

(1997) 05 NCDRC CK 0023

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

RaVs Exports P Ltd

APPELLANT

Vs

Air France Cargo

RESPONDENT

Date of Decision: May 9, 1997

Citation: 1997 2 CPC 202 : 1997 3 CPJ 112 : 1997 3 CPR 398

Hon'ble Judges: A.N.CHATURVEDI , V.N.MISRA J.

Judgement

1. THE present complaint has been filed under Section 12 of Consumer Protection Act, 1986 seeking a claim of Rs. 5,95,000/ on various accounts for alleged negligence and carelessness on the part of the treating surgeon who operated the complainants right eye for removal of cataract and for implanting intra ocular lens.

2. THE facts of the complaint may briefly be stated as below:

The complainant, Sri K.N. Lal, a practising Lawyer had consulted Dr. Narendra Bhasker at Faridabad on 14.10.1991 for diminishing vision in R.E. who diagnosed the ailment as macular oedema and advised Shri Lal for change of glasses. As advised he got the glasses changed on 30.10.1991. After only three months or so he had the same problem when he consulted Dr. S.N. Upadhyay at Patna who once again advised change of glasses in R.E. He accordingly got the glass changed on 10.2.1992. He later on consulted Dr. Ranjan Kumar Akhauri, the opposite party on 24.6.1992 who diagnosed the ailment as nuclear cataract in R. E. He again visited the Opposite Party on 7.5.1993 who advised change of glasses and confirmed the ailment as cataract. Shri Lal visited the opposite party on 16.9.1993 who advised for cataract operation. Part operation fee of Rs. 1,000/ was paid and date of operation was fixed on 14.10.1993. He was directed for check up of Blood Pressure and Blood

Sugar, which he got done on 4.10.1993. The above report was produced before the doctor on 10.10.1993 at the time of scanning of eye. As the report was considered to be normal he was advised to come on 14.10.1993 for operation. As advised by the doctor he took the prescribed medicines between 7.10.1993 to 13.10.1993.

He deposited the amount of Rs.2,800/ as balance operation fee and cost of intra ocular lens. He was operated on the date fixed on 14.10.1993 but the lens could not be implanted. On removal of the bandage at 6 p.m. the same day in the evening, Sri Lal had no vision in his right eye. He was advised to use goggles for 15 days and the vision would be regained and would be all right with glass of higher index according to the doctor. A sum of Rs. 1,800/ was returned to Shri Lal as lens could not be implanted. He visited the doctor on 21.10.1993 when he was told that the operation was only of conventional type and so there was no cause for any anxiety. The lens which could not be implanted at the time of operation would be implanted after six months. He again visited the doctor on 16.11.1993 when he checked intra ocular pressure (IOP hence onwards) for the first time and recorded the same on anti glaucoma therapy (glaucaire). He again visited the doctor on 15.12.1993 for the third time after operation when no glass was prescribed and no advice for further treatment was given to him. He was misled to contact Dr. Riyaz for contact lens who refused to provide contact lens for R.E.

Thereupon he immediately wrote to Shankar Netralay in Madras who fixed 11.3.1994 as date for examining his eye. In order to save his eye sight, he decided to consult Dr. Ajit Sinha, an eye specialist in the meantime without losing time who advised him on 10.4.1994 for blood sugar test. His blood sugar report was normal. He reported to Dr. Sinha on 12.1.1994 with the above report for local test of eye when IOP was found to be 26 30 mm of mercury. He observed PAS at 10 o'clock and also cupping of disc. He prescribed medicines for glaucoma. His vision was 6/9.

Sri Lal visited Shankar Netralay in Madras on 9.3.1994 where on examination on 11.3.1994 signs of aphakia and PAS were noticed. IOP was found to be 26 and 22 mm of mercury and glaucomatous cupping without dilation. They refused to treat him unless IOP was brought down for which medicines were prescribed. He visited Holy Home Hospital, Pune and also Bombay Trust Hospital. None of them treated the R.E. as the same was considered beyond repair.

The complainant has alleged that he had IOP beyond permissible limit of 16 20 mm of Hg, cupping of optic discs and also field defects before operation of R.E. The surgeon was negligent and careless, as he did not check up IOP before operation. He further alleges that cataract operation should not have been performed because his vision was 6/9. He, therefore, prays to be compensated for the loss of eyesight in R.E. and consequent expenditure incurred and also likely to be incurred because of the impairment.

The complainant further submitted supplementary affidavit enclosing extracts from medical literature dealing with eye and its diseases and relevant judgments praying for revised compensation of Rs. 8,80,000/.

