

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 2762 OF 2016

(Against the Order dated 02/05/2016 in Appeal No. 472/2013 of the State Commission Punjab)

1. MALWA ORTHO HOSPITAL & ANR.

K.K.P.ROAD,

SRI MUKTSAR SAHIB

PUNJAB

2. USHA BANSAL NURSING HOME PVT. LTD.,

KKP ROAD,

SRI MUKTSAR SAHIB

PUNJAB

.....Petitioner(s)

Versus

1. RESHAM SINGH & 2 ORS.

S/O. KUNDAN SINGH, R/O. HOUSE NO. 796,ADARSH

NAGAR, SRI MUKTSAR SAHIB, TEHSIL &

DISTRICT- SRI MUKTSAR SAHIB

PUNJAB

2. UNITED INDIA INSURANCE COMPANY LIMITED,

54, JANPATH CONNAUGHT PLACE,

NEW DELHI

3. AICL INSURANCE COMPANY,

54, VINOBA PURI, LAJPAT NAGAR-II,

NEW DELHI-110024

.....Respondent(s)

BEFORE:

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

For the Petitioner : Appeared at the time of arguments
Mr. Kapil Kher, Advocate

For the Respondent : Appeared at the time of arguments
Ms. Mantika Haryani, Advocate &
Ms. Deeksha Agrawal, Advocate for R-1
Mr. Sanjay Kumar, Advocate for R-3
None for R-2

Dated : 19 Dec 2022

ORDER

1. The Petitioners/the Opposite Parties Nos.1 & 2 have filed the instant Revision Petition under section 21 (b) of the Consumer Protection (Amendment) Act, 2002, against the Order dated 02.05.2016 passed by the State Consumer Disputes Redressal Commission, Punjab in First Appeal No.472/2013, wherein the State Commission allowed the Appeal filed by the Complainant.

2. Brief facts that the Complainant met with an accident on 31-05- 2010 and suffered fracture of right Radius and Ulna bones. He was admitted in the Malwa Ortho Hospital operated for open reduction and internal fixation (ORIF). After few days, the Complainant visited OP No. 1 for swelling and pain, some medicines were prescribed but condition remained same. Later on, the X-ray of right hand revealed bones were not properly fixed, screws and plates were loose and separated, moving freely. Again on 22-01-2011, second operation for removal of plates done and fixed plaster of paris (POP). It was alleged that while applying plaster, there was no union of fractured ulna bone and the complainant's hand bent towards one side. He became handicapped and was unable to do his work properly. Thereafter complainant visited few hospitals in Rampura Phool, Amritsar and Sri Muktsar Sahib; but all those hospitals told for another surgery. Lastly he visited Civil Hospital, Muktsar wherein he was declared to be 35% handicapped vide certificate dated 05-10-2011. Complainant was teacher, remained on medical leave during the time of treatment. Complainant requested OPs many times to pay the amount spent by him but the OPS refused to pay any amount. Being aggrieved, the Complainant filed a complaint before the District Forum, Sri Muktsar Sahib.
3. The District Forum relied upon the evidence of Dr. H.S. Sohal, Professor and Head of Department of Orthopaedics, Government Medical College, Amritsar that as per Government Rules benefit of disability cannot be given if it falls below 40%. As the Complainant's disability was 30% (less than 40%) no case of medical negligence was made out and complaint was dismissed by District Forum.
4. Being aggrieved, the Complainant filed First Appeal before the State Commission, Punjab. The State Commission allowed the Appeal and directed the OPs Nos. 1 and 2 to pay Rs. 1. 5 lakh with interest.
5. Being aggrieved, the Opposite Parties Nos.1 & 2 filed the instant Revision Petition.
6. Heard the learned Counsel for both the sides. Perused the entire material on record *inter-alia* Orders of both the fora.
7. Admittedly, the Complainant suffered commutated fracture of both forearms and dislocation of wrist joint. He was taken to Bansal Nursing Home, wherein on 03.06.2010, Dr. Arun Jain performed (ORIF) surgery with DCP with bone grafting and G.Graft. He was discharged on 17.06.2010 in satisfactory condition. After 4 months, on 22.01.2011, the Complainant visited the hospital. The X-rays revealed dislocation of plates. The plates were removed by Dr. Jain and POP was applied and he was discharged on the same day. The Complainant was advised surgery if bone did not unite but the Complainant ignored the advice. I have carefully perused the bills issued by the Malwa chemist between 22.01.2011 to 25.1.2011. Those bills were prepared wrongly in connivance with the chemist. The POP was provided free of cost by Dr. Arun Jain. The bills were forged and fabricated without signature of Dr. Arun Jain, except one stamp in the name of Dr. Jain was affixed on those bills. In my view, the deformity was caused due to the negligence of the Complainant.
8. I have perused few statements on record given by the Officers and Doctors at Civil Hospital, Muktsar. Those are vital in the instant case. Mr. Sukhdev Singh, Jr. Assistant CMO, the In-charge of Disability Certificate issuing division, stated that no record was available about the issuance of disability certificate by the Civil Hospital and no entry in the physically handicapped dispatch register. There was no serial number on the certificate. As per hospital records, no application made from the Complainant Resham Singh for issuance of disability certificate and no document regarding any tests carried upon him. Another statement of Rtd. CMO, Dr. G.S. Bhullar, in his statement, stated that disability certificate less than 40% disability shall not be issued. The certificate got signed from him in routine and it does not bear any number and even the certificate issuance register had no entry of issuance of such certificate between 14.09.2011 to 05.10.2011. The third statement of Dr. H.S. Sohal, Professor and Head of the Department of Orthopaedics, Govt. Medical College, Amritsar , who was also Head of the Department for State of Punjab to issue disability certificate. Accordingly to him no certificate can be issued without any number. Certificates can be issued if the disability even less than 40% but the benefits of disability and for compensation as per Govt. rules if disability of 40% or above. In the certificate, dislocation of Ulno Carpal joint was mentioned, but such joint never exists in body. He further opined that there was no negligence of the operating surgeon, the patient did not follow the instructions given by the operating doctor, such disaster can happen.

9. I have carefully perused the Disability Certificate (Ex. C1), which does not bear any serial number and appears to be a forged document, issued without any authority. Thus, there is a possibility of the Certificate being procured in connivance with the officials of the hospital. As per the RTI information, the Complainant Resham Singh was Govt. School Teacher and he was on duty as a teacher taking regular classes and seminars. He also performed census work during the year 2010 and 2011.

10. On the basis of foregoing discussion, it is evident that the treating doctor was a qualified Orthopaedician and performed ORIF as an accepted standard of practice. The non-union or mal-union of fracture is a known complication, which could arise by improper follow-up, weight bearing or infection. The disability was not due to the negligence of treating doctor or hospital.

11. The State Commission erred by holding the OPs liable for the disability suffered by the Complainant. The Order of State Commission is set aside and the Revision Petition is allowed. Consequently the Complaint filed before the District Forum is dismissed.

The parties to bear their own costs.

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DR. S.M. KANTIKAR
PRESIDING MEMBER