
(1994) 03 NCDRC CK 0053

In the National Consumer Disputes Redressal Commission

SAU. SUNITA VASANT HEG ANAWAR

APPELLANT

Vs

MIRAJ MEDICAL CENTRE

RESPONDENT

Date of Decision : 25-03-1994

Acts Referred:

Citation : 1994 2 CPJ 544 : 1994 3 CPR 214

Hon'ble Judges : G.G.Loney , M.G.Gavai J.

Final Decision : Complaint dismissed

Judgement

1. IN this complaint filed by Smt. Sunita Vasant Heganawar, her husband Mr. Vasant Pandurang Heganawar and daughter Ku. Warsha Vasant Heganawar aged six months, it has been alleged that Smt. Sunita Heganawar had some cardiac complaint for which she was admitted in the Miraj Medical Centre, Wanless Hospital, Miraj. On 11.6.90, the complainant No. 1 viz. Mrs. Sunita was operated upon. It is an allegation that during the operation she was administered blood by the Hospital because of which she contracted "Aids". It is her contention that the blood which was given by the Blood Bank of the Hospital was contaminated with Aids virus. She has alleged that not only has she been personally infected by the Aids virus but her husband complainant No. 2 has also been infected because of her contact with him by the Aids disease and her small child viz. complainant No. 3 born after the operation has also been afflicted with Aids. For the negligent and deficient service rendered by the Wanless Hospital, the complainant has demanded compensation of Rs. 10 lakhs. She has also stated that she will have to live with the disease in future for indefinite number of years and, therefore, the opposite party should administer complete medical examination and tests every six months to the complainants without charging any fees. She also demanded that whatever medicines are available at present on this disease "Aids" as well as, if new medicines come in the market for this disease in future, they should be supplied to the complainants free of charge.

2. THE opposite party has submitted its written version about the complaint of the complainants. In its reply, the opposite party has stated that during the

operation of the complainant No. 1, Smt. Sunita on 11.6.90, which was performed for the correction of atrial septom defect and mitral stenosis, the Complainant was administered blood from the Wanless Hospital Blood Bank. After the operation, it was found that the blood pressure of the complainant had gone down below the dangerous level and it was necessary to administer more blood. First one unit of blood was administered during the operation. When the blood pressure had gone down below the dangerous level, and it was necessary to administer more blood, two more units of blood which had already been tested for Anti HIV antibodies were administered. According to the opposite party, the first three units of blood were tested for Anti-HIV Antibodies and were not contaminated with HIV virus. However, the grave emergency continued and the patient was required to be given another unit of blood. Had it not been given, considered the state of the health of the complainant No. 1, she would perhaps not have survived. THE Hospital in this emergency decided to administer one more unit of blood. This blood was given in good faith and bonafide manner to save the life of the patient. This forth unit of blood was later on found to have been contaminated aid with HIV positive and was responsible for the complainant No. 1 examining infected with HIV+. It has been further stated by the opposite party that complainant No. 2 was tested for Anti-HIV antibodies in June, 1991, February, 1992 and May, 1993 and his blood was found to be negative. Further it is the contention of the opposite party that they are not responsible for the Anti-HIV antibodies that are found in the child born to the first complainant because the Hospital Authorities had forwarded the complainant that since she was a HIV positive person, if she had a child there was likelihood of the danger of HIV infection passing on to the child if she gave birth to one. The opposite party has stated that they have taken care of the complainant even after her discharge from the hospital and delivery of her child and subsequent check ups were done at the hospital free of charge. They further stated that the opposite party has already furnished the assurance that medical check ups of complainant No. 1 would be done at the cost and expenses of the opposite party for a period of six years from the date of operation and denied entitlement of the complainant to any further other reliefs-whether as prayed for or not; and has stated that since there was no deficiency on their part, the complaint may be dismissed.

We have heard Shri H.C. Karandikar, Advocate for the complainant and Shri Chandrachud, Advocate for the opposite parry.

