

IN THE STATE COMMISSION: DELHI

(Constituted under Section 9 of the Consumer Protection Act, 1986)

Date of Decision: 21.07.2017

First Appeal No. 906/2012

(Arising out of the order dated 23.07.2012 passed in Complaint Case No. 837/2009 by the District Consumer Disputes Redressal Forum (East) Convenient Shopping Centre; Saini Enclave: Delhi-92)

In the matter of:

1. Dr. Jiledar

C.M.O.

LBS Hospital
Kalyan Puri
Delhi-110091

2. The Concerned Nurse

Room No. 14
LBS Hospital
Kalyan Puri
Delhi-110091

.....Appellants

Versus

Sh. Lalan Prasad Sharma

C/o Ragini Devi
R/o E-6, 5th Floor
Near Prakash Medical Sharma Market
Sector-5, Harolla Noida
Distt. Gautam Budh Nagar (U.P.)

.....Respondent

CORAM

N P KAUSHIK

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Member (Judicial)

- | | | |
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| 1. | Whether reporters of local newspaper be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |

N P KAUSHIK – MEMBER (JUDICIAL)

JUDGMENT

- 1) Admitted facts of the case are that the complainant Sh. Lalan Prasad Sharma was examined in emergency ward of LBS Hospital Kalyanpuri Delhi-110091 on 10.01.2009 and given two injections in his right hand. Complainant immediately thereafter

felt that his right hand had stopped working and was almost paralyzed. He was advised to go home. On the next day on his visit to the hospital, doctors put plaster on his right hand. Patient did not feel any relief. He went to Metro Hospital Delhi on 16.01.2009. He was referred to G B Pant Hospital Delhi where he was told that due to the negligence on the part of the doctor his hand had stopped working.

- 2) Defence raised by the OP hospital was that the complainant was suffering from right side radial nerve palsy alongwith wrist drop which was caused by chemical neuritis secondary to intramuscular injection. It was further submitted that the problem arose as a result of anatomical variation of course of radial nerve.
- 3) OP hospital sought an expert opinion from GTB Hospital Delhi-95 before the complainant filed his complaint in the District Forum. The relevant portion of the expert opinion as given by GTB Hospital Delhi is reproduced below:

"Medical Board is of the opinion that the findings are suggestive of right radial nerve palsy. The same has been proved by Neuro-diagnostic tests done at A.I.I.M.S. (Neuroscience Centre) dated 26 May 2010, patient I.D.No. 800-10, available with the patient."

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- 4) Ld. District Forum taking into account the facts and circumstances of the case awarded compensation to the tune of

Rs. 5,00,000/- to the complainant, recoverable from OP No. 1 and OP No. 3. CMO of LBS Hospital was given the opportunity to recover the said amount from the salaries of the doctor and the nurse respectively for the paralysis caused to the patient.

- 5) Appeal has been filed on the grounds inter-alia that there did not exist the relationship of 'consumer' and a 'service provider' between the complainant and the OPs. Ld. Counsel for the appellant has relied upon the case of **Kusum Sharma and Ors. v. Batra Hospital and Medical Research Centre and Ors.**, 2010 (1) CPJ 29 SC. In the said case the Hon'ble Supreme Court observed that a mere deviation from normal professional practice is not necessarily an evidence of negligence.
- 6) Giving injections in the nerve of the patient is not simply a deviation from a normal professional practice. Doctor or a nurse giving injections must be conscious of the area of the human body on which injection is being given. A medico must be thoroughly familiar with the anatomy of the human body. Clearly, the law cited is not applicable to the case in hand.
- 7) Coming to the plea of non-existence of relationship of 'consumer' and 'service provider', the Hon'ble Supreme Court in the case of **Indian Medical Association v. V P Shantha**, 1995 (3) CPJ 1 (SC) held that the services rendered by the

Government hospital fall within the purview of the Consumer Protection Act 1986. This plea again does not help the appellant.

8) In view of the discussion above, I am of the view that the appeal is devoid of merits. The same is hence dismissed.

9) Copy of the orders be made available to the parties free of costs as per rules and thereafter the file be consigned to Records.

(N P KAUSHIK)
MEMBER (JUDICIAL)

(fatima)