

**IN THE STATE CONSUMER DISPUTES REDRESSAL COMMISSION
ODISHA, CUTTACK**

First Appeal No. A/206/2017

(Date of Filing : 12 Apr 2017)

**(Arisen out of Order Dated 15/03/2017 in Case No. Complaint Case No. CC/21/2014 of
District Bargarh)**

1. Prafulla Padhan

S/o- Trilochan Padhan, R/o- Pipilipali, Ps- Barpali.

Bargarh.

.....Appellant(s)

Versus

1. Purohit General Hospital & Research centre, Bargarh

represented through its Director, Dr. Rama Krishna
Purohit, At- Shakti Nagar, NH-6, Bargarh, Ps/Dist-
Bargarh.

2. Dr. Prafulla Kumar patra

C/o- The Child, Bargarh. At- Bandutikra Chowk, Bargarh,
Po/Ps/Dist- Bargarh.

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE Dr. D.P. Choudhury PRESIDENT

PRESENT: M/s. S.S. Patra & Assoc., Advocate for the Appellant 1

M/s. R.K. Pattnaik & Assoc., Advocate for the Respondent 1

Dated : 05 Oct 2021

Final Order / Judgement

Heard learned counsel for both sides.

2. Here is an appeal filed u/s 15 of the erstwhile Consumer Protection Act, 1986 (hereinafter called the 'Act'). Parties to this appeal shall be referred to with reference to their respective status before the District Forum.

3. The factual matrix leading to the case of the complainant is that the complainant has taken his wife to OP No.1's hospital for treatment and delivery of the child. On the advice of OP No.1 the wife of the complainant was admitted in the hospital on 4.8.2013. It is alleged *inter alia* that OP No.1 did not take care of the wife of the complainant and directed the nurse to take care of the concerned woman. It is alleged that with the help of that nurse on 5.8.2013, she gave birth to a male child. Since it was a prematured baby steps were taken by the OPs till 18.9.2013 for the treatment of both mother and child.

4. Complainant has alleged that OP No.2 as Pediatrician attended the male child of the complainant. Since the baby was born prematured, OP No.2 has given oxygen therapy along with many other treatments. After the mother and child both cured, they were discharged from the hospital. During stay at hospital OP No.1 complainant found that there is eye problem with the child. OP No.2 continued for treatment of the child. However, after discharge from the hospital, the complainant took said child to Dr. Rout an Eye Specialist who also referred the matter to L.V.Prasad Eye Institute, Bhubaneswar and then also the child was referred to an Eye Institute at Indore. It was diagnosed that the child was suffering from R.O.P. in his eyes and this was caused due to over oxygen therapy. Complainant alleging about deficiency of service on the part of the OPs filed the complaint case claiming compensation of Rs.15,00,000/- and further Rs.2,00,000/- for expenses incurred during treatment at hospital. As such, the complaint was filed.

5. OPs filed written version stating that the wife of the complainant was treated in the hospital of OP No.1 and OP No.2 has already attended the child of the complainant. According to the OPs there are several factors for damage of the eye. Out of that one of the reasons is the R.O.P. Therefore, they averred that they have given best treatment to the mother and child and also advised them to take care of the child before the good pediatrician. However, they claimed that they have no any deficiency of service on their part for which the complaint should be dismissed.

6. After hearing both parties, the learned District Forum have dismissed the complaint.

7. Learned counsel for the appellant submitted that the child was born under the supervision of the OPs. The son of the complainant has got eye problem developed when oxygen therapy was extended to the child of course under the supervision of OP No.2. Therefore, any treatment which is defective is only due to negligence of the OPs. Had he been informed earlier, he would have taken the child to better Ophthalmologist. Learned District Forum has failed to understand all these facts and law and illegally dismissed the complaint. Therefore, he submitted to set aside the impugned order by allowing the appeal.

8. Learned counsel for the OPs submitted that there are several reasons for R.O.P. in the eye of the child and the oxygen therapy is one of the reasons but there is no occasion to apply excessive oxygen therapy. Apart from that they advised the complainant to take the child to an Eye Hospital but the complainant insisted to be treated there. Since the OPs have done their best without any negligence on their part, the learned District Forum has rightly passed the impugned order by not attributing negligence on the part of the OPs. Therefore, the impugned order should be affirmed.

9. Considered the submission of learned counsel for the respective parties and perused the DFR including the impugned order.

10. The complainant is required to prove the deficiency of service on the part of the OPs.

11. It is absolutely admitted fact that the child was born to the wife of the complainant in the hospital of OP No.1. It is not in dispute that OP No.2 being a pediatrician was attended the child of the complainant. It is not in dispute that the child has developed some defect in the eye. The learned District Forum has discussed in detail about the evidence on record and pleas of the respective parties. It is the case of the OPs that they have asked the complainant to take the child to better Eye Hospital for check up but he did not do so. OP No.2 is a Pediatrician but not an Eye Surgeon. The complainant has not proved through any expert evidence that R.O.P. was caused to the eye of the child only due to negligence of OP No.2. He should have filed a petition before the

learned District Forum to obtain expert opinion. It is also discussed in the impugned order that there are eight reasons for which the R.O.P. occurs. One of the reasons is extra oxygen administered. The OPs denied to have administered extra oxygen. The complaint is also silent about such fact. However, when there are several reasons for R.O.P. and no expert opinion is available, rightly it is held by the learned District Forum that the complainant failed to prove the deficiency of service on the part of the OPs. In the facts and circumstances, it is held that the learned District Forum has gone to the facts and law in the matter and dismissed the complaint. Hence, this Commission do not find any error in the impugned order and accordingly it is affirmed and the appeal stands dismissed. No cost.

DFR be sent back forthwith.

Supply free copy of this order to the respective parties or the copy of this order be downloaded from Confonet or Website of this Commission to treat same as copy supplied from this Commission.

[HON'BLE MR. JUSTICE Dr. D.P. Choudhury]
PRESIDENT