

(2010) 08 NCDRC CK 0016

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Shailesh A Shah

APPELLANT

Vs

Khodabhai Ganeshdas Patel

RESPONDENT

Date of Decision: Aug. 12, 2010

Citation: 2010 3 CPJ 435

Hon'ble Judges: K.S.Gupta , S.K.Naik J.

Advocate: S.J.Mehta , Yogender Handoo

Judgement

1. THIS appeal is directed against the order dated 5.10.2007 of Consumer Disputes Redressal Commission, Gujarat State, Ahmedabad whereby appellant/opposite party was directed to pay compensation of Rs. 5.00 lakh with interest @ 9% p.a. and cost to the respondent/complainant.

2. FACTS giving rise to this appeal lie in a narrow compass. Respondent who had stone in kidney, was admitted in the clinic of the appellant on 16.7.1995. On 17.7.1995, operation for removal of stone as also prostate was performed by the appellant. Respondent alleged that he was discharged on 23.7.1995 from the clinic by the appellant with instruction to visit clinic on 25.7.1995 for removal of stitches. Respondent again visited the clinic on 25.7.1995. He was kept there and was discharged on 28.7.1995. Relatives of the respondent informed the appellant on telephone that the respondent has been passing stool in urine. Appellant, therefore, called the respondent at the clinic and he removed the catheter. Soon thereafter the respondent developed temperature which rose upto 1040F. Problem of the respondent of passing the urine mixed with stool continued. On being contacted, the appellant advised the respondent to get admitted in clinic. Respondent was

re-admitted in clinic where he was kept for 5 days. During this period, the appellant gave high dose injections but there was no improvement. As advised by the appellant, the respondent was got admitted on 8.8.1995 in Civil Hospital to which the appellant was attached as a Professor in Kidney Diseases. On 10.8.1995, operation of Colostomy was conducted by the appellant. Since the condition of the respondent was deteriorating, he was shifted to Sir Harkishandas Narottomdas Hospital at Bombay. Dr. Nayan Sanghvi working in the hospital told the respondent that while performing first operation on 17.7.1995 his bladder was damaged and a false passage between bladder and intestine was created where Fistula had developed. Thus, alleging deficiency in service on the part of appellant, a total amount of Rs. 18,16,000 was claimed towards compensation, etc. Appellant contested the complaint by filing written version. It was alleged that the complaint was barred by limitation as having been filed beyond two years of 28.7.1995 when the appellant was lastly treated by the respondent. Appellant is a highly qualified doctor and used his skilful knowledge and experience which was required in this case. It was not disputed that operation was performed on 17.7.1995 as alleged. However, it was pleaded that the respondent was discharged on 20.7.1995 with the advise to come for removal of stitches. Respondent came to the appellant on 27.7.1995 for removal of stitches and catheter. Certain medicines were prescribed. Sonography of the respondent was done on 28.7.1995 and 1.8.1995 which showed that the bladder of the respondent was normal. Respondent got admission in Civil Hospital on 8.8.1995 and operation of Colostomy was performed on 10.8.1995 by the appellant. The appellant visited respondent every day in the hospital. It was denied that during first operation any damage was caused to the bladder of the respondent or that the appellant was negligent in treating him. We heard the parties learned Counsel and were taken through the record.

3. CONDUCTING of respondent's operation for prostate and Lt. Ureteric Stone and for Colostomy are admitted by the appellant. Respondent alleges that during operation on 17.7.1995, the appellant negligently damaged the bladder, created false passage between intestine and bladder where fistula had developed. According to the respondent, it was because of this reason that the urine and stool used to mix up. Thrust of argument advanced on behalf of the appellant was that the two sonography reports dated 28.7.1995 and 1.8.1995 would show that the bladder was normal. These reports belie respondent's case in regard to the bladder being damaged in the operation on 17.7.1995. Appellant was not responsible if as a result of severe urinary track infection, the respondent later on had developed fistula. It was pointed out that in support of the alleged damage to the bladder, the

respondent had not examined any expert witness. Reliance was placed on the decision in *Martin F. D'Souza v. Mohd. Ishfaq*, I (2009) CPJ 32 (SC)=II (2009) SLT 20=157 (2009) DLT 391 (SC)=2009 (3) SCC 1. In order to appreciate the said submission, reference need be made to the said two sonography reports, admission made in cross-examination by the appellant, Cystoscopy report dated 9.10.1995 (copy at page 289 and 290), Cystoscopy report dated 14.7.1995 (copy at page 220) and the operation/procedure sheet dated 13.10.1995 (copy at page 311 and 312) done at Sir Harkishandas Narottomdas Hospital, Bombay. Omitting immaterial portion, the sonography report dated 28.7.1995 (copy at page 56) reads thus:

