



REPORTABLE

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

CIVIL APPEAL NO(S). _____ OF 2024
[Arising out of SLP (Civil) No(s). 17437 of 2018]

NAJRUL SEIKH **...APPELLANT(S)**

VERSUS

DR. SUMIT BANERJEE & ANR. ...RESPONDENT(S)

ORDER

1. Delay condoned.
2. Leave granted.
3. The Appellant before us, a BPL card holder, is the father of Master Irshad, a 13-year-old boy who lost complete vision in his right eye following an allegedly negligent cataract surgery undertaken by the Respondents. The complaint preferred by the Appellant under Section 12 of the Consumer Protection Act, 1986 was allowed by the District Consumer Disputes Redressal Commission ('**DCDRC**') However, the order of the DCDRC was set aside by the West Bengal State Consumer Disputes Redressal Commission ('**SCDRC**') and thereafter, the revision petition preferred by the Appellant before the National Consumer

Disputes Redressal Commission (the ‘NCDRC’) was also dismissed *vide* order dated 09.06.2016, which is impugned before this Court.

Brief Facts:

4. The facts, to the extent relevant, are that on 14.11.2006, Master Irshad sustained an injury in his right eye. The next day, he was taken to Disha Eye Hospital and the examination report revealed that Irshad was suffering from traumatic cataract and required a minor surgery. Being unable to finance his son’s treatment at Disha Eye Hospital, the Appellant approached Respondent No.1, a doctor and partner at Megha Eye Centre i.e., Respondent No. 2 on 18.11.2006.

5. Thereafter, Respondent No. 1 affirmed the previous medical opinion and accordingly, conducted the surgery on 24.11.2006. After the surgery, Irshad began experiencing irritation, pain, and blood clotting and despite visiting Respondent No. 1 multiple times, there was no improvement in his condition. Eventually, Respondent No.1 referred them to the Regional Institute of Ophthalmology (‘RIO’) and a month later, on 19.04.2007, the Appellant and his son visited the RIO and were informed that it was a case of Retinal detachment leading to permanent loss of vision in the right eye, caused due to the faulty operation conducted by Respondent No. 1.

6. *Vide* order dated 16.05.2013, the DCDRC found that there was deficiency in the medical services provided by the Respondents herein and *inter alia* directed payment of INR 9,00,000 as compensation, in favour of the Appellant within a period of one month, failing which, the amount would be subject to an interest @ 10% until the date of realisation. The DCDRC relied on the *uncontroverted* expert evidence provided by Dr. Anindya Gupta, RMO-cum-Clinical tutor from the Burdwan Medical College to hold that Irshad lost his vision due to the negligent and careless attitude of Respondent No. 1 manifesting through lapses in pre-operative and post-operative care and rehabilitation.

7. On the other hand, the SCDRC *vide* order dated 11.09.2015 held that the Appellant herein failed to establish deficiency of service/negligence on part of the Respondents and dismissed the complaint of the Appellant. The SCDRC relied on the report of the West Bengal Medical Council (the '**Medical Council**') dated 18.05.2015 which exonerated Respondent No. 1 of all charges of misconduct/negligence and instead found contributory negligence on part of the Appellant as he visited the RIO only after a delay of 1 month, contrary to the advice of Respondent No. 1.

8. Similarly, the NCDRC also held that there was no negligence on part of the Respondents and concluded that the

Appellant's delay of one month in approaching the RIO was fatal for his son.

Submissions & Analysis:

9. Learned Counsel for the Appellant vehemently contends that the NCDRC failed to consider that the SCDRC undertook a selective appreciation of evidence, completely disregarding the uncontroverted expert evidence provided by Dr. Gupta regarding the lapses in pre-operative and post-operative care provided by the Respondents.

10. *Per Contra*, Learned Counsel for the Respondents submits that both the NCDRC and the SCDRC have correctly placed reliance on the decision of the Medical Council to arrive at their conclusions regarding the absence of negligence on part of the Respondents.

11. This Court has heard the Learned Counsel for the parties and perused the record.

12. Upon perusal of the orders of the NCDRC and the SCDRC, we find significant merit in the contention of the Learned Counsel for the Appellant. At this stage, it would be appropriate to refer to the findings of the DCDRC regarding the negligence of the Respondents. The operative paragraph(s) of the order passed by the DCDRC read as under:

“So, we are very much affirmed that diagnosis of Disha Eye Hospital regarding "traumatic cataract" was known to the O.P. No.1 before the operation. This O.P. No.1 has admitted in the last portion, of para-23 of the written version by saying that 'from medical point of view it is well established that management and rehabilitations of traumatic cataract, specially in a child, is very difficult, unpredictable and any complication may happen at any moment and it cannot be ascertained before hand. Unfortunately this type of complication happened to the son of the complainant.

