
(2013) 05 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

Sunil Kumar Bijpuria

APPELLANT

Vs

Priya Dubey @ Preetam Mishra

RESPONDENT

Date of Decision : 01-05-2013

Acts Referred:

Citation : 2013 3 CPJ 138

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

Final Decision : Petition dismissed

Judgement

1. THIS revision petition is preferred against the order dated 19.6.2012 passed by the learned Jharkhand State Consumer Dispute Redressal Commission Ranchi, Jharkhand in First Appeal No. 375 of 2009 by which the learned State Commission dismissed the appeal. Facts in brief:

On 5.12.2005 Smt. Priya Dube, a Complainant/respondent attended the OPD of Sadar Hospital, Deoghar for acute pain in her left wrist The respondent - petitioner Dr. S.K. Bijpuria is a Government Medical Officer at Sadar Hospital, Deoghar, Bihar State. The doctor examined Smt. Priya Dubey and prescribed certain medicines and X -ray without taking any fees; and also insisted Smt. Priya to purchase medicines outside from Satyanarayan Medical Hall and X -ray from Central X -ray, which are private establishments. Further she was diagnosed with fracture of lower end of radius and advised POP but the pain did not subside and she suffered. But the appellant denied of any treatment given to Smt. Priya and no negligence on his part. On 27.1.2006 she had taken treatment form consulted another orthopaedic surgeon Dr. Ajay Kumar by which pain and swelling of same wrist relieved.

2. THE District Forum dismissed the complaint No. 14/2006 observing as no negligence or deficiency in service by OP/appellant. The Complainant filed a first appeal No 375/2009 before State Commission who heard the Counsel of both sides and considering evidence on record hold the OP Doctor S.K. Bijapurja himself have put POP and prescribed medicines to Smt. Priya Dubey as alleged and the reports as well as prescription on different dates contradict him and his

Counsel failed to explain this, the denial itself is deficiency in service for which the learned State Commission has imposed a fine of Rs. 5,000 on Dr. S.K. Bijapuria.

3. AGGRIEVED by order of State Commission the present revision petition filed. We heard the learned Counsel of both the parties and perused the documents on record. Our findings are as follows:

4. ON perusal of OPD slip and prescriptions it is true that Smt. Priya Dubey attended the Govt. hospital OPD of appellant/OP on 5.12.2005 who advised/prescribed X -ray of left wrist, few medicines and FOP from outside. As the X -ray report was available on record but the assertion of opposite party that he did not treat and not put the POP but on perusal of the OPD prescription slips, it becomes more pertinent why the OP has advised POP and asked for required material purchased on the same day from Satyanarayan Medical Hall vide receipt No. 1331 dated 5.12.2005 which clearly mentioned the name of prescribing doctor. Hence, it is quite possible no other than Dr. S.K. Bijapuria himself have put FOP and prescribed medicines to Smt. Priya Dubey. We hold that Dr. Bijapuria has plastered the left wrist of Smt. Dubey on 5.12.2005 and treated her again on 10.1.2006, 27.1.2006. The POP was removed on 10.1.2006 but pain persists. Thereafter on 27.1.2006 Smt. Priya Dubey consulted Dr. Ajay Kumar for same complaints of pain in her wrist which were treated by him and shown curative results. But, to establish medical negligence as alleged by complainant there is no evidence or the complainant has not been able to prove that the treatments were incorrect Hence, in absence of X -ray report or X -ray film such evidence difficult to hold respondent negligent in treatment.

5. EVEN the OP found fracture on X -ray, it is an error of judgment and putting POP cast does not amount to medical negligence. The complainant did not file any evidence of Dr. Ajay Kumar to prove her case. On perusal of consultation slip of Dr. Ajay Kumar who diagnosed this case as "Dequervain Synovitis" where the extensor tendon of thumb involved. Dr. Ajay Kumar treated the complainant by steroids and advised wrist brace. We won't think of any negligence of appellant. We did not find any infirmity that the appellant has put POP even though X -ray did not show crack which is also one of the preferred lines of treatment in such patients.

6. IN contra, we confirm the view of State Commission that OP/petitioner Dr. S.K. Bijapuria is liable for the deficiency. It is surprising to note that why the Government hospital doctor advised medicines and X -ray from outside. He did not mention whether such facility for X -ray was not available in his Govt. Hospital at that time. It appears to be unethical indulgence by a Government Doctor to refer patients to private x -ray clinics, laboratories and for purchase of medicines. It is known fact that such unethical practices are rampant in Govt. Hospitals which are difficult to prove; but the patients are real victims. The OP has claimed falsely that he has not treated Smt. Dubey nor got the X -ray from Central X -ray Clinic, the reports as well as prescriptions on different dates

contradict him. If it is true why the cash memos of Satayanarayan Medical Hall, the X -ray report bear OP name as referred by. It is pertinent to note that no pharmacy or diagnostic centre mention doctor's name casually. Therefore, such denial itself is deficiency in service for which the learned State Commission has imposed a fine of Rs. 5,000 on the OP/petitioner. Therefore, we agree with the findings of State Commission that there is no medical negligence as such, but the appellant is liable for the deficiency in service as denial of reality and unethical practices. Accordingly, the revision petition is dismissed.