

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 273 OF 2017

(Against the Order dated 05/10/2016 in Complaint No. 21/2011 of the State Commission Kerala)

1. ERNAKULAM MEDICAL CENTRE & ANR.

REP. BY ITS DIRECTOR, PALARIVATTOM, NH
BYPASS, KOCHI, ERNAKULAM (DIST)

KERALA STATE, PIN-682028

2. DIRECTOR, M/S. ERNAKULAM MEDICAL
CENTRE,

PALARIVATTOM, NH BYPASS, KOCHI,
ERNAKULAM (DIST),

KERALA STATE PIN-682028

.....Appellant(s)

Versus

1. DR. P.R. JAYASREE & ANR.

W/O. DR. MANISH KUMAR, ANANYAM, VIDHYA
NAGAR, THENJIPALAM P.O, MALAPPURAM DIST,

KERALA STATE, PIN-673636

2. R.P. RANI W/O. K.S. VINOD

'SHRANYA', THALAYOLAPARAMBU, KOTTAYAM
(DIST), KERALA STATE, PIN-686605

.....Respondent(s)

BEFORE:

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

HON'BLE MR. DINESH SINGH, MEMBER

For the Appellant :

For the Respondent :

Dated : 12 Mar 2020

ORDER

APPEARED AT THE TIME OF ARGUMENTS

For the Appellants : Mrs. Radha, Advocate

For the Respondents : Mr. A. Karthik, Advocate
Mr. Badusha Sulaiman, Advocate

Pronounced on : 12th March, 2020

ORDER

PER DR. S. M. KANTIKAR, PRESIDING MEMBER

1. The instant first appeal filed by M/s. Ernakulam Medical Centre and its director challenges the quantum of compensation granted by the Kerala State Commission for the alleged negligence and deficiency in service from the hospital who issued wrong dead body of one patient to some other claimant.

2. The order dated 05.10.2016 passed by the Kerala State Commission which allowed the complaint 21/2011 and awarded Rs. 25 Lakhs with 12 % interest from the date of complaint till realization together with cost of Rs. 10,000/-.

3. Brief facts:

R. Purushothaman (since deceased) (hereinafter referred to as “the patient”), father of both the complainants died on 30.12.2009 evening during treatment in M/s. Ernakulam Medical Centre Hospital, Ernakulam (for short ‘the hospital’) -O.P. No. 1. His dead body was kept in the refrigerated box in the mortuary of the hospital. On the very next date, dead body of one Lt. Col. A.P. Kanthi about 88 years was also kept in the mortuary in the refrigerated box. On the 01.01.2010, Mr. Jayasankar, the grandson of the patient, late Mr. R. Purushothaman along with his father Justice P.S. Gopinathan approached the O.P.No.1 hospital in early morning for release of dead body of R. Purushothaman. It came as a surprise to them that the dead body was to be released was not of late R. Purushothaman, but it was of Lt. Col. A.P. Kanthi. Immediately, after knowing the fact, it came to light that Mr. V. K. Pramesh, the public relations officers (PRO) of the O.P. No. 1 Medical Centre has already released one body to the immediate relatives of Lt. Col. A.P. Kanthi and it was cremated with the religious rites. Therefore, the relatives of late Lt. Col. A.P. Kanthi were interrogated, who after initial reluctance, admitted their mistake and sought apology to Justice P.S. Gopinathan and thereafter handed over to them the ashes of late Mr. R. Purushothaman. The dead body of Lt. Col. A.P. Kanthi was released to their concerned relatives. It was alleged that such callous attitude of the O.P.s in wrongly releasing the dead body of the father of the complainants deprived their right to decent cremation / burial of their deceased father. It caused severe mental agony also. Being aggrieved by the deficiency in service on the part of the hospital, the two younger daughters of deceased R. Purushothaman filed a complaint no.22/2011 before the Kerala State Commission and claimed compensation from O.P.s for Rs. 1 crore with 18 % interest from the date of filing of the complaint.

4. The opposite parties filed version and contended that it was neither unfair trade practice nor negligence nor deficiency of service on their part. The complaint is not maintainable as the claim raised by the complainants is beyond the scope of Consumer Protection Act, 1986. It can only be adjudicated in a Civil Court and not a consumer dispute. Also the complaint was filed by two children though the deceased R. Purushothaman admittedly had four children. The matter settled and was given a quietus between the

son and brother of late Lt. Col. Kanthy in the presence of the deceased R. Purushothaman's legal heirs, brother in law Justice P. S. Gopinathan, a judge of the Hon'ble High Court of Kerala and the elder sister of the complainants who herself was a reputed medical officer. According to the O.P.s on 31/12/2009, four persons who were the immediate relatives of deceased Lt. Col. Kanthy mistakenly identified the dead body of R. Purushothaman as that of deceased Kanthy. The PRO Mr. V.K. Pramesh without any doubt /ill intention released that dead body to them and it was cremated in the Pachalam crematorium as per Hindu religion.

5. On hearing both the sides, the State Commission has partly allowed the consumer complaint vide order dated 05.10.2016 by awarding compensation of Rs. 25 Lakhs with 12 % interest from the date of complaint till realization together with cost of Rs. 10,000/-.

6. Being aggrieved the instant first appeal was filed by the O.P.s

7. Heard the learned counsel for both the sides and perused the material on record.

8. It was an admitted fact that erroneously the dead body of R. Purushothaman was issued by the hospital to the relatives of deceased Lt. Col. A. P. Kanthy. However, factually on 31.12.2009 during day time the dead body of Late R. Purushothaman was kept in the house of A. P. Kanthy's daughter and homage was paid by the four children, siblings, close relatives and friends but none had expressed any doubt regarding the identity of the deceased Kanthy. In the evening the body was cremated as per the Hindu customs.

