

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 726 OF 2014

(Against the Order dated 27/08/2013 in Appeal No. 203/2009 of the State Commission Delhi)

1. ESI HOSPITAL & ANR.

THROUGH ITS MEDICAL SUPERINTENDENT,
BASAIDARAPUR, RING ROAD
DELHI

2. ESI DISPENSARY

JWALAPURI NANGLOI
NEW DELHI 110087

.....Petitioner(s)

Versus

1. RAVINDER GUPTA & ANR.

House No. D-506, Gali No. 61, Mahavir Enclave-III
New Delhi - 59

2. AIIIMS HOSPITAL

ANSARI NAGAR,
DELHI

.....Respondent(s)

BEFORE:

**HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT
HON'BLE DR. S.M. KANTIKAR, MEMBER**

For the Petitioner : Appeared at the time of arguments through Video Conferencing
For Petitioner : Mr. Bhupesh Narula, Advocate with
Dr. Rajesh Lal Chandani, ESI Hospital

For the Respondent : Appeared at the time of arguments through Video Conferencing
For Respondent : Mr. Jogender Singh, Advocate
With Respondent No.-1 in person
Mr. Sarthak Chillar, Advocate for R-2

Dated : 18 Jun 2021

ORDER

PER DR. S. M. KANTIKAR, MEMBER

1. The present Revision Petition has been filed by the Petitioners – ESI Hospital and ESI Dispensary (hereinafter referred to as the Opposite Parties Nos. 1 & 2 respectively) under Section 21(b) of the Consumer Protection Act, 1986 against the Order dated 27.08.2013, wherein the State Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as the State

Commission) dismissed the Appeal and confirmed the Order of the District Consumer Disputes Redressal Forum – III, Janakpuri (hereinafter referred to as the District Forum) in Consumer Complaint No. 890/06

2. Brief facts of the case are that the Complainant's daughter Ms. Neelam (hereinafter referred to as the patient) suffered injury to her left hand and approached ESI Dispensary at Jwalapuri (hereinafter referred to as the Opposite Party No.-1) on 26.04.2006. On the next day she was further referred to ESI Hospital, Basaidarapur (hereinafter referred to as the Opposite Party No. 2). It was alleged that the doctors applied plaster to her left hand despite no fracture being seen in the X-ray. Thereafter, she developed pus discharge and complications in her left hand for which she underwent several operations at the Opposite Party No. 1 Hospital. On 08.11.2006 she was referred to AIIMS, New Delhi (hereinafter referred to as the 'Opposite Party No. 3') however she did not get completely cured and became handicapped.

3. Being aggrieved by the negligent treatment, the Complainant filed a Consumer Complaint against both the Opposite Parties before the District Forum, Janakpuri, New Delhi claiming compensation of Rs. 4,50,000/-.

4. The District Forum partly allowed the claim and ordered the Opposite Party No. 2 to pay Rs. 3 lakh to the Complainant. The Opposite Party No. 1 and 2 filed an Appeal before the State Commission. The Appeal was dismissed and the Order passed by the District Forum was affirmed.

5. Being aggrieved by the Order of State Commission, the Hospital- Opposite Party No. 1 and 2 filed the instant Revision Petition.

6. We have heard the arguments from the learned Counsel for the Parties. During arguments the learned Counsel for the Complainant was accompanied with the Complainant and his daughter (patient). The learned Counsel for the Opposite Party No. 2 was accompanied with Dr. Rajesh Lal Chandani from ESI Hospital.

