
(2014) 09 NCDRC CK 0037

In the National Consumer Disputes Redressal Commission

Shiv Dial Singh

APPELLANT

Vs

Shree Sanatam Dharam Mahavir Dal Hospital

RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:

Citation : 2014 4 CPJ 358

Hon'ble Judges : S.M.Kantikar J.

Final Decision : Petition dismissed

Judgement

1. THE present Revision Petition has been filed before this Commission under Section 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 30.5.2012 in Appeal No. 439/2007 passed by the State Consumer Disputes Redressal Commission (in short, "State Commission"). The State Commission dismissed the Appeal filed against the order in Complaint No. Consumer Complaint 186 of 1999 dated 22.2.2007 passed by the District Consumer Disputes Redressal Forum, (in short, "District Forum"). The Complainant, Shiv Dial Singh, a businessman, suffered a minor injury in his left eye while working in the workshop in April, 1997. As there was unbearable pain, the Complainant visited Shree Sanatam Dharam Mahavir Dal Hospital -OP -1, on 3.7.1997. Dr. Kataria of OP -1, examined him, took x -ray and prescribed some medicines and advised for operation. The operation was fixed for 18.10.2014, to be conducted by Dr. Ashok Sharma, OP -2, but as OP -2 had gone out of station, the said operation was conducted by Dr. J.K. Gupta -OP -3, on the said date. During the operation, the OP -3 gave an injection on the left side of the head, due to which, Complainant's ear got damaged. He was unable to hear. Thereafter, complainant took treatment from Dr. Daljeet Singh Dhillon at Bhatinda, up to 27.10.1997. The OP -2, Dr. Ashok Sharma, returned back on 19.10.1997, checked the Complainant and put him on medicines for 6 months with advice for regular follow -up. The Complainant's eye further worsened; hence, on 4.2.1998, the Complainant visited Dr. Daljeet Singh at Amritsar, who performed X -ray, ultrasound of the left eye and opined that it was too late to cure his left eye, because it was damaged due to negligence by OP -1. Hence, on 29.5.1998, the

Complainant went to PGI, Chandigarh. There also, the doctors opined the same. The complainant filed a complaint before the District Forum, Bhatinda, against the OPs, with allegation of medical negligence, due to which, he lost his left eye and became "permanently handicapped".

2. THE District Forum dismissed the Complaint against which the Complainant preferred an appeal. The appeal was remanded back to the District Forum again, on 16.5.2006, which allowed the complaint and ordered the OPs to pay Rs. 1,00,000 along with Rs. 2,000. Aggrieved by the order of the District Forum, cross -appeals were filed before the State Commission. The first appeal filed by the complainant for enhancement of compensation was dismissed and the first appeal filed by OP was allowed.

3. HENCE , aggrieved by the Impugned Order of State Commission the Complainant approached this Commission, through this Revision Petition.

4. WE have heard the Counsel for the parties. The Counsel for the Complainant reiterated the facts and happenings. However, he contended that Dr. Ashok Sharma (OP -2) was not on leave but he was busy in the OPD. The operation was performed by Dr. J.K. Gupta (OP -3), who was not conversant with the history of the patient. The OPs 2 and 3 had not conducted USG study before the operation, hence failed to identify the foreign body. The complainant suffered due to negligence in the treatment. Instead of waiting for 5 months, the OP -1 should have referred the Complainant earlier, to the higher centre. The Counsel for the OP argued that, Complainant had undergone surgery on 29.5.1998 at PGI Chandigarh, which was performed by Dr. Amod Gupta, for the removal of foreign body from the left eye and for reattachment of the retina of the left eye. He further stated in his examination that during the operation, he removed intra ocular lens and Pars Plana Vitrectomy and also a metallic foreign body which was found in the left eye, was removed. The Counsel further submitted that, during cross examination, before District Forum, Dr. Amol Gupta admitted that the foreign body could not be located with ultrasonography before the operation. Due to presence of cataract, foreign body may not be detected always, if it was lying behind the lens. In this case, the foreign body was lying on the retina. Therefore, it could be seen only during the operation. Also, we do not find any negligence on the part of OP -3 Dr. J.K. Gupta, who has operated the left eye of the patient, in good faith. The Counsel for OP Hospital argued that it was a free camp and, therefore, no charges were paid by the Complainant to any doctors.

5. AFTER our thoughtful consideration, it is clear that, the patient had injury in the month of April 1997, but he approached doctor, after 4 months, i.e. in July 1997. This delay was fatal to him, which caused the foreign body to lodge behind the lens and there was development of traumatic cataract. It is negligence on the part of complainant himself, for which, the OPs cannot be made liable. The evidence of PGI, the higher Centre and other two doctors did not warrant any negligence committed by the OPs. There is no deviation from the standard of practice. Therefore, on the basis of foregoing discussion, we confirm the order of

State Commission and dismiss this revision petition. However, there will be no order to costs.