

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 6224 OF 2013

NAGARMAL MODI SEWA SADAN

APPELLANT(S)

VERSUS

PREM PRAKASH RAJAGARIA & ORS.

RESPONDENT(S)

O R D E R

Heard learned counsel for the appellant as also learned counsel for the respondents and perused the appeal papers.

The appellant is before this Court assailing the judgment dated 06.02.2013 passed by the National Consumer Disputes Redressal Commission, New Delhi (For short `NCDRC') in O.P.No.170 of 1999. The NCDRC while taking note of the rival contentions has held the appellant and also the Doctors who were working under the appellant-Hospital, namely, the respondent Nos. 2,3 & 4 before the NCDRC as negligent in causing the death. It is in that light, the NCDRC has ordered payment of compensation in the manner in which it has done as per the specific directions against the respondents before it.

Though learned counsel for the appellant seeks to contend that the NCDRC was not justified in holding that the Doctors working under the appellant Hospital were negligent, we have perused the judgment in detail. In fact, the NCDRC after having referred to the evidence which was available before it and on analyzing the same and taking into consideration the report received from the AIIMS Hospital has arrived at its conclusion. We see no other contrary material available on record to arrive at a different conclusion. Insofar as the conclusion reached by the NCDRC with regard to the negligence, it is un-exceptionable and as such does not call for interference.

Having arrived at the above conclusion, one aspect of the matter which requires clarification herein is with regard to the liability of the insurer, namely, the respondent No.6- New India Assurance Co. Ltd. It is not in dispute that the said Insurance Company have issued the policy in favour of the Doctors working under appellant i.e. in favour of Dr.Raman Garodia and Dr. H.P. Shanyar. The said Doctors have been held to be negligent by the NCDRC. In such circumstance, it is the Insurance Company which would have to reimburse the compensation to the extent of the liability under the Policy as against the said respondents.

Learned counsel for the respondent-Insurance Company no doubt has placed reliance on the judgment in the case of *Sheth M.L. Vaduwala Eye Hospital Vs. Oriental Insurance Co. Ltd.* reported in (2021) SCC online 3449 to contend that when the Policy issued is in the name of the Doctors and the benefit is sought to be claimed by the Hospital, the same is not payable by the Insurance Company. Having perused the same, we note in the said case the Hospital itself was seeking to take advantage of the policy. In the instant facts, as noted, in addition to the appellant-Hospital, the Doctors in whose name the Policy had been issued were also arrayed as respondents in the NCDRC and the NCDRC having adverted to all the contentions had arrived at its conclusion that the said Doctors were negligent and such conclusion has attained finality in view of our above conclusion.

It is in that circumstance, in the instant case the Insurance Company is liable to reimburse to the extent they had agreed under the Policy. Hence to that extent, we modify the order holding the Insurance Company(Respondent No.6) to be liable to the said extent and in all other respects, the appellant shall reimburse the compensation jointly and severally.

The amount in deposit before this Court shall now be released to the respondent No.1 with the accrued interest. The balance of the amount payable as per the judgment in terms

of their respective liability shall be calculated and be paid by the appellant as also the Insurance Company to the extent of their liability and the other respondents who are held jointly and severally liable, within a period of four weeks.

With the above observations and directions the appeal is disposed of.

.....J.
[A.S. BOPANNA]

.....J.
[DIPANKAR DATTA]

NEW DELHI;
APRIL 20, 2023

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 6224/2013

NAGARMAL MODI SEWA SADAN

Appellant(s)

VERSUS

PREM PRAKASH RAJAGARIA . & ORS.
(IA No. 117058/2022 - EARLY HEARING APPLICATION)

Respondent(s)

Date : 20-04-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE DIPANKAR DATTA

For parties

Ms. Ruchira Gupta, Adv.
Mr. Shishir Deshpande, AOR
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Ms. Aparajita Jha, Adv.
Mr. Brian Henry Moses, Adv.
Mr. Madan Lal Sagar, Adv.
Ms. Divya Roy, AORDr. Sushil Kumar, Adv.
Ms. Sunita Gupta, Adv.
Ms. Mridula Ray Bharadwaj, AOR

Ms. Surbhi Mehta, AOR

UPON hearing the counsel the Court made the following
O R D E RThe appeal is disposed of in terms of signed order.
Pending application(s) shall stand disposed of.(RAJNI MUKHI)
COURT MASTER (SH)

(Signed order is placed on the file)

(DIPTI KHURANA)
ASSISTANT REGISTRAR