

(2010) 12 NCDRC CK 0023

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

V C Bendale

APPELLANT

Vs

Leela Veerajaneyulu

RESPONDENT

Date of Decision: Dec. 16, 2010

Citation: 2011 1 CPJ 1 : 2011 1 CPR 15

Hon'ble Judges: B.N.P.Singh , S.K.Naik J.

Advocate: G.R.Mishra , Vivek Aggarwal , Pradeep Khatri

Judgement

1. MR. S.K. Naik, Member-This revision petition has been filed by Dr. (Mrs.) V.C. Bendale, who was sole opposite party before the District Consumer Disputes Redressal Forum, Thane (District Forum for short), against the order dated 2nd of January, 2006 passed by the Maharashtra State Consumer Disputes Redressal Commission, whereby while quashing/setting aside the order of the District Forum it has allowed the appeal of respondent/complainant and directed Dr. Bendale to pay a sum of Rs. 2,60,000 along with 7% interest from the date of filing of the complaint within a period of 30 days from the date of receipt of their order. The District Forum vide its order dated 16th of March, 2001 had dismissed the complaint of the respondent/complainant.

2. FACTS of the case, giving rise to the present revision petition, are that complainant's son Aditya aged 8 years 10 months, who was suffering from fever, was taken to the clinic of Dr. Bendale on 30.9.1997. Dr. Bendale prescribed medicines Surpoxion and Reziz and also provided some other medicine from her clinic. After 2-3 days the fever was under control but subsequently on 13.10.1997 in the night there was uneasiness to the patient due to which he could not sleep in the

night. In the morning the patient was taken to the clinic of Dr. Bendale with complaint of watery eyes and some redness in the eyes. Dr. Bendale this time prescribed eye-drop Pyrimon and gave some tablets from her clinic. On 14.10.1997 during the patient's second visit to Dr. Bendale some more medicines were prescribed. On 15.10.1997 in the morning when again there was high fever to the patient and his eyes were red and watery, besides rashes on the chest and back and eruption on the lips, he was taken to Dr. Bendale, who this time too prescribed medicines including Reziz and also issued a certificate that the patient was suffering from Malaria on the request of the complainant for submitting the same in the school of his son for his absence. After coming home, when the patient was administered one tablet of Reziz rashes developed all over his body within half an hour. The complainant immediately contacted Dr. Bendale who referred the patient to a Pediatrician. On 15.10.1997 at about 1800 hours the Pediatrician examined the patient; diagnosed the disease to be "Stevens Johnson Syndrome" (SJS); explained that it was due to drug reaction; prescribed some medicines; and advised to admit the patient to his hospital. On his way home, the complainant along with the patient approached Dr. Bendale, who stated that it was not a case of drug reaction as stated by the Pediatrician. However, the patient was administered the medicines prescribed by the Pediatrician but of no help. Initially on 16.10.1997 the complainant took the patient to the hospital of the Pediatrician, who after admitting and examining the patient in the hospital advised him to take the patient to a better hospital. On 17.10.1997 in the morning the complainant being a retired employee of the Indian Navy took the patient to Naval Hospital "INHS Asvini", Mumbai. At this hospital after completing necessary formalities the matter was reported to the Senior Duty Medical Officer Surg. Lt. Cdr. (Mrs.) S.S. Mathai, a qualified specialist in Pediatrics, who opined that the patient was very serious and the patient was shifted to ICU. While the necessary treatment was being given to the patient at Naval Hospital on 24.10.1997 his condition started deteriorating and ultimately he died at about 1150 hours. In the death certificate issued by the Naval Hospital the cause of death is shown as Cardiac Arrhythmia (ICD 427) due to or as consequence of Stevens Johnson Syndrome (ICD 693). In this background, alleging medical negligence the respondent/complainant filed a complaint before the District Forum.

3. THE District Forum, however, found no force in the complaint and dismissed the same.

4. FEELING aggrieved with the dismissal of his complaint, the complainant knocked the door of the State Commission, who allowed his appeal and quashed the order of the District Forum and also directed Dr. Bendale to pay a sum of Rs. 2,60,000 with 7% interest. Hence, this revision petition by the petitioner/opposite party/doctor.

5. AT the outset, it may be stated that even though the dispute centred around a very narrow compass as to whether deceased Aditya was suffering from Malaria when he was brought for treatment before Dr. Bendale on 30th of September, 1997 and whether prescribing Reziz at the doze of 1 tablet twice a day for two days and further whether it was appropriate for her to have repeated the same medicines on the 15th of October, 1997 when redness of the eyes, eruption on the lips and rashes had appeared on the body of the child, which is alleged to have resulted in the child developing SJS, which was the ultimate cause of death of the child; both the parties have resorted to very fierce and aggressive stand to establish each other's case in the process, they have crossed the boundaries on facts and leveled unfounded accusation on each other. This would be evident as we proceed to narrate the details in subsequent paragraphs.

