

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 616 OF 2019

(Against the Order dated 10/12/2018 in Appeal No. 1080/2015 of the State Commission West Bengal)

1. B.S.F COMPOSITE HOSPITAL & ANR.

KADAMTALA, P.O. KADAMTALA P.S. MATIGARA,

DISTRICT-DARJEELING-734011

WEST BENGAL

.....Petitioner(s)

Versus

1. SUKHI RAM

S/O. SRI POORAN SINGH, VILLAGE RAMGARH, P.O & P.S.

HASSANPUR,

DISTRICT-FARIDABAD/PALWAL

HARYANA-121107

2. DR. R.K. CHOUDHARY,

SPL GR II, B.S.F. COMPOSITE HOSPITAL, KADAMTALA

P.O. KADAMTALA, P.S. MATIGARA,

DISTRICT-DARJEELING

WEST BENGAL-734011

.....Respondent(s)

BEFORE:

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

For the Petitioner :

For the Respondent :

Dated : 30 Sep 2022

ORDER

Appeared at the time of arguments

For the Petitioner : Mr. Anmol, Advocate

Dr. Rakesh Kumar Choudhary, Ortho-Surgeon

For the Respondents : Mr. Devmani Bansal, Advocate

Pronounced on: 30th September 2022

ORDER

1. This Revision Petition has been filed under section 21 of the Consumer Protection Act, 1986 by the Petitioner B.S.F Composite Hospital (hereinafter referred to as the "Opposite Party No. 4") and Dr. R. K. Choudhary (hereinafter referred to as the 'OP-5) against the Impugned Order dated 10.12.2018 passed by State

Consumer Dispute Redressal Commission, Kolkata, West Bengal (hereinafter referred to as the “State Commission”) in First Appeal No. 1080/2015.

2. The issue relates to the alleged shortening of leg due to medical negligence after the treatment of fracture of the patient’s leg. For the convenience, the parties are referred to as stated in the Complaint before the District Forum.

3. Brief facts are that the Complainant / Respondent No. 1 (hereinafter referred to as the ‘patient’) suffered “Fracture Lower 3rd Tibia and Upper 3rd Fibula” of right leg. He visited the Petitioner / OP No. 4 Hospital. After examination a plaster was applied and medicine prescribed by Dr. R. K. Choudhary (OP No. 5 / Petitioner No. 2). The plaster was opened after four months, but the alleged complications were developed. Therefore, for 2nd time, plaster was reapplied. However, the fractured leg failed to recover as normal. Thereafter, the OP No. 5 carried out surgery, but patient’s leg became shorter by 1½ cm. Being aggrieved by the alleged wrong treatment, the Complainant filed a complaint before the District Forum, Siliguri.

4. The District Forum held that the OPs are Govt. Hospital and a doctor was working there. The patient was a constable. The total expenditure for treatment was from the government and patient did not pay any money except the registration fee. Based on the principles laid down in **Indian Medical Association Vs. V.P. Shantha & Ors**[1] and on merits, the District Forum held that there was no deficiency of service or negligence from the OPS. The Consumer Complaint was dismissed.

5. Being aggrieved, the Complainant filed the First Appeal before the State Commission.

6. The State Commission allowed the Appeal against the Petitioners - OP No. 4-Hospital and OP No. 5- Dr. R.K.Choudhary. The State Commission directed the doctor (OP-5) to pay Rs.3,00,000/- and the hospital (OP-4) Rs.1,50,000/- to the Complainant.

7. It was also held that there was no evidence on records in support of deficiency in service on behalf of OP Nos. 1 to 3.

8. Being aggrieved, the OPs Nos. 4 and 5 filed this Revision Petition.

9. Heard the learned Counsel for both the sides and Dr. R. K. Choudhary, Petitioner No. 2, who was present in person and perused the material on record.

