

## SAMAR NATH MUKHERJEE Vs SAROJ GHOSH

**Court:** NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

**Date of Decision:** Aug. 11, 2000

**Citation:** 2000 3 CPJ 216 : 2000 3 CPR 332

**Hon'ble Judges:** S.C.Datta , S.Majumder , D.Karformas J.

**Final Decision:** Case dismissed

### Judgement

1. Mr. Justice S.C. Datta, President

2. THE petitioner claims himself to be a Medical Practitioner with more than 17 years standing. Opposite party No. 1 is the Director of May Fair

Nursing Home at B.T. Road, Calcutta. Opposite party Nos. 2 to 4 are Medical Practitioners attached to the same Nursing Home.

On 28.12.1996 the petitioner's wife Mrs. Sipra Mukherjee felt slight pain in her body and chest accompanied with no temperature. On the next

day she felt pain in abdomen and necessary medicines were administered by the petitioner himself. On 30.12.1996 she felt weakness with slight

fever and pain in the left side of the chest. The petitioner applied necessary medicines and his wife had undergone X-ray chest P.A. view and other

blood tests.

On 1.1.1997 at about 8.30 a.m. in the morning she complained of mild respiratory trouble, i.e. breathing difficulties and accordingly Dr. Biswajit

Banerjee was sent for who arranged for ECG forthwith. The said report depicted only development of Sinus Tachychordia. Accordingly the

petitioner got his wife admitted in a cabin at the Nursing Home where she was examined by opposite party No. 2 and necessary medicines were

administered.

3. ON the same day, i.e. on 1.1.1997 at about 8.30 p.m. the petitioner with the permission of the Authority of the said Nursing Home and

examined his wife personally and noticed persistence of respiratory trouble and drew the attention of the attendant there for taking proper care of

her. He contacted opposite party No. 2 over phone at 12.10 a.m. on 2.1.1997 at his residence to enquire about the health of his wife when he

was told that her condition was alright. At about 7.10 a.m. Dr. Biswajit Banerjee suddenly called the petitioner over phone and informed that the

patient had since been shifted to I.C.C.U. ON receipt of this information he rushed to Nursing Home and noticed that his wife was under cardiac

massage. According to the complainant his wife had already expired but to cover up their negligence and to mislead the petitioner that the doctors

were seen attending on her.

A Death Certificate was issued on the same day. The petitioner lodged a complaint with the Cossipore P.S. alleging rash and negligent conduct on

the part of the opposite parties. The said criminal case is still pending. The petitioner understands that the mode of treatment meted out to his wife

was highly irregular and deviating from usual norm of medical practice resulting in her death. The petitioner claims that he had hired the services of

the opposite parties for consideration and as such he is a consumer of service. The petitioner holds these opposite parties guilty of negligence and

deficiency in service. The deceased left a minor daughter aged about 13 years. Hence the petitioner has approached this Commission claiming

compensation of a sum of Rs. 10,00,000/-.

4. THE case is contested by the opposite parties by filing written version wherein the maintainability of the case has been challenged. It has been

stated that the complainant has lodged a complaint in the Court of the learned Additional Chief Judicial Magistrate, Sealdah. A specific case was

registered with the Cossipore P.S. under Section 304A/34, I.P.C. and on completion of investigation the police has submitted charge-sheet against

the opposite parties. According to the opposite parties the evidence of the complainant is being recorded in the aforesaid criminal case.

Accordingly it is submitted that it would not be expedient in the interest of justice to proceed with this case. Another ground taken by the opposite

party is that they have rendered service to the petitioner free of charge and as such the petitioner cannot be regarded as a consumer within the

definition of the word under Section 2(d)(ii) of the Consumer Protection Act.

We have heard the learned Counsel for the opposite party and the petitioner who appears in person. The petitioner is a Medical Practitioner with

more than 17 years of practice. His wife Smt. Sipra Mukherjee having developed respiratory trouble, Dr. Biswajit Banerjee was first consulted

and ECG report indicated development of Sinus Tachychardia. Thereafter she was admitted in a cabin of the Nursing Home. It is not clear that

under whose care and treatment the deceased was put at the Nursing Home. It has however, been stated that opposite party No. 2 examined the

patient on 1.1.1997 at 11.30 a.m. It is the positive case of the complainant that with the permission of the Authority of the said Nursing Home he

had also examined his wife personally and observed persistence of respiratory trouble. On 2.1.1997 at about 7.00 a.m. Dr. Biswajit Banerjee

telephoned him to inform that the patient had since been shifted to I.C.C.U. Accordingly he rushed to the Nursing Home to notice that the

deceased was under cardiac massage. Later he came to learn that it was merely to cover up their negligence and to mislead the petitioner. The

petitioner alleged the rash and negligent act on the part of the Doctors attending on his wife. The specific acts of negligence have not been pleaded

within the four corners of the written complaint. It has been simply stated that the mode of treatment was highly irregular and deviating from usual

norm of medical practice leading to the death of his wife. It has of course been stated that the petitioner believed that the death of his wife was

attributable to perceptible negligence of the opposite party as well as R.M.O. on duty. The opposite parties have challenged the maintainability of

the case on the ground that the services rendered to the deceased were free of charge and as such the petitioner cannot be regarded as a

consumer. It is accepted that rendering of any service free of charge cannot be regarded as service. Section 2(d)(ii) enjoins that ""consumer"" means

any person who hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised etc. etc. The

complainant filed a xerox copy of bill raised by the Nursing Home wherefrom it would appear that nothing was charged for rendering service to the

deceased as she was the wife of a Medical Practitioner. The complainant has not produced any scrap of paper to show that in fact any amount has

been paid to the Nursing Home or to the attending Physicians for the service rendered by them. Therefore, we have no hesitation to hold that the

contention raised by the opposite party is well-founded and we see no reason to reject the same.

The second ground of objection is that the complainant has lodged a complaint with the learned Additional Chief Judicial Magistrate, Sealdah and

a specific case has been started. The police has submitted charge-sheet upon completion of investigation and the trial is proceeding. It is not

disputed that the evidence of the complainant is being recorded. In view of the circumstances, learned Counsel for the respondent submits that the

present case should not be proceeded with. We find substance in this objection. It appears that with regard to the same subject-matter involving

identical issues a criminal case awaits decision. Accordingly we think that it would not be appropriate for this Commission to conduct a concurred

adjudication of those issues covering the subject-matter in the instant case under a summary proceeding under the Act when they are already

pending adjudication before a Criminal Court. Accordingly we are constrained to hold that this complaint is untenable as the said matter is

subjudice before the competent Criminal Court. In view of the discussion aforesaid we uphold both the contentions raised by the learned Counsel

for the opposite party and hold that the present complaint cannot be entertained and is as such liable to be dismissed. For the reasons aforesaid,

we find no merit in this case which is hereby dismissed on contest. Case dismissed.