The opposite party in his written statement denies the allegation stating them to be false and frivolous. In this connection he has referred to Discharge Book where he has recorded IOP as normal during one of the post operation follow up visits. He, in his defence, has stated that the complainant had visited a doctor at Faridabad in October 1991 who too had not diagnosed glaucoma after examining the complainant. He only found Macular oedema in the right eye. The eye specialist at Patna in February, 1992 also had not observed any sign of glaucoma. The complainant had visited the opposite party in May, 1993 when he diagnosed cataract and was advised for its operation. All necessary tests were done and necessary medicines were administered to the complainant before operation was taken up. The operation was performed on the appointed date on 14.10.1993 but implantation of lens could not be possible because of lack of integrity in posterior capsule and vitreous loss. He has stated that rise of IOP leads to rupture of posterior capsule and consequent vitreous loss which may happen in case of apprehensive and hypertensive patients or patients with mini expulsive hemorrhage. In any of the circumstances stated above the eye becomes tense and the pressure of eye ball rises and this pressure gradually ruptures the posterior capsule through which vitreous comes out. As a result, intra ocular lens implantation could not be possible in this case at the time of operation. According to the doctor sometimes nucleous adheres to posterior capsule and so during nucleous delivery a chunk of posterior capsule may also come out. This may also happen in case if there is a pre existing hole in posterior capsule following any injury or due to any other reason which renders implant of lens not possible. In such situations implant of lens in anterior chamber can be done in the same sitting in case if the pressure of the eyeball, according to the doctor, is not high. Implant of lens in the anterior chamber also could not be possible because of high pressure. The doctor states that rupture of posterior capsule occurred with vitreous loss during the operation due to rise in IOP. He also states that the patient appeared to be tense and apprehensive due to fear of undergoing operation. He further says that he refunded Rs. 1,800/ to the patient, which indicates the honesty of the doctor. He had explained everything in detail to the patient the same evening after operation that lens implant may be possible after six months. It is not correct that the patient had lost eyesight in R.E. as he had a vision of 6/6 with glass after two months of surgery. He denied that the patient had glaucoma at the time of operation. Allegations against the doctor have been brought about with the ulterior motive of extorting money from an eminent doctor like him with a roaring practice. The doctor further states that the patient, after detection of glaucoma did not take proper care as a result of which the ailment further aggravated. He further in para 13 of his written statement mentions that he had examined the patient before operation and no disc cupping was observed. The

earlier two doctors who had examined him also had not noticed disc cupping. In the end of the same para it is stated that cataract operation was essential to see the back of eye, as unless cataract is removed, it is not possible to see the disc. According to him the disc in case of the patient was normal before operation. He strongly repudiates the charge of negligence or carelessness on his part. In para 18 it has been mentioned that the complaint petition is not maintainable in this Commission. He strongly feels that the compensation claimed by the complainant is unjustified, arbitrary and exaggerated and says that the complaint/petition may be rejected as the complainant has not been able to establish proof of negligence and carelessness on his part.

3. THE learned Lawyers on behalf of both the parties were heard on 24th and 25th of July, 1997. The complainant/ Lawyer argued that there was apparent negligence leading to deficiency in services rendered by the doctor in all stages whether it be pre operative or intra operative or post operative stage. It was incumbent upon the operating surgeon to find out if there was any sign of intra ocular hypertension in the patient for which IOP test was essential. This was not done before taking up cataract operation. The surgeon decided to go in for cataract operation even when his vision was 6/9 not recommended in such situation by medical textbooks. The surgeon should have also addressed himself to the problem of frequent change of glass three times in a period of one and half years.

The surgeon has stated in his written statement that the patient was tense at the time of operation. He could have very well postponed the operation. This was not done and he continued the operation, which resulted in rupture of posterior capsule alongwith several consequent complications. During postoperative stage also he did not advise anything for correction and control of the ailment till 15.12.1993. Dr. Ajit Sinha on the other hand had diagnosed glaucoma only within one month on 12.1.1994, which is a clear indication of negligence and carelessness on the part of the opposite party. He, therefore, prayed that the revised claim of Rs. 8,80,000/ may be ordered to be paid to him by the opposite party. As regards the allegations of greed on the part of complainant of extorting money from the opposite party, he offered that he would abide by the directive of the Commission to donate the entire amount of compensation to the account of any reputed charitable institution like Mahavir Arogya Sansthan dedicated to the cause of providing health care.

