

(2011) 01 NCDRC CK 0013

In the National Consumer Disputes Redressal Commission

Yashumati Devi

APPELLANT

Vs

CHRISTIAN MEDICAL COLLEGE

RESPONDENT

Date of Decision : 21-01-2011

Acts Referred:

Citation : 2011 1 CPJ 308

Hon'ble Judges : R.K.Batta , Vinay Kumar J.

Final Decision : Complaint dismissed.

Judgement

1. THIS complaint has been filed by Yashumati Devi, wife of deceased late Raj Ballav Ram who is complainant No. 1 and Dhananjay Kumar, Complainant No. 2 who is the son of Smt. Yashumati Devi and the deceased. The deceased was 59 years of age and had gone for confirmatory angiogram test to CMC, Vellore. The deceased had slight pain in the left arm while walking uphill or walking up 3 flights of stairs since 2006. He had undergone TMT test, which was positive and was advised confirmatory test of angiogram. He was admitted on 9.6.2009 for tests On 13.1.2009, angiography was advised. He was admitted on 14.6.2009 for coronary angiography and angioplasty, if required. On 16.6.2009, he was put on heparin 5000 units every 6 hourly. On 17.6.2009, after third injection of heparin 5000 units, he slipped into deep coma. Ultimately, he died on 20.6.2009.

2. THE diagnosis of the hospital was "Intracranial Haemorrhage Ischemic Heart Disease Diabetes Mellitus Hypertension". The complainants have sought compensation of Rs. 2,01,44,000.

3. LEARNED Counsel for the petitioner was heard on admission of the matter inasmuch as the claim was, prima facie, found to be speculative, without data and supporting material on many heads under which the compensation has been claimed. The total claim made is to the tune of Rs. 2,01,44,000.

4. SENIOR Counsel for the Complainant has submitted that the claim has been filed for actual loss suffered for which sufficient data has been placed on record. Senior Counsel has placed reliance on a number of judgments, but it is not

necessary to refer to the same as rulings cannot help unless the facts disclosed make out a case prima facie justifying the claim.

5. AT the admission stage the complainant has to prima facie satisfy that there is sufficient justification and material to make the claim. The claim has to be just and reasonable and the complainant cannot be permitted to make exorbitant, excessive or speculative claim with the ulterior object of giving pecuniary jurisdiction to a particular Court or Forum. The claim filed by the Complainants can be divided into following heads: 1. Hospital Expenses 2. Loss on account of earning capacity 3. Expenses incurred on conveyance, boarding and lodging 4. Loss in agricultural income from ancestral property. 5. Claim on account of negligence of doctors. 6. Compensation on account of mental strain and agony to the deceased, mental strain and agony of the complainants, mental strain and agony of elder brothers of the deceased and mental strain and agony of sisters, wife and other relatives. 7. Expenditure incurred for carrying dead body from Vellore to Village Tanchanpur and general expenses. 1. Hospital Expenses: (items (a), (b), (c) at page 16 of complaint) Under this head, the expenses claimed are: (a) Hospital expenses as substantiated by consolidated bill given by hospital Rs. 86,000 (b) Misc. expenses, such as payment to staff, Sundry Expenses Rs. 25,000 (c) Expenses incurred on several tests done in hospital itself by charged separately Rs. 8,000 Rs. 1,19,000 The above expenditures can be, prima facie, accepted for the purpose of admission of the matter. 2. Loss on account of earning capacity: (Item (f) at page 17 and 18 of the complaint) (f) Loss of salary as the retirement was due on 31st July, 2009 Rs. 40,000 Loss due to non-commutation of Pension [Central Civil Services (Commutation of Pension) Rules, 1981] Rs. 4,50,000 The two elder brothers of the deceased are aged 92 and 78 and are still surviving and by the token of their example one can modestly presume that he could have lived at least till 85 years of age Based on such presumption loss of pension benefits which gets reduced to half on demise and surviving spouse receives a pension without the associate in crements on time-to-time pay revision Rs. 15,00,000

6. IN this respect, the loss of salary as the retirement was due on 31st July, 2009, is stated Rs. 40,000. In this connection, along with additional affidavit filed by the complainant last pay certificate has been annexed which shows that the gross salary last drawn till June, 2009 was Rs. 26,437. The deceased was to be retired on 31.7.2009 after which the pension would be paid. Therefore, the pension of the deceased would come to around Rs. 13,000 per month only. It is claimed by the complainant that the deceased would have lived till the age of 85 years. The normal expectancy of life is taken as 65 years. The claim for loss of pension has been stated to be at Rs. 15,00,000, which is much on higher side. The total pension for 5 years till the age of 65 years would come to Rs. 7,80,000 out of which 1/3rd would be incurred by the deceased on himself and admissible claim would come to around Rs. 5,00,000 and the loss due to non-computation compensation is claimed at Rs. 4,50,000 besides Rs. 40,000 being loss of salary. Thus, the total amount admissible under this head would be Rs. 10,00,000 if the

longevity of life is taken as 65 years and Rs. 15,00,000 if the longevity of life is taken as 70 years. The said amount can be prima facie accepted for the purpose of admission of the matter. 3. Expenses incurred on conveyance, boarding and lodging (Item Nos. (d), (e) at page 16) (d) Expenses incurred during the stay at Vellore by the way of lodging in Hotels and food bills of five people (including the patient) for five days and there after of eight people for four days Rs. 2,00,000 (e) Four people namely Raj Ballav Ram, Yashumati Devi, Mahesh Prasad and Anil Kumar travel ling from Tata Nagar Jn. to Vellor in 2nd AC including Incidental expenses such as taxi, food, and other Misc. expenses. Rs. 40,000 Complainant No. 2 rushing from Mumbai by flight after the un fortunate and rather ill mannered truisms of the first consultant doctor including expenses such as taxi, food and other Misc. expenses. Rs. 15,000 Three relatives rushing from Tatanagar by Kolkata to Chennai Flight after hearing the sudden news of the deceased slipping into coma including incidental expenses such as taxi, food and other Misc. exp. Rs. 95,000 Bangalore-Kolkata including incidental Expenses such as taxi, food and other Misc. expenses Rs. 1,60,000 Kolkata-Tatanagar including incidental expenses such as Taxi, food, and other misc. exp. Rs. 20,000