10. The learned Counsel for the Complainant argued that due to wrong treatment and wrong surgery the fractured leg of the patient became short by 1½ cm. The Hospital (OP-4) was also vicariously liable for its failure to ensure proper and reasonable care and treatment done by OP-5. He relied upon the decision of Hon’ble Supreme Court in **Paschim Banga Khet Mazdoorsamity & Ors. vs. State of West Bengal & Anr**[2], wherein it was held that failure of Government Hospital to provide proper treatment to a person is violation of Right to Life under Article 21 of the Constitution of India, hence the case falls under Consumer Protection Act, 1986. Therefore, the District Forum passed the Order impugned without applying the judicial mind and without taking into consideration the evidence on records.

11. The petitioner Dr. R. K. Choudhary, during his argument, narrated the chronology of treatment of the fracture at the BSF Composite Hospital, Kadamtala. He submitted the OPs provided the best possible treatment to the patient with due care attention. If any disability was suffered by the patient, the authority should give proper and adequate help for his disability as per handicaps.

12. I have perused the medical record. It is important to go through the nature of fracture injuries and method of treatment adopted at BSF Hospital (OP-4). The patient Sukhi Ram suffered segmental fracture of right lower third of Tibia with displacement, fracture of upper third Fibula. Initially plaster was applied and thereafter on examination due to vascular compromise the doctors explained about the prognosis. He was operated on after taking informed consent on emergency. The patient was under follow up and on 23.10.2011 the quality of fracture union was assessed. On 22.11.2011 it was found delayed union at one fracture site of lower tibia was

found while the other fracture site of lower Tibia was united well. Below knee B.K. cast was given again to facilitate union. Thereafter, it is pertinent to note that on 17.12.2011 bone graft was put around delayed union site of Rt lower tibia taken from patients Rt iliac crest followed by above knee slab under spinal anesthesia. The stitches were removed on 31.12.2011, which revealed some pus and blood oozed out. It was sent for culture and sensitivity and accordingly treated thereafter. Regular dressing was done by the Orthopaedic surgeon of the Hospital. Repeat pus culture and sensitivity done found to be sensitive to certain antibiotics and started antibiotic combination according to report on 17.01.2012. On 18.02.2012 patient Sukhi Ram refused for skin grafting, therefore it delayed the wound healing.

13. Thus in my view the treating doctor acted as per the reasonable standards. The non-healing or mal-union of fractures is a known complication due to post-operative infections. The patient was investigated and treated with appropriate higher antibiotics. Thus “**No cure shall not be construed as Negligence**”.

14. Secondly, there was no Jurisdiction as the BSF Hospital was a Govt. Hospital (under Ministry of Defense) and the services were free. Only payment of registration charges cannot be said to be the Consideration Paid by the patient (consumer). The principles laid down in **V.P. Shantha’s** Case (supra) were considered by the Hon’ble Supreme Court in the recent judgment in the case of **Nivedita Singh vs. Dr. Asha Bharti & Ors.**[3], wherein it was held as below:

A reading of the above para shows that a medical officer who is employed in a hospital renders service on behalf of the hospital administration and if the service as rendered by the Hospital does not fall within the ambit of 2(1)(0) of the Act being free of charge, the same service cannot be treated as service under Section 2(1)(0) for the reasons that it has been rendered by medical officer in the hospital who receives salary for the employment in the hospital. It was thus concluded that the services rendered by employee-medical officer to such a person would therefore continue to be service rendered free of charge and would be outside the purview of Section 2(1)(0) of the Act.

In view thereof, we do not find any merits in the present appeal and the same is dismissed.

15. Based on the discussion above, I do not find any negligence during treatment of fractured right leg of patient. The patient was operated as per standard of practice. Unfortunately, he suffered non-union, therefore the OP-5 performed bone grafting as a standard procedure. Further based on culture and sensitivity tests proper antibiotics were given and regular dressing was performed. The disability 1 ½’ was a sequel of the non-union, but it was neither due to negligence or deficiency in the treatment.

16. The Order of the State Commission is hereby set aside and the Order of the District Forum is upheld.

Resultantly, the Revision Petition is allowed.

[1] (1995) 6 SCC 651

[2] (1996) 4 SCC 37

[3] Civil Appeal No(s). 103 of 2012

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DR. S.M. KANTIKAR
PRESIDING MEMBER