

(1997) 06 NCDRC CK 0010

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

A.P.BHATNAGAR And
SMT. NIRMALA
BHATNAGAR

APPELLANT

Vs

N.K.PATNAIK

RESPONDENT

Date of Decision: June 18, 1997

Citation: 1997 3 CPJ 368 : 1998 1 CPC 317

Hon'ble Judges: A.P.Chowdhri , Desh Bandhu J.

Final Decision: Appeal dismissed with costs

Judgement

1. BRIEF facts giving rise to this appeal are that Smt. Nirmala Bhatnagar (complainant No. 2) wife of Shri Atma Prakash Bhatnagar (complainant No. 1), aged 68 suffered from Herpes Zoster on the left side of the head, forehead and swelling on the left side eyebrow in June-July, 1989. After about three weeks, the swelling subsided but itching continued. Thereafter she suffered from inflammation and infection of the eyes at times for which she took treatment in January-March, 1991. She also suffered from Uvietis for which she was treated at the A.I.I.M.S. (AIIMS). On July 2, 1991, she consulted the opp. party Dr. N.K. Patnaik, Eye Specialist, with regard to the cataract in the left eye. She paid Rs. 100/- as consultation fee. She was told that the cataract was mature and required to be operated and with Intra Ocular implantation her eyesight would improve in the left eye. She was further informed that the operation would be performed with YAG Laser. She agreed and accordingly the operation was performed by Dr. Patnaik on 8.7.91. She paid Rs. 5,500 /- on account of operation fee and cost of Intra Ocular Lens (IOL) and Rs. 485/- as hospital charges. She was seen by the Surgeon on the next following day and again after another two days. For these follow-up visits, she was charged a further fee of Rs. 50/- each. She could read only letter "A" of the first line of the standard chart. The complainant was again seen on four different dates by Dr. Patnaik in the month of July and August and asked to come again after another 15 days of the last visit. These visits cost the complainant another Rs. 1,000/-. She returned to Bijnore where

she resided. On 29th August, 1991 and 30th August, 1991, she was examined by Dr. Vineet Mathur, Eye Specialist. From a distance of six metres or even less, she could read only capital letter "A" of the standard chart and her vision in left eye was found to be 6/60 with the implanted lens. The eye ball was found sticking to the implanted lens. The complaint giving rise to this appeal was filed on 1.1.92 claiming compensation of Rs. 1, 00,000/-. The grievances of the complainant were:

(i) The opp. party misrepresented that the operation would be performed with the laser technique. He also misrepresented that the operation would not be unsuccessful as he had the latest skill and appliance imported from U.S.A. and comparable with the appliances, etc. available abroad. (ii) He charged fee many times more than average Eye Surgeon and was expected to exercise high degree of expertise and skill but he failed to do so. (iii) He should have known that the IOL was not advisable in view of the history of the complainant, namely suffering from Uvietis, he had not given due attention to the treatment undergone by the complainant for Uvietis in the A.I.I.M.S. (iv) He failed or was negligent in ascertaining the exact power of the lens before actually implanting the same. (v) The opp. party again misled the complainant by using additional lens i.e. in addition to IOL and making her read 3/4 lines in order to convey the impression that the complainant's eyesight had improved. (vi) He failed to warn that complainant's optic Nerve was affected and eyesight would not be restored to normal at the time of initial consultation. (vii) The implanted lens having been found to be sticking to eye ball indicated that the operation had been performed negligently. (viii) That the opp. party was guilty of misconduct for charging post operative fees.

2. DR. Patnaik filed his written version in the form of affidavit. The preliminary objection included the plea that the service rendered by the medical practitioner was beyond the purview of service as defined in the Act and the Commission had no jurisdiction in the matter. This objection stands decided against the opp. party in view of the decision of the Supreme Court in IMA v. V.P. Santha and Others, III (1995) CPJ 1 (SC). On merits, each and every material averment of fact was expressly denied. According to him, the complainant was brought to his clinic on 3.7.91 and she had, inter alia, complained of itching on the forehead. She was diagnosed as a case of Healed Herpes Zoster with mature cataract in the left eye. Retina and Optic nerve could not be as the cataract was mature and light could not penetrate through dense mature cataract. The Doctor explained to the patient, her son and her husband who accompanied her about the risk of the operation and the possible residual complication due to Herpes Zoster. In particular, it was explained that Herpes Zoster was a viral inflammation and might have affected the optic nerve. The