9. According to the PRO Mr. V. K. Pramesh, he was not familiar with the face of either R. Purushothaman or A.P. Kanthy and he without any ill intention bonafidely believed the assertion of the kith and kin, brother and son of A. P. Kanthy regarding the identification of the body without considering the identifying tag. In any manner in our view it was a negligence and failure of duty of care by one Mr. V. K. Pramesh, the PRO who without proper identification wrongly released the dead body of R. Purushothaman,

10. The mistake was admitted by the opposite parties. It is pertinent to note that Late R. Purushothaman has 4 daughters and in terms of the amicable settlement the eldest two daughters abstained from joining as complainants in the array of parties in the consumer complaint in C.C. No. 21/2011. The fact remains that deceased R. Purushothaman had been given pious cremation in accordance with Hindu religious rites and that the ashes been received by the children of R. Purushothaman for observing further religious rites.

11. In our view, the complaint is totally misconceived. The 2 of the 4 children of the deceased person have attempted to make a fortune out of the mistake committed by a stranger who bonafidely claimed the body of their deceased father. The State Commission ought to have appreciated that it is trite law that awarding of compensation should be on the basis of cogent grounds.

12. In this case, the dead body of the complainants' father was released to some other person. This is an admitted fact, and also again admitted to by both sides in the arguments.

13. The State Commission has determined deficiency in service on the part of the appellants.

14. We concur with the State Commission in its findings of deficiency in service on the part of the appellants i.e. on the part of the hospital and its chairman / managing director.

15. The State Commission has awarded compensation of Rs. 25 lakh with interest @ 12% per annum from the date of complaint till realization and cost of Rs. 10,000/-.

16. During arguments, apropos the quantum of just and equitable compensation, learned counsel for the respondents – complainants submitted that the compensation prayed for in the complaint was apt and that at the very least the compensation awarded by the State Commission should not be reduced in any manner.

17. And the learned counsel for the appellants submitted, on instructions, that the appellants are willing to pay compensation of Rs. 10 lakh.

18. We have carefully studied the entire material on record, and noted the facts and specificities of the case.

19. We are of the considered view that the point being made by the complainants stands proved, i.e. release of the dead body of the complainants' father to some other person, and thereby depriving the complainants of the last rites and cremation and final journey of the deceased, is decidedly deficiency in service within the meaning of section 2(1)(g) & (o) of the Act 1986.

20. However, in our considered view, compensation of Rs. 5 lakh to the complainants would be just and equitable, and would meet the ends of justice on this count as far as the complainants are concerned. The said compensation shall be paid by the appellants within four weeks from 04.07.2019, failing which it shall attract interest @ 10% per annum. In addition, considering the gravity of such negligent and deficient act committed in a hospital well-endowed with the requisite infrastructure and wherewithal, an amount of Rs. 25 lakh shall be deposited by the appellants in the Consumer Legal Aid Account of the State Commission within four weeks from 04.07.2019, failing which it shall attract interest @ 10% per annum. The liability of the appellants i.e. the hospital and its chairman / managing director shall be joint and several.

Per Hon'ble Mr. Dinesh Singh, Member

21. In the interest of justice, to settle the matter on merit, the short delay in filing the appeal is condoned.

22. The limited point in this case is that the dead body of the complainants' father was released to some other person by the hospital.

This is an admitted fact, which was also specifically admitted to by both sides in the arguments before this Commission on 04.07.2019 (this admission was explicitly recorded in the daily Order dated 04.07.2019 of this Commission).

23. Releasing a dead body by a hospital to an unrelated third person unquestionably constitutes 'deficiency in service' within the meaning of section 2(1)(g) & (o) of the Act 1986.

24. We concur with the State Commission in its findings of deficiency in service on the part of the hospital and its chairman / managing director.

25. The point being made by the complainants stands proved, i.e. release of the dead body of their father to some other person, and thereby depriving them of the last rites and cremation and final journey of the deceased, is decidedly deficiency in service.

26. However, in the totality of the case, in our considered view, compensation of Rs. 5 lakh to the complainants would be just and equitable, and would meet the ends of justice on this count as far as the complainants are concerned. The said compensation shall be paid by the opposite parties (hospital and its chairman / managing director) within four weeks from 04.07.2019, failing which it shall attract interest @ 10% per annum.

In addition, considering the gravity of such slipshod deficient act, committed in a hospital well-endowed with the requisite infrastructure and wherewithal, an amount of Rs. 25 lakh shall be deposited by the opposite parties in the Consumer Legal Aid Account of the State Commission within four weeks from 04.07.2019, failing which it shall attract interest @ 10% per annum.

The liability of the opposite parties i.e. the hospital and its chairman / managing director shall be joint and several.

27. It may be recalled that the penultimate paragraph of the daily Order dated 04.07.2019 specifically stipulated that: In case the appellants wish to await / agitate the reasoned judgment, etc., they are at liberty to deposit the said amount of Rs. 5 lakh and Rs. 25 lakh (total Rs. 30 lakh) with the State Commission within four weeks from today (i.e. 04.07.2019) without prejudice to their right to agitate the reasoned judgment, in which contingency the State Commission shall keep the said amount in fixed deposit and the interest of 10% per annum shall not be attracted.

Needless to say, the liberty, so provided, after hearing the arguments on 04.07.2019, on recording the operative portion pending the pronouncement of the reasoned judgment, stands as it stood.

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DR. S.M. KANTIKAR
PRESIDING MEMBER

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DINESH SINGH
MEMBER