

(2007) 05 NCDRC CK 0043

In the National Consumer Disputes Redressal Commission

SAJJITHA PARVEEN

APPELLANT

Vs

EMPLOYEES STATE INSURANCE CORPORATION

RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:

Citation : 2007 4 CPJ 181

Hon'ble Judges : K.Sampath , PonGunasekaran J.

Final Decision : Revision Petition allowed

Judgement

1. THIS revision arises out of the order passed by the District Forum, Chennai (North) in C.M.P. No. 226/2005 in O.P. No. 38/2004. The complaint against the opposite parties has been dismissed on the preliminary ground that the Consumer Fora do not have jurisdiction to entertain complaints against the Employees State Insurance Corporation and the Medical Officer attached to the said Corporation for any alleged deficiency in service rendered by them in connection with the treatment given to the complainant's minor son.

2. THE District Forum relied on a judgment of this Commission in A.P. No. 331 of 1999 dated 13.12.2005 wherein it has been observed as follows: "Following the decision of the National Commission in R.P. No. 543/1996 dated 3.9.1998, the Appeal in A.P. No. 513/99 preferred by the Employees State Insurance Corporation shall stand allowed and the appeal in A.P. No. 331/99 preferred by the complainant shall stand dismissed. THE complainant is directed to pursue the remedies available under the Employees State Insurance Act. If and when the complainant chooses to go before the Forum constituted under the ESI Act, it will be open to him to invoke the provisions of Section 14 of the Limitation Act and seek to have the delay condoned before the ESI Court." In our view, the decision relied on by the District Forum is not applicable to the facts of the present case. This is a case of negligence attributed to the opposite parties in the treatment of complainant's son. So far as the Employees State Insurance Act is concerned, that does not cover a situation like this. In Revision Petition No. 543 of 1996 decided by the National Commission, the question that arose for consideration

was whether the complainant was entitled to get reimbursement of the medical bills submitted before the Director of Employees' State Insurance Scheme. There is an express bar provided under Section 75 of the ESI Act against entertainment of complaints in respect of subjects covered by ESI Act. In *E.S.I. Hospital (Medical Officer) & Anr. v. Ranjit Kumar Das & Ors.*, I (2007) CPJ 61 (NC)=2006 (3) CPR 284 (NC), it has been held that the provisions of Consumer Protection Act are applicable to cases on medical negligence alleged against ESI Hospital and the doctor employed there already noted, the provisions of ESI Act do not cover cases of negligence alleged against the Hospital and the doctors employed therein. The District Forum was in error in dismissing the complaint on this preliminary point.

Consequently, the revision petition is allowed; the order of the District Forum is set aside and the matter shall stand remitted to the District Forum for consideration on merits. R.P. allowed.