7. THE total expenses claimed are Rs. 5,30,000. The expenses incurred by wife of the deceased and the son of the deceased namely the complainant under this head are quite reasonable, but the expenses incurred by relatives cannot be prima facie allowed. The expenses incurred by the wife of the deceased and son of the deceased complainant and carrying dead body from Vellore to the village can be prima facie taken as Rs. 2,00,000 and rest of the claim is speculative in nature. 4. Loss in agricultural income from ancestral property (Complaint page 18) and loss of salary of Complainant No. 2 and his wife The loss is claimed to be Rs. 25,00,000 @ Rs. 2,00,000 per annum. As per income certificate filed the said income is of all family members consisting of 3 adults. Loss of salary of complainant No. 2 and his wife as they had to take leave without pay thereby risking their job Rs. 1,00,000

8. THE loss is stated to be from ancestral property. In the additional affidavit filed by the complainant it is stated that the deceased's brothers were waiting for his retirement so that the agricultural land could be further enhanced. Thus, the agricultural income from ancestral land did not belong solely to the deceased. No prima facie material has been placed on record in order to prima facie justify this stand, nor any income tax returns have been filed to show the income disclosed from the ancestral property. Therefore, this claim is without sufficient basis and speculative in nature. Even otherwise income from the property would continue irrespective of the death of the deceased. No data has been filed in support of claim for loss of salary of Complainant No. 2 and his wife. 5. Claim on account of negligence of doctors: (g) Total neglect of the lower hospital staff in conducting CT Scan and the delay of around 4 hours which was avoidable and the resulting Heparin induced Pight Intracranial Bleed progressing beyond redemption (admitted in report itself). Rs. 12,00,000 (h) Damages for neglect of the hospital doctors in administering Heparin when it was not warranted. Rs. 17,00,000 (j)

Damages for violating the invaluable right of the patient to give consent for surgery (no consent was obtained from either the patient or the complainants for CABG (Coronary Arterial By pass Grafting) Rs. 16,00,000 (l) Wanton delay of the hospital doctors in not attending to the deteriorating condition of the deceased. Rs. 19,00,000 The total claim under this head comes to Rs. 64,00,000. No basis for this claim is disclosed anywhere in the complaint, nor any material in support has been produced. The claim is highly exaggerated, speculative and unrealistic.

6. Compensation on account of mental strain and agony to the deceased, mental strain and agony of the complainants, mental strain and agony of elder brothers of the deceased and mental strain and agony of sisters, wife and other relatives: (Complaint pgs.18 and 19) (f) Mental strain and agony of deceased Raj Ballav Ram seeing himself deteriorating gradually in the hospital and ultimately dying. Rs. 18,00,000 Mental strain and agony and loss of companionship of complainant No. 1 seeing her husband deteriorating gradually in the hospital and ultimately dying. (i) Mental strain and agony and loss of companionship of complainant No. 1 seeing her husband deteriorating gradually in the hospital and ultimately dying Rs. 13,00,000 (k) Mental strain and agony of complainant No. 2 seeing his father deteriorating gradually in the hospital and ultimately dying Rs. 14,00,000 (m) Mental strain and agony of deceased's two elder brothers around 92 and 78 for losing their youngest brother and most loved brother so suddenly and seeing him deteriorating gradually in the hospital and ultimately dying. Rs. 11,00,000 (n) Mental strain and agony of complainant No. 2's sisters, wife and other relatives seeing their close one deteriorating gradually in the hospital and ultimately dying. Rs. 23,50,000 The total compensation claimed under this head is Rs. 79.5 lakh. The claim for mental strain and agony regarding two elder brothers of deceased, sisters and other relatives is far fetched and cannot be allowed. Moreover, they are not parties to the claim. In respect of mental agony of the complainants and the deceased a total sum of Rs. 46,00,000 has been claimed which again is highly speculative.

7. Expenditure incurred for carrying dead body from Vellore to Village Tanchanpur and general expenses. Rs. 30,000 Tatanagar to native place Village Kanchanpur in Aurangabad (Bihar) including incidental Expenses such as taxi, food, and other Misc. Exp. The entire family as well as the close relatives accompanying for the funeral rites Rs. 1,00,000 (e) Funeral rites for 20 days, which involves huge expenses in a traditional society of Bihar. Rs. 2,50,000 (k) Misc. Expenses Rs. 1,75,000 The expenses claimed under this head are Rs. 5.50 lakh. The expenses are, prima facie, highly exaggerated and prima facie at this stage the expenses can be taken around Rs. 2,00,000 Even otherwise, funeral expenses would be incurred when a person dies normal death.

9. IN our opinion, the claim is high exaggerated, speculative in nature, unrealistic and at any rate, the claim would not fall within the jurisdiction of this Commission which is one crore and above. In view of this, complainant is free to lodge claim before the Consumer Fora in whose pecuniary jurisdiction it would fall. Complaint dismissed.