

SHODA DEVI

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v.

DDU/RIPON HOSPITAL SHIMLA AND ORS.

(Civil Appeal No. 2557 of 2019)

MARCH 07, 2019

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**[ABHAY MANOHAR SAPRE AND
DINESH MAHESHWARI, JJ.]**

Consumer Protection Act, 1986:

Medical negligence – Compensation – Appellant's case was that she was admitted in respondent-Hospital on account of abdomen pain and menstrual problem where she was examined by respondent no.2 and diagnosed with having fibroids and endometrial hyperplasia and had to undergo minor operation – For the said purpose, respondent no.3-para-medico administered intravenous injection of Phenergan directly by a syringe in her right arm – Appellant continuously suffered excruciating pain during the entire surgical procedure and despite bringing the fact to the knowledge of respondents-doctors during and after the procedure, no measures were taken to reduce the discomfort suffered by her – Due to the complications that arose in regard to arm of the appellant which could not be handled by the team of doctors at respondent-Hospital, she was shifted to another hospital in a taxi arranged by her husband where she was diagnosed with acute arterial occlusion with ischemia of limb caused by intra arterial injection which ultimately resulted in amputation of her right arm above the elbow – Claim petition by appellant – State Commission rejected the complaint but directed the respondent to make ex gratia payment of Rs.2,93,526/- to the appellant – National Commission held that it was a clear case of medical negligence and awarded compensation of Rs.2 lakh – Appeal for enhancement of compensation amount – Held: Appellant was 45 years of age when her right arm was amputated – She belonged to a very poor and rural background and was covered under Integrated Rural Development Programme – National Commission, even after finding it to be a case of medical negligence

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- A *quantified the amount of compensation only at Rs. 2,00,000/- – When the appellant is shown to be a poor lady from rural background, her contribution in ensuring the family meeting both ends also deserved due consideration – With her disablement and reduced contribution, the amount of compensation ought to be of*
- B *such level as to provide relief in reasonable monetary terms to the appellant and to her family – Appellant is allowed Rs. 10,00,000/- towards compensation, over and above the amount awarded by the State Commission and the National Commission.*

Consumer Protection Act, 1986:

- C *Medical negligence – Compensation – Determining factors – Ordinarily, the general damages towards pain and suffering as also loss of amenities of life deserve to be considered uniformly for the human beings and the award of compensation cannot go restrictive when the victim is coming from a poor and rural background; rather, in a given case like that of the appellant, such a background of the victim may guide the adjudicatory process towards reasonably higher amount of compensation after having regard to all the attending circumstances.*

Allowing the appeal, the Court

- E **HELD:** 1. The State Commission though recorded that with the onset of gangrene, amputation of the right arm of the appellant was carried out with a view to save her life but dismissed the complaint on rather untenable grounds like that the surgery would not have been successful if sedation was not complete and proper; and that the appellant was referred to another hospital for more effective treatment after all the efforts at the respondent hospital were exhausted. In appeal, the National Commission minutely examined the evidence on record and concluded on the medical negligence of respondents for several counts such as:
- F not providing or making arrangements for an ambulance for proper shifting of the appellant; not attending on the appellant at the first instance on her complaint about unbearable pain and the delay having aggravated the ischemic process; and though cannula
- G not providing or making arrangements for an ambulance for proper shifting of the appellant; not attending on the appellant at the first instance on her complaint about unbearable pain and the delay having aggravated the ischemic process; and though cannula

was not used as it was a one-time prick for the procedure, yet it should have been used to prevent mishaps. There is no infirmity in the findings of the National Commission, in so far the issue of medical negligence is concerned. However, after having recorded clear findings on medical negligence and after taking note of the directions of the State Commission regarding ex gratia payment, the National Commission considered it proper to award to the appellant an additional compensation to the tune of Rs. 2,00,000/-. The requirement in such cases of disablement due to medical negligence is of awarding just and reasonable compensation to the victim, while keeping in view the pecuniary damages as also the non-pecuniary damages like pain and suffering and loss of amenities of life. [Paras 14, 16] [953-C-G; 955-A]

Nizam's Institute of Medical Sciences v. Prashanth S. Dhananka and Ors. (2009) 6 SCC 1 : [2009] 9 SCR 313 ; Alfred Bendict v. Manipal Hospital: (2015) 11 SCC 423 – relied on

2. Appellant was 45 years of age when she suffered the medical negligence and consequences thereof, leading to amputation of her right arm. She came from a very poor and rural background and is covered under Integrated Rural Development Programme. The National Commission, even after appreciating the troubles and trauma as also disablement and disadvantage suffered by the appellant, had been too restrictive in award of compensation. [Paras 16.1, 16.2][955-B-E]

