

(1996) 01 NCDRC CK 0054

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION****Case No:** None

VISHNA DEVI @ VISHLA DEVI

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision:** Jan. 19, 1996**Citation:** 1996 2 CPJ 137**Hon'ble Judges:** M.R.Agnihotri , S.Kulwant Singh , Sushil Paul J.**Final Decision:** Appeal dismissed

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**Judgement**

1. COMPLAINANT Smt. Vishna Devi has come up in appeal against the order dated 15th of June, 1994 passed by the learned District Forum, Sonapat, whereby her complaint has been dismissed being not maintainable under the Consumer Protection Act. The appellant under-went tubectomy operation for the purposes of birth control in Civil Hospital, Sonapat on 1st of February, 1985 as she was already having four children; two sons and two daughters. However, inspite of this operation, four years later on 15th of September, 1989 a female child was born to the complainant. Alleging negligence in the performance of tubectomy operation, the appellant filed a civil suit before Sub-Judge 1st Class, Sonapat claiming Rs. 2 lacs as compensation from the State of Haryana, Secretary Health Department, the Chief Medical Officer and the Collector of Sonapat. The suit was however dismissed on 27th of November, 1991. However, appeal filed against the same before the Additional District Judge, Sonapat was withdrawn on 6th of May, 1993 after obtaining permission to file complaint before the District Forum, Sonapat. Thereupon the complaint was filed on 15th of June, 1993, which was contested by the respondents on the ground that according to the Medical Science, the possibility of failure of sterilization operation ranging between 0.5% to 1.0% could not be ruled out even in the best of hands and the chances of spontaneous recanalisation were also there. It was further pleaded that sterilization operation was thus only a procedure and a contraceptive device and not a fool proof guarantee against the conception. In addition, it was also pleaded that Mr. O.P. Mittal, who had performed sterilization operation was a qualified and experienced Surgeon and there was no

negligence on his part in performing the tubectomy operation. Finally, that the civil suit filed by the complainant on the same cause of action having already been dismissed by the Civil Court on 27th of November, 1991, the present complaint was not maintainable. After going through the pleadings and the evidence produced by the parties, the learned District Forum came to the conclusion that the tubectomy operation having been performed on 1st of February, 1985 and the birth of the 5th child having taken place on 15th of November, 1989, the complaint filed on 15th of June, 1993 was barred by limitation.

2. AFTER hearing the parties and having gone through the record, we are of the considered view that the complaint was not maintainable under the Consumer Protection Act, 1986. Firstly, because the Act came into force on 1st of July, 1987 whereas the tubectomy operation was performed on the complainant on 1st of February, 1985, i.e. more than two years earlier to the enforcement of the Consumer Protection Act. Therefore, the alleged negligence on the part of Doctors performing the operation could not be made the subject matter of a complaint under the law, which was not even in force at the time of operation. Secondly, even after the enforcement of the Act, the cause of action, if any, arose to the complainant on 15th of September, 1989 when the female child was born to the complainant, but the complaint was filed even after the expiry of more than three years therefrom i.e. after the expiry of the maximum period of limitation available to the complainant at that time. Thirdly, the State Government, the Collector and the Chief Medical Officer, Sonapat were not liable as the complainant did not hire or avail of the services of any Doctor for consideration in the General Hospital, Sonapat. Finally, the complainant having failed to establish any negligence on the part of the Doctor, who had performed the tubectomy operation on her, the complaint could not be accepted and no relief whatsoever could be granted. Consequently, the appeal is dismissed with no order as to costs. Appeal dismissed.