optic nerve of the left eye could not be assessed there was a mature cataract. No related papers or diagnosis of any of the Surgeons either at AIIMS or elsewhere indicated any involvement of optic nerve. Since the patient appreciated light in all directions, she was advised Extra Capsular Lens extraction with Intra Ocular Implantation in the left eye. It was added that it was well known that if mature cataract was not operated, then the lens could suddenly progress to a hyper mature stage leading to rupture of the lens capsule which might result in secondary glaucoma and ultimate loss of the eyesight. It was further stated by the Doctor that the anterior capsule could be cut without opening the cornea by YAG Laser method. In the present case after opening the cornea by YAG Laser, the patient was moved to the Operation Theatre and under operating microscope the lens was aspirated out by a small cut with a diamond knife. The Intra Ocular Implantation was done and one continuous suture applied. By using the laser technique, the rate of complication was greatly reduced and it was explained to the complainant and her attendants that the appliances available in his surgery were from West Germany. The consultation fees of Rs. 100/- was less than what other Sr. Doctors were charging in the town. It was explained to her that the expenditure involved would be around Rs. 5,500/- to Rs. 6,000/- which was much less than what any Eye Surgeon and Eye Specialist charged in Delhi. She was charged Rs. 2,000/- towards surgeon's fee and anaesthesia fee and YAG Laser. The cost of IOL was Rs. 3,500/- only. The total expenditure was Rs. 5,500/-. Besides operation theatre charges of Rs. 485/-. As the patient was not admitted, the expenditure was much less than even any Government Hospital like AIIMS. She was charged Rs. 150 to Rs. 200/- towards post operative dressing. She improved gradually. The respondent was quite satisfied with the progress. It was further stated that the respondent was an Expert Eye Specialist having undergone special training in the field of laser surgery; for that training he had gone to West Germany. The cost of Intra Ocular Implantation varied from Rs. 5,000/- to Rs. 15,000/- in different eye Centres in Delhi. The respondent saw no reason why Intra Ocular Implantation should not have been done in this case. Neither was there any corneal involvement due to Herpes Zoster nor any active inflammation prior to surgery. If conventional cataract surgery of the left eye had been done, it would have become necessary to keep the right eye closed for a considerably long period to avoid double vision. The right eye happened to be the good eye with the vision improved to 6/9 with glasses. The decision to implant IOL was thus correct and proper. Reference was made to DR. Mathur's prescription relied on by the complainant which showed that eyesight improved to 6/ 18 with some extra corrective glasses. Further improvement was perhaps not possible due to partial damage to the optic nerve following Herpes Zoster, a fact which was not pre-operatively established or could be seen due to mature cataract. It was further stated that the intra ocular implantation was done in the posterior chamber. The position of the lens was proper and was located in its place. The operation was performed properly and efficiently with the help of YAG Laser and operating microscope. It was pointed out that while in the notice the complainant had claimed

compensation amounting to Rs. 50,000/- the amount had been suddenly increased to Rs. 1,00,000/- in the complaint.

Apart from the OPD Cards available with the complainant the complainant filed her own affidavit and that of her husband, record regarding payment of fees. Expenditure incurred on various medicines was also produced. The respondent was cross-examined by the complainant. Also examined as witnesses in this case were Dr. V.K. Dada, Prof. in the AIIMS who had examined the complainant on 3.1.92 and Dr. S.K. Bishnoi, Eye Surgeon, Distt. Hospital Bijnore. Dr. Patnaik respondent, denied having told the complainant that the operation which he would perform must not be unsuccessful. He added that, in fact, no Surgeon can give such an assurance. He further stated that the condition of the optic nerve could not be ascertained as the cataract had matured. He further stated that he had performed the operation with Laser technique.

Dr. V.K. Dada, Professor in AIIMS, was examined as PW 2, being a very Senior Doctor, we attach great significance to his statement and would, therefore, refer to his statement in detail. The various points made by him have been brought in the form of different points to highlight their importance. He examined Smt. Nirmala Bhatnagar on various dates. He also had various investigations carried out. On 3.1.92, he found that glow in the left eye was very dull. On 15.1.92, he found that the IOL was not at its proper place. He further stated that behind IOL a white film (Jhilli) had appeared which could be on account of inflammation in the eye. The examination carried out on 20.4.92 revealed the presence of suture and a direction was given to the Junior Doctor to remove the same and the suture was removed on 22.4.92. Dr. Dada concluded that the patient's left eye was in a bad condition with inflammation, which happens only in 3% cases. She could not see from the left eye. He further stated that in 90% cases, it is not possible to ascertain the cause for the inflammation. He also stated that in case of Herpes Zoster no treatment was available in India and Smt. Bhatnagar was a case of healed Herpes Zoster. According to Dr. Dada, USA was far advanced in the field of Lens implantation. He did not agree with the opinion expressed in "High Speed Healing" by Rodale Published in USA that in 50% cases white film resulting in clouding appears. In his view this figure could be more or less. He made the significant statement that Doctors in India prescribe lens implantation in cent percent cases unless there was an absolute contra-indication. He added that existence of inflammation was not a contraindication.