3. Granting of reasonably higher amount of compensation in the present case appears necessary to serve dual purposes: one, to provide some succour and support to the appellant against the hardship and disadvantage due to amputation of right arm; and second, to send the message to the professionals that their responsiveness and diligence has to be equi-balanced for all their consumers and all the human beings deserve to be treated with equal respect and sensitivity. When the appellant was writhing in

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- A pain, she was not immediately attended at and was snubbed with the retort that ‘the people from hilly areas make unnecessary noise’. Such remarks, obviously, added insult to the injury and were least expected of the professionals on public duties. Apart from that, when the appellant is shown to be a poor lady from
- B rural background, her contribution in ensuring the family meeting both ends also deserves due consideration. With her disablement and reduced contribution, the amount of compensation ought to be of such level as to provide relief in reasonable monetary terms to the appellant and to her family. The appellant deserves to be
- C allowed further an amount of Rs. 10,00,000/- towards compensation, over and above the amount awarded by the State Commission and the National Commission. The respondents shall make the requisite payment within 3 months from today failing which, the enhanced amount of compensation shall carry interest
- D @ 6% p.a. from the date of filing of the complaint before the State Commission. [Paras 16.3-18][955-F-H; 956-A-E]

Nizam's Institute of Medical Sciences v. Prashanth S. Dhananka and Ors. (2009) 6 SCC 1 : [2009] 9 SCR 313 ; Alfred Bendict v. Manipal Hospital (2015) 11 SCC 423 – relied on

Case Law Reference

[2009] 9 SCR 313	relied on	Para 11
(2015) 11 SCC 423	relied on	Para 15

- F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2557 of 2019.

From the Judgment and Order dated 23.02.2018 of the National Consumer Disputes Redressal Commission, New Delhi in First Appeal No. 348 of 2009.

- G Aftab Ali Khan, Syed Mohammed Aatif, M. Z. Chaudhary, Rahat Ali Chaudhary, Ms. Heena Khan, Ali S. Farooqi, Syed Imtiyaz Ali, Advs. for the Appellant.

- H Abhinav Mukerji, Mrs. Bihu Sharma and Ms. Pratishta Vij, Advs., for the Respondents.

The Judgment of the Court was delivered by

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DINESH MAHESHWARI, J. 1. Leave granted.

2. This appeal by special leave is directed against the judgment and order dated 23.02.2018, as passed in First Appeal No. 348 of 2009, whereby the National Consumer Disputes Redressal Commission ('National Commission') has modified the order dated 03.08.2009, as passed by the Himachal Pradesh State Consumer Disputes Redressal Commission ('State Commission') in Complaint Case No. 11 of 2006; and while holding that the State Commission had wrongly exonerated the respondents for medical negligence and deficiency in service, has awarded compensation to the complainant-appellant in the sum of Rs. 2,00,000/- in addition to the ex gratia amount of Rs. 2,93,526/- allowed by the State Commission. In the present appeal, the complainant-appellant seeks enhancement of the amount of compensation with reference to the disablement and loss suffered by her due to the negligence of the respondents, which led to the amputation of her right arm above the elbow.

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3. We may observe at the outset that the impugned judgment and order dated 23.02.2018, as passed by the National Commission in First Appeal No. 348 of 2009, holding the respondents liable for compensation on account of medical negligence, was sought to be questioned by the Medical Officer concerned (respondent No. 2 herein) by way of a Petition for Special Leave to Appeal (C) No. 15888 of 2018 that was considered and dismissed by this Court on 11.07.2018.

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4. Having regard to the subject matter of this appeal, the background aspects, so far relevant for the present purpose, could be noticed, in brief, as follows:

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4.1 The appellant, who had been suffering with abdomen pain and menstrual problems, approached the respondent No.1 Deen Dayal Upadhyay Hospital - a government hospital at Shimla ('DDU Hospital') where she was examined by the respondent No. 2 on 10.07.2006 and was diagnosed with having fibroid and endometrial hyperplasia. On 18.07.2006, after finding that she had no relief from medicines, the appellant was advised to undergo a minor operation viz., Fractional Curettage (D & C).

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4.2. On 19.07.2006, for the purpose of the operation aforesaid, the respondent No. 3, a para-medico, administered intravenous injection

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- A of Phenergan and Fortwin directly by a syringe in the right arm of the appellant. The case of the appellant has been that she continuously suffered excruciating pain during the entire surgical procedure and despite bringing the fact to the knowledge of respondent Nos. 2 and 3 during and after the procedure, no measures were taken to redress and reduce the discomfort suffered by her.
- B 4.3. Due to the complications that had arisen in regard to the arm of the appellant, which could not be handled by the team of doctors at DDU Hospital, she was shifted to Indira Gandhi Medical College and Hospital, Shimla ('IGMCH') in a taxi arranged by her husband. In IGMCH, she was administered Brachial Plexus Block treatment immediately and, on being examined by CW-2, she was diagnosed with "*acute arterial occlusion with ischemia of limb, caused by intra-arterial injection*", which ultimately resulted in CW-1 amputating her right arm above the elbow on 22.07.2006.
- C 5. Having thus suffered the loss of limb, the appellant, apart from filing FIR under Section 338 IPC on 27.07.2006 at Police Station, Sadar, Shimla, preferred the consumer complaint on 28.09.2006, seeking compensation with the submissions, *inter alia*, that after several hours of complaints, the respondent No. 2 attended on her with a team of doctors consisting of general physician and gynaecologist in a rather casual manner; that no proper service was provided to her; that she was shifted to IGMCH only in a taxi arranged by her husband; and that she suffered amputation only due to the medical negligence of the medicos and para-medicos of the respondent No. 1.
- D 6. The respondents filed their separate counter affidavits in opposition to the complaint so made by the appellant. The sum and substance of such counter affidavits had been that the respondents had provided services with utmost caution and care; that the appellant was to undergo a minor surgery viz., Fractional Curettage wherefore, the staff nurse administered an intravenous injection prior to the surgery; that the entire procedure lasted for about 5 minutes and the appellant cooperated during the procedure, which was conclusive of the fact that the intravenous injection was administered properly; that after being shifted to the ward, when the appellant complained about severe pain in the right forearm, she was attended at immediately but when onset of limb ischemia was confirmed, she was referred to IGMCH for further treatment as DDU Hospital was not equipped with CTVS Department;
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that on reaching IGMCH, immediate treatment was administered to the appellant but, despite all possible treatment, her right arm had to be amputated as gangrene had started to set in. Thus, the respondents asserted that the appellant was provided immediate and necessary treatment; and that there was no negligence and/or deficiency in their service.

7. The appellant examined Dr. Rajneesh Pathania, Professor & Head, CTVS, IGMCH, Shimla as CW-1 who produced the case history of the appellant and pointed out that she had arrived at the hospital in emergency with a history of severe pain in the right forearm and she was diagnosed with acute limb ischemia and treatment was given on these lines; but with the onset of gangrene, the right arm was amputated under his supervision to save the life of appellant. CW-1 further stated that the reaction to an injection administered could take place irrespective of the route of administration; that severity of limb ischemia is more if the whole drug is given intra arterially and occurs one in a million; and that preventive efforts should have been taken when the complaint of pain was made at the first instance. He further stated that the treatment administered at DDU hospital was the one accepted as an initial line of treatment for management of pain in similar situations. Dr. R.G. Negi CW-2, who was the first doctor to examine the appellant in IGMCH, also made the statement in concurrence with that of CW-1. The appellant got herself examined where she denied all the suggestions put to her by the respondent but admitted that she did not complain about any pain when she was shifted from the operation theatre. It was pointed out that the medical board had assessed her permanent disablement at 80%.

8. During the course of hearing of the matter, the State Commission made an order on 16.09.2008, expecting the Deputy Commissioner, Shimla and the Secretary Health Department to explore the possibility of extending a reasonable ex gratia payment to the appellant, looking to the nature of disablement suffered by her and her poor and rural background. In response thereto, the Senior Medical Superintendent of DDU Hospital stated by way of affidavit that a sum of Rs. 2,93,526/- was assessed in this regard; and if accepted by the appellant, the same may be conveyed to the Director Health Services. Thereafter, the State Commission examined the matter on merits; and, with reference to the evidence of the doctors as also that of the appellant, held that no case of medical negligence was proved. Hence, the State Commission rejected the complaint. But, in view of the order previously passed on 16.09.2008 and response thereto by the Government, the State Commission directed

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- A the respondent No. 1 to make ex gratia payment to the tune of Rs. 2,93,526/- to the appellant, if she was willing to accept the same.

9. In appeal against the order of the State Commission, the appellant relied on the principle of *res ipsa loquitur* and also contended that the State Commission overlooked the material facts, the evidence

- B of experts, the delay caused at each and every stage, and the continuous suffering that she had to undergo from the time of minor operation, to the amputation of her right arm and thereafter as well.

10. The National Commission meticulously examined the evidence on record and particularly, the evidence of CW-1 Dr. Rajneesh Pathania

- C and CW-2 Dr. R.J. Negi as regards the cause of onset of gangrene on the appellant's right arm as also the preventive measures which could have been, but were not, taken by the respondents. While holding it to be a clear case of medical negligence, the National Commission allowed the appeal but enhanced the compensation only to the tune of Rs. 2,00,000/-.

- D 11. Seeking enhancement over the amount so awarded, learned counsel for the appellant has relied on the decision in *Nizam's Institute of