

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
PUNJAB, CHANDIGARH**

First Appeal No.23 of 2023

Date of Institution : 11.01.2023

Date of Reserve : 23.10.2024

Date of Decision : 30.10.2024

Jaswant Singh age about 62 years son of Karam Singh, resident of Village Channi Nand Singh Tehsil Mukerian, District Hoshiarpur Pin 144306.

....Appellant/Complainant

Versus

Dr.K.D.'s Eye Hospital, A-18/19, Near Improvement Trust Office, Patel Chowk, Pathankot, Tehsil and District Pathankot through its Proprietor Pin Code No.145001.

....Respondent/opposite party

First Appeal under Section 41 of the Consumer Protection Act, 2019 against the order dated 02.12.2022 of the District Consumer Disputes Redressal Commission, Gurdaspur.

Quorum:-

Mr.Harinderpal Singh Mahal, Presiding Judicial Member

Mrs. Kiran Sibal, Member

Present:-

**For the appellant : Sh.D.D.Sharma, proxy for
Sh.Naresh Chander, Advocate**

For the respondent : Sh.Dinesh Mahajan, Advocate

HARINDERPAL SINGH MAHAL, PRESIDING JUDICIAL MEMBER

This appeal has been preferred by the appellant/complainant- Jaswant Singh against the order dated 02.12.2022 passed by District Consumer Disputes Redressal Commission, Gurdaspur (in short 'District Commission'), whereby the complaint filed by the complainant under the Consumer Protection Act, 2019 (in short 'the Act') was dismissed.

It would be apposite to mention that hereinafter the parties will be referred, as have been arrayed before the District Commission.

2. Brief facts of the case are that the complainant who is a Diesel Engine Mechanic suffered an eye injury, while at work and has approached the Opposite party-Hospital for medical treatment on 21.08.2020. During the treatment, the opposite party-Hospital got the injured left-eye-radio-graphed (x-rayed) and observed that a 'Tiny radio opacity noted in the left orbit seems some foreign particle' and asked the complainant to deposit Rs.15,000/- as admission fee and accordingly eye was operated upon. Next day, the complainant also visited the hospital and was given the injection in his left eye by the doctor and asked to follow the treatment. On 24.08.2020, 28.08.2020 and 29.08.2020 the concerned doctor check-up the complainant and gave some medicines. Thereafter, again the complainant was called on 01.09.2020, 15.09.2020, 23.09.2020 and 02.10.2020 for check up. On 02.10.2020, the opposite parties gave him one month

medicines and assured him that his left eye has not recovered after removing the foreign particle. The condition of the left eye of the complainant became deteriorated due to infection in the eye and the injury got worse so he was again operated upon S.B. Dr.Sohan Singh Eye Hospital, Amritsar on 18.10.2020 to remove the foreign particle and was finally discharged from hospital on 20.10.2020. It has been alleged by the complainant that he lost his eye sight due to medical negligence of hospital and his right was saved from infection with the right time surgery done by Amritsar Hospital. Due to the injury in the eye, the complainant unable to do his professional duties and this is due to the negligence of opposite party-Hospital, who is liable to pay him Rs.20,00,000/- as damages.

3. Upon notice, opposite party appeared and filed their written reply taking preliminary objections that the complaint is not maintainable in the present form and has no cause of action accrued to the complainant. The complainant has no locus standi to file the present complaint. The complaint filed by the complainant is mis-conceived, frivolous and not sustainable in the eyes of law and the complainant filed this complaint just to extract the money from the opposite party-Hospital. The complaint is bad for non-joinder and mis-joinder of the parties as the complainant has not impleaded S.B. Dr.Sohan Singh Eye Hospital, Amritsar in the present complaint being the necessary party. The complainant approached the opposite party after 48 hours of the eye injury and

before that he got the medical treatment from the local clinic but the eye continuously swelled with the infection. On merits, they denied the averments made by the complainant and alleged that there is no negligence on their part and the treatment given by them. Rest all the averments made by the complainant were denied and prayed for dismissal of the complaint.

4. The parties led their evidence in support of the contentions before the District Commission and after hearing the contentions of both the parties, the complaint of the complainant was dismissed, vide impugned order dated 02.12.2022.

5. Aggrieved by the said order, this appeal has been filed by the appellant/complainant with the prayer for setting aside the impugned order dated 02.12.2022 and to allow his appeal.

6. We have heard the contentions of the parties and have carefully gone through the record as well as written arguments filed by them. We have also given our thoughtful consideration to the same.

7. Learned counsel for the appellant/complainant submitted the written argument as well as orally submitted that the District Commission has wrongly dismissed the complaint in spite of the fact that the appellant/complainant has sufficiently proved on record that it was only due to the deficiency in service of the opposite party which defected the eye of the appellant/complainant and this fact is proved by the documents proved on record, vide

Ex.C-1 to Ex.C-8 but the District Commission while deciding the complaint has not considered and prayed to allow his appeal.

8. Rebutting to the contentions of the learned counsel for the appellant/complainant, the respondent/opposite party filed their written arguments and orally submitted that the complaint of the complainant is bad for mis-joinder and non-joinder of the necessary parties and further alleged that the complainant was only taking OPD treatment and during that no surgery was performed nor any exorbitant fees was received from the appellant/complainant. He further submitted that there is not an iota of evidence that any surgery was performed or any fee was paid by the complainant, as alleged, because there is no document on the record to confirm that.

9. The case of the appellant/complainant is that he visited the opposite party-Hospital on 21.08.2020 with the injury in his left eye and for removal of foreign particle and he was charged Rs.15,000/- and for that he received the full treatment and after that some medicines were also prescribed to him. Finally, he was told that his eye was recovering and he was given one month's time. In the meantime, his eye got worst and he was to be operated in emergency from S.B. Dr.Sohan Singh Eye Hospital, Amritsar as indoor treatment. As per the contentions of the appellant/complainant that surgery was performed on his left eye by the respondent/opposite party, if it is so, then it was his prime duty to produce some sufficient evidence on the record to prove

that any such surgery was performed and he remained in the hospital as indoor patient but as observed, there is no evidence on the file to prove that any such treatment was given to the appellant/complainant.

10. On the contrary, the respondent/opposite party has alleged that the eye of the appellant/complainant was infected and filled with puss and blood so it was not possible to perform any surgery and he was given initially treatment with the medicines to follow and this plea of the respondent/opposite party appears to be reasoned.

11. From the perusal of the record produced on record by the appellant /complainant, nothing is proved that the respondent/opposite party performed the surgery upon the appellant/complainant due to which he lost his left eye. In lack of any proper evidence on behalf of the appellant/ complainant qua the allegations, as leveled, the respondent/ opposite party cannot be penalize for the act which they never committed.

12. The District Commission while deciding the complaint of the complainant has rightly observed that the opposite party-Hospital/ doctor has been viciously and unnecessarily accused by the appellant/complainant seemingly for an ulterior purpose.

13. In view of the above discussions, the appeal of the appellant/complainant is hereby dismissed being devoid of merits and the order of the District Commission is upheld.

14. The appeal could not be decided within the statutory period due to heavy pendency of court cases.

**(HARINDERPAL SINGH MAHAL)
PRESIDING JUDICIAL MEMBER**

**(KIRAN SIBAL)
MEMBER**

October 30th, 2024

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