6. THE admitted facts of the case are that respondent/complainant approached Dr. Bendale for the treatment of her ailing son on the 30th of September, 1997. Dr. Bendale after examination prescribed the medicines of Surpoxin and Reziz. It appears that the child recovered from the ailment i.e. fever within 2-3 days and started going to the school. However, when the child complained of redness and watery eyes the parents again approached Dr. Bendale who prescribed Pyrimon eyedrops on the 14th of October, 1997. The main problem, however, arose when on the 15th of October, 1997 the child started running high fever, his eyes continued to be red and watery and in addition rashes had appeared on the chest and back and Dr. Bendale, therefore, had to be approached for the third time. While Dr. Bendale contends that she advised the parents to take the child to a Pediatrician (child specialist) the parents insisted on the child being treated by her and, therefore, she continued with the earlier treatment for Malaria, including the administration of Reziz. There is no evidence whatsoever on this contention of the petitioner. However, when the child was administered 1 tablet of Reziz, as advised by Dr. Bendale, severe rashes developed all over his body within half an hour and,

therefore, the doctor was again approached for the second time on the same day. Dr. Bendale thereafter referred the patient to one Dr. P.M. Gandhi, a child specialist. The child accordingly was taken to the Gandhi Hospital and was examined by Dr. Gandhi, who diagnosed the problem to be that of SJS and advised hospitalization. When the parents expressed their inability to get the child admitted on the spot, he prescribed some medicines. The child, however, was admitted on the next day i.e. on 16th of October, 1997 and remained under the care and treatment of Dr. Gandhi for a day and was taken to the Naval Hospital "INHS Asvini" for better management as the complainant's husband was an ex-serviceman. The doctors at Naval Hospital confirmed it to be a case of SJS and tried their level best to treat the patient, who, however, unfortunately expired on 24th of October, 1997. Cause of death was stated to be cardiac arrest as a consequence of SJS.

7. IT is alleged that Dr. Bendale, who first treated the child was responsible for the development of SJS, ignoring the fact that child was less than nine years old and according to the suggested/recommended dose for administration of Reziz a high doze of the medicine was recommended and further when rashes had appeared on the body of the patient on the 15th of October, 1997, it was clear indication that the child was developing SJS, Dr. Bendale should not have repeated the administration of Reziz, which aggravated the condition of the child to develop into a full fledged SJS. The District Forum vide its detailed order held that the allegations did not stand substantiated and has dismissed the complaint. The State Commission on appeal by Dr. Bendale vide its detailed order, however, has set aside the order of the District Forum and has allowed the complaint in the manner stated earlier.

8. WHILE arguing on behalf of Dr. Bendale, Mr. G.R. Mishra, Advocate, has contended that much is being made out by the complainant with regard to the dosage of Reziz administered on the deceased Aditya claiming that he was below the age of nine years and, therefore, the dosage ought to have been given on the lower side. Referring to some of complainant's own documents such as the legal notice (page 63), history given to the Pediatrician Dr. Gandhi (page 91), and the summary of case sheet prepared by the Naval Hospital (page 96), all of which state that the boy was nine years old, he contends that the child was in fact 9 years old and dosage of Reziz prescribed was in keeping with his age and the practice

adopted in that area. Contending further he has submitted that firstly the deceased had not developed SJS but it was a case of SSSS. According to him, the Pediatrician Dr. Gandhi diagnosed the case to be that of SJS without proper diagnosis and the doctors at INHS without carrying out any investigation took it for granted that it was a case of SJS. Had the child been suffering from SJS, the Counsel contends that there ought to have been immediate improvement in the condition of the child after the doctors withdrew the administration of Reziz but that was not so. On the contrary, his condition continued to deteriorate and the child finally died in their hospital. In this regard, he has laid much stress on the affidavit of Dr. R.S. Bangal. Referring to the letter which the complainant had written to Dr. Gandhi and to the INHS, in which she had apprised her intention to file a complaint against Dr. Bendale, the Counsel contends that it was a deliberate move on part of the complainant to get their support in the form of evidence. Otherwise there was no need for her to have stated that she has no grouse or complaint against them. It is also argued against the way Dr. Gandhi and the INHS have treated the deceased child and the Counsel has virtually attempted to make out a case that it was not Dr. Bendale but the doctors at the INHS who are responsible for the death of the child.

9. WE have considered the detailed arguments and have perused the order passed by the State Commission, which gives in great detail the reasons as to why it did not agree with the findings of the District Forum and has held Dr. Bendale liable for having administered Reziz in an excessive dose which was the main cause of development of SJS and ultimate death of the child.

