
(2014) 05 NCDRC CK 0076

In the National Consumer Disputes Redressal Commission

Usha Lakshman

APPELLANT

Vs

N. Chandrashekar Neuro Surgeon

RESPONDENT

Date of Decision : 07-05-2014

Acts Referred:

Citation : 2014 0 NCDRC 254

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : ABHINAV BAJAJ

Judgement

1. APPELLANT has filed this appeal against the order dated 5.11.2008 passed by the Karnataka State Consumer Disputes Redressal Commission, Bangalore (in short, "the State Commission ") in Consumer Complaint No. 64 of 2005 - Usha Lakshman & Ors. Vs. Dr. N. Chandrashekar & Anr., by which, complaint was dismissed.

2. COMPLAINANTS /Appellants filed complaint before State Commission for compensation due to negligence in conducting second surgery of deceased S. Lakshmana Swamy. Both parties led evidence before the State Commission and after hearing both the parties, complaint was dismissed against which, appellant filed this appeal and also filed application under Order 41 Rule 27 CPC for seeking permission to lead additional evidence. Respondents did not appear and submitted reply by post.

3. HEARD learned Counsel for the appellant and perused reply submitted by respondent.

4. APPELLANT submitted that during pendency of complaint, complainant expired on 5.5.2008 after a prolonged illness and legal heirs of the complainant which included his widow and daughters were left in a state of financial and emotional lurch and it was not possible for them to pursue the case. Consequently, important evidence of Dr. Swarup Gopal, Neuro Surgeon and Dr. Venkatesh Krishnamurthy could not be placed before State Commission. In such circumstances, application may be allowed and he may be permitted to lead

additional evidence at this stage. Respondent submitted that parties led their oral evidence through affidavits and interrogatories were also served on them and opportunity was granted. Appellant led evidence, but appellant never made a request expressing their inability to secure evidence of aforesaid witnesses. In such circumstances, now, appellant cannot be permitted to lead evidence of aforesaid doctors. It was further submitted that in memo of appeal appellants have mentioned that due to bonafide mistake of the Counsel for the Appellant, the aforesaid doctors were not examined. In such circumstances, application deserved dismissal. Perusal of record clearly reveals that number of opportunities were given to the appellant to file affidavit evidence and complainant filed his evidence and also cross -examined OP and his witness. Complainant never requested learned State Commission for calling Dr. Swarup Gopal, Neuro Surgeon and Dr. Venkatesh Krishnamurthy. Perusal of order sheets further reveals that after completion of evidence of both the parties on 6.12.2007, matter was fixed for arguments on 31.1.2008 and from time to time number of adjournments were granted and in such circumstances, it cannot be inferred that on account of death of complainant on 5.5.2008, legal heirs of the complainant could not examine Dr. Swarup Gopal, Neuro Surgeon and Dr. Venkatesh Krishnamurthy.

5. PERUSAL of order sheets clearly reveals that sufficient opportunity was granted to the complainant to lead evidence and he chose not to examine aforesaid witnesses and in memo of appeal, it has clearly been mentioned that due to bonafide mistake of the Counsel for the appellant, doctors could not be examined. Order 41 Rule 27 CPC cannot be invoked for fulfilling lacuna and additional evidence can be led only if either that was not in the knowledge of the parties or even after exercising of due diligence could not be produced by him before the Trial Court. In the case in hand the complainant had full knowledge of evidence of both the aforesaid witnesses and has filed their medical opinion and intentionally not produced them before State Commission and in such circumstances, now he cannot be permitted to fill up lacuna and application under Order 41 Rule 27 CPC is liable to be dismissed.

6. LEARNED Counsel for the petitioner placed reliance on III (2005) CPJ 64 (NC) - HUDA Vs. KamaljitKaur Ahluwalia and Ors. in which in first paragraph of the order it was observed as under: ""We further reiterate that proceedings before the Consumer Fora are not adversary litigation but are inquisitorial and hence even if points were not highlighted by the parties, even then, it was a duty/function of the consumer fora to appreciate the evidence brought on record and to arrive at a just and proper conclusion "".

We agree with the aforesaid observation, but this observation does not help to the petitioner as petitioner was having knowledge of evidence of Dr. Swarup Gopal, Neuro Surgeon and Dr. Venkatesh Krishnamurthy and he intentionally not examined these witnesses before the State Commission. State Commission appreciated the evidence brought on record by both the parties and passed

impugned order.

7. IN such circumstances, application for additional evidence under Order 41 Rule 27 CPC filed by the Appellants is dismissed.

8. PUT up for final arguments on 30.9.2014.