

**(2011) 07 NCDRC CK 0068**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** None

Abraham Koola Koola House

APPELLANT

Vs

Royal Hospital

RESPONDENT

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**Date of Decision:** July 6, 2011

**Citation:** 2011 0 NCDRC 361 : 2011 3 CPR 478 : 2011 4 CPJ 221

**Hon'ble Judges:** V.R.Kingaonkar , Vinay Kumar J.

**Final Decision:** Appeal dismissed

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**Judgement**

1. THE Appellant Abraham Koola has challenged the judgment of the Kerala State Consumer Disputes Redressal Commission in OP NO.20/2000. In the impugned order, the complaint of medical negligence against Royal Hospital and Dr. P.R. George has been dismissed by the State Commission, holding that no negligence can be attributed to the Respondents/OPs.

2. THE above order in OP No.20/2000 was passed by the State Commission on 15.8.2005, but the present appeal against this order has been filed on 18.1.2007. Thus, there is a delay of 491 days in filing the appeal. This delay attracts the provision in Section 19 of the Consumer Protection Act, 1986, which gives the Appellant a period of 30 days only from the date of the order of the State Commission. However, the proviso to this Section allow this Commission to entertain an appeal filed beyond 30 days, if the Commission is satisfied that there was a sufficient cause for not filing it within that period.

We have perused the application filed by the Appellants/Complainants with an explanation of the reasons, which caused this delay. The application is clearly

written without any indication of the number of days of delay, which it is seeking to explain. The first ground is that the Appellant is a Teacher under great financial hardship. It took some time to arrange the necessary fund for filing the appeal in time. He had to take loans for the same. This cryptic explanation gives no idea of the Appellant's understanding of the likely expenses nor does it give any idea of the time taking in arranging the same. The second explanation is that even after arranging the money he could not find a suitable counsel to handle the case in Delhi. He claims to have sent of the case and the Vakalatnama to a counsel on 17.11.2006. This itself was 15 months after the date of the impugned order. However, according to the Complainant, but the same was returned to him on 28.11.2006, on account error in the address. Thereafter, he obtained the correct address telephonically and sent the papers again. The Complainant claims that he was informed by the counsel on 7.12.2006 that the documents were not properly executed. Once again, there is no supporting evidence to show the return of the post and of finding of inadequacies in the documents by the counsel in Delhi. Both should be matters of fact and supporting evidence should exist in relation to both. The third ground mentioned by the Appellant/Complainant is that all the leave to his credit had already been utilized in the treatment of his son. Therefore, he could travel to Delhi only during the holidays in December, 2006. Yet again, no supporting documentary evidence has been produced to substantiate the claim that all leave to his account already stood utilized and travel to Delhi was actually performed during the period of his school holidays. We find the explanations sketchy and non-specific. We also do not accept the absence of any evidence in support of the reasons mentioned in justification of this abnormal delay of 491 days. The appeal petition is therefore, liable to be dismissed on the ground of limitation alone.

3. COMING to the merits of the case, we find that the order of the State Commission has been assailed on several grounds, which are non-specific, and at best, represent the perception of the Appellant. We however, look at the substantive ones. The first is that the State Commission failed to appreciate that the Respondent No.2 Dr. P. R. George, had failed to carefully assess the X-Reports. ?Loss of radial pulse, sensation, should put an orthopedic on guard. Pain, pulselessness, paller, paraesthesia and paralysis are the diagnostic features of Volkmanns Ischaemia. The first 3 symptoms should alert a surgeon at once. In this present case the child suffered from pain and pulselessness?.

This point has been directly addressed by the State Commission in para 24 of the impugned order. The Commission has noted that the Complainants have not chosen

to examine any expert to prove their case that primary duty of a doctor attending to a patient who sustained supra conylar fracture is to see that there was no vascular damage or arterial ischemia i.e. to see that there is no vascular impairment or circulatory obstruction of blood and if there is any to remove such an obstruction by surgery or otherwise and restore the blood circulation and then only to attempt any reduction of fracture. Further in para 28 the State Commission has observed that the reduction of the fracture was well documented in three X-Ray films. The Commission has also noted that:-

"According to them after gentle manipulated reduction radial pulse was reestablished, distal circulation was good, the hand and fingers became warm and of normal colour. RW1 and RW2 have sworn in their respective affidavit the above stated assertions made in their joint written version and we find no material to discard the same."

This fact of reestablishment of radial pulse has again been noted by the State Commission in para 30, observing that no material is brought out to show that the findings noted in the case-sheet are not correct. Therefore, the State Commission has reached the finding of no negligence on the part of the Respondents, in conducting of gentle manipulated reduction. The Commission has further observed that no material has been produced to show that it was on account of putting the right hand of the boy in plaster with only finger tips exposed that no radial pulse were felt on 30.6.1998.

4. IN the background of the fact that it was a case of complex supra conylar fracture of the elbow and the concerns about possibility of vascular impairment, as clearly recorded in the case-sheet, the State Commission has rightly noted that the case sheet shows that at the time of discharge on 27.6.1998 the patient was asked to come for review after three days. On examination of the hand on 30.6.1998 it was found to have oedema in the fingers and radial pulse was not felt at the wrist. On the same day, the patient was admitted in Thrissur Heart Hospital (THH) and surgery performed to ressect the brachial artery and to perform the vein graft. The patient was discharged from this Hospital on 21.7.1998.

Secondly, it is alleged by the Appellant that the State Commission failed to appreciate that when the Respondent was aware that he was not well equipped to conduct a complicated surgery, he should have advised well in advance, hence the doctor has not acted in good faith. This question has been very directly addressed by the State Commission, in the impugned order. The Commission has, on the basis of evidence produced before it, concluded that on the fourth day, the patient's

condition showed that there was secondary vascular occlusion. The respondent hospital did not have facility to perform it. The patient was to be operated upon jointly by Orthopedic Surgeon and Vascular Surgeon. This surgery took place in the THH on the same day. Therefore, the State Commission has rejected the contention of the Complainant. As already noted earlier in this order, before the patient was discharged on 27.06.1996, radial pulse was, as per record, re-established. The patient was asked to come back on 30.6.1998. It was at this stage that secondary vascular occlusion was observed, necessitating surgery. We are therefore in agreement with the findings of the State Commission. For the reasons discussed above, this appeal fails both on the ground of limitation and on merits. The appeal is accordingly dismissed with no orders as to costs.