

(2006) 03 NCDRC CK 0076

In the National Consumer Disputes Redressal Commission

SAVITHRI CHANDRABHAN JAIWANSI

APPELLANT

Vs

D.R.GURBANI

RESPONDENT

Date of Decision : 09-03-2006

Acts Referred:

Citation : 2006 3 CPJ 385

Hon'ble Judges : S.N.Kapoor J.

Final Decision : Appeal disposed of

Judgement

1. APPELLANT was the complainant before the State Commission, where she had filed a complaint alleging medical negligence on the part of the respondents/ opposite parties.

2. VERY briefly, the facts of the case are that the complainant's husband late Mr. Chandrabhan Jaiwansi, who was a patient of chronic headache and hypertension, for which he was being treated by one Dr. Kundi, who in turn, referred the deceased's case to the first respondent Dr. Gurbani for Electro-conclusive Treatment (ECT). The deceased was under treatment from 20.2.1992 onwards and had seen the respondents on 20.2.1992, 22.2.1992 and 25.2.1992. It is the episode of 26.2.1992 which was under the challenge before the State Commission. It is stated that on 26.2.1992 at 2.00 p.m., the deceased was removed to the operation theatre where he was sitting on stool and he suddenly collapsed and the sister attending on the deceased rushed to inform the first respondent and he tried to revive the deceased by resuscitation and other methods but he died in operation theatre. The matter was reported to the Police. Post-mortem was done. It was the case of the complainant that Dr. Gurbani is not the qualified anaesthetist and the ultimate cause of death was the injection given by Dr. Gurbani. Matter was contested by the respondents, and State Commission, after hearing the parties, dismissed the complaint. Aggrieved by this order, this appeal has been filed before us. We heard the learned Counsel for the parties and find that the State Commission has relied upon the post-mortem report and also the report of one Dr. Vase who had conducted the inquiry as a

sequel to proceedings in the State Legislative Assembly. We also see that affidavits were filed from the complainant side by the complainant as also by the respondent. Hospital record is also on record but we find that the material evidence has not been discussed in the order passed by the State Commission and more importantly neither the post-mortem report nor the inquiry report, on which the State Commission has relied upon, has been proved. Undisputedly this is the case of alleged medical negligence and it has to stand on its own legs. The deponents of the affidavits have not been cross-examined nor the person who prepared the post-mortem report or the Doctor, who enquired into the matter were cross-examined. This, in our view, has resulted in failure of justice. This should have been done irrespective of the final outcome. The State Commission should have reached its conclusion one way or the other keeping in view the material brought on record as also resulting from the cross-examination of the deponents. This has not been done.

In view of above, we are unable to sustain this order. The case is remanded back to the State Commission to give opportunity to both the parties to lead (additional) evidence, if necessary, and also obtain any expert evidence from an independent agency and also give opportunity to both the parties to cross-examine each other's witness by themselves or through a Commission and pass orders on merit as per law on the point of medical negligence.

3. BOTH the parties are directed to appear before the State Commission on 29.5.2006. This appeal stands disposed of in above terms. Appeal disposed of.