

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION  
WEST BENGAL  
11A, Mirza Ghalib Street, Kolkata - 700087**

**First Appeal No. A/1190/2014  
( Date of Filing : 16 Oct 2014 )  
(Arisen out of Order Dated 16/09/2014 in Case No. CC/369/2013 of District North 24  
Parganas)**

1. Dr. Arabinda Ray

Baranagar State General Hospital, P.O. Noapara, P.S.  
Baranagar, Kolkata-700 090.

.....Appellant(s)

Versus

1. Smt. Latika Debnath

133/4, Maha Raja Nanda Kumar Road,P.O.-Baranagar,  
Kolkata-700 036.

2. Ms. Sarmistha Debnath

133/4, Maha Raja Nanda Kumar Road,P.O.-Baranagar,  
Kolkata-700 036.(Expunged the name of deceased  
Respondent no.-2, as per order dt.17/09/2019)

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. JUSTICE ISHAN CHANDRA DAS PRESIDENT  
HON'BLE MR. SHYAMAL KUMAR GHOSH MEMBER  
HON'BLE MRS. SAMIKSHA BHATTACHARYA MEMBER**

**PRESENT:**Mr. Abhishek Chakraborty, Advocate for the Appellant 1  
Mr. Utpal Roy Chowdhury, Advocate for the Respondent 1  
Mrs. Latika Debnath (Authorised Person)/, Advocate for the Respondent 1

**Dated : 07 Jan 2021**

**Final Order / Judgement**

**HON'BLE MR.JUSTICE ISHAN CHANDRA DAS,PRESIDENT**

This appeal has been directed against the judgment and order dated 16-09-2014 passed by Ld. DCDRF, 24-Parganas (North) at Barasat in CC/369/2013 where the petition of complaint was allowed on contest against the OPs who was directed to pay a sum of Rs. 2,00,000/- (Rupees two lakh) to the complainant for loss of vision, mental harassment and agony and Rs. 3,000/- (Rupees three thousand) towards

litigation cost to be paid within one month from the date of the order with further direction to pay a sum of Rs. 100/- per day from the date of the order till its realization as punitive damage to be deposited before the SCWF.

Being aggrieved by such judgment and order dated 16.9.2014 the OP/Dr. Arabinda Roy preferred this appeal.

The case of the complainant, the original respondent (and hereinafter referred to as the complainant) was that the complainant Biswanath Debnath filed an application before Ld. DCDRF, 24-Parganas (North) seeking justice and reasonable compensation to the tune of Rs. 10,00,000/- (Rupees ten lakh) for the loss of his right eye sight. He, in his petition of complaint alleged that due to low vision in his right eye he consulted the visiting physician, Dr. Arabinda Roy at Baranagar State General Hospital and upon physical examination of the patient the appellant/OP (hereinafter referred to as the OP) assured the complainant that the complainant would get normal vision after removal of cataract from his right eye and advised him to go for such operation. Accordingly the complainant appeared for cataract operation of his right eye on 29-01-2013, since this date was available for operation at Baranagar State General Hospital and the consulting surgeon, Dr. Arabinda Roy performed cataract operation of his right eye with certain post operative directions given to him. But soon after the operation the complainant found that he absolutely lost his vision through his right eye though he had low vision before such operation. After the operation was over, the complainant appeared before Ophthalmology Division of Nilratan Sarkar Medical College and Hospital as well as before the Medical College, Kolkata where both the doctors opined that the vision of right eye of the complainant would not be back and such opinion was given in black and white. The complainant felt that the OP/Dr. Arabinda Roy of Baranagar State General Hospital carelessly operated his right eye and caused his blindness in the said eye for which the complainant applied for

stringent action against the doctor and the compensation of a sum of Rs. 10,00,000/- (Rupees ten lakh) was claimed for the loss of such vision, hence the complaint case.