4. THE learned Lawyer on behalf of the opposite party pleaded that the opposite party is a renowned ophthalmic surgeon who has performed innumerable number of such operations with success. It is because of sudden increase of pressure in the eye in this case that implantation of ocular lens could not be done for which the opposite party refunded a sum of Rs. 1,800/- to the complainant. He argued that there was no deficiency in service in any manner. He, therefore, prayed that the complaint/petition may be rejected. As he had not touched some of the vital points raised by the complainant Lawyer, the learned Lawyer on behalf of the opposite party was specifically asked to throw light on the following points:

(i) If IOP test of the patient before operation was done and if so what was the finding? (ii) If vision of the patient was checked before operation and if so what was the finding? (iii) Was any investigation done to find out the reason of frequent change in index of glasses of the patient? (iv) Steps taken if any and if considered necessary to eliminate the possibility of glaucoma before taking up of the cataract operation of the patient? (v) Did the surgeon advise the patient for postponement of the cataract operation when he found the patient to be tense? The learned Lawyer on behalf of the opposite party apologetically prayed to be excused as he had no medical background to give replies to such technical issues and informed that most of the points have adequately been controverted in the written statement filed by him. He gave a booklet on glaucoma with the doctor's stamp on its cover.

The opposite party raised the issue of maintainability of the complaint/petition before this Commission. It is now well settled with the judgment delivered by Supreme Court in the case of Indian Medical Association v. V.P. Shantha and Others, reported in III (1995) CPJ 1 (SC). The plea of the opposite party in view of the above judgment is rejected at the outset and we hold that there is no absolute immunity to medical practitioners from liability for negligence.

5. AFTER hearing the learned Lawyers and on perusing the records it is apparent that the complainant had consulted two eye specialists before he consulted the opposite party. None of the eye specialists had diagnosed glaucoma. They had also not observed anything about cupping of disc as is apparent from their prescriptions. They had also not observed field defects. They had however prescribed glass after vision tests, which was found to be 6/6 with glass. On persistent problem in his R.E. the complainant consulted the opposite party who diagnosed that there was cataract in the initial stage which was confirmed in subsequent consultation as full blown cataract in a period of less than a year only when vision tests were not done on both the occasions. It is not clear how the

surgeon could arrive at the conclusion of confirming cataract when vision was not tested. On referring to Grey's Anatomy and Diseases of lens at P /137 it is apparent that cataract operation is not advisable if vision is 6/12 or even 6/18. The opposite party has not made any mention of vision test except D/V indicating thereby defective vision and R / L that right eye is more defective than the left eye. Further the doctor himself in para 13 has made contradictory statements by stating that cupping of disc could be seen only when cataract was removed and again saying that disc was normal before operation. He has further made an assertion that the vision of the patient after two months of operation was 6/6 with glass for which there is no basis neither in the prescription nor in the discharge book.

6. THE opposite party admits that the IOP of the patient was very high during operation period, which led to the complications but the opposite party stresses that his IOP was normal before operation. No mention to this effect how ever appears in the prescription. In case if it is not necessary to record this finding before operation, reasons for mention of IOP after operation specially when it was within permissible limits are not clear. The opposite party might take the plea that the previous two doctors consulted by the complainant before him had also not recorded his IOP. This plea may not be sustainable as because the patient had not gone to them for operation. Textbook on diseases of eye by Dr. V.A. Rao, while dealing with pre operative investigations, particularly for intra ocular operations such as cataract and glaucoma at P/277 278, has unambiguously recommended for IOP test. In case IOP is found to be beyond permissible limit, the same has first to be controlled by medication before operation or there may be chance of expulsive hemorrhage as it happened in the present case. IOP test, therefore, was essential before taking up the operation. This was a serious omission on the part of the doctor not expected of an ophthalmic surgeon of even any average skill. The doctor has not indicated in his written statement as to what steps were taken by him when IOP during operation was found to be very high leading to rupture of the posterior capsule. He has also not indicated, anything in his operation note which is likely to lend credibility to the allegations brought about by the complainant. In case the doctor found that the patient was getting tense and hypertensive because of fear of operation he should have used medication to normalise his condition as expected of medical practitioners of even mediocre calibre, which was not done. If that was not possible for some reasons he should have even postponed the operation rather than putting the complainants eye sight in jeopardy by continuing the operation. The complainant visited the doctor three times after operation. It appears that he was kept in dark all along and was given false hopes that his eyesight would be all right

with the help of external lens and in the end he was advised to contact Dr. Riyaz for contact lens. Thus two months of his valuable time was lost when he could have contacted experts to save his eyesight. He did contact Dr. Ajit Sinha, an eminent eye specialist at Patna, Shankar Netralay at Madras, Holy Home Hospital at Pune and Bombay Trust Hospital, Bombay but when the situation was beyond repair. In spite of his frantic efforts to regain eyesight he had to resign to his fate and reconcile. The doctor has brought about the charge of carelessness on the part of the complainant that he neglected to take medicines regularly after glaucoma was discovered which is not borne out by facts. He had not prescribed any effective treatment for glaucoma.

