
(1991) 10 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

SAI MEDICAL STORES

APPELLANT

Vs

R.D.Gupta

RESPONDENT

Date of Decision : 26-10-1991

Acts Referred:

Citation : 1992 2 CPJ 850

Hon'ble Judges : Y.B.Suryavanshi , M.L.Tiwari J.

Final Decision : Appeal partly allowed

Judgement

1. THIS is an appeal u/Sec. 15 of Consumer Protection Act against the orders by learned District Forum, Gwalior, in complaint case No. 87/90, on 5.4.91, directing payment of Rs. 5,000/- as compensation for selling different tablets than the one prescribed by the doctor who had operated complainant's wife for cataract.

2. THE complainant Shri R.D. Gupta alleged that on 24.10.90 and 30.10.90 he had purchased medicines from the respondent's Medical Store as per doctor's prescription. "Arlidin" tablets were prescribed, but another medicines "Avana" tablets were sold. Having learned subsequently that another medicine has been sold/supplied. He consulted the doctor thus the patient instead of getting any benefit has suffered bodily and mental pain which has also occasioned financial loss. Hence, he claimed Rs. 7,000/- by way of compensation. The respondent's version is that the complainant had lodged a complaint under Drugs and Cosmetics Act and Rules and as that matter is pending, this complaint is not entertainable. He further stated that for the first time he had sold on 3.10.90 medicines for the complainant's wife Smt. Vimallata Gupta viz. Avana tablets as prescribed by Birla Institute of Medical Research. Thereafter the same tablet and other medicines were sold by the complainant on 20.10.90 and 24.10.90. That, on the basis of two prescriptions one by Dr. Jayashree Dwivedi of Birla Institute of Medical Research and the other prescription which was old which had prescribed Avana tablets. The medicines were supplied under consolidated cash memos as requested by the complainant. It is, further, alleged that Avana tablet is an Ayurvedic product. It was, further alleged that the complainant had

suppressed the old prescriptions. However, the respondents produced copies of other cash memos. It is also alleged that the respondents never dispensed any medicines without prescriptions and no one so far had any complaint. He, further, prayed that the complaint is liable to be dismissed.

It is not in dispute that the complainant's wife Smt. Vimal Lata Gupta was operated on 9.9.90 for cataract in Birla Institute, Gwalior. She was discharged on 11.9.90. Dr. Jayashree Dwivedi had prescribed medicines to be purchased from the market. She prescribed Arlidin tablet to be taken for a month. It is, further, undisputed that the complainant on 24.10.90 purchased medicines from appellant's shop. Medicines were purchased by the complainant admittedly on 24.10.90 and 30.10.90.

3. BEFORE the District Forum, the complainant R.D. Gupta examined himself. Dr. Jayashree Dwivedi (P.W. 2) was also examined on behalf of the complainant. On the other side, Mukesh Kumar Agarwal (D.W. 1) was examined. The learned Forum found that the doctor had prescribed "Arlidin" tablets to be taken for a month for improvement of eye-sight during post operational period, but instead the medical stores on 24.10.90 and 30.10.90 supplied Avana tablets. It was, further, held that due to sale of wrong medicine the eyesight of complainant's wife has been adversely affected to the extent of 5% and the process of improvement was delayed for another month. Thus, the complainant's wife had to suffer for almost a month without improvement in eye-sight. Accordingly, the learned Tribunal awarded Rs. 5,000/- as compensation to be paid within 30 days of the order. Record perused. Both the learned Counsel heard. Shri Khedkar, the learned Counsel for the appellant urged that the complaint has been lodged under Drugs and Cosmetics Act and Rules and, therefore, this complaint is not tenable. This contention is devoid of any substance and we find no reason why the complaint under Consumer Protection Act is not tenable. Shri Khedkar did not press this objection further.

4. SECONDLY, it was contended that the complainant is Ramji Das Gupta who has personally not suffered any injury or loss. It was also argued that the prescriptions are in the name of Smt. Vimal Gupta and, therefore, Ramji Das Gupta has no locus standi to file this complaint. Obviously, this objection is technical. Smt. Vimal Gupta is undisputedly the wife of Ramji Das Gupta, who has filed this complaint. Section 2(b)(c) define the expressions ""complainant" and "complaint". The expression "person" has also been defined under Clause "A" of Section 2. It is an "inclusive" definition, which widens the scope of the expression "complainant." Furthermore, the expression "agent" has been defined in Rule 2(b) of the Consumer Protection Rules, 1987. Agent means, "a person duly authorised by the party to present any complaint, appeal or reply on its behalf before the National Commission." In the instant case, instead of Smt. Vimal Gupta, her husband Ramji Das Gupta has filed this complaint. A duly authorised agent includes any person having implied authority. Such authority need not be in writing. (Refer AIR 1964 Punjab Page 235 - New India Assurance