3. IN Cross-examination on behalf of Dr. Patnaik, opp. party in this case. Dr. Dada stated that in such cases they prescribe operation as symptomatic treatment. He added that if this were not done, it would result in total blindness. He then expressed his considered view that in such cases, operation was absolutely necessary otherwise the patient ran the risk of total blindness. Dr. Dada further stated that before implanting the lens, the power of the eye is ascertained to the extent possible. The lens was implanted alongwith operation for removal of cataract. And in such cases in ninety per cent case post operative additional number of glasses is necessary. No Doctor can make a precise assessment of the powers of lens required to be implanted.

Here we would like to notice in necessary details the operation notes contemporaneously made by Dr. Fatnaik, respondent in the OPD Card. The entry dated 3.7.91 showed that vision in the right eye was 6/9 with glasses and with the left eye the patient could see hand movement and perception of light. The fund us examination revealed that glow could not be seen due to mature cataract. Dr. Patnaik also noted his "impression" as post sub-capsular cataract RE. Mature senile cataract with healed Herpes Zoster inflammation. He advised extra capsular lens extraction with intra ocular implantation (LE). He also noted that the prognosis was explained. On 8.7.91, he carried out YAG-Laser anterior capsulectomy followed by extra capsular lens extraction with IOL in the left eye. Further operation notes of the same date, inter alia, noted the following:

"Operation Notes: After YAG Laser anterior capsulectomy..... Small incision was given by 11 NS blade and Lens matter was aspirated out. IOL was inserted (posterior chamber) in proper place by the help of operating microscope.... continuous suture applied."

4. THE points to be noted are (1) that instead of initial conventional incision for the extraction of the extra capsular lens, YAG Laser was used. This was to reduce chances of complications. (2) In addition to YAG Laser, the operation was carried out with operating microscope. (3) A continuous suture was applied and this fact duly mentioned in the operation notes. THE stand taken by the opp. party in the written statement thus finds total support and corroboration from the operation notes referred to above.

Dr. S.K. Bishnoi examined the complainant on 21.12.91 and he found vision of the left eye to be 4/60 with glasses. According to the record prepared by him at the time of examination, the complainant could see fingers from a distance of four metres.

On a consideration of the material on record, the District Forum-I held that the complainant failed to establish any negligence on the part of the respondent and consequently dismissed the complaint leaving the parties to bear their own costs. Hence this appeal.

5. WE have heard the parties and have gone through the written notes filed by them. It would be convenient to deal with the various grievances summarised as points (i) to (viii) in the opening part of this judgment.

6. POINT (i) is to the effect that the opp. party misrepresented that the operation could not be unsuccessful as he had the latest skill and appliances imported from USA. The opp. party admitted that he had imported appliances not from USA but from West Germany where he had, in fact, undergone necessary training. His further stand is that he never held out any promise that the operation could not be unsuccessful. In fact, it is consistent with probabilities of the case that the operating Doctor had not held out any such assurance. All that even the best Doctor can say is that a particular operation was fairly safe and no one can guarantee 100% safety or results. It has not been proved that the claim of the Doctor that he had appliances, etc., imported from West Germany was untrue. It has also to be remembered that the complainant selected Dr. Patnaik for consultation and operation. It may be safely presumed that the attendants of the complainant namely, her husband and son who was holding a responsible position in the Police Department must have made necessary enquiries about the capabilities of various Doctors in the field, before deciding to go to Dr. Patnaik.

With regard to point (ii) and also (viii), it is sufficient to say that no law prescribes fees to be charged from a patient. The level of fee is determined by economic forces of demand and supply. In any case, the categorical assertion of the opp. party is that he had charged fees which were even less than the expenditure involved in such operation in Government Hospitals like, were even less than the expenditure involved in such operation in Government Hospitals like, AIIMS etc. It has been repeatedly laid down by the National Commission that in the matter of fees on price where the same have not been prescribed under any law, the question whether the same are reasonable or excessive does not constitute a consumer dispute. In any

case, no material has been placed on record to show that what was charged by Dr. Patnaik was excessive or unreasonable compared to the fees being charged by similarly placed other Doctors for such services.

