

(1997) 07 NCDRC CK 0070

In the National Consumer Disputes Redressal Commission

Union of India

APPELLANT

Vs

A.P. MATHUR

RESPONDENT

Date of Decision : 17-07-1997

Acts Referred:

Citation : 1997 3 CPJ 424 : 1998 1 CPR 591

Hon'ble Judges : A.P.Chowdhri , Desh Bandhu J.

Final Decision : Appeal dismissed

Judgement

1. BRIEF facts giving rise to this appeal are that one Mr. A.P. Mathur, retired from the post of Deputy Secretary, Ministry of Health and Family Welfare in February, 1972. He however, continued to be a Member of CGHS for which he was paying a small amount every month. He incurred a sum of Rs. 2,285/- for Intra Ocular Lens (IOL) being implanted by A.I.I.M.S. He also invested some expenses and medicines and injections as well as coloured film and made a claim for reimbursement. Whereas the sum of Rs. 240/- incurred on medicines etc. and sum of Rs. 170/- on coloured film were reimbursed, the expenses incurred on IOL were declined to be reimbursed on the ground that the said item had not been included in the items which are reimbursible. He, therefore, filed a complaint being complaint No. 723/93 before District Forum-II. The case was contested by order under appeal, the District Forum held (i) that the complainant was a consumer and (ii) that there was no logic in confining the reimbursement to items mentioned in the list of reimbursible items and support was also taken from the fact that by a later circular dated 4.5.92 the list had also been amended to include expenses incurred on IOL implantation subject to a ceiling limit of Rs. 6,500/-. In the instant case the expenses had been incurred by the complainant on 6.11.91. It was, therefore, directed that the complainant shall be paid Rs. 2,285/- incurred on IOL implantation together with the interest @ 12% per annum with effect from 6.11.91. Aggrieved by the order, the OP, namely Union of India, has preferred this appeal.

2. ALONGWITH the reply, an application under Order 22, Rule 2 r/w Section 151

CPC and Section 17 of the Consumer Protection Act has been made by the Legal Representatives of the deceased Mr. A.P. Mathur. In the application it has been stated that Mr. A.P. Mathur died on 11.12.95 leaving a Will in favour of his two nephews Ashok Kumar Mathur and Om Prakash Mathur and that they were entitled to be brought on record as L.Rs. of the deceased. The first question which arises for consideration is whether a decree passed in favour of a deceased person is a valid one. As the right to sue survive, the complaint did not abate and the proposed L.Rs. are entitled to be brought on record. We order accordingly.

The next question is of limitation. The impugned order is dated 11.1.96. Admittedly certified copy was received by the OP, appellant herein, on 8.2.96 and the present appeal was filed on 4.6.96 i.e. after a delay of 111 days. An application for condonation of delay has also been made. The reason attributed for the delay in filing the appeal is movement of the file for which ultimately a decision was taken that the appeal should be filed and a lawyer instructed to prepare and file the appeal. The application has been opposed by Mr. Vipin K. Dwivedi who placed reliance on V.C., DDA v. O.P. Gauba, III (1995) CPJ 18 (NC)=1995 (2) CPR 464. The delay was in that case for 3 days. There was an application for condonation of delay it was held by the National Commission that inter office consultation for prolonged period was not sufficient cause for condonation of delay and accordingly prayer for condonation was declined. In our view the present case is completely covered by the aforesaid decision and, therefore, the appeal must fail on the short ground of limitation.

3. ASSUMING for the sake of argument that an appeal had been filed within limitation or the delay had been condoned on merits, the decision of the District Forum deserves to be set aside as payment of a token amount under the CGHS Scheme has been held to be no consideration for the purposes of definition of "Consumer" under the Consumer Protection Act and the Forums have no jurisdiction to entertain cases relating to deficiency in service as far as CGHS is concerned. This is based on recent decision of the National Commission in the Additional Director, CGHS v. Dr. R.L. Bhutani, Revision Petition No. 219/95 decided on 9.2.96 and reported in I (1996) CPJ 255 (NC)=1986-96 Consumer Part-II 1969. In view of our conclusion that the appeal is barred by limitation, we are unable to interfere with the order passed by the District Forum and we accordingly dismiss the appeal leaving the parties to bear their own costs. A copy of the order be communicated to both the parties as well as District Forum-II. Appeal dismissed.