

(1998) 03 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

S.B.JAIN

APPELLANT

Vs

Munni Devi

RESPONDENT

Date of Decision : 20-03-1998

Acts Referred:

Citation : 1998 2 CLT 13 : 1998 2 CPJ 239

Hon'ble Judges : M.R.Agnihotri , Sushil Paul , A.D.Malik J.

Final Decision : Appeals dismissed with costs

Judgement

1. THIS order shall dispose of two Appeal Nos. 99 of 1997 filed by New India Assurance Company against Smt. Munni Devi, and 124 of 1997 filed by Dr. S.B. Jain against Smt. Munni Devi, as both these appeals have been filed against the same order dated 21.1.1997 passed by the learned District Consumer Forum, Hisar, whereby the complaint of Smt. Munni Devi wife of Shri Amar Singh, alleging deficiency in service rendered by Dr. S.B. Jain of the Jain Eye Hospital, Hisar, during her medical treatment, has been allowed by passing the following order: "We hold that the respondent No. 1 liable to compensate the complainant. Since respondent No. 1 is insured with the respondent No. 2, so respondent No. 2 is liable to compensate the complainant for the act of respondent No. 1. So, we direct respondents jointly and severally liable to pay Rs. 50,000/- (fifty thousand only) to the complainant including her expenses of operation and treatment, with interest @ 12% from the passing of the order till payment."

2. THE complainant had approached the learned District Consumer Forum with the grievance that she had contacted Dr. S.B. Jain for treatment of her right eye, which, according to the said Doctor was to be operated upon for cataract. THE Doctor conducted the necessary operation of 6.10.1992, but there was no relief and ultimately she lost her right eye sight completely. Attributing negligence, carelessness and deficiency in medical service against Dr. S.B. Jain, the complainant claimed a sum of Rs. 85,000/- with interest by way of compensation. In their reply, the respondents pleaded that when the complainant had approached Dr. S.B. Jain for the first time on 14.9.1992 she had been

advised to undergo the operation within the next 2/3 days, otherwise the complications could further develop resulting into permanent loss of vision and as the complainant had come after about three weeks, it was already too late, and the operation could not bring the desired result. THE learned District Consumer Forum, after examining the evidence produced by the parties, came to the conclusion that the stand taken by Dr. S.B. Jain did not inspire confidence inasmuch as the complainant had been visiting his Hospital right from the very initial stages of the complications and if it was not a case fit for operation at all the Doctor should not have conducted the same. THE complaint was, therefore, allowed by granting the relief as aforesaid. Learned Counsel for the appellants. Dr. S.B. Jain and the New India Assurance Company with which Dr. S.B. Jain was insured, have vehemently contended that there was no deficiency in service on the part of the appellant Dr. S.B. Jain as the complainant alone was to be blamed for her indifference and carelessness in not contacting the Doctor in time. On the other hand, the learned Counsel for the complainant, Smt. Munni Devi, has vehemently pleaded that the complainant was an illiterate woman from a village and had approached the Jain Eye Hospital for the treatment of her right eye. If, in the opinion of the Doctor it was not a fit case for operation. Dr. S.B. Jain should not have conducted the same and should have advised the patient accordingly. But the fact that he charged a sum of Rs. 9,500 / - as operation charges and the patient was admitted to his Hospital where she remained for a number of days and was discharged on 9.10.1992, was sufficient to prove that there was deficiency in rendering medical service on the part of the Doctor. In fact, the learned Counsel pleads that even after the operation when the complainant was discharged on 9.10.1992, she had admittedly attended the Hospital on October 12, October 16, October 17 and October 18, 1992, for dressing, etc.

After hearing the learned Counsel for the parties at length and having gone through the record, we are of the considered view that there is no legal infirmity in the detailed and well reasoned order passed by the learned District Consumer Forum. The deficiency in service on the part of the appellant. Dr. S.B. Jain, in handling the case for conducting eye operation certainly stands fully established from the admission of the Doctor himself that it was not a case of operation at all but he conducted it on the asking of the complainant herself. The net result is, that the complainant who is an illiterate woman from a village has lost the vision of her right eye completely, though according to the Doctor there was some vision still left in the eye even at the time of operation and also immediately thereafter when the dressing was removed. In the aforesaid factual position proved on record, we do not find any merit in the appeals and the same are dismissed. The complainant-respondent Smt. Munni Devi shall also be entitled to costs of these appeals which are assessed at Rs. 1,000/- in each case. Appeals dismissed with costs.