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TARA CHAND JAIN

v

SIR GANGA RAM HOSPITAL AND ANR.

DECEMBER 15, 2005

B

[ARIJIT PASAYAT AND TARUN CHATTERJEE, JJ.]

Consumer Protection Act, 1986:

C *Medical negligence—Deficiency in service—Claim for compensation—Finding by National Consumer Disputes Redressal Commission that complainant failed to establish allegations of negligence—Appeal—Held, findings of Commission do not suffer from any infirmity requiring interference.*

Practice and Procedure:

D *Proceedings before National Consumer Disputes Redressal Commission—Held, are not akin to a suit though some of provisions of Code of Civil Procedure are pressed into service as part of fair procedure while adjudicating the matter—Code of Civil Procedure, 1908.*

Appellant underwent prostrate operation in respondent No. 1 hospital.

E It was the case of the appellant that after the operation he started feeling acute pain in his thigh muscle and backbone; and that the tendency of continuous and regular flow of urine which had started after the operation continued. He filed a claim petition before the National Consumer Disputes Redressal Commission against the Hospital and the doctor who performed the operation. The respondent denied the allegation and contended that there was no grievance of the nature alleged by the complainant at the time of discharge from the hospital and the claim petition was filed about four years after the operation. The Commission dismissed the claim petition.

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Aggrieved, the complainant filed the appeal.

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Dismissing the appeal, the Court

HELD: 1. It is not a case where the Commission has not referred to the material on record. On the contrary, on a perusal of the record, the Commission has come to a conclusion that the complainant has failed to establish the allegations of negligence. This finding recorded by the

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Commission does not suffer from any infirmity to warrant interference. The pivotal documents do not in any way substantiate the appellant's case. They do not establish, as rightly observed by the Commission, that the incontinence of appellant was due to cut of sphincter muscle during operation performed by respondent No. 2. [816-B-D] A

2. The proceedings before the Commission are not akin to that of a suit, though some of the provisions of the Code of Civil Procedure, 1908 are pressed into service as a part of a fair procedure while adjudicating the matter. [816-C] B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6930 of 1999. C

From the Judgment and Order dated 25.8.99 of the National Consumer Disputes Redressal Commission, New Delhi in Original Petition No. 43 of 1993.

Y.P. Singh, C. Siddharth, Mrs. P. Purnima, Mrs. V. Singh, Mrs. Viraj, Mukesh K. Sharma and Debasis Misra for the Appellants. D

Vinay Bhasin, S. Raina, Sanjeev Kr. Singh, Ms. Sheenam Parwanda and Bhargava V. Desai with him for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Challenge in this appeal is to the order dated 25th August, 1999 passed by the National Consumer Disputes Redressal Commission, New Delhi (in short 'the Commission'). The appellant made a claim for compensation alleging that on the ground of medical negligence on the part of the respondents, he had suffered untold miseries and had spent a huge amount of money to get cured without any avail. E

The background facts disclosed in the complaint were to the effect that the appellant visited the respondent No. 1 - hospital as he was having urinary trouble. The respondent No. 2 with his team examined the complainant and advised him to undergo prostate operation. The complainant was admitted in the hospital on 10.01.1990 and was operated by respondent No. 2 on 11.01.1990. He was discharged from the hospital on 15.01.1990. At the time of discharge, he was advised to take some medicines and was told that he would be perfectly normal within one or two months. The complainant returned to his native place, i.e. Muzaffarnagar and duly followed the advise given and the treatments prescribed. Instead of getting relief, he started feeling acute pain in the thigh muscles and backbone. The tendency of continuous and regular H

- A** flow of urine which had started immediately after the operation continued. He suffered high fever and increase in blood urea and as a result, his condition become very serious. He was again hospitalized in respondent No. 1's hospital on 17.11.1990 in the Nephrology department and was discharged on 13.12.1990. Despite the medicines prescribed the problem of continuous urine flow was not cured. The respondents had advised that he should take the injection "Teflon", which was not available in India and was available in America. The complainant wrote to a relative who lived in America for sending the injection. But the relative who happened to be a Doctor, advised the complainant not to take the injection as it had bad side effects and also not of much use in such cases. The complainant visited the hospital on a number of occasions but his problem continued. Same was due to the negligent acts on the part of respondent No. 2. Though the appellant was advised to use clamp all the time so that the urine may not flow but it was so painful to use the clamp that even after the use of clamp, there was no further development. Reference was made to the Text book of Bailey and Love's Short Practice of Surgery, 16th Edition, pages 1196 and 1197 to contend that the negligence of the respondents was established. Under these circumstances, the complainant claimed compensation of Rs. 40,00,000 (Rupees Forty Lakhs only) on account of deficiency in service on the part of the respondents.

