

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 267 OF 2021

(Against the Order dated 15/12/2020 in Appeal No. 271/2015 of the State Commission
Andhra Pradesh)

1. DR. V. UMA LAKSHMIPetitioner(s)

Versus

1. MAPATHULA VENKATA SATAVENI (DIED) & 4 ORS.Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE SUDIP AHLUWALIA, PRESIDING MEMBER

FOR THE PETITIONER : MR. PARNAM PRABHAKAR, ADVOCATE
MR. TARUN CHAUHAN, ADVOCATE.

FOR THE RESPONDENT : NEMO

Dated : 02 April 2024

ORDER

JUSTICE SUDIP AHLUWALIA, MEMBER

This Revision Petition has been filed against the impugned Order dated 15.12.2020 passed by the Ld. State Consumer Disputes Redressal Commission, Andhra Pradesh in First Appeal No. 513/2015, vide which the Cross Appeals filed by both the parties were dismissed and the Order of the Ld. District Forum was affirmed.

2. The factual background, in brief, is that the deceased Complainant No. 1, a housewife, experienced pain in her right breast in 2011. Seeking treatment, she consulted the Petitioner on 10.01.2011, who, after clinical examination, prescribed medication and advised her to undergo a pathological test for diagnosis. Following the prescribed course, she underwent a mammography test at Sree C.T. Scanning Centre, the results of which were shared with the Petitioner. Despite subsequent medication, the pain persisted, leading the Petitioner to recommend surgery to remove the lump in the right breast. Consequently, on 11.05.2011, the Complainant underwent surgery to remove the lump, with a piece sent for biopsy to Neo Diagnostic Centre, Rajahmundry. Post-surgery, she followed the Petitioner's instructions for care. However, as the pain persisted, she sought further consultation at G.S.L. Cancer Hospital, as per the Petitioner's referral. The biopsy report revealed infiltrative duct cell carcinoma, with the tumor deemed inoperable due to its growth. Subsequently, at NIMS Hospital, Hyderabad, her right breast was surgically removed. It was only post-surgery, upon consultation with doctors at NIMS Hospital and GSL Hospital, that she realized the alleged improper treatment by the Petitioner. The issue of cancer was initially indicated in the report dated 27.01.2011 from Sree CT Scanning Centre, suggesting negligence on the part of the Petitioner. Subsequent treatments included weekly chemotherapy at NIMS Hospital and radiotherapy at GSL Cancer Hospital, Rajahmundry, resulting in side effects such as hair loss and loss of appetite, impacting her ability to care for her family. A Legal Notice dated 12.09.2011 was issued to the Petitioner, demanding damages of Rs. 10,00,000/-, to which Reply was received that she had properly adhered to the investigation procedures.

Dissatisfied with the alleged negligence, the Complainant and her family filed their Complaint before the Ld. District Forum, Rajahmundry.

3. The District Forum vide its Order dated 19.05.2015 allowed the Complaint and directed the Petitioner to pay to the Complainants the amount of Rs. 5,00,000/- towards compensation, Rs. 1,00,000/- towards mental agony and Rs. 5,000/- towards litigation costs. The Petitioner and the Respondents filed Cross Appeals before the Ld. State Commission, which vide the impugned Order dated 15.12.2020 dismissed both the Appeals, and upheld the Order of the District Forum.

4. Ld. Counsel for Petitioner has argued that the lower Fora erred manifestly by allowing the Complaint without duly considering the Petitioner's impeccable track record spanning four decades of medical practice. It is contended that negligence was wrongly attributed to the Petitioner without taking into account the comprehensive evidence, including that of an Oncology Surgeon; That due to the deceased Complainant's young age and the relatively small size of the lump according to the Mammogram and Ultrasound, diagnosing cancer was challenging. Additionally, the Petitioner's treatment had been done 2.5 years prior to the Complainant's death, with the cause of death remaining undisclosed. It has been argued that sympathy should not translate into legal liability, and an incorrect diagnosis should not automatically amount to medical negligence; That the absence of an explanation for the 2-month gap between the Complainant's discharge from the Petitioner's hospital and the subsequent surgery, suggests a potential exacerbation of the disease during this period. Reference is made to a judgment of the Hon'ble Supreme Court in "Dr. (Mrs.) Chandarani Akhouri & Ors. v. Dr. M.A. Methu Sethu Pathi & Ors., 2022 (SC) 391", wherein it was established that a medical practitioner would only be held liable if his conduct fell below the standards of a reasonably competent practitioner in their field. Additionally, Ld. Counsel has cited "Jacob Mathew v. State of Punjab, 2005 6 SSC 1", wherein it was laid down that a medical practitioner should not be deemed liable solely because of unfortunate outcomes or errors in judgment during the treatment decisions.

