought to the centre on 3.12.1995 was found of RH negative and it was taken not by the appellant but was brought by the respondent herself and thus report was given so and thus there was no negligence on the part of the appellant in giving the report on 3.12.1995. IT was further stated that since there was normal delivery of the respondent on 31.3.1996 and thus no complications as alleged by the respondent had arisen in this case. Hence it cannot be said that for the report dated 3.12.1995 the respondent had to suffer. Apart from that it has been further stated that in case of diagnostic centre the diagnosis is based on opinion, therefore, there can be two opinions and from this point of view the report of the appellant centre if found wrong, it cannot be said that it was given deliberately and by a person who was not competent to give the report. Hence no case, complaint be dismissed. The District Forum after hearing both the parties through impugned order dated 3.4.1998 partially allowed the complaint of the complainant respondent in the manner as indicated above inter alia holding that the blood test which was got conducted by the appellant on 3.12.1995 was taken by the respondent not from outside and thus the test was conducted by the appellant after taking sample of the blood from the respondent on the spot. That since thereafter two tests were conducted in respect of the blood group of the respondent and in both of them the blood group "O" RH positive was found. Thus the report dated 3.12.1995 was wrongly given by the appellant for which there could be no excuse and thus the Forum had found deficiency in service on the part of the appellant in giving the wrong report. Aggrieved from that order this appeal has been filed. In this appeal, the main argument of the learned Counsel for the appellant is that the findings of the learned District Forum are erroneous one on two counts: (i) That in cases of diagnosis, since diagnosis is based on opinion, therefore, there can be two opinions and from this point of view, if the report of the appellant's diagnostic centre was found wrong, it cannot be said that it was given deliberately. (ii) That since no damage would have occurred to the respondent because of the wrong report dated 3.12.1995 the amount of compensation awarded by the District Forum was wholly unjust, improper and unreasonable.

The learned Counsel for the appellant has placed reliance on the decision of the Bihar State Commission in the case of Dharmendra Kumar Mishra v. Dr. Akhauris Sinha, II (1996) CPJ 298.

3. ON the other hand, the learned Counsel for the respondent has supported the impugned order. We have heard the learned Counsel appearing for the appellant as well as of the respondent and gone through the entire materials available on

record.

4. BEFORE proceeding further, it may be stated here that professional negligence, rather medical negligence is that which, as the term suggests, relates to the medical profession and is the result of some irregular conduct on the part of any member of the profession or related services in discharge of professional duties. Basically, medical negligence means such negligence resulting from the failure on the part of the doctor to act in accordance with medical standards in vogue which are being practised by an ordinarily and reasonably competent man practising the same art. According to Charlesworth and Percy on "Negligence", a specialist is one from whom, in case of a contract, more skill can be demanded than from a general practitioner. Similarly, prescription of drugs without first examining the patient also tantamounts to negligence.

5. A practitioner can only be held liable in this respect if the diagnosis is so palpably wrong as to prove negligence, that is to say, if his mistake is of such a nature as to imply an absence of reasonable skill and care on his part, regard being had to the ordinary level of skill in the profession.

6. APART from this, a personal who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Keeping the above aspects in mind the facts of the present case are being examined.

In this case there is no dispute on the point that the appellant's diagnostic centre had given a report on 3.12.1995 stating that the blood group of the respondent was of RH negative. There is also no dispute on the point that when the blood group of the respondent was tested by Dr. Vimla Kachhawaha in Umed Hospital, it was found negative. There is also no dispute on the point that even on 11.8.1997 after delivery the blood group of the respondent was found RH "O" positive even in the diagnostic center of the appellant.

7. THUS from the appellant's centre there are two reports of blood group pertaining to the respondent-one is dated 3.12.1995 showing the blood group RH negative and the other dated 11.8.1997 showing positive. Since both reports are contradictory in nature by the appellant centre, thus it can be inferred or concluded that the appellant's diagnostic centre gave its report dated 3.12.1995 in a very casual manner without taking due care and caution which should have taken as a reasonable and prudent man and thus by doing so professional negligence on the part of the appellant is well established and thus findings recorded by the District Forum are based on correct appreciation of evidence and do not require any interference by this Commission in this appeal. THUS the appeal deserves to be dismissed on merits. So far as the law laid down in the case of Dharmendra Kumar Mishra v. Dr. Akhauri S. Sinha (supra) is concerned that no doubt there may be error in the report regarding blood group of a person without doing any negligence on the part of the doctor but in the present case

since the same diagnostic centre gives another report contradictory to its previous report, therefore, negligence on the part of the appellant's diagnostic centre is well established. Hence, this ruling would not come to help to the learned Counsel for the appellant.

8. SO far as on the point of compensation is concerned it may be stated here that when an RH-negative woman is married to an RH positive man, the chance of her becoming sensitized to the RH antigen and thus having children affected with haemolytic disease of the new born is initially relatively small. Thus it can be said that by giving wrong report no damage was caused to the respondent except that she had to incur some expenses for getting the test again and in doing so she would have suffer some mental agony and that cannot be ruled out. In this case the amount of compensation which has been awarded by the District Forum is of Rs. 10,000 and in our considered opinion that if all facts and circumstances of the case are taken into consideration, it appears to be just and reasonable. Hence no interference is called for with the amount of compensation awarded by the District Forum. For the reasons mentioned above there is no force in this appeal and the same is dismissed. Appeal dismissed.