
(2015) 07 NCDRC CK 0130

In the National Consumer Disputes Redressal Commission

Case No : 53 of 2015

SUBRATA DAS

APPELLANT

Vs

DR. UTPAL CHATTERJEE & 2 ORS

RESPONDENT

Date of Decision : 07-07-2015

Acts Referred:

Citation : 2016 1 ALD 30

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

Advocate : A. Subhashini Rao, UTPAL CHATTERJEE

Judgement

1. The patient, Nirmala Das was suffering from chronic myeloid leukaemia (CML) and she was admitted under supervision of Deputy Superintendent, ESI Hospital (OP-3) on 03.06.2008. The Oncologist Dr. Shantanu Basu, ESI Hospital, Sealdah, prescribed Dastinib 50 mg medicine, but the OP Hospital failed to provide the said medicine to the patient. Hence, the patient's condition deteriorated and she expired. Therefore, alleging that the failure to supply the medicine was the cause of death, the patient's son Mr. Subrata Das filed the complaint before the District Consumer Disputes Redressal Forum, Kolkata, and Unit II (hereinafter referred as "District Forum". The District Forum allowed the complaint and awarded the sum of Rs.1,00,000/- to be paid jointly and severally by the OPs.

2. Aggrieved by the order of the District Forum, OP-3 Dr. Subrata Sengupta filed the First Appeal no. 973 of 2012 for dismissal before the State Commission, West Bengal, whereas complainant filed First Appeal No. 983 of 2012 for enhancement of compensation. The State Commission disposed of both the appeals and dismissed the complaint. Hence, against the order of the State Commission, the complainant preferred this revision petition.

3. Heard the counsel for the parties. The Amicus Curiae Smt. A. Subhashini Rao argued on behalf of the complainant that, it was responsibility of OP/respondent to provide necessary medicine as per the prescription of doctor. There was a deficiency in service as administrative staff failed to procure necessary medicine within time. The rival arguments advanced by the counsel for OP, that the patient

was suffering from CML and Dr. Sengupta was part-time doctor. Patient was 66 years old. He was given blood transfusion and medicines. The Dasatinib medicine was expensive, which was not in stock of the hospital.

4. Therefore, the request was sent to Health Department for purchase of the said medicine. The counsel relied upon the decision of Hon"ble Supreme Court in case titled as " Marine Container Services South Pvt. Ltd. Vs. Go Go Garments " AIR 1999 SC 80; it is not applicable as, the facts are different in the instant case. Therefore, in my opinion that, due to paucity, the Dasatinib was not in stock of the hospital and the necessary steps were taken to procure those medicines from Health Department by the OP. Thus, under those circumstances, the patient would have purchased Dasatinib from outside pharmacy and claimed for reimbursement from the authority. Thus, it shows lax attitude of the patient or her relatives who were equally responsible.

5. Therefore, on the basis of forgoing discussion, I do not find any deficiency in service on the part of the OPs. Therefore, dismiss both the revision petitions in limine with no order as to costs.