Coming to the point (iii). Dr. Patnaik stated that the status of optic nerve could not be determined because the cataract was mature. In fact, in the OPD Card dated 3.7.91, it was stated as under: "Glow could not be seen due to mature cataract." In Taber's Cyclopedic Medical Dictionary (15th Edition) the word "Cataract" has been defined to mean opacity of lens of the eyes or its capsular or both. Under the same heading, the word "Capsular" in the context of cataract has been defined to mean "Cataract of opacity of the capsule". The literal meaning of capsular cataract or cataract as such signifies opacity. The noting in the OPD Card which was contemporaneously prepared also is to the effect that because of the mature cataract, the glow could not be seen implying that the status of the optic nerve or other parts situated on the posterior side of the eye lens could not be seen. Dr. V.K. Dada, who was Professor in the AIIMS stated that in 100% cases lens implantation is recommended unless there is a positive and absolute contra-indication. He further clarified that presence of inflammation in the eye did not tantamount to a positive and absolute contraindication. Coming as it does from a Senior Eye Specialist of the rank of Professor in AIIMS the opinion goes a long way in establishing that the advice given by Dr. Patnaik was unexceptionable. The complainant could not place on record any pre-operative assessment with regard to the optic nerve having been already affected, on account of Herpes Zoster including Uvietis or other ailment for which she had taken treatment at the AIIMS and elsewhere In the absence of such assessment and due to the physical limitations of the affected parts not being visible because of mature cataract, Dr. Patnaik could not be found fault with for having advised the operation with IOL in the absence of any contraindication.

7. WITH regard to point (iv), we may again refer to statement of Dr. V.K. Dada who stated that it was not possible for any Doctor to assess the exact power of the lens to be implanted and Corrective Extra Lens by means of spectacles was necessary. This takes care of point (v) as well. WITH regard to point (vi), the observations while dealing with point (i) should be kept in mind. Enough has been said about status of the optic nerve and the record made available to Dr. Patnaik and no possibility of physical examination thereof while dealing with other point above. We do not, therefore, find that the opp. party was guilty of any deficiency in service on this count. In Cataract Surgery and its complications by Norman S. Jaffe (Third Edition) in Chapter V under the heading Intra Ocular Lens Implants", and sub-heading "Early or late complications" have been detailed as under:

"(a) Too much air in the anterior chamber. (b) Too wide a pupil as result of rupture of the sphincter of amiotic pupil during cataract extraction or sphincter damage by the cry probe. (c) Premature discontinuation of pilocarpine in those implants not secured by a fixation suture or device. (d) Accidental use of mydriatics. (e) Pupillary dilatation at night. (f) Pupillary dilatation due to excitement. (g) Loop length of implant too short. (h) Ocular trauma. It would be seen that dislocation of the Intra Ocular Lens can be on account of a variety of reasons and simply because displacement of the IOL had taken place in the case of the complainant. It would not necessarily follow that it was on ant. It would not necessarily follow that it was on account of negligence on the part of the operating Doctor.

Another grievance which was put forward was that even though Dr. Patnaik represented that he would carry out the operation with YAG Laser, in fact, the operation appears to have been carried out by conventional method as suture was applied and it was got removed by Dr. Dada after he had examined the patient. This has been explained in detail in the affidavit of Dr. Patnaik. In brief, the explanation is that by YAG Laser method the anterior capsule may be cut without opening the cornea and this was so done in the case of the complainant. It has further been explained that by using the Laser method the chances of complications was greatly reduced. In view of the material available on record, we are satisfied that according to the technique known at the relevant time laser was not a complete substitute for the operation which was only supplemental to the operation which helped in reducing the complications and that is why it was used. Documents placed on record show that Smt. Nirmala Bhatnagar developed problem in the right eye. She got operated for the same from another Doctor and at the end her vision in the right eye is practically reduced to nil whereas it has somewhat returned or improved in the left eye. Reference in this connection may be made to the report dated 23.4.94 issued by Venu Eye Institute showing that in January, 92 the right eye of the patient was operated for cataract with IOL implantation. The report shows that she was not able to perceive light in the right eye due to development of endotalmites while in the left eye she was able to perceive light with accurate projection of rays. The report also shows that the patient had a history of recurring Herpes Zoster infection (Uvietes) in both eyes for five years" duration.

8. FOR the foregoing reasons, we find no merit in the appeal, which fails and is dismissed with costs, which we assess as Rs. 2,500/-. A copy of this order be conveyed to the parties as well as District FORum-I. Appeal dismissed with costs.
