

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 3706 OF 2012

(Against the Order dated 20/07/2012 in Appeal No. 1431/2006 of the State Commission Haryana)

1. YOGESH (MINOR)

Through Natural Guardian Sumer Chand, R/o 26, Vishnu
Nagar,

Yamuna Nagar

Haryana

.....Petitioner(s)

Versus

1. DR. D.C. MITTAL & ANR.

Workshop Road, Near Kumani Chowk, Tehsil Jagadhri,
Yamuna Nagar

Haryana

2. United India Insurance Company Ltd.

Through Director, 54, Janpath Cannaught Place,

New Delhi

Delhi

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT

HON'BLE DR. S.M. KANTIKAR, MEMBER

For the Petitioner :

For the Respondent :

Dated : 01 Apr 2021

ORDER

Appeared at the time of arguments through Video Conferencing

For Petitioner : NEMO

For Respondent No. 1 : Mr. Anand Prakash, Advocate

Pronounced on: 1st April 2021

ORDER

PER DR. S. M. KANTIKAR, MEMBER

1. The present Revision Petition has been filed by the Complainant (minor Yogesh, through his natural guardian Sumer Chand, hereinafter referred to as the “patient”) under Section 21(b) of the Consumer Protection Act, 1986 against the impugned Order dated 20.07.2012 of the State Consumer Disputes Redressal Commission, Panchkula, Haryana (hereinafter referred to as the “State Commission”) in First Appeal No. 1431 of 2006, wherein the State Commission allowed the Appeal and dismissed the Complaint filed before the District Consumer Disputes Redressal Forum, Yamuna Nagar, Jagadhri (hereinafter referred to as the “District Forum”).
2. The instant Revision Petition raises a question whether the alleged injection was given by Dr. D.C. Mittal (hereinafter referred to as the “Opposite Party No. 1” was the cause of injury – foot drop to the Complainant – patient.
3. Brief facts that master Yogesh (the Complainant, hereinafter referred to as the ‘patient’) about 7 years of age approached Dr. D. C. Mittal for the treatment of fever. The Opposite Party administered one injection in the left gluteal region by which the patient became unconscious and his left leg became paralysed. The patient was unable to walk. Immediately on the same day, the patient’s father took him on the same day to Dr. A.V.S. Ravi, the Child Specialist, who diagnosed it as left foot drop and treated the patient till 15.05.2004. Thereafter, he consulted several doctors who diagnosed it as foot drop due to post injection injury. The patient was brought to AIIMS, New Delhi on 24.05.2004 at Neurology Department and thereafter, at TDTR DAV Institute of Physiotherapy, it was again diagnosed as foot drop due to injection palsy. Thereafter, in June, 2004 he approached Goyal Hospital, Jagadhri, Aggarwal Orthopedic Centre, Jagadhri for further treatment. Being aggrieved the patient filed a Complaint through his guardian before the District Forum, Yamuna Nagar, Jagadhri.
4. The Opposite Parties filed their respective written versions and denied the allegations. They prayed for dismissal of the Complaint.
5. The District Forum after appraisal of evidence from both the sides, partly allowed the Complaint and directed the Opposite Parties to pay jointly and severally Rs. 4 lakh to the Complainant. The District Forum observed as below:

4. xxxxxx

The original register seen at the time of argument prove that the register are false and fabricated one and draw the attention of this Forum towards the OPD register in which on the last page the date has been mentioned 7.5.2004 and last page is refixed with the Jilt

(Cover) and the next register start from 8.5.2004 which was also refixed with the cover (Jilt) and the OPD of 9.5.2004 and 10.5.2004 has not been shown knowingly which shows the manipulation and tempering with the register and further draw the attention of this Forum towards the date of OPD 4.12.2003 and after which the date has been mentioned 25.12.2003, meaning thereby the doctor was not present in the hospital from 5.12.2003 to 24.12.2003 and in the date 4.12.2003 the patient have been seen by the respondent doctor about 225 patient in a day whereas in subsequent day or in the following day he never seen more than 10 to 15 patient. It shows that the OPD Register are maintained only to bluff this forum and to falsify the claim of complainant. No reliance can place on such like register which are not in sequences and are fabricated one and draw the attention of this Forum towards the authority 1971 C.A.R. 296 (S.C.). Appreciation of evidence-courts have to rely more on human probabilities than on assertions of witnesses. When it is proved that complainant is the neighbour as admitted by the respondent doctor himself and respondent doctor himself admitted that he angry upon the Complainant as such there was no any animity of complainant with the respondent doctor so there is no embiguity regarding the relationship which is proved on the file as the treatment was taken by complainant of his son from the hospital of respondent doctor who by administering an injection without any precaution and carelessly damaged the lower limb of the son of complainant and he become disabled and prayed for acceptance of complaint.