It can be appreciated that a doctor may not be expected to succeed in all his ventures and cure all his patients but it is certainly expected of him as a part of his duty that he would keep no secret from his patient and explain to him the real position so that he could seek redressal elsewhere. The opposite party owed duty to the complainant to exercise reasonable care in carrying out his professional skill of diagnosis, advice, surgery and treatment. Apparently the opposite party failed to provide the services and care to the complainant as cast upon him and as a result the complainant a practising Lawyer lost eye sight in his R.E. resulting in professional loss, expenditure on treatment and other allied expenditure.

7. THE respondent has submitted, on affidavit, a revised claim of Rs. 8,80,000/ for damages on various counts. His earlier claim was for Rs. 5,75,000/ as per original petition details of which are given below:

As per original claim As per revised claim (a) Compensation on account of loss of eye sight in the R.E due to carelessness and negligence of the doctor Rs. 2,00,000/ Rs. 2,00,000/ Rs. 2,00,000/ (b) Mental tension Rs. 25, 000/ Rs. 1,00,000/ (c) Loss in professional income Rs. 2,00,000/ Rs. 2.40.000/ (d) Cost of treatment including cost of stay, travel to Shankar Netralaya, Madras, Holy Home Hospital, Pune and Bombay Trust Hospital, Bombay Rs. 50,000/ Rs. 1,00,000/ (e) Cost in engaging a driver/attendant to drive the car or accompany the respondent Rs. 1,00,000/ Rs. 2,40,000/ Rs. 5,75,000/ Rs. 8,80,000/ Arguments put forth in support of the revised claim do not apparently carry conviction in some of the items of claim. The pangs of mental agony, because of loss of a vital limb of the body, generally in the initial period is more severe and one gets gradually used to it and reconciles. This was evaluated as per original petition as Rs. 25,000/ which has been revised now as Rs. 1,00,000/ The cost on account of treatment, travel to Shankar Netralaya, Madras and other places was assessed to be as Rs. 50,000/ which has been enhanced to Rs.

1,00,000/ The expenditure already incurred could not escalate with passage of time. The assumption of the respondent for expectancy of his life as 70 years may however be considered reasonable in determining the quantum of damages in view of the fact that average expectancy in India with high infant mortality rate is 61 years.

8. IN view of the above discussion we are inclined to hold that there was gross negligence leading to deficiency on the part of the doctor inasmuch as IOP and vision of the complainant were not checked before operation was taken up ultimately leading to loss of the eyesight in the right eye. Omission of conducting the essential tests before taking up of operation cannot be an error of judgment. The complaint is, therefore, allowed. Considering measures of damages:

(a) A sum of Rs. 2,00,000/ (Rs. two lacs) as compensation for loss of eye sight in the R.E. rendering the complainant disability to the extent of 30% is allowed.

(b) The complainant, on affidavit, has stated that before loss of eye sight in the right eye he was an I.T. assessee which he is not now. He is not in a position to strain only the left eye left and his professional income has gone down considerably. This has not been denied by the appellant. Assuming monthly loss of Rs. 1,500/ against his claim of Rs. 2,000/ per month as per revised claim he would suffer a loss of Rs. 1,80,000/ in ten years of active life. A sum of Rs. 1,80,000/ (Rs. one lac eighty thousand) is allowed on this account as a fair recompense for loss of profit of his profession.

(c) Although detailed vouchers in support of Rs. 1,00,000/ as per revised claim for expenditure on account of treatment at various places have not been furnished a sum of Rs.50,000/ is considered reasonable to meet the cost on account of travel, stay, treatment and medicines. A sum of Rs. 50,000/ (Rs. fifty thousand) as expenditure incurred in travel, check up and treatment at Patna, Shankar Netralaya, Madras, Holy Home Hospital, Pune and Bombay Trust Hospital, Bombay is allowed.

(d) A sum of Rs.25,000/ (Rs. twenty five thousand) on account of mental agony suffered by the complainant is allowed.

(e) The complainant maintains a car and with the disability that he has, he himself cannot drive the same or move on foot unattended. He necessarily has to engage a driver or an attendant for which he rightly deserves to be compensated. A sum of Rs. 1,00,000/ (Rs. one lac) is allowed on that account.

Thus a total sum of Rs. 5,55,000/ (Rs. five lacs fifty five thousand) only shall be paid by the opposite party Dr. Ranjan Kumar Akhaury to the complainant within three months from the date of the receipt of the order. In case of default the opposite party will be liable for interest at the rate of 10% form due date of payment. The Commission will refrain from issuing any directive to the complainant for donating the amount of any philanthropic organisation. The complain ant will be at liberty to use the amount in any manner that he may like. The Commission may however appreciate if the amount is put to a good cause for the benefit of the society.

The opposite party shall pay a sum of Rs. 1,000/ (Rs. one thousand) as cost to the complainant. Complaint allowed.