

**(1998) 09 NCDRC CK 0007**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** None

M.Subramani

APPELLANT

Vs

CHRISTU JOTHI HOSPITAL

RESPONDENT

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**Date of Decision:** Sept. 2, 1998

**Citation:** 1998 3 CPR 428 : 1999 1 CPJ 387

**Hon'ble Judges:** E.J.Bellie , Pulavar V.S.Kandasamy J.

**Final Decision:** Appeal disposed of

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**Judgement**

1. THE unsuccessful complainants before the District Forum are the appellants. THE complainants are the husband and three children of one deceased Deivanai. THE case of the complainants is that the said Deivanai, on pregnancy, was admitted in the 1st opposite party Hospital for delivery and by a caesarean operation a child was delivered. According to the complainants, due to the deficiency in service on the part of the opposite parties only subsequently the said Deivanai died. Thus alleging, they have filed the complaint claiming compensation.

2. THE three opposite parties contested the complaint contending that there was no deficiency in service on their part in any way and therefore the complaint was liable to be dismissed.

The District Forum, on consideration of the pleadings and the evidence, came to the conclusion that the complainants have not proved any deficiency in service on the part of the opposite parties. Hence the District Forum dismissed the complaint with a cost of Rs. 3,000/-.

Now before us the learned Counsel appearing for the appellants/complainants contends that there was deficiency in service in the post-operative period and not before that. According to him admittedly during the post-operative period there was bleeding and to arrest it the opposite parties had not given proper treatment. It is not disputed by the appellants/ complainants that the opposite parties had given treatment by giving injections in spite of which the patient died. The learned Counsel would further submit before us that in the circumstances of the case, the opposite parties should have removed the uterus to stop the bleeding but they had failed to do so and that amounted to deficiency in service on their part. But it is not so pleaded in the complaint. As such there was no opportunity for the opposite parties either to admit or to deny that allegation. For the first time it is so argued before us. Therefore we are unable to accept this point raised by the learned Counsel.

3. WE find from the complaint that according to the complainants the opposite parties had not pre-arranged for blood and only when the blood was required they made arrangements. The District Forum, on facts, has found that is to be true. It is the definite case of the opposite parties that even before the operation, blood was brought and kept for emergency. There is no evidence to prove the allegation in the complaint that there was failure on the part of the opposite parties to make pre-arrangements to perform the operation. In these circumstances, rightly the District Forum has dismissed the complaint. Thus we find no merit in the appeal.

As regards the costs awarded by the District Forum, under Section 26 of the Consumer Protection Act only in the case of false, frivolous or vexatious complaints, costs can be awarded. But there is no finding by the District Forum in its order that the complaint was false or frivolous or vexatious. We also do not find any material to hold so. Therefore we set aside the order of the District Forum as regards the costs awarded.

4. THUS the appeal is disposed of. There will be no order as to costs in the appeal. Appeal disposed of.