

(2024) 02 NCDRC CK 0008

National Consumer Disputes Redressal Commission

Case No: Revision Petition No. 3585 Of 2017

C.M.O.H., M.R. Bangur Hospital &

Anr

APPELLANT

Vs

Tanmoy Majhi

RESPONDENT

Date of Decision: Feb. 9, 2024

Acts Referred:

- Consumer Protection Act, 1986 - Section 2(1)(d), 12, 21(b)

Hon'ble Judges: Avm J. Rajendra, Avsm Vsm (Retd.), Presiding Member

Bench: Single Bench

Advocate: Raja Chatterjee, Anupama Gupta, Tapas Kumar Maity

Final Decision: Allowed

Judgement

Avm J. Rajendra, Avsm Vsm (Retd.), Presiding Member

1. The present Revision Petition has been filed by the Petitioner under Section 21(b) of the Consumer Protection Act, 2019 (the "Act") against impugned order dated 09.08.2017, passed by the learned State Consumer Disputes Redressal Commission, West Bengal ('State Commission') in First Appeal No. 425 of 2016. In this appeal, the Petitioners/OPs appeal was dismissed, thereby affirming the Order dated 26.04.2016, passed by the District Consumer Disputes Redressal Forum, South 24-Parganas, Baruipur, Kolkata ("District Forum") in Consumer Complaint No. 557 of 2008, wherein the Complaint filed by the Complainant was allowed.

2. For convenience, the parties in the present case are denoted as per their reference in the Complaint before the District Forum.

3. The brief facts of the case, as per the Complainant, are that he was admitted to M.R. Bangur Hospital, a Government Hospital, for medical treatment under Dr. Hiranmoy

Deb (Ortho) due to fracture injuries on the right femur and right humerus sustained in a road traffic accident on 27.10.2009. He underwent surgeries for the right humerus and femur on 16.11.2009 and 28.11.2009, respectively, and was discharged on 10.12.2009. Subsequently, he attended the hospital for a neurological issue on 10.01.2010, was referred to Bangur Institute of Neuroscience, and treated as an outpatient on 25.01.2010. On 02.03.2010, the complainant fell at home, resulting in a re-fracture of the right femur, allegedly due to the weak steel plate used in the initial surgery. He was readmitted to Bangur Hospital and discharged on 08.05.2010 with traction and advice for four months of bed rest. The Complainant alleged that the doctor's negligence resulted in him becoming permanently physically disabled, with his right leg bent and shortened due to abnormal bone growth and infection at the fracture site. Despite subsequent visits to MR Bangur Hospital in 2010 and 2012, where doctors recommended removing the broken plate, he was unable to undergo the operation due to financial constraints. Feeling aggrieved, the Complainant filed Consumer Complaint No. 557 of 2014 before the District Forum, seeking compensation of Rs. 9,50,000/- along with litigation costs and interest as per the law.

4. In reply, Dr. Hiranmoy Deb (OP-2) contested that the complaint was not maintainable under the law, citing a decision reported in 2009 (1) CPJ 32 (SC), wherein the Hon'ble Supreme Court emphasized the necessity of seeking the opinion of medical experts in specialized fields before admitting a complaint. OP-2 highlighted the complex nature of the medical issues involved in the case, asserting that without expert medical evidence, the District Forum would be unable to make a well-informed decision. OP-2 further contended that the complaint failed to disclose a cause of action and urged the District Forum to dismiss the case. Given the highly technical and complicated nature of the allegations regarding medical negligence, OP-2 sought the District Forum to refrain from exercising jurisdiction in the matter and direct the Complainant to seek appropriate relief through the civil court or the appropriate forum. OP-2 further asserted that infection is a known complication of surgery and was detected approximately two years after the surgery. OP-2 suggested that the infection may have occurred due to the compromised state of the Complainant's health or his failure to adhere to the prescribed antibiotics and sought him to provide bills for the antibiotics to demonstrate whether they were taken regularly. OP-2 further contended that his inability to work stemmed from the major road accident as well as the fall at his residence, events over which OP-2 had no control. As OP-1 did not contest the case before the District Forum, OP-1 was proceeded ex parte.

