
(1999) 06 BOM CK 0035
In the Bombay High Court
Case No : Appeal No. 850 of 1997

Shri Deepak Behl

APPELLANT

Vs

Dr. Narendra M. Rege

RESPONDENT

Date of Decision : 01-06-1999

Acts Referred:

Consumer Protection Act, 1986 — Section 2(1), 25, 26

Citation : (2000) 1 BomCR 58

Hon'ble Judges : Rajyalakshmi Rao, Member; G.R. Bedge, J; A.A. Halbe, President

Bench : Full Bench

Judgement

A.A. HALBE, PRESIDENT

1. This appeal is directed against the order of District Forum, Nashik in Complaint No. 69/956 directing the respondent doctor to pay in all Rs. 15,000/- to the complainant, in respect of the negligence in the medical treatment of baby Juhi, daughter of the complainant. We have gone through the judgment. We have also seen the documents and we feel that the approach of the District Forum had been totally erroneous in as much as the important point of jurisdiction has been totally ignored. Although, this appeal is filed by the complainant for enhancement of the compensation, the basic issue of jurisdiction has to be taken into consideration by the State Commission. If there was no jurisdiction in the Nashik Forum, the judgment is vitiated on account of jurisdictional error committed by the District Forum. This observation is based, in view of the fact that no appeal has been filed by the Doctor, against the order. The few facts are that the daughter of complainant was found to be limping. She had a faulty gait and there was "varus/ curvature" of tibia i.e. lower main bone below the knee and that the right side leg was longer than the left leg that there was bilateral-planovalgus (reversible) i.e. a condition in which the longitudinal arch of the foot is flattened and averted. The complainant approached the Doctor Rege at Bombay for consultation. However, according to the complainant, the respondent/O.P. did not

mention the case papers about the pain at the hip level and wrongly mentioned that hip joint was normal. The respondent did not take X ray of the side in question but on the other hand prescribed tonics and proper evaluation of the child from time to time. It was advised that the child should be under observation, till she attains the age of 4 years. The complainant took repeated treatments from Dr. Rege and all along Dr. Rege did not take the X ray but only advised the observation. However, when the child was examined by Dr. Parulekar, Orthopedic Surgeon, it was revealed that there was dislocation of left hip joint from birth and the diagnosis was made as "congenital dislocation of left hip joint. Dr. Johari carried out the surgery at Nanavati hospital, where the operation was performed in September, 93. The complainant was required to spend Rs. 55,813.95 for hospital/ medical charges etc. The allegation is that Dr. Rege, did not advice the correct treatment of surgical intervention. This prolonged the disability of the child and therefore, the complainant claimed the claim of Rs. 2 lakhs from the Opposite party.

2. Surprisingly, in appeal, the claim has been enhanced to Rs. 8 lakhs and odd on various grounds.

3. The documents clearly reveal that the opposite party is in Bombay and that the case papers show that the prescriptions were made at Bombay. No part of the cause of action arose at Nasik. It was therefore, an error on the part of the District Forum, to have tried the case at Nasik.

4. Although this appeal is for enhancement of the compensation, the basic issue of jurisdictional error can not be ignored. It is also to be found that the Opposite party has contended that no payment was made towards the fees. The enhancement of the claim at this stage is not permissible. All the same, when the District Forum entertained the complaint, we believe that the claim of the complainant can well be considered by remitting this complaint to the proper form viz. District Forum, Mumbai Suburban District, where the parties should be allowed to appear after due summons. They should also adhere evidence, put their pleadings etc. We, therefore, pass the following order.

ORDER

5. The appeal is allowed. The order of the District Forum in Complaint No. 69/95 dated 21-7-97 is set aside. The complaint is remitted to District Forum, Mumbai Suburban District (Proper Forum) for disposal according to law. The District Forum, Mumbai Suburban District shall issue notice to both parties, permit the parties to put up their respective pleadings and also lead the evidence and repetitiously dispose off the complaint. There should be however, no order as to cost. A copy of the judgment be sent to the District Forum, Nasik for submitting the Original Record and proceedings to District Forum, Mumbai Suburban District.

6. Appeal allowed.