3. DURING the arguments, the opposite party Shri Chandrachud had given an assurance before this Commission that the Hospital the opposite party was prepared to render all necessary and required medical treatment for the treatment to all the complainants at the Wanless Hospital, Miraj as long as it is necessary. He further offered on behalf of the Hospital that some suitable employment will be given to the husband of the complainant by the Hospital so that their problem of maintenance could be taken care of. The medical treatment would be offered free. The complainant sought time to consider this offer given by the opposite party through their Counsel, the learned Advocate Shri

Chandrachud. On the next date of hearing, the complainant informed the Commission that she was not prepared to accept the offer and pressed for her claim for monetary compensation of Rs. 10 lakhs demanded in the complaint application. In view of the fact that no compromise was acceptable to the complainant, we heard the complaint on merits. During the course of arguments, Shri Chandrachud raised a point about the maintainability of the complaint. He stated that the complainant is not a consumer inasmuch as no consideration was paid by her for the operation or the medical treatment given by the Miraj Medical Centre, Wanless Hospital, Miraj. The Miraj Medical Centre is a charitable hospital run by the Christian Mission and all the treatment given to the complainant was free of charge. This statement has been substantiated by the opposite party by production of the relevant documents of the Miraj Medical Centre. A perusal of the records of the Miraj Medical Centre proves the contention of Shri Chandrachud that no consideration was paid by the complainant to the Miraj Medical Centre for her medical treatment. On the basis of these facts, it is clear that the complainant is not a consumer and the provisions of the Consumer Protection Act are not attracted and, therefore, we find that this complaint before us is not maintainable. It is pertinent to mention here that the complainant in her written complaint has nowhere said that she had paid any consideration to the Hospital for her medical treatment.

4. IN view of this decision on the point of the maintainability of the complaint, we do not think that any useful purpose could be served by going into the question of the negligence or the deficiency of the hospital in rendering the necessary services to the complainant No. 1, during and after her operation which was performed on 11.6.1990 by the opposite party at the Miraj Medical Centre, Wanless Hospital. It will only be a futile exercise. There is however a humanitarian and moral aspect to this case and in fairness to the Wanless Hospital we must say that this aspect has not been lost sight of by the opposite party. We must say that the learned Advocate, Shri Chandrachud of the opposite party has been extremely fair during his arguments and has given a specific assurance to this Commission that inspite of what the legal position might be, the Hospital is prepared to give the undertaking if necessary, even the written undertaking to the Commission that they are prepared to take over the responsibility of giving medical treatment to the complainant and her relations i.e. husband and child, as long as it is necessary and that the treatment would be free of cost. Shri Chandrachud has also reiterated the earlier offer made by the Hospital of giving employment to the complainant's husband at the Hospital; so as to take care of the daily livelihood of the family. It must be said to the credit of the hospital, which is a reputed charitable hospital in Maharashtra for over six decades that they had not indulged in usual tactics of hushing up the matter and when it was found that the blood which was administered by them to complainant No. 1 was contaminated with HIV, they made a clean breast of it and even in their written version have admitted it frankly. We believe in the assurance given by the opposite party viz. Miraj Medical Centre given through

the learned Advocate-Shri Chandrachud and it is left to the good sense of the complainants to decide whether to accept this offer or not. We are aware that this is a very unfortunate case and the complainants deserve full sympathy of every one; but we cannot be oblivious to the legal position of the complaint. So far as the claim of the complainants of Rupees Ten Lakhs for compensation is concerned as observed earlier the medical service rendered to the complainant being free of consideration, complainants have no right to claim compensation in terms of money under the Consumer Protection Act, 1986. However, in view of the offer made by opposite party for free treatment to complainants and the offer of employment to complainant's husband it can be accepted by the complainants and in that event the opposite party is directed to adhere to its offer, despite the dismissal of this complaint. With this observation, the complaint stands dismissed. Complaint dismissed.