If that be the position, why the doctor did not take any post-operative care of traumatic cataract. In this regard the expert doctor Anindya Gupta who is the RMO-cum-Clinical Tutor department of Ophthalmology, Burdwan Medical College and Hospital has specifically stated that "prior to operation skin test is done for determining any drug allergy if at all". But no test of drug allergy was advised in the prescriptions. Apart from that expert doctor has stated that OT date was on 24.11.2006 but the medical card of the patient does not reflect the treatment prior to 24.11.2006 except urine test pending and there is nothing mention of next date of review after 24.11.2006. It has further stated normally a patient is checked on the next date of operation if not discharged earlier. The expert doctor has further stated that theoretically speaking any check after 72 hours of the operation is sufficient in a normal case during post-operative period but the card shows that the next date of checking is 1.12.2006 after (24.11.2006, date of OT). The expert doctor further stated that on 6.12.2006 the vision rating, is not normal. It is

pertinent to point that the expert doctor has specifically stated that "as a doctor one should take care of all risk factor of the patient before performing the operation". So, it is clear inspite of knowing the fact of seriousness of the treatment i.e. operation of traumatic cataract O.P. No.1 doctor did nothing on the medical point of view. So, we are opined that it is not only the unfortunate of the patient but it is the unfortunate of the society at large that this type of unruly negligent doctor still performing operation in the medical field, particularly when he had no faith upon the medical science and medical ethics and regulations. In this regard the expert doctor has stoutly stated in the end of his deposition that a doctor must always be updated. If a doctor violates the code of medical ethics and regulations it can be said to be professional misconduct.

Apart from that, the expert did not stop of saying against the treatment of this O.P. No.1 but stated "non-adherence to medical prescription, post-operative trauma etc. are the contributory factor for the loss of vision after operation. Extra Capsular Surgery is the modern level of surgery and risk factor may be less in case of Extra Capsular Surgery compared to other method of surgery which is available in all Eye Hospital. The O.P. No.1 has admitted in para No.20 of written version that he is being a one of the partner of Megha Eye Centre, which is well equipped and (modernized institution with world class microscope for examination. If that be so, what prompted the O.P. No.1 not to induct surgery in the modern method i.e. Capsular Surgery?, particularly when he was well aware regarding the gravity of disease namely traumatic cataract and also aware that on medical point of

view management and rehabilitation of traumatic cataract specially in a child is very difficult, unpredictable and any type of complication may happen at any point of time which cannot be ascertained before hand.”

It is evident that the DCDRC has made specific findings regarding lapses in duty of care by Respondent No.1 *vis a vis* both pre-operative and post-operative standards for conducting a traumatic cataract surgery. More pertinently, through the evidence of Dr. Gupta, a nexus was established between the lapses in post-operative care (the delay in review, the abnormal vision rating on 06.12.2006 which was left unchecked by Respondent No. 1, failure to undertake extra capsular method of surgery despite having the necessary equipment) and the development of loss of vision after the operation. It must be re-emphasized that the expert evidence of Dr. Gupta went entirely uncontroverted due to the absence of cross-examination and the failure of the Respondents to bring on record any other contradictory expert evidence.

13. Despite the presence of evidence pointing towards negligence of the Respondents, both the SCDRC and the NCDRC failed to consider it and relied only on the report of the Medical Council. On a perusal of the Medical Council report, it appears that the Medical Council did not delve into the nuances of pre-operative and post-operative care. Further, the finding of

contributory negligence attributed to the Appellant is entirely unsubstantiated by expert opinion.

14. Under these circumstances, both the SCDRC and the NCDRC ought to have examined the evidence in totality, especially since this plea was urged by the Counsel for the Appellant in both the forums. Instead, both the forums have mechanically and exclusively relied upon the Medical Council report and reiterated its findings without any reference to the evidence of Dr. Gupta. While the report of the Medical Council can be relevant for determining deficiency of service before a consumer forum, it cannot be determinative, especially when it contradicts the evidentiary findings made by a consumer forum. In these circumstances, the appellate forum is tasked with the duty of undertaking a more thorough examination of the evidence on record. On this failing alone, the orders of the SCDRC and DCDRC deserve to be set aside.

15. As it stands today, the specific findings made by the DCDRC regarding lapses in post-operative care by the Respondents and the resultant development of Retinal detachment remains unchallenged by the other evidence on record. In fact, the holding of the DCDRC is strengthened not only by the report of the Medical Council which states that development of Retinal Detachment is not uncommon in cases of blunt trauma as in the case of Irshad, but also by the admission

of the Respondent No. 1 itself that management and rehabilitation of traumatic cataract for a child is very difficult, unpredictable, and prone to complications. That being the case, and in view of the established principle of law that in cases of deficiency of medical services, duty of care does not end with surgery, we have no hesitation in affirming the finding of the DCDRC that there was a deficiency in the medical services provided by the Respondents to the Appellant's son.

16. In view of the aforesaid, the present appeal succeeds and the order of the NCDRC and the SCDRC are set aside. Accordingly, the Respondents are directed to comply with the order of the DCDRC within one month from the date of this order.

17. Resultantly, the appeal stands allowed.

18. Pending applications, if any, shall also stand disposed of.

.....**J.**
[VIKRAM NATH]

.....**J.**
[SATISH CHANDRA SHARMA]

NEW DELHI
FEBRUARY 22, 2024