5. Ld. Counsel for Respondents has argued that there was a delay in the correct diagnosis and administration of treatment by the Petitioner from 10.01.2011 to 26.05.2011. This delay adversely affected the outcome of treatment, particularly considering the young age of the patient and the aggressive nature of the disease with poor prognosis/ biological factors. PW-2, the expert doctor, supported the Complainants' case, emphasizing the negative impact of treatment delays; That the Petitioner's admissions during evidence undermine her own defence. The Petitioner admitted to not recording suspicions about the mass in the medical records and prescribed antibiotics and anti-inflammatory drugs initially, followed by iron tablets after blood investigations. The failure to prescribe further diagnostic tests such as MRI, CT scan, and FNAC, coupled with the absence of estrogen testing before surgery, are instances of negligence; That the absence of a biopsy and FNAC recommendation, along with reliance solely on a normal mammogram, is deemed inadequate for ruling out breast cancer. Despite the dismissal of the cross Appeal filed by the Complainants' side, the circumstances of the case warrant dismissal of the present Petition, and affirmation of the Order of State Commission.

6. This Commission has heard both the Ld. Counsel for Petitioner and Respondent, and perused the material available on record.

7. The decisions of both the Ld. Fora below are concurrent. Both of them have come to the conclusion that there was negligence/ deficiency in service on the part of the Petitioner/Opposite Party who did not advise appropriate investigations in time, which

resulted in a fast progression in the disease of Breast Cancer for which the deceased Complainant had actually been suffering. In fact, the Ld. State Commission in its Order has noted that when the pain and affliction being suffered by the deceased Complainant persisted in spite of the conservative treatment prescribed by the Petitioner, no investigations were advised on no less than 5 different occasions between 10.1.2011 to 24.3.2011. The defence raised in her Written Version that she had orally advised such investigations, but the Complainant herself was reluctant to undergo the same, cannot be regarded as a credible excuse for not writing the advice or not recording the oral advice and reluctance of the Complainant as claimed in the relevant Prescription slips. Furthermore, even in the Mammography and SonoMammography Report dated 27.1.2011 (Annexure-P1), it was noted that the "...Right Breast shows two small irregularly oval hypoechoic lesions....., multiple internal echoes...." and the final impression was "SMALL EVOLVING ABSCESSSES- RIGHT BREAST". About 4 months later on 26.5.2011 ultimately the Biopsy Report of the Right Breast Lump established Cancer (Annexure- P2).

8. In the given facts and circumstances, the continuous therapy and reluctance to even record the advice for further diagnostic investigations to find out the nature and prognosis of the lesions already noted in the Mammography Report would certainly suggest clear negligence on the part of the Petitioner as the Consulting Physician/ Family Doctor of the Complainant, since the lump originally seen at the earlier stage in the investigations had grown very rapidly till the surgery was performed four months later.

9. Also, it is well settled that in its revisional jurisdiction, this Commission cannot go into re-appreciation of evidence in a case of concurrent findings, and the scope available to this Forum in its revisional jurisdiction is very limited. The Hon'ble Apex Court in "Rajiv Shukla Vs. Gold Rush Sales and Services Ltd. & Anr., Civil Appeal No. 5928 of 2022, decided on September 8, 2022"; in this regard has observed inter alia –

"7.1 At this stage, it is required to be noted that on appreciation of evidence on record the District Forum as well as the State Commission concurrently found that the car delivered was used car. Such findings of facts recorded by the District Forum and the State Commission were not required to be interfered by the National Commission in exercise of the revisional jurisdiction. It is required to be noted that while passing the impugned judgment and order the National Commission was exercising the revisional jurisdiction vested under Section 21 of the Consumer Protection Act, 1986. As per Section 21(b) the National Commission shall have jurisdiction to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. Thus, the powers of the National Commission are very limited. Only in a case where it is found that the State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise the jurisdiction so vested illegally or with material irregularity, the National Commission would be justified in exercising the revisional jurisdiction. In exercising of revisional jurisdiction the National Commission has no jurisdiction to interfere with the concurrent findings recorded by the District Forum and the State Commission which are on appreciation of evidence on record. Therefore, while passing the impugned judgment and order the National Commission has acted beyond the scope and ambit of the revisional jurisdiction conferred under Section 21 (b) of the Consumer Protection Act."

10. Again in Mrs. Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd., Civil Appeal No. 2588 of 2011, decided on 18.3.2011, the Apex Court had set aside the decision of this Commission by virtue of which the concurrent decisions of the Ld. District Forum and the State Commission, which had gone in favour of the Complainant, were set aside with the following observations –

“23. Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora.”

11. Consequently, this Commission finds no grounds whatsoever to interfere with the concurrent decisions of both the Ld. Fora below. The Revision Petition is therefore dismissed. Parties to bear their own costs.

12. Pending application(s), if any, also stand disposed off as having been rendered infructuous.

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SUDIP AHLUWALIA
PRESIDING MEMBER