

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 1055 OF 2018

(Against the Order dated 19/03/2018 in Complaint No. 87/2008 of the State Commission Delhi)

1. MOHD. KAUSAR PARVEZ

H NO.B-203, 2 FLOOR GALI NO 3, MANDAWALI
FAZALPUR

DELHI 110093

.....Appellant(s)

Versus

1. ST. STEEPHEN'S HOSPITAL

THROUGH ITS DIRECTOR/MEDICAL
SUPERINTENDENT NAR TIS HAZARI COURTS

DELHI 110054

.....Respondent(s)

BEFORE:

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

HON'BLE MR. DINESH SINGH, MEMBER

For the Appellant :

For the Respondent :

Dated : 07 Feb 2020

ORDER

APPEARED AT THE TIME OF ARGUMENTS

For the Appellant : Mr. Saurabh Shandilya, Advocate with appellant
in person

PRONOUNCED ON : 07th February 2020

ORDER

PER DR. S. M. KANTIKAR, PRESIDING MEMBER

1. This first appeal has been filed under section 19, read with section 21(a) (ii) of the Consumer Protection Act, 1986 against the impugned order dated 19.03.2018, passed by the Delhi

State Consumer Disputes Redressal Commission (hereinafter referred to as ‘the State Commission’) in Complaint No. 87 of 2008 , filed by the complainant, vide which, the said complaint was dismissed.

2. There is delay of 48 days in filing the instant appeal. In the interest of justice and for the reasons stated in the application for condonation of delay, this short delay is condoned.

3. Brief facts of the case are that Smt. Zaheda Rajat Quraisee, the wife of the complainant (for referred as the ‘patient’) took initial treatment for severe abdominal pain from Dr. Deepak Sharma on 13.11.2007. There was no improvement. Therefore, she was taken to St. Stephen Hospital (OP Hospital) on 19.11.2007. Chest X-ray, ultra sound, CT scan and other tests were conducted on 20 & 21.11.2007. It was alleged that on 22.11.2007, the patient was shifted to surgical female ward and the Ryle’s tube was forcibly inserted through her nose despite resistance from the complainant. It was done by unskilled nurse and no qualified doctor was present at that time. Such procedure should be carried out in presence of competent and qualified doctor. Therefore, the patient was put to unwarranted risk. She was shifted to Surgical (SICU) as she developed pneumonia. The patient was not properly treated for the ailments she was suffering from. On 28.11.2007 the patient was declared dead. Deficiency in service and negligence on the part of OP Hospital resulted in the death of wife of the complainant. The hospital did not issue medical record despite several requests.

4. Being aggrieved, the complainant filed a complaint before the State Commission, New Delhi.

5. The opposite party through its written version denied all the allegations and negligence during treatment. The opposite party averred that the complaint was based upon the gross misconception. The treatment was given as per clinical signs and the symptoms of the patient. The relatives of the patient were informed at every stage of treatment. It was denied that unskilled nurse inserted the Ryle’s tube.

6. During the proceedings before the State Commission, it sought an expert opinion from the Safdarjung Hospital. The State Commission after hearing the parties, considering the evidence and expert board report, dismissed the complaint being devoid of merit.

7. Being aggrieved, the complainant filed the first appeal before this Commission.

8. Heard the learned counsel for the appellant – complainant at admission stage. Learned counsel submitted that the complainant is a practicing advocate in Delhi. The counsel reiterated the facts and its affidavit of evidence. The counsel further submitted that the expert opinion was not as per the prescribed standard, but it was just a general report issued based on medical record. The counsel further submitted that if the patient was suffering from hydatid disease of liver then why the treatment of pneumonia was given. He further submitted that the Ryle’s tube was not properly placed, it invaded the lungs, thus it was the negligence on the part of the opposite parties.

9. We have perused the medical record and the expert opinion received from Safdarjung hospital. The relevant extract of the expert opinion is reproduced as below:

“ EXPERT OPINION REPORT IN RESPECT OF LATE MRS. RAFAT

The patient, Mrs. Rafat, w/o Md. Kausar Parvez was admitted to the said hospital on 19.11.2007 with complaints of fever, pain abdomen and vomiting and during her stay in the hospital a diagnosis of hydatid cyst of liver with sepsis with multi organ dysfunction and acute respiratory distress syndrome was made. She was shifted to the ICU on 22nd Nov., where her condition worsen.

This is nothing in the submitted reasons to suggest that due diligence and care was not taken by the attending doctor and specialist while treating her.

All necessary ventilator strategies were adopted, necessary investigations done, antibiotics, fluids, vasopressors were administered according to necessity and according to accepted guidelines.

According to records, the patients' relatives were informed of her deteriorating condition, off and on."

10. We have given our thoughtful consideration to the arguments and to the expert opinion. From the medical record, the diagnosis was clear that the patient was suffering from hydatid disease of the liver with sepsis and multi organ dysfunction syndrome (MODS) with acute respiratory disease syndrome (ARDS). Under such condition, it was necessary to aspirate gastric contents through Ryle's tube. We do not find that the Ryle's tube was wrongly placed in the lung or there was any perforation of esophagus.

11. The medical record clearly depicts that the treating doctors have performed all necessary investigations and arrived at the diagnosis of hydatids disease of the liver. The patient further suffered MODS and ARDS which was treated as an emergency in the ICU with antibiotics, IV fluids and the vasopressors proper ventilatory support. We do not find there was any deficiency from the O.P. hospital and the treating doctors therein during the care and treatment of the patient. The patient was critical, but despite every possible efforts, the patient could not survive.

12. Bases on the foregoing discussion, we find neither deficiency nor negligence on the part of the O.P. hospital.

The first appeal is dismissed.

Per Hon'ble Mr. Dinesh Singh, Member

13. The forum of original jurisdiction, the State Commission, adjudged the allegations of deficiency / negligence, wherein it dismissed the allegations as being devoid of merit. In the course of adjudication, it called for neutral expert opinion from Safdarjung Hospital, New Delhi. The expert opinion *inter alia* observed that "There is nothing in the submitted records to suggest that due diligence and care was not taken by the attending doctors and specialists while treating her. All necessary ventilator strategies were adopted, necessary investigations done, anti-biotics, fluids, vasopressors were administered according to necessity and according to accepted guidelines."

14. We find the State Commission's impugned Order to be well-appraised and well-reasoned Order.

15. In the obtaining facts and the evidence adduced, it is not feasible to attribute negligence / deficiency on the respondent hospital, it is difficult to conclusively establish medical negligence / deficiency in service on the respondent hospital.
16. The first appeal fails.

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DR. S.M. KANTIKAR
PRESIDING MEMBER

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DINESH SINGH
MEMBER