5. The District Forum vide order dated 26.04.2016, partly allowed the complaint and held the OPs negligent with the following order:

"Ordered

That the application under section 12 of the C.P Act, 1986 is allowed on contest against O.P-2 and dismissed against O.P-1.

The O.P-2, Doctor, is directed to pay compensation to the tune of Rs.9 lacs within 45 days from the date of this order failing which interest will carry @10% p.a from the date of this order till its realization.

Apart from that O.P-2 is also directed to pay Rs.20,000/- towards litigation cost to the complainant within that stipulated period and if the O.P-2 failed to pay the said amounts within the stipulated period then further interest will carry @9% p.a on the whole amount till its realization.

6. Being aggrieved by the District Forum Order, the OP2/Petitioner No.2 filed Appeal No. A/425/2016 before the State Commission. The State Commission vide order dated 09.08.2017 dismissed the appeal and upheld the Order of District Forum.

7. Being dissatisfied by the Impugned Order dated 09.08.2017 passed by the State Commission, the Petitioners/OPs filed the instant Revision Petition No. 3585 of 2017.

8. In his argument, the learned Counsel for the Petitioners/OPs reiterated the facts and contentions presented in the reply and asserted that the complaint was not maintainable, being barred by limitation as he approached the District Forum after the expiry of the statutory time limit of 2 years from the date of cause of action. He neither filed an application seeking condonation of delay nor did the District Forum pass any orders in this regard. The learned Counsel further argued that the Complainant is relying clandestinely on an OPD ticket dated 03.12.2013, when the Complainant visited the hospital with complaints related to his right arm, not his leg. He emphasized that the Complainant was discharged from the hospital for the second time on 08.05.2010 and made no attempts to pursue legal remedies until 2014. His last follow-up with OPs was on 11.09.2012, while he approached the District Forum on 17.11.2014, well after the lapse of 2-year period. He further argued that the Complaint was not maintainable as the OPs treated the Complainant free of cost. That the Hon'ble Supreme Court of India in the matter of **Indian Medical Association vs. VP Shantha** (1995) 6 SCC 651, and in **Nivedita Singh vs. Dr. Asha Bharti & Ors**, Civil Appeal No. 103 of 2012 has held that that when patients avail treatment free of cost, the hospital is not providing "service" as defined under the Consumer Protection Act. Further, the doctor providing such medical aid, who is employed by such Hospital is also not considered to be providing Services under the Consumer Protection Act.

9. On the other hand, the learned Counsel for the Complainant / Respondent reiterated the facts outlined in the complaint and argued that the Respondent physically became handicapped to the tune of 80% certified by a competent Medical Board under control of the CMO (H), M.R. Bangur Hospital. Due to the unfortunate and

mandate handicap physique the respondent is confined to local area for mobility and have since turned a beggar for his subsistence.

10. I have examined the pleadings, including the orders of both the learned fora and rendered thoughtful attention to the arguments advanced by the learned Counsels for both the parties.

11. In the instant case, it is established that the M. R. Bangur Hospital is a Government Hospital providing free services and OP-2 was working as Govt. Servant. Therefore, it was a "Contract of Service" which the OP-2 was rendering in M.R. Bangur Hospital. Thus, the patient was not a consumer as defined under section 2(1)(d) of the Act,1986. This view dovetails from the recent decision of Hon'ble Supreme Court in **Nivedita Singh Vs. Dr. Asha Bharti & Ors.** Civil Appeal No. 103 of 2021, decided on 7/12/2021. Therefore, the Consumer Complaint filed before the District Forum is not maintainable.

12. Based on the discussion above, no medical negligence is attributed to the OP-2. The Revision Petition is allowed and the Orders of both the fora below are set-aside. Consequently, Complaint No. 557 of 2008 filed before Disputes Redressal Forum, South 24-Parganas, Baruipur, Kolkata is dismissed.

13. All other pending Applications, if any, stand disposed of.