- E** The complaint was resisted by the respondents. They contested the claim that the urine flow was continuous on account of any negligence while the operation was conducted. On the contrary, with reference to certain documents which were prepared at the time of discharge, it was submitted that there was no grievance of the nature, as indicated in the complainant petition. Long after about three years, the complainant was filed and never before that on any occasion any grievance was made by the appellant about the difficulties pointed out. It was highlighted that instead of making the grievance, as was made in the complaint, the complainant requested the hospital authorities to change the period for which he had treated, from four years, as recorded in the medical records, to four months, so that it would facilitate settlement of the insurance claims. Taking into account the materials on record, the Commission came to hold that the inference which the complainant wanted to be drawn from the mention of the word 'Teflon' in one of the documents produced would not make the position different. The Commission noted that it was not known as to who wrote the word 'Teflon' and if really it was by the Doctor prescribing the medicine, who was serving as a Doctor in the hospital, he would have mentioned it in the prescription itself and not written on the top. In any event, Dr. Ajit Saxena who purportedly

wrote it was not examined as a witness by the complainant. The mere scribbling of the word would not take the case of the complainant any further . A reference was also made to the original records produced by respondent No. 1 - hospital. The Commission noted that there was not any negligence on the part of the respondents and the complainant had not been able to substantiate the allegations made with reference to any concrete material. Ultimately, the Commission came to hold that the inferential conclusions which the complainant wanted the Commission to draw, were not possible on the materials. On the contrary, the original records produced by the hospitals clearly established that the ailments which the complainant claimed to have suffered were not present when the complainant was discharged for the hospital. It as also noted that not even a letter was written by the complainant to the respondents complaining about the urinary leakage till July, 1992 which was about two years after his operation in September, 1990. According to the Commission, the only question which was to be decided was whether the sphincter of the muscle of the complainant was cut during the operation performed by respondent No. 2. After referring to the documents on record, it was noted that the materials were not sufficient to establish the claim of the complainant. It was in essence held that the complainant had failed to establish that sphincter was cut during the operation performed by respondent No. 2 and the complainant had been suffering from incontinence from 15.09.1990 to 17.11.1990. As a result, it was held that the complainant had not been able to substantiate the charges of negligence and deficiency in service on the part of the respondent and, accordingly, the complaint was dismissed.

Learned counsel appearing for the appellant assailed correctness of the Commission's order on several grounds. Primarily, it was submitted that the Commission did not take note of all the material aspects and, therefore, the conclusions recorded by it are perverse, contrary to the materials and evidence on record. It was also submitted that the onus of proving certain aspects was on the appellant while the same should have been placed on the respondents. It was submitted that a technical view in such matters is not to be taken looking at the beneficial purpose for which the Statute was enacted.

In response, learned counsel for the respondents submitted that the very fact that the complainant was lodged after about three years, itself shows the hollowness in the claim. Additionally, at two different points of time, prior to the filing of the complaint, the appellant had written letters to the Superintendent of respondent No. 1 - hospital. In none of these letters,

A there was mention about the so called deficiencies and there is not even a whisper that there was any negligence on the part of respondent No. 2 while performing the operation. The documents relied upon by the complainant do not establish his case. On the contrary, the original documents produced by the respondents clearly established that the claim of having the continuous urine flow right from the time of the operation has been belied.

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It is not a case where the Commission has not referred to the materials on record. On the contrary, on a perusal of the materials placed, the Commission has come to a conclusion that the complainant has failed to establish the allegations of negligence. The proceedings before the Commission are not akin to that of a Suit, though, some of the provisions of the Code of Civil Procedure, 1908 (in short 'the CPC') are pressed into service as a part of a fair procedure while adjudicating the matter. The findings recorded by the Commission to the effect that the complainant had failed to establish its allegations of negligence, do not suffer from any infirmity to warrant interference. The pivotal documents i.e. those written by Dr. Ajit Saxena do not in any way substantiate the appellant's case. They do not establish, as rightly observed by the Commission that the incontinence of appellant was due to cut of sphincter muscle during operation performed by respondent No. 2. In the order document (prescription of Dr. B. Rautray) the words "due to sphincter damage" was admittedly scored out by the Doctor. The appeal fails and is dismissed but in the circumstances, without any order as to costs.

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R.P.

Appeal dismissed.