10. AT the time of argument before us, the learned Counsel for Dr. Bendale has tried to convince us that Malaria is rampant in the area to which the child belonged and even as per the advice of the State Government the doctors are to treat any case of fever being Malaria and start treatment. Prescribing Reziz for the treatment of Malaria was, therefore, in keeping with the practice prevailing in the area. What, however, surprises us is that the minimum that Dr. Bendale ought to have done was to have examined the child properly to arrive at, even on clinical examination, that he was suffering from Malaria. However, a perusal of her first prescription dated 30th of September, 1997 betrays complete lack of professional conduct, inasmuch as the prescription does not indicate the age of the child nor does it indicate as to

whether he was running fever at the time of examination and whether there were other symptoms from which she could arrive at a proper conclusion that the child was suffering from Malaria. Fever has manifestation e.g. viral, dengue, chikangunia, etc. and the doctor should have recorded some details as to why she straightaway diagnosed it to be a case of Malaria. Blood smear tests facilities are now-a-days available in every PHC and health centre and she should have asked for a test report before prescribing medicine without that. She has not stated a single word with regard to the history of the patient and has gone on to prescribe the medicines in a very routine manner. Her contention that she has diagnosed it to be a case of Malaria is now based on the prescription of Reziz rather than on any clinical history. This by itself constitutes negligence. However, even if the case is taken to be that of Malaria, straightaway prescribing Reziz without any investigation will not be justified. In fact it runs counter to the treatment protocol on Malaria prescribed by the National Drug Policy on Malaria of the Government of India. This policy prescribes the following steps for the treatment of Malaria:

"Treatment of uncomplicated Malaria 1. All fever cases suspected to be malaria should be investigated by microscopy or RDT. 2. Pvivax cases should be treated with chloroquine for three days and Primaquine for 14 days. Primaquine is used to prevent relapse but is contraindicated in pregnant women, infants and individuals with G6PD deficiency. Note: Patients should be instructed to report back in case of haematuria or high coloured urine /cyanosis or blue colouration of lips and Primaquine should be stopped in such cases. Care should be taken in patients with anaemia. 3. P. falciparum cases should be treated with ACT (Artesunate 3 days + Sulphadoxine-Pyrimethamine 1 day). This is to be accompanied by single dose Primaquine on day 2. 4. Pregnant women with uncomplicated P. falciparum should be treated as follows: 1st Trimester: Quinine 2nd and 3rd Trimester: ACT Note: Primaquine is contra indicated in pregnant woman 5. In cases where parasitological diagnosis is not possible due to non-availability of either timely microscopy or RDT, suspected Malaria cases will be treated with full course of chloroquine, till the results of microscopy are received. Once the parasitological diagnosis is available, appropriate treatment as per the species, is to be administered. 6. Presumptive treatment with chloroquine is no more recommended."

(emphasis added)

11. FURTHER, with regard, however, to Reziz, the medical literature states that Reziz is a combination of two drugs such as Sulphadoxine and Pyrimethamine. No doubt, it is used to treat Malaria but only if it has been established that the Malaria is

chloroquine resistant and the attack is acute in nature. With regard to the dosage, it states that while adults can take 2-3 tablets as a single dose, the children from 5-10 years age group with 20-30 kgs. body weight can be given 1 1/2 tablets as a single dose. It clearly stipulates that the dose should not be repeated for at least seven days. In the case in hand, Dr. Bendale has prescribed four tablets of Reziz at the rate of two tablets per day for two consecutive days as against the recommended dose of 1 1/2 tablets as a single dose. It cannot, therefore, be said that the dosage prescribed was not in excess. It is admitted that even on the 15th of October, 1997 Dr. Bendale has repeated the Reziz and, therefore, it is fully established that Reziz had been administered to the child far in excess of the requirement. In this background, the attempt of the learned Counsel for Dr. Bendale that the child was not suffering from SJS is only a desperate attempt to pass on the blame to the doctors of the INHS. Dr. Gandhi, the Pediatrician, with a vast experience behind him and the specialist doctors at INHS have held this to be a case of SJS pursuant to the excessive dose of Reziz and we are not convinced that in the absence of any confirmatory diagnostic test they have in any way gone wrong in diagnosing the case to be that of SJS. Just because the complainant informed them about her intention to file a complaint against Dr. Bendale would not render their evidence in any way to be coloured in favour of the respondent/complainant. It is not denied that Reziz can cause SJS and medical literature shows that it is potentially fatal and there are possibilities of death in case of adverse effect. In Malaria programme this medicine is not recommended in routine but is prescribed very cautiously with other medicines. Dr. Bendale having not prescribed the proper medicine with proper dosage has failed in her duty as a doctor and the State Commission, in our view, has very rightly held her to be negligent.

12. UNDER the circumstances, we do not find any illegality or irregularity in the order passed by the State Commission warranting any interference in its order.

13. THE revision petition accordingly is dismissed with no order as to costs.