

(2014) 09 NCDRC CK 0021

In the National Consumer Disputes Redressal Commission

S. Pandu

APPELLANT

Vs

M. Subba Rao

RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Citation : 2014 0 NCDRC 651

Hon'ble Judges : K.S.CHAUDHARI J.

Advocate : JHUMA BOSE

Judgement

1. THIS revision petition has been filed by the petitioner against the order dated 06 -06 -2008 passed by State Consumer Disputes Redressal Commission, Karnataka (in short, "the State Commission ") in Appeal No. 2441/2007 - Dr. Pandu S. Vs. M. Subba Rao, by which appeal filed by the petitioner was dismissed against the order of the District Forum allowing complaint.

2. COMPLAINANT - M. Subba Rao filed complaint before District Forum alleging medical negligence on the part of the opposite party/petitioner while conducting operation of his left eye. Opposite party resisted complaint. Learned District Forum vide order dated 09 -08 -2005 allowed complaint and directed opposite party no. 1/petitioner to pay Rs. 2 lakhs and opposite party no. 2 to pay Rs.50,000/- with interest. Appeal filed by the petitioner was dismissed by learned State Commission vide impugned order, against which this revision petition has been filed.

3. DURING proceedings respondent/complainant died and his Legal Heir has been taken on record. None appeared for the respondent even after service and respondent was proceeded ex -parte. Heard learned counsel for the petitioner and perused record.

4. PETITIONER along with revision petition filed application for permission to file additional documents annexures P -4, P -5, P -6 & P -7 and submitted that petitioner carried out all necessary investigations before performing surgery and opposite party no. 1/Hospital is not a mere maternity home but has all the

facilities necessary for carrying out eye operations. It was further submitted that petitioner conducted surgery with utmost care but could not provide relevant documents and expert opinion as he was transferred from Bangalore to Mysore in the year 2001 and his advocate did not advise him; hence these documents may be taken on record.

5. LEARNED counsel for the petitioner submitted that these documents are necessary for disposal of revision petition and as these documents could not be filed on account of improper advice of counsel appearing before District Forum and State Commission, these documents may be taken on record and matter may be remanded back to District Forum.

6. PERUSAL of impugned order reveals that learned State Commission observed in Para 10 that opposite party no. 1 except filing his written statement and affidavit, has not filed any material, even discharge summary pertaining to complainant. It was further observed in Para 14 of the judgment that complainant has only produced certificate issued by Vagh Eye Centre pertaining to operation of right eye and has not produced any other evidence to show negligence of petitioner in conducting operation of left eye. Learned State Commission dismissed appeal as no documents were filed by the petitioner in support of his contention.

7. NO doubt petitioner should have filed all necessary documents before District Forum and at least before State Commission but as impugned order has been passed only on the basis of report of Vagh Eye Centre and as documents proposed to be filed with this application i.e. complainant 's admission, discharge, treatment record, operation record, certificate of expert, medical literature, copy of register depicting eye operations in opposite party no. 2 hospital are very material for proper adjudication of complaint, I deem it appropriate to allow application at this stage, subject to cost and remand matter back to District Forum for disposal of complaint after considering these documents.

8. CONSEQUENT LY , application filed by the petitioner for taking additional documents on record is allowed, subject to payment of cost of Rs.10,000/ - to the respondent and documents are taken on record. As documents which have been taken on record are necessary to be considered by District Forum, impugned order and order of the District Forum are liable to be set aside.

9. CONSEQUENT LY , revision petition filed by the petitioner is allowed and impugned order dated 06 -06 -2008 passed by learned State Commission in Appeal No. 2441/2007 - Dr. Pandu S. Vs. M. Subba Rao and order of District Forum dated 09 -08 -2005 passed in Complaint No. 569/2002 - M. Subba Rao Vs. Dr. Pandu S. is set aside and matter is remanded back to District Forum to consider documents taken on record and give opportunity of adducing evidence to both the parties and decide complaint after giving an opportunity of being heard to both the parties, subject to payment of cost of Rs.10,000/ - by

petitioner to the respondent. As respondent is ex -parte, petitioner is directed to deposit this amount with District Forum on or before the date, which may be disbursed to the respondent whenever he appears.

10. PETITIONER is directed to appear before District Forum on 24.11.2014.

11. COPIES of documents taken on record by this Commission may be sent to District Forum along with copy of order.