"Sonography screening of KUB region On ultrasound examination both kidneys are of normal size, shape and position. Both kidneys show presence of mild hydronephrosis with dilation of ureters. Hydronephrosis is more on right side. Cortical thickness is 20 mm. No calculus is seen on either side. Urinary bladder appears normal. No evidence of cystitis or bladder calculus is seen. Prostatic fossa is empty. Post voiding screening shows presence of marked residual urine (almost as full as before voiding)." Omitting immaterial portion, cystoscopy report dated 9.10.1995 at page 290 reads thus: "Procedure Urethra stitches with false passage (Details) Bladder not visualized Scopy from suprapubic was done -Bladder is filled with full of fungus ball. -Betadine was given. Closure Catheterization was done."

Aforesaid operation sheet dated 13.10.1995 would show that "Exploratory laparotomy with Excision of bladder with Neoureterostomy" of the respondent was done and pre-operative diagnosis indication of surgery, was R.V. Fistula. The procedure sheet notices:

- SG/a P/O/I of part. - Exploratory Laparotomy was done. - Bladder was slashed out and sigmoid colon big Fistula. - Fistula was repaired. - Both ureter was isolated and..... and....Was done - Bladder excised. - Drain was kept - Closure was done"

4. SAMPLE of the slough and urine was sent for bio-chemical examination. Bio-chemical examination report dated 14/17.10.1995 showed that the sections shown was extensively ulcerated, necrotic mucosa with a copious mural inflammation.

5. COPY of the statement including cross-examination of the appellant has not been filed. Order of the State Commission is written in Gujarati. However, English translation thereof has been filed. It is in cross-examination of the appellant extracted in para 22 of the Impugned order that the catheter of the respondent was removed on 27.7.1995; thereafter respondent got 104°F fever and he complained of passing stool with urine; he asked the complainant for ultrasound which was got done on 28.7.1995. Thus, according to the own admission of the appellant, the respondent complained of the passing of urine mixed with stool even before the sonography was done on 28.7.1995 and 1.8.1995. Sonography would not necessarily reveal any injury to the bladder. Therefore, reliance by the appellant on the said two reports to disprove the injury to the respondent's bladder is totally misplaced. As is seen from the aforesaid report dated 13.10.1995 of Sir Harkishandas Narottomdas Hospital, Bombay where the respondent had taken treatment later on, the abdomen of the respondent was opened, damaged bladder was excised and fistula was repaired. This report completely belies the stand taken by the appellant in regard to damage to the bladder not having been done during the first operation. The appellant, thus, cannot escape liability of the fistula having developed after the performing of the surgery by him and the consequences arising therefrom. No further evidence on negligence of any expert was required to be adduced by the respondent. Martin D. Souza's case (supra), is of no help to the appellant.

6. COMING to the plea of limitation, complaint was filed on 11.8.1995. Appellant alleges that period of limitation will start running from 28.7.1995 when he lastly treated the respondent. Limitation reckoned from this date the complaint was barred by limitation. First operation was conducted by the appellant at his clinic on 17.7.1995. Second operation of Colostomy was conducted at the Civil hospital on 10.8.1995. Document at page No. 67 of the Civil Hospital would show that the respondent was under the treatment of appellant as an indoor patient in the said hospital till 18.9.1995. Computed from this date the complaint filed on the said date was well within limitation. Moreover, the State Commission had rightly held that as the cause of action was continuing, the complaint instituted on 11.8.1997 was within time.

7. AS regards the quantum of compensation awarded, the respondent has to survive with a permanent urine bag, respondent had undergone lot of physical pain and incurred, expenses on treatment. Considering the circumstance, the total compensation of Rs. 5.00 lakh with interest cannot be said to be arbitrary or excessive. In fact, this amount is on lower side. Appeal is without any merit and is dismissed as such with Rs. 20,000 as cost to the respondent. Half of the awarded amount if deposited pursuant to the order dated 14.2.2008 by appellant with this Commission will be released by the Registry in favour of the respondent. Awarded amount will be paid by the appellant within six weeks to the respondent. Appeal dismissed.