

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 545 OF 2011

(Against the Order dated 05/11/2011 in Complaint No. 50/2011 of the State Commission Kerala)

1. ST. THOMAS MISSION HOSPITAL

Represented by Dr. Rev. Kurien Thomas, Administrator,
attanam, Kayamkulam,

District-Alleppey

.....Appellant(s)

Versus

1. MUTHU VIJAYAN (MINOR) REP. BY THE
GUARDIAN SRI AJAYAN & ANR.

Represented by the Guardian, Sri Ajayan, S/o. Krishnan
Nair, Pullampallil Puthenveedu, Karimulackal,
Kommallur,

District- Alleppey

2. DR. VISWANATHAN M.S.

ORCHID HOSPITAL,

MALAPPURAM-676505

KERALA

.....Respondent(s)

FIRST APPEAL NO. 3 OF 2012

(Against the Order dated 05/11/2011 in Complaint No. 50/2001 of the State Commission Kerala)

1. MUTHU VIJAYAN (MINOR)

Represented by natural gurdian/father, Vijayan,
Pullampampil Puthenveedu, Karimulakkal,

Komallpur P.O

Kerala

.....Appellant(s)

Versus

1. DR. VISWANATHAN M.S. & ANR.

St. Thomas Mission Hospital, Kattanam, Pallickal,
Kayamkulam

Kollam

Kerala

2. ST. THOMAS MISSION HOSPITAL

Through its Administrator, Kattanam, Pallickal,
Kayamkulam,

Kollam Dist.

Kerala

.....Respondent(s)

BEFORE:

**HON'BLE MR. PREM NARAIN,PRESIDING MEMBER
HON'BLE MR. C. VISWANATH,MEMBER**

- For the Appellant :** In FA No.545 of 2011
For the Appellants Ex parte
In FA No.3 of 2012
For the Appellants Mr C N Sreekumar, Advocate with
Mr Amit Sharma, Advocate
- For the Respondent :** In FA No.545 of 2011
For Respondent no.1 Mr C N Sreekumar, Advocate with
Mr Amit Sharma, Advocate
For Respondent no.2 Ex Parte
In FA No.3 of 2012
For Respondent no.1 Ex Parte
For Respondent no.2 Ex Parte

Dated : 28 Aug 2020

ORDER

PER MR PREM NARAIN, PRESIDING MEMBER

These appeals are the cross appeals filed by the opposite party hospital – St Thomas Mission Hospital and the complainant - Muthu Vijayan (Minor) represented by the natural guardian respectively, against the order dated 05.11.2011 of the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram ('the State Commission') in OP no.50 of 2001.

2. The brief facts of the case are that the complainant is the minor child aged 4 years who is represented by her natural guardian the father. On 05.05.1999, the minor child was admitted in the appellant hospital/ OP no.2 for burn injuries and was treated there. On the third day of admission blackening on the burnt portion of the minor child was noticed by the complainant father and the same was reported to the doctor who told that it was a sign of healing. The condition of the minor child started worsening after 2 days and she was operated as well. After the operation, the complainant got discharged the minor child after looking at her condition.

3. Thereafter, the child was admitted to Pushpagiri hospital for 5 days. As there was no improvement, she was referred to SAT hospital and she was an inpatient from 15.05.99 to 28.06.99 and from 29.9.99 to 9.10.99 and from 19.1.2000 to 31.01.2000.

4. At the time of examination of the child at the other two hospitals, it was found that she had developed septicaemia due to negligence on the part of OP no.1. Further, two fingers from the right hand had to be removed/ amputated and her right hand is twisted and is incapable of any effective movements.

5. Aggrieved by the act of OPs, the complainant filed the complaint before the State Commission against the OPs for negligence and the disability and disfigurement of the hand of the minor child.

6. The State Commission vide its order dated 05.11.2011 allowed the complaint with a cost of Rs.10,000/-. The State Commission directed OPs, jointly and severally to pay a sum of Rs.3,00,000/- as compensation along with interest @ 7% p.a. from the date of filing the complaint.

7. Hence, OP no.2 has filed the first appeal before this commission.

8. On the day of the hearing, the appellant – Hospital as well as respondent no. 2 Dr Viswanathan did not appear and they were proceeded *ex parte* on 2nd March 2020 as they did not appear on the previous date of hearing also. Therefore, the learned counsel for the complainant was heard.

9. Learned counsel for the complainant states that though the State Commission has agreed to the assertions of the complainant, however, the compensation awarded by the State Commission is not commensurate with the misery and sufferings of the complainant. The baby child is a girl child and a girl with twisted hand and two fingers amputated will face lot of difficulties in her future life. Complainant had not been compensated looking at the seriousness and lapse of medical negligence on the part of the hospital and the Doctor. The doctor who treated the child was not holding any special degree to treat burn case. When septicaemia was spreading and there were dark spots on the hand of the child, the treating doctor said that those were the signs of improvement whereas those were the signs of spreading septicaemia. Ultimately, two fingers of the right hand were amputated in order to save further spread and to save the life of the girl child. It was requested by the learned counsel for enhancement of compensation from Rs.3.00 lakh awarded by the State Commission to Rs.12.00 lakh.

10. We have carefully considered the arguments advanced by the learned counsel for the complainant and have also examined the appeal filed by the opposite party – Hospital.

11. The case relates to the treatment of the child of about four years of age who was injured due to burns. The hospital provided treatment, however, the condition of the hand of the child did not improve and ultimately, the complainant had to shift the child to other hospital. It was found that the child was suffering from septicaemia and to prevent further spread of infection, her two fingers of the right hand were amputated. The Hospital in their appeal has stated that the State Commission should have dismissed the complaint on the sole ground of non-impleadment of necessary and proper parties in the complaint. The baby was treated in other hospital and on the basis of the treatment given by the other hospital, it has been alleged that the treatment given by the appellant hospital was deficient. It has been alleged that deformity in the hand has come due to the plastic surgery given by the other hospital which has not been made a party in the present complaint. The sole responsibility of deformity and disability has been put on the appellant hospital, whereas the other hospitals are more responsible than the appellant hospital. Thus, until the other hospitals which have treated the child are also made a party in the present case, it is difficult to decide the deficiency in service on the part of the hospital. It was further alleged that it was the case of severe burn and whatever best treatment was possible has been given to the child and deformity has developed due to plastic surgery done at the other hospital. Obviously, the burnt hand cannot be put in the same condition as it was before the burn. In fact no deficiency in

service has been proved by the complainant and the State Commission has passed an order on the basis of presumptions and assumptions. In fact, the hospital has saved the life of a girl child and still the hospital has to pay compensation to save the child.

12. Facts of the case are that the girl child has lost her two fingers and her hand has become twisted. She is also suffering from 40% disability. Moreover, the treating doctor at the OP Hospital did not correctly assess the deteriorating condition of the girl child and failed to give the right treatment. In these conditions, we are of the opinion that the State Commission has rightly assessed the negligence on the part of the hospital. We do not find any merit in the appeal filed by the hospital being FA no. 545 of 2011.

13. Coming to the appeal filed by the complainant for enhancement of compensation, it is seen that the State Commission has appropriately compensated the complainant and interest of 7% per annum from the date of filing of the complaint has also been awarded. No special reason has been given by the complainant to enhance the compensation awarded by the State Commission. Thus, we do not find any merit in the appeal filed by the complainant.

14. Based on the above discussion, both the appeals being FA no. 545 of 2011 and FA no. 3 of 2012 are dismissed.

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PREM NARAIN
PRESIDING MEMBER

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C. VISWANATH
MEMBER