7. We have perused the entire Medical Record of the ESI Hospital and AIIMS and given our thoughtful consideration.

8. We note from the Medical Record of ESI Hospital that the patient approached Ortho OPD on 28.04.2006 with history of fall from stairs. X-ray AP and lateral of left upper arm was advised and the patient was given Tablet Brufen 200 mg. There was swelling and tenderness of left arm up to shoulder. The doctors at ESI Hospital made a provisional diagnosis of fracture of surgical neck of left humerus (arm) and clavicle (collar bone) with rib fracture and osteomyelitis. The treatment advised was U slab, limb elevation, active finger movements, watch for swelling and colour changes. On 30.04.2006, the patient was referred to Pediatrics for abdominal pain but there were no significant findings, so she was advised to continue the medicines prescribed by the Orthopedics. On 01.05.2006, Dr. A. K. Dawar examined the patient. He further advised incision and drainage [I&D] and preparation of OT for emergency I&D. The emergency blood investigations like HB, TC, DC, RBS, Routine Urine, X-ray chest were done and asked to arrange the blood also. After pre-anesthetic check-up, at 8.00 pm under General Anesthesia the emergency I & D surgery with debridement of dead tissue was performed by Dr.Kailash, Dr. Aditya and Dr.

Asad. Post operatively, limb elevation and active finger movements were advised. The patient was given injections of higher antibiotics and pain killers. One unit of blood was transfused. The incision drainage steps written by the treating doctor are reproduced as below:

“Steps:

patient laid supine on O.T. table part prepared and draped

Anterolateral incision given over arm and elbow

Soft tissue dissection done

Pus drained sent for culture sensitivity

Pus about 300 ml with soft tissue debrided

Clearing with H₂O₂, betadine, Saline and liquid Ciplox done

ASD done and sling given.

Undersigned SR Ortho”

9. The patient was under treatment of team of doctors consisting of Orthopedician, Pediatrician and Surgeon. The patient was kept under observation from 02.05.2006 and the wound was checked regularly. On 05.05.2006 re-exploration of wound with multiple drill holes and corrugated rubber drain under GA was done by Dr. Tribhuvan and Dr. Sumit. On 26.05.2006 the secondary closure of wound under GA was done by Dr. Kailash and Dr. Brahmgya. There was no neurovascular deficit. The patient was also advised physiotherapy from 17.05.2006. The patient was discharged on 30.05.2006. Thereafter the patient was under follow-up in the OPD from 02.06.2006. Periodically the pus Culture and Sensitivity was performed and accordingly the antibiotic and pain killers were given. On 01.09.2006 the senior resident examined the patient and diagnosed it as pathological fracture. On 05.09.2006 Dr. Rajesh Lalchandani Senior Orthopedician examined the patient and confirmed as chronic osteomyelitis with pathological fracture. Therefore the patient was referred to AIIMS, New Delhi for fibular bone grafting and further management.

10. We took reference from the standard text book Campbell's Orthopedics. It is pertinent to note that due to fall the patient suffered injury to her left arm, there was swelling. It was not compound fracture and there were no external injuries. The treating doctors gave U slab to stabilize the bone and soft tissue. It appears that the patient developed acute osteomyelitis due to infected hematoma because there was no surgical intervention at the time of admission. Thus it was hematogenous spread of infection which caused osteomyelitis and subsequently chronic osteomyelitis. It further resulted into degeneration of humerus and for treatment bone grafting was essential. Therefore on 8.11.2006 the patient was referred to AIIMS for bone grafting. We do not find any inordinate delay from the Opposite Party No. 2 in the said reference.

11. We have perused the AIIMS OPD slips. The patient approached AIIMS on 15.11.2006, He was advised U slab and PVC brace. The case was discussed with Dr. Kotwal who suggested Fibula grafting, however at AIIMS there was no date available for surgery till 30.03.2007. We cannot hold AIIMS for failure of duty of care for the non-availability of date for operation.

12. Based on the discussion above we do not find any negligence of treating doctors at ESI Hospital either in diagnosis or the treatment of left hand fracture of the patient. The doctors adopted the standard method of treatment. There was no breach in the duty of care. We allow the instant revision petition and set aside the Order of State Commission. Consequently the Consumer Complaint is dismissed.

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R.K. AGRAWAL
PRESIDENT

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DR. S.M. KANTIKAR
MEMBER