

A M/S SHETH M L VADUWALA EYE HOSPITAL
v.
ORIENTAL INSURANCE COMPANY LIMITED AND OTHERS
(Civil Appeal Nos. 7611-7634 of 2021)

B DECEMBER 11, 2021

**[DR. DHANANJAYA Y CHANDRACHUD AND
A. S. BOPANNA, JJ.]**

C *Consumer Protection: Medical negligence – Liability of
Hospital – Appellant a charitable hospital conducted an eye camp
and performed cataract surgeries on 112 patients – Patients
complained of negligence in performance of surgeries by use of
non-sterilized appliances, contaminated medicines and lenses of
an inferior quality resulting in eye infections and loss of vision –
State Government appointed a Committee to enquire into the causes
D which led, inter alia, to several patients having lost their eye-sight
– Consumer complaints instituted by consumer organization against
the hospital and the insurer – Doctors had insurance policies to
cover claims of professional negligence – Doctors were not parties
to the proceedings before the District Forum though affidavits were
E filed by them – District Forum held that according to the report of
the Expert Committee, negligence of the doctors and the staff of the
appellant hospital was established and passed an award of
compensation – District Forum held that the liability of both the
hospital and the insurer would be joint and several, but the award
would be enforced only against the insurer – Award was not
F challenged by Hospital – State Commission dismissed the insurer’s
appeal – NCDRC set aside order holding the insurer liable – It,
however, clarified that this would not affect the directions fastening
liability on the Hospital – In arriving at this conclusion, the NCDRC
noted that the liability has been fastened on the Hospital on the
G basis of six professional indemnity policies obtained by the doctors,
though their business addresses were shown to be Vaduwala Eye
Hospital – NCDRC held that this fact could not by itself fasten the
liability on the insurer, particularly in the absence of any specific
allegation of negligence against any of the doctors – Instant appeals
H filed by Hospital – Held: The insurance policies were obtained by
the doctors – These were professional indemnity insurance policies*

which would cover a claim for professional negligence which was made against the doctors – Admittedly, finding of negligence, as it appears from the order of the State Commission, is specifically against the hospital – The finding is that the hospital and its staff were negligent in the conduct of the cataract surgeries – The specific finding is that the equipment which was used were not properly sterilized, the staff was not properly trained and the medicines which were administered were not of the requisite quality and were contaminated – The hospital was not the beneficiary of the insurance policies which were obtained by the doctors to cover the discharge of their own professional obligations – A joint and several liability could not have been fastened on the insurer under insurance policies which were not obtained by the hospital – No interference with the order of NCDRC called for.

Dismissing the appeals, the Court

HELD: Admittedly, the finding of negligence, as it appears from the order of the State Commission, is specifically against the hospital. The finding is that the hospital and its staff were negligent in the conduct of the cataract surgeries. The specific finding is that the equipment which was used were not properly sterilized, the staff was not properly trained and the medicines which were administered were not of the requisite quality and were contaminated. In this backdrop, the issue is whether the hospital could have claimed to be indemnified by the insurer. The hospital was not the beneficiary of the insurance policies which were obtained by the doctors to cover the discharge of their own professional obligations. There was a manifest error on the part of the District Forum as well as the State Commission. The NCDRC had a valid basis to exercise its revisional jurisdiction. While it is true that the NCDRC has interfered in the exercise of its revisional jurisdiction, it was justified in doing so since a joint and several liability could not have been fastened on the insurer under insurance policies which were not obtained by the hospital. The submission of the hospital that it was the beneficiary of those insurance policies does not evidently have any basis. [Paras 14, 15][122-A-E]

A CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.7611-7634 of 2021.

From the Judgment and Order dated 26.02.2014 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No.2143 of 2013 to Revision Petition No.2166 of 2013.

B Manoj Swarup, Sr. Adv., Shakti Kanta Pattanaik, Tarun Kumar Tiwari, Santosh Kumar, Dhruv Kiran Dave, Advs. for the Appellant.

Ms. Amrreeta Swaarup, Adv. for the Respondents.

