

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).3903/2019

A.J. MOHAMMED SHAH @ AJ SHANAVAS APPELLANT(S)

VERSUS

KERALA INSTITUTE OF MEDICAL SCIENCE (KIMS) & ANR. RESPONDENT(S)

WITH

CIVIL APPEAL NO. 3904/2019

CIVIL APPEAL NO. 3905/2019

O R D E R

In all these appeals the parties who were before the National Consumer Disputes Redressal Commission (For short`NCDRC`), are assailing the common judgment dated 24.02.2015 passed by the NCDRC. The appeal bearing Civil Appeal No. 3903/2019 is filed by the Complainant before the State Consumer Disputes Redressal Commission claiming compensation towards medical negligence alleged against respondent nos. 1 and 2 in this appeal who are also assailing the same order dated 24.02.2015

The respondent nos. 1 and 2 in this appeal have in that regard separately instituted the appeals bearing C.A. NO. 3904/2019 and C.A. NO. 3905/2019.

The brief facts leading to the situation is that the appellant-complainant in C.A.No.3903/2019 had approached the

first respondent-hospital wherein the second respondent-Doctor is employed with regard to the treatment due to abdominal pain. On examination, the second respondent-Doctor had advised that since there is a Renal stone noticed, the same is to be removed and had accordingly administered treatment. Though, initially the stone was crushed and was required to be flushed out, it had not in the normal course flushed out. Hence, a stent was introduced. Even thereafter since there was certain medical complications, operation had been advised. The appellant-complainant, however on experiencing pain and discomfort had thereafter contacted the Kasturba Medical College, Manipal wherein subsequently the operation has been conducted and by that time since it was diagnosed that the kidney was affected, one of his kidney was removed.

It is in that background, the appellant had approached the SCDRC claiming compensation. The respondents had filed their version before the SCDRC and indicated the manner of the treatment that was to be administered and sought to justify their action contending that the best medical advise was given and the appellant himself was negligent since, as had been advised by them, the appellant had not visited them within time and therefore, if any, complication had arisen the respondent nos. 1 and 2 cannot be held liable.

The State Commission at the first instance, has arrived at the conclusion that the second respondent-Doctor was negligent to a certain extent and the liability is to be shared by the first respondent -hospital wherein the treatment was administered. Since the SCDRC was of the opinion that the appellant had also caused delay in approaching the KMC Hospital, Manipal, certain contributory negligence is to be attributed to the appellant herein. It is in that light, though the SCDRC had arrived at the compensation of Rs.6,20,000/- it was apportioned and only a sum of Rs. 3,10,000/- was awarded with cost of Rs. 5000/-. Against such conclusion reached by the SCDRC through its judgment dated 19.05.2009 all the parties were before the NCDRC.

The NCDRC though has upheld the finding so far as negligence on the part of the respondent nos.1 and 2 amounting to deficiency, has set aside the finding relating to contributory negligence and has awarded the entire amount of Rs.6,20,000/-.

It is in that background, the parties are before this Court wherein the appellant-claimant is seeking enhancement of the compensation, while the respondent nos. 1 and 2 are assailing the finding relating to medical negligence amounting to deficiency.

Having heard the learned counsel for the parties at length, we have also perused the appeal papers. In a matter of the present nature, when it is seen that the appellant-complainant had approached the respondent-hospital and was being advised the

various forms of treatment from the time of his first consultation and also taking into consideration the manner in which he has been subsequently treated in KMC Hospital, Manipal, in the present facts and circumstances, we feel that the negligence as attributed to the respondent nos. 1 and 2 cannot in an absolute term be accepted since from time to time the manner of treatment was being indicated and was also being followed up. In any event, there is no definite evidence to the effect that it is the treatment that which led to the failure of the kidney. The Doctor from KMC Hospital, Manipal who was examined before SCDRC has not disapproved the process followed by respondent No.2.

Be that as it may, taking into consideration the hardship that has been gone through by the appellant in undergoing the entire process over and over again, to some extent the compensation in any event cannot be said as unjustified though it cannot be by holding respondent Nos. 1 and 2 as negligent. Even if that be the position, we are of the opinion that in the present facts and circumstances of the case, to render a quietus to the situation, even though we are inclined to set aside the finding relating to negligence against respondent nos. 1 and 2, in exercise of our power under Article 142 of the Constitution of India, in order to do complete justice, we feel it appropriate that adequate compensation is to be provided to the appellant herein.

As already noted, the amount of Rs.6,20,000/- has been awarded by the NCDRC. A further sum of Rs. 3,80,000/- shall be paid by the respondent nos. 1 and 2 jointly and severally, to the appellant in C.A.No. 3903/2019 within four weeks, which shall be in full and final settlement of all claims of the appellant.

It is made clear that if the said amount is not paid within a period of four weeks from this day, the same shall thereafter carry interest @ 9 % per annum till the date of payment of the amount.

All the appeals are disposed of in the above terms.

.....J.
(A.S. BOPANNA)

.....J.
(DIPANKAR DATTA)

NEW DELHI
MAY 11, 2023

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s).3903/2019

A.J. MOHAMMED SHAH @ AJ SHANAVAS

Appellant(s)

VERSUS

KERALA INSTITUTE OF MEDICAL SCIENCE (KIMS) & ANR. Respondent(s)

WITH

C.A. No. 3904/2019 (XVII-A)

C.A. No. 3905/2019 (XVII-A)

Date : 11-05-2023 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE DIPANKAR DATTA

For parties

Dr. S. Gopakumaran Nair, Sr. Adv.
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Ms. Beena Victor, Adv.
Mr. Vivek Guruprasad Ballekere, Adv.
Ms. Keerthipriyan E, Adv.
Ms. M Priya, Adv.UPON hearing the counsel the Court made the following
O R D E RThe Civil Appeals are disposed of in terms of the signed
order.

Pending application(s) shall stand disposed of.

(RAJNI MUKHI)
COURT MASTER (SH)(DIPTI KHURANA)
ASSISTANT REGISTRAR

(SIGNED ORDER IS PLACED ON THE FILE)