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6. Being aggrieved, the United India Insurance Co. (hereinafter referred to as the “Opposite Party No. 2) filed the First Appeal before the State Commission, Haryana Panchkula. The State Commission allowed the Appeal and dismissed the Complaint with the following observations:

“The perusal of the record shows that the complainant has not produced any prescription slip on the record so as to prove that any injection was given to the minor Yogesh by Dr. D.C. Mittal and in absence thereof, it cannot be said that the minor was given injection by Dr. Mittal. Thus, without any cogent and convincing evidence the relationship of consumer and service provider is not proved. District Consumer Forum has accepted the complaint merely on assumption and presumption by relying upon the affidavit of the complainant which cannot take the shape of proof.

Under the reasons recorded above, this appeal is accepted, the impugned order is set aside and the complaint is dismissed.”

7. Being aggrieved by the dismissal of the Complaint, the Complainant filed the instant Revision Petition.

8. We have heard the learned Counsel for both the sides, perused the material on record *inter alia* the original record of the District Forum.

9. From the medical record, it is apparent that the child suffered foot drop because of the neural injury. The question before us is as to what was the cause of neural injury. After the alleged incidence, the patient was immediately taken to Dr. Ravi, the Paediatrician immediately. The various prescriptions on record proves that during the period 09.05.2004 to 16.06.2004, the patient took treatment / consultation from various hospitals namely viz. Ravi Hospital; Masih Hospital; Sparsh Neuro Diagnostic at Saharanpur, the AIIMS, New Delhi; TDTR - DAV Institute of

Physiotherapy; Goyal Hospital and Jagdari & Aggarwal Orthopedic Centre, Jagdari. The doctors at different hospitals opined that it was sciatic nerve injury due to intramuscular injection.

10. The next question before us is whether the Opposite Party No. 1 administered the injection. The Complainant in his support filed the evidence of auto driver who took the patient from the Opposite Party Hospital to the Paeditrician - Dr. Ravi. The Opposite Party No. 1 has not rebutted it. According to the Opposite Party No. 1, on the date of alleged incidence, he was not present in the town on 09.05.2004, however he has not produced any cogent evidence to prove that he was out of station. Moreover, the observations of the District Forum as stated supra, it was clear that the OPD Register was totally fabricated with missing entries and no continuation of entries for the respective dates. Such a record creates more doubt in our mind. Thus, the submission of the Opposite Party No. 1 is not acceptable.

11. Moreover the contention of the Opposite Party No. 1 is that the Complainant has not produced any prescription or receipt of Rs. 50/- paid by him. It should be borne in mind as a common practice at village or tehsil area level, no doctor issues either receipt of prescription to their patients.

12. In our view, the District Forum allowed the Complaint on the basis of the evidence and affidavit of Complainant and the auto-rickshaw driver. It was not merely on assumption and presumption as the State Commission observed which appears to be erroneous.

13. Based on the foregoing discussion, we hold the Opposite Party No. 1 liable for medical negligence. We set aside the Order of the State Commission and restore the Order of the District Forum. It is made clear that as the Opposite Party No. 1 was indemnified by the Insurance Co. under professional indemnity, we direct the Insurance Co. (Opposite Party No. 2) to pay the awarded compensation to the Complainant within six weeks from today, failing which the entire amount shall carry the interest @ 8 % per annum till its realisation.

14. The Revision Petition is allowed.

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R.K. AGRAWAL
PRESIDENT

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DR. S.M. KANTIKAR
MEMBER