

(1997) 09 NCDRC CK 0071

In the National Consumer Disputes Redressal Commission

TOMARINO MARCEL D'CRUZ

APPELLANT

Vs

MANAGEMENT OF ST. JOSEPH'S BOYS' HIGHER SECONDARY
SCHOOL

RESPONDENT

Date of Decision : 12-09-1997

Acts Referred:

Citation : 1998 1 CPJ 340

Hon'ble Judges : E.J.Bellie , Pulavar V.S.Kandasamy , Angel Arulraj J.

Final Decision : Complaint dismissed

Judgement

1. THE complainant Tamarino Marcel D'Cruz is a minor represented by his father. THE petitioner minor boy was a student in the 1st opposite party School at Coonoor. He was a boarder in the hostel of the Institution. On 25.10.1992 at 6 p.m. due to a fire accident in the Z School grounds, the petitioner boy's right eye was injured. THE School Authorities including the 2nd opposite party Vice Principal attended on the boy and the boy was taken to the 3rd opposite party Hospital and there, the 4th opposite party Doctor treated the boy. Evisceration was done i.e., the whole eye was removed by operation. (Even though the petitioner is a minor boy represented by his father, the recitals in the complaint reads as though the petition has been filed by the father himself.) According to the complainant, even though the boy's parents were living in Wyanad at about 140 kms. away from the School, without giving information about the accident to his parents, the School Authorities have allowed the operation to be performed on the boy. THE operation was not done properly and on account of that the boy had lost one eye of his. THE School Authorities have wrongly allowed the students to play with crackers in the School premises. It was due to the negligence on the part of the School Authorities and the improper and negligent manner the treatment including the operation was given to the boy, the boy has lost his eyes. His parents also have suffered mental pain and agony. On these allegations, the complaint was filed claiming compensation under different heads totalling in all to Rs. 10,15,500/-.

2. THE opposite parties 1 and 2 filed their written version contending that since it was a Deepavali day, the boarders in the hostel were celebrating the festival by screening movies, bursting crackers and having special dinner. It was so regulated that the bursting of crackers was performed only between 7 p.m. and 7.30 p.m. But unfortunately, at about 6.15 p.m., one of the boys had lit a small rocket cracker which had gone in the wrong direction and hit the eye of the petitioner boy who was standing at about 50 feet away. He was immediately taken to the School hospital. THEN he was rushed to Emmanuel Eye Hospital. Since unfortunately no Doctor was present there, the boy was taken to the 3rd opposite party hospital and there, the 4th opposite party Doctor treated the boy. Since the 4th opposite party Doctor stated that the boy had to be immediately operated upon, the School Authorities gave consent for the same. In the circumstances of the case, whatever was best was done to the boy and therefore, there was no deficiency in service on the part of the 1st and the 2nd opposite parties. THE School had paid the bill amount of Rs. 4,860/- for the medical services rendered to the boy and also they have paid a sum of Rs. 10,000/- to his parents when he was being taken from the Institution for possible future medical treatment. THEREfore it is not correct to say that there was any deficiency in service on the part of the opposite parties 1 and 2. The opposite parties 3 and 4 in their written version would contend that the 4th" opposite party Doctor was well qualified being an MBBS and D.O.M.S. to perform eye operations. On seeing the boy, the 4th opposite party felt that a detailed examination without anaesthesia was not possible. Therefore, after giving general anaesthesia, the examination was done. It was noted that the right eye had been shattered to pieces and the eye had been totally damaged on account of the fire cracker rocket hitting the eye. The contents of the right eye ball was missing. In other words, technically the perforating injury had caused an expulsive haemorrhage. A portion of cornea and sclera alongwith the internal contents of the eye i.e.. Aqueous Humor, Crystalline Lens, Vitreous Humor, a portion of the choroid and retina were all extruded out by the torrential haemorrhage occurring under the Retina - a condition called as explosive haemorrhage. The bleeding that was continuing from the remnants of the eye ball was tackled by a procedure known as Evisceration to prevent sympathetic Opthalmia i.e., involvement of the good eye following grievous injury to the other eye. It was with the permission of the School Authorities the operation was done, and before the operation they were clearly told that evisceration was the only procedure to be adopted to prevent further complication, the most dreaded being sympathetic Opthalmia which is involvement of the good eye following grievous injury to the fellow eye. Considering all these factors and the nature of the injury, the 4th opposite party took all preparations to conduct a major surgery and a major surgery was done and the School Nurse who accompanied the injured patient also attended the surgery. Under these circumstances, no Doctor or Nurse could have saved such an eye. If such a severe injury in an eye is left untreated for 48 hours as stated in the complaint, it would have definitely caused very severe infection which would have affected the brain causing danger to the

boy's life. If the right eye which was totally damaged was not removed, it would have been considered as an act of negligence on the part of the 4th opposite party. It is a case where the parents and the boy should thank the Doctor instead of finding fault with him. Therefore, there was no negligence either on the part of the 3rd opposite party hospital or the 4th opposite party Doctor.

The point that arises for consideration is whether there was any deficiency in service on the part of the opposite parties as alleged.

3. AS against the 1st opposite party School and the 2nd opposite party Vice Principal, the case in the complaint appears to be that they are responsible for the injury caused due to the fire crackers and that the School Authorities had given consent to the Doctor to do the operation without informing the parents of the boy immediately and waiting for their arrival. We are of the view that there is no merit in this allegation at all. When the boy had been injured in the eye, one would expect the School Authorities to give immediate treatment and that was what they have done in this case. According to them, immediately the boy was taken to the School Hospital and from there he was rushed to Emmanuel Eye Hospital, but since there was no Doctor at that time, the boy was taken to the 3rd opposite party hospital and there, the 4th opposite party Doctor attended on the boy. The parents were living admittedly 140 kms. away from the School. It is admitted that while the accident happened at 6.30 p.m. they were informed at about 8 p.m. According to these opposite parties 1 and 2, the 4th opposite party Doctor told them that immediately an operation has to be done and therefore, per force they had to give their consent for the same since otherwise there was a possibility of disastrous results happening. In consideration of these facts and circumstances, it would appear very clear that it cannot at all be said that there was any deficiency in service on the part of the opposite parties 1 and 2. Coming to the opposite parties 3 and 4, there is absolutely no allegation in the complaint against the 3rd opposite party hospital except stating that the hospital was not sufficiently equipped for the operation. That allegation has been repudiated by them. Apart from that, there is nothing to substantiate the same. Therefore there is no case at all against the 3rd opposite party Hospital.

4. IN the written version it has been clearly stated that the right eye had been shattered to pieces and had been totally damaged on account of the fire cracker rocket hitting the eye and the contents of the right eye ball was missing. The evisceration had been done to prevent involvement of the good eye also following the grievous injury to the righteye. Since evisceration was the only remedy, that was done and the 4th opposite party Doctor had taken all necessary tests before the operation. The complainant has not let in any evidence to rebut the said claim of the 4th opposite party Doctor in the written version filed by the 3rd and the 4th opposite parties. The 4th opposite party Doctor has examined himself as a witness (RW-1) and he has given evidence substantiating what has been stated in the written version. He has categorically stated that if the operation had not been done on that date, it could have been disastrous and he

would have been charged with omission. Nothing has been elicited in the cross examination that would discredit the evidence of the Doctor in the chief examination. Therefore, there is nothing to show that there was any deficiency in service on the part of the 4th opposite party Doctor. Thus we find no merit in the complaint. Accordingly, the complaint is dismissed. However, there will be no order as to costs. Complaint dismissed. _____