Co. v. Punjab Roadways). In the instant case, the husband has purchased medicines for his wife. Looking to the condition and way of life in Indian Society, this is quite natural, and a realistic approach is necessary. Even under the definition of a "consumer" as given in Section 2(d) it includes, "any user of such goods other than the person who actually buys such goods for consideration". To cut short, the discussion, the objection viz., that the complaint by the husband on behalf of the wife is not maintainable, is devoid of any force. Thirdly, It was urged, that the appellant in his application dated 26.12.1990 had alleged that on the basis of prescription dated 3.10.1990 by Birla Institute of Medical Research, the questioned tablet was supplied. The complainant, on the basis of old prescription and thereafter, on basis of new prescription asked the appellant to prepare cash memos and that is how Exs. P.2 and P.3 were prepared. The point urged is that the old prescriptions have been suppressed by the complainant and reliance is placed on the prescription marked Ex. P.1. On the other hand, the learned Counsel for the respondent urged that the complaint is only on the basis of the cash memos dated 24.10.1990 and 30.10.1990, which are co-related to the prescription Ex. P.1, dated 26.4.1990. The further controversy is that the prescription Ex. P.1, bears a date which is not very clear. According to the complainant, the prescription is dated 24.10.1990 whereas, the appellant's version is that it is dated 26.10.1990 and, therefore, no medicine could have been supplied on that basis on 24.10.1990. However, the position is clear from the statement of P.W.2 Dr. Jayshree Dwivedi, who has stated that as per Ex. P.1, the prescribed medicine is "Arlidin." It has not been suggested in her crossexamination, whether she has ever prescribed the tablets called "Avana", which is an Ayurvedic product. P.W.2, Dr. Jayshree is not sure about the date of Ex. P.1 and according to her statement it could be either 24.10.1990 or 26.10.1990, but certainly it is not 30.10.1990. On the other hand, the dates on Exs. P.2 and P.3 are very clear. The complainant's case is based on Ex. P.1, P.2 and P.3, therefore we agreed with the finding by the learned District Forum that the correct date is 24.10.1990. Accordingly, we find that the learned District Forum has rightly disbelieved the statement of the appellant D.W.I Mukesh Kumar Gupta to the effect that Ex. P.2 cash memo relates to some other prescription which has been suppressed and not produced in evidence. Fourthly, It was urged that the operation was performed on 9.9.1990 and the patient was discharged on 11.9.1990 .The medicines was prescribed for a month and, therefore, the patient was expected to take that medicines from 11.9.1990 to 11.10.1990, but the prescription Ex. P.1 is dated 24/26.10.1990. It is unnecessary to confuse the controversy. The complainant's case is purely based on prescription Ex. P.1 dated 24.10.1990 and it relates to the medicines supplied vide cash memos Exs. P.2 and P.3 dated 24.10.1990 and 30.10.1990 respectively. It is common experience that doctors change the medicines and line of treatment from time to time and, therefore, it cannot be said that there was some other prescription besides Ex. P.1, on the basis of which the questioned medicine in Exs. P.2 and P.3 have been supplied. The simple point is that the medicine supplied as per cash memos Exs. P.2 and P.3 are not according to the

prescription Ex. P.1 dated 24.10.1990. Therefore, we find that the submissions made by the learned Counsel Shri Khedkar, cannot be accepted.

5. LASTELY, it was urged, that the compensation awarded is an exaggerated amount. There seems some substance in this contention. Smt. Vimal Gupta has not been examined before the District Court, who alone could have described her pain and suffering. In the examination of P.W.2 Dr. Jayshree Dwivedi, it was suggested that correct medicine as prescribed in Ex. P.1 i.e. Arlidin tablets could not be taken, there was deterioration in eye-sight. But she avoided any categorical reply by saying "DAVA JITNEY JALDI KHATY, UTNA JALDI FAIDA HOTA." There is also some interpolation in the deposition after recording the above question. Even, if we ignore that this expert witness had obviously asserted that even if Arlidin tablet had not been taken, it would not result in any "permanent injury" to the eye-sight. According to her, only the process of nourishment of the nerve and improvement was likely to be delayed. As regards the questioned tablets supplied vide Exs. P.2 and P.3. P.W.2 states that its effects would be inconsequential. In other words, their use may not be beneficial to the patient, but equally it would not be detrimental.

6. THE complainant P.W.I Ramji Das Gupta had stated that as correct medicine was not supplied, not only the process of recoupment has been deferred but there has been "deterioration" in eyesight. He further states that his wife was also examined in J.A. Group of Hospital. THE O.P. tickets Ex. P.4 has been produced to show the Condition of the patient eye-sight. But then this itself shows that the patient had been using spece for last 20 years, and was "Highly Myopic." P.W.2 has explained this expression and has said that in such cases lense is weak. Even according to P.W.2 Dr. Jayshree, the patient wore thick lenses since childhood. In this state of evidence and circumstances, the statement of the complainant seems highly exaggerated to inflate claim of compensation. That is not to say that the Medical Stores was not negligent in supplying wrong medicine. In our view while dispensing medicine the attendants in the Medical Stores have to be very vigilant in supplying the Medicines strictly according to the prescription. It is, however, different that in the instant case the wrong supply of tablet has only resulted in prolonging the process of post operational re-coupment which obviously prolonged the period of inconvenience and suffering which is not easy to be quantified. The interests of justice would be met by awarding the complainant Rs. 2,000/- in place of Rs. 5,000/- awarded by the District Forum. The complainant appeared before the District Forum for about ten hearings and had also engaged a Counsel at some stages.

For the aforesaid reasons, this appeal is partly allowed. The amount of compensation awarded by the District Forum i.e. Rs. 5,000/- is reduced to Rs. 2,000/-. The complainant-respondent is further awarded Rs. 250/- and Rs. 400/- as litigation expenses before the District Forum and State Forum, respectively. The appellant shall pay the aforesaid amounts within 30 days of the receipt of these orders which are being sent to the parties by Registered A.D. free of cost,

as per rules. Appeal partly allowed.