The OP of CC/369/2013 i.e. Dr. Arabinda Roy filed a written version to contest the complaint case and contended that the complainant was not a consumer within the meaning of section 2 (1) (d) of the Consumer Protection Act, 1986 and he prayed for dismissal of the complaint case. The OP in his written version categorically admitted that the patient/original complainant was admitted to the Hospital (i.e. Baranagar State General Hospital) on 29-01-2013 for undergoing cataract operation under National Programme for Control of Blindness which was absolutely free of cost and the patient was operated on the self same date ( 29-11-2013 ) thereafter he attended the OPD on 30-01-2013 with a good vision and good condition. In the said written version the OP further claimed that on 01-02-2013 the complainant/patient paid visit to the Hospital with complaint of dimness of vision. The patient was examined and the OP found that the lens was not in the position and referred the patient to vitreoetinal surgery with implantation of intraocular lens and sent the patient to NRS Hospital, Kolkata and the patient was admitted and stayed there from 01-02-2013 to 08-02-2013 for his successful operation by vitreoetinal surgeon Dr. Kalishankar Das with implantation of intraocular lens. The patient was discharged on 08-02-2013 with good post operative vision, but the complainant lost his vision subsequently for which the OP should not be blamed. Denying and disputing all other material allegations with regard to earning of a handsome amount from the complainant, this OP ultimately prayed for dismissal of the complaint case.

Upon consideration of the materials on record and on the strength of the pleadings of the parties Ld. DCDRF allowed the petition of complaint and directed the OP to pay compensation to the tune of Rs. 2,00,000/- (Rupees two lakh) and other consequential reliefs, as pointed out in the earlier part of this judgment.

Now the point for consideration is – whether Ld. DCDRF was justified in passing such judgment and order and directing the OP to pay compensation for the loss of vision of right eye of the original complainant.

It is brought to our notice that during pendency of the complaint case the original complainant died and his legal heirs have duly been substituted to continue the complaint case or appeal, as the case may be.

Here the factual aspects of the matter i.e. cataract operation of the complainant, a 62 year old man, as he then was, by the OP/Dr. Arabinda Roy at Baranagar State General Hospital on 29-01-2013, the patient's subsequent post operative complication, ultimate loss of vision of his right eye etc. are not disputed. It is the OP who claimed that the complainant was not 'a consumer' within the meaning of section 2 (1) (d) of the Consumer Protection Act. It is claimed by the OP that the complainant was operated under National Programme for Control of Blindness which was a charitable act of the Government, free of cost and the complainant did not pay anything to acquire the status of 'a consumer'.

National Programme for Control of Blindness was launched in the year 1976 as a 100% Centrally Sponsored Scheme with the goal of reducing the prevalence of blindness to 0.3% by 2020, as it appears from a office memorandum dated 21-10-2008 sent by the Government of India, Ministry of Health and Family Welfare (Ophth./BC section). The patient was privileged to undergo cataract surgery with the pious object of controlling blindness and on 29-01-2013 his operation took place at Baranagar State General Hospital under the said National Programme for the Control of Blindness. Though the OP took the plea that the complainant was treated at the Hospital free of charge and declined to give him the status of a consumer but Ld. Counsel appearing for the said OP/appellant in course of argument with all fairness submitted that such a plea cannot be accepted in view of a decision of Hon'ble Apex Court in Indian Medical Association Vs. V.

P. Santha, reported in 1995 (6) SCC 651 and pointed out that irrespective of the fact that apart of the service is rendered free of charge would nevertheless fall within the ambit of the expression 'service' as defined in section 2 (1) (d) of the Act and the beneficiaries of such service come within the definition of consumer under section 2 (1) (d) of the Act. He also admitted with all fairness that similar view of the Hon'ble Apex Court was reported in subsequent judgment of the Hon'ble Apex Court in Paschimbanga Khet Mazdoor Samity Vs. State of West Bengal and another, reported in 1996 SCC (4) 37. In the premises, we firmly hold that the original complainant/patient was a consumer within the meaning of section 2 (1) (d) of the Act.

So far as the allegation of medical negligence against the OP/appellant/Doctor is concerned, Ld. Counsel for the OP argued much on this issue. He pointed out that a case of medical negligence has to be proved by proper medical experts' evidence and it cannot be based on mere statement of a patient [Ref. Sikha Nayek Vs. Dr. Manabesh Pramanik, reported in 2006 CTJ 662 (CP) (NCDRC)]. It is brought to our notice that an Enquiry Committee was formed to review the cause of blindness of the patient as it was a case operated under the National Programme for Control of Blindness, a Government Sponsored Scheme where the Enquiry Committee concluded that as per medical records available the case was though unfortunate but acceptable post operative complication of mature/hyper mature cataract surgery (decentered IOL had happened). It was also observed that the case was attended promptly and correctly referred to NRSMCH by Dr. Arabinda Roy, the appellant herein and the patient was treated at NRSMCH by Dr. Kalishankar Das, Assistant Professor, Department of Ophthalmology, NRSMCH and was finally discharged on 08-02-2013 with "good visual acuity". From the petition of complaint dated 05-07-2013 it appears that the patient raised complaint against the appellant after a lapse of five months or more but upon consideration of the facts and materials on record the committee found the appellant not negligent in performing his duties as a Ophthalmologist and such observation of the Enquiry Committee dated 10-10-2010 was produced before Ld. DCDRF during trial but the DCDRF concerned instead of

expecting the opinion of the Enquiry Committee rejected the same and held the appellant guilty of negligence in treating the patient with a further allegation that the prognosis of surgery was not explained to the patient.

In course of argument Ld. Counsel for the appellant brought it to our notice with reference to a literature under the heading “Possible predisposing Factors for Late Intraocular Lens Dislocation After Routine Cataract Surgery” and pointed out that the posterior chamber of intraocular lens dislocation or decentralization is a well known complication of cataract surgery and usually occurs when the integrity of the posterior or the equatorial capsule is disturbed. He further pointed out that the cataract surgery being a safe surgical procedure with a high rate of success has been improved now a days because of development in surgical advices and intraocular lens making it safer than it was two decades ago. When the complainant felt it necessary to realise compensation from the treating doctor or the surgeon alleging medical negligence he should have taken the recourse of collecting an Expert’s opinion by sending the documents to a body of Experts of a reputed Institute of Ophthalmology. But in the instant case the DCDRF while dealing with the complaint case disposed it of with a sympathetic attitude without addressing the findings of the Enquiry Committee properly but with a blame to the human factor. Mere fact that desired result could not be achieved is no ground for holding the doctor guilty of negligence. The DCDRF in the impugned judgement held the Appellant guilty of negligence being swayed by the allegations given against the Doctor or the Hospital instead of giving proper weight to the observation of the Enquiry Committee, as pointed out earlier. Hon’ble Apex Court in *Achutrao Haribhau Khodwa & Ors –Vs- State of Maharashtra & Ors* (1996) 2 SCC 634 noticed that “the very nature of the profession is such that there may be one course of treatment which may be advisable for treating a patient, courts would indeed be slow in attributing negligence on the part of a doctor if he has performed his duties to the best of his ability and with due care and caution”. In *Kusum Sharma & Ors –Vs- Batra Hospital and Medical Research*, reported in 2010 (3) SCC 480, the Hon’ble Apex Court

observed that “negligence in the context of medical profession calls for a treatment with a difference to infer rashness or negligence on the part of a professional, in particular a Doctor, additional considerations apply. A case of occupational negligence is different from professional negligence. A simple lack of care and error of judgement or an accident is not proof of negligence on the part of medical professional. So long as a Doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled Doctor would not have chosen to follow or resort to that practice or procedure which the accused follows”.

A medical practitioner would be liable only where his conduct fell below that of his standard of a reasonably competent practitioner in his field as observed by the Hon’ble Apex court in Jacob Mathew –Vs- State of Punjab & Anr. (reported in (2005)6 SCC 1). It was further observed by the Hon’ble Apex Court in Jacob Mathew (supra) that “a medical practitioner faced with an emergency ordinarily tries his best to redeem the patient out of his suffering. He does not gain anything by acting with negligence or by omitting to do an act. In order to succeed, the complainant was under obligation to make out a case of negligence before a Medical Practitioner is charged with .....” which is absolutely lacking in the instant case. Since the complainant failed to make out a case of negligence against the attending doctor, and did not prefer to send the matter to a Body of Experts in the Field of Treatment of the patient to establish negligence on the part of the surgeon and the allegation effects adversely to the complainant. Hence , upon taking into consideration the materials on record in the light of the observations of the Hon’ble Apex Court, quoted hereinabove, we firmly conclude that no amount of compensation can be imposed upon the treating Doctor i.e. the Appellant herein.

In the background , we allow the Appeal set aside the judgement impugned resulting that the Complaint Case being No. CC/369/2013 is dismissed. Parties do bear their respective costs of Appeal.

**[HON'BLE MR. JUSTICE ISHAN CHANDRA DAS]  
PRESIDENT**

**[HON'BLE MR. SHYAMAL KUMAR GHOSH]  
MEMBER**

**[HON'BLE MRS. SAMIKSHA BHATTACHARYA]  
MEMBER**