

(1997) 04 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

TAPAN KUMAR NAYAK

APPELLANT

Vs

STATE OF ORISSA

RESPONDENT

Date of Decision : 09-04-1997

Acts Referred:

Citation : 1997 0 NCDRC 44 : 1997 2 CPJ 14 : 1997 2 CPR 104 : 1997 5 CTJ 410 : 1998 1 CPC 233

Hon'ble Judges : V.BALAKRISHNA ERADI , S.S.CHADHA , R.THAMARAJAKSHI , S.P.BAGLA , C.L.CHAUDHRY J.

Judgement

1. THE Appellants are not present either in person or through authorised representative when the case is called for hearing. We have carefully gone through the records of the case with the assistance of Ms. Kirti Mishra who appeared on behalf of the State of Orissa (Respondent). This is a very unfortunate case where an infant who was administered the triple antigen injection as well as anti polio drops to immunise it against contracting diphtheria, tetanus, whooping-cough and polio myelitis developed severe reaction resulting in damage to his brain causing muscular deformity and deficiency as in the case of polio myelitis.

2. THE Complainant Nos. 2 and 3 who are the father and the mother of the infant brought the complaint before the State Commission, Orissa claiming compensation from the Government of Orissa on the allegation that there was negligence on the part of the concerned doctors who administered the medicine and it was the result of such negligence that the child suffered irreversible damages. The State Commission enquired into the matter in detail and found that the allegations of negligence levelled against the concerned Government Doctors were not established and that hence there was no scope for awarding relief to the Complainants under the Consumer Protection Act. We have examined the materials on record and we find that the conclusion so reached by the State Commission cannot be said to be erroneous or unwarranted by the evidence. Though it had been suggested before the State Commission by the complainants that the DPT which was administered to the child was defective,

from the enquiry report submitted by the District Immunisation Officer, Cuttack which is at page 13 of the paper book it is seen that none of the other children who had also been vaccinated out of the same batch of the vaccination had suffered any complication of the present kind and hence it could not be said that there was any defect in the vaccine which was administered to the infant of the Complainant Nos. 2 and 3. In these circumstances, we confirm the order passed by the State Commission dismissing the complaint on the aforementioned ground that no negligence had been made out against the opposite parties. We also affirm the observation made by the State Commission that necessary action should be taken by the State Government of Orissa against the staff who was responsible for displaying such indifference as not noting the batch number, date of manufacture and expiry date etc. in the register maintained in respect of the administration of vaccines to infants. We may also observe that in our opinion, the State Commission was quite right in recording the finding that the Complainants in the case cannot be regarded as consumers entitled to maintain the complaint inasmuch as there was no arrangement of hiring of service for consideration as between them and the Opposite Parties.

3. HAVING regard to the very unfortunate nature of this case and the very indigent position in which the parents of the infant are placed, we would strongly recommend to the State Government that steps may be taken by the State Government to render all possible assistance to the parents of the child in the matter of providing proper rehabilitation treatment to the child since there is every possibility that a substantial portion of the disability arising out of the polio myelitis may be got over by proper rehabilitation treatment. Counsel appearing for the Respondent assures us that she will take up the matter with the State Government and impress upon it the imperative necessity of implementing this recommendation.