The Judgment of the Court was delivered by

C **DR. DHANANJAYA Y CHANDRACHUD, J.**

1. Leave granted.

2. These appeals arise from a judgment of the National Consumer Disputes Redressal Commission¹ dated 26 February 2014.

D 3. The appellant is a charitable hospital registered under the Bombay Public Trust Act 1961. Between 21 and 23 June 2000, the appellant conducted an eye camp where cataract surgeries were performed on 112 patients. The patients complained of negligence in the performance of the surgeries by the use of non-sterilized appliances, contaminated medicines and lenses of an inferior quality resulting in eye infections and loss of vision. The State Government appointed a Committee to enquire into the causes which led, *inter alia*, to several patients having lost their eye-sight.

E 4. Meanwhile, twenty-four complaints were filed by a consumer organization, Jagrut Nagrik Trust. The consumer complaints were instituted against the hospital and the insurance company. The insurance policies were obtained by the doctors from the insurer to cover claims of professional negligence. The doctors were not parties to the proceedings before the District Consumer Disputes Redressal Forum, Vadodara², though affidavits were filed by them.

F 5. The District Forum by its order dated 19 February 2010 awarded an amount of Rs 1,70,000 as compensation to each of the twenty-four complainants together with a refund of registration fees (Rs 250),

¹ “NCDRC”

H ² “District Forum”

compensation for mental agony (Rs 3000), costs (Rs 1500) and interest at the rate of 9% per annum. In arriving at its conclusion, the District Forum relied on the report of the Enquiry Committee appointed by the State Government, which had found that there was negligence. An extract of the findings of the Enquiry Committee as recorded by the District Forum are below:

The expert committee constituted by the Government of Gujarat has further concluded that there was total lack of aseptic precaution on the doctors and the OT staff. The operation theatre assistants were not qualified. There was lack of proper sterilization of instruments etc. used in operations. In the machines, OT tables instruments etc. [...] bacteria was found and the damage to the eyes of the patients was because of this bacteria [...] was also found on Phacomachine. There was no proper fumigation and even after fumigation bacteria was found in OT and the operation table in O.T. The O.T staff was unqualified and it was not supervised by doctors. There were serious lapses in Autoclave. The patients ought to have been examined on the next day of operation. The Committee has held responsible the doctors and the staff for the damage to the eyes of the patient.”

6. The District Forum further rejected the argument of the insurer that no liability could accrue to it as the doctors (who had taken the insurance policy) had not been made parties to the proceedings and in any case, were not negligent. The Forum held that according to the report of the Expert Committee, negligence of the doctors and the staff of the appellant hospital had been established. Thus, the District Forum held that the liability of both the hospital and the insurer would be joint and several, but the award would be enforced only against the insurer. The award was not challenged by the hospital.

7. The insurer filed appeals against the order of the District Forum before the State Consumer Disputes Redressal Commission, Gujarat³. By its judgment dated 30 November 2012, the State Commission dismissed the appeals. For convenience of reference, the findings which were arrived at by the State Commission are extracted below:

“In connection with the aforesaid undoubted facts, it is clear that the cataract operation camp which was organized by the defendant

³ “State Commission”

A no.3 Hospital, in it the staff which was appointed for the help of
Doctors, that staff being untrained staff, could not properly sterilize
the equipments used for the purpose of operation. Moreover, the
medicines which were used, were also adulterated and the patients
were examined with the Non Standard Lens. Moreover, as
B Sidonomus (sic) Infection was found in the operation theatre, the
patients whose eyes were infected after the operation, the pupil
of that eye were removed, otherwise there was fear of infection
in another eye also. In these circumstances, the pupils of eyes of
all the aforesaid patients were removed. The incident being
C occurred in such a huge proportion, the State Government took its
note and framed inquiry committee. In it the expert doctors inquired
regarding the incident, confirmed the fact of all negligence in their
report. The Doctors who performed the surgery were questioned
and cross examination of many doctors is also made by the
prosecution. Therefore, it is proved that as the staff helping the
D Doctors for performing the cataract operation was untrained, the
care which should have been taken was not taken, the aforesaid
applicants had to lose their eyes and in that manner the defendant
no.3 Charitable Hospital, after accepting the charge of Rs.250/-
towards treatment from every patient, the care which should have
E been taken was not taken and the loss of eye is caused on account
of negligence of the Hospital and the circumstances had arrived
that some patients had to lose their lives. As the principle of [res
ipsa loquitur] can be applied to such case “Circumstances speak
for themselves”. On its basis, the Consumer Forum has come to
the conclusion that the behavior of negligence is proved towards
F the patients. The Consumer Commission herein is convinced with
that.”

8. A revision was filed before the NCDRC by the insurer. The
NCDRC by its impugned order dated 26 February 2014, set aside the
orders of the consumer fora holding the insurer liable. It, however, clarified
that this would not affect the directions fastening liability on the hospital.
G In arriving at this conclusion, the NCDRC noted that the liability has
been fastened on the hospital on the basis of six professional indemnity
policies obtained by the doctors, though their business addresses were
shown to be Vaduwala Eye Hospital. The NCDRC held that this fact
could not by itself fasten the liability on the insurer, particularly in the
H absence of any specific allegation of negligence against any of the doctors.

9. Assailing the judgment of the NCDRC, the hospital is in appeal. A
During the pendency of the proceedings, an interim order was passed
by this Court on 20 February 2015. The order reads as follows:

“On condition of depositing the amount of Rs.42,00,000/- (Rupees
Forty Two Lakhs) by the petitioner before the District Consumer
Forum, Vadodara within four weeks, the proceedings for execution B
of the order dated 19.2.2010 passed in Consumer Complaint
Nos.307/2000 to 309/2000, 311/2000 to 326/2000, 356/2000 and
358/2000 to 360/2000 passed by the District Consumer Forum,
Vadodara shall remain stayed. On such deposit, the claimants
would be entitled to withdraw the same.” C

10. In pursuance of the above order, the appellant has deposited
an amount of Rs 42 lakhs before the District Forum and the amount has
been withdrawn by the claimants.

11. Mr Manoj Swarup, learned senior counsel has appeared on
behalf of the appellant while Ms Amreeta Swaarup, learned counsel D
appears on behalf of the first respondent.

12. Mr Manoj Swarup, learned senior counsel has made an earnest
effort to challenge the order of the NCDRC while submitting that the
hospital was entitled to lay a claim against the insurer as a beneficiary of
the insurance policies and, consequently, the NCDRC was not justified E
in reversing the findings of the District Forum and the State Commission
in revision. Learned senior counsel has principally relied upon the
observation of the NCDRC that there was no finding of negligence on
the part of the doctors and has assailed it on the ground that the doctors
had participated in the proceedings by filing affidavits in which event, it
was open to the District Forum to fasten joint and several liability on the F
hospital as well as the insurer.

13. On the other hand, it has been submitted on behalf of the first
respondent that there was no privity of contract between the insurer and
the hospital and the professional indemnity policies were obtained by the
doctors. There was no insurance cover in respect of the hospital or the G
staff. Hence, it has been submitted that the NCDRC was justified in
entertaining the revision and directing that the insurer would not be liable
to indemnify the hospital.

14. From the record, it emerges that the insurance policies were
obtained by the doctors. These were professional indemnity insurance H

- A policies which would cover a claim for professional negligence which was made against the doctors. Admittedly, the finding of negligence, as it appears from the order of the State Commission, is specifically against the hospital. The finding is that the hospital and its staff were negligent in the conduct of the cataract surgeries. The specific finding is that the equipment which was used were not properly sterilized, the staff was not properly trained and the medicines which were administered were not of the requisite quality and were contaminated. In this backdrop, the issue is whether the hospital could have claimed to be indemnified by the insurer. The hospital was not the beneficiary of the insurance policies which were obtained by the doctors to cover the discharge of their own professional obligations. There was a manifest error on the part of the District Forum as well as the State Commission. The NCDRC had a valid basis to exercise its revisional jurisdiction.

15. In this backdrop, and for the above reasons, no fault can be found with the ultimate findings of the NCDRC. While it is true that the NCDRC has interfered in the exercise of its revisional jurisdiction, it was justified in doing so since a joint and several liability could not have been fastened on the insurer under insurance policies which were not obtained by the hospital. The submission of the hospital that it was the beneficiary of those insurance policies does not evidently have any basis.

16. In the circumstances, we see no reason to entertain the appeals. However, all that needs to be clarified is that the dismissal of the appeals shall not come in the way of the appellant working out its equities or rights in law by adopting suitable proceedings against any other persons, who according to them may also be negligent in the discharge of their duties, on which this Court makes no observation or finding of fact whatsoever. Since the amount was deposited in pursuance of the interim order and has been permitted to be withdrawn by the patients, it also needs to be clarified that this aspect shall stand confirmed while disposing of the appeals. If any amount has not been disbursed to the original claimants, this shall be done expeditiously.

17. The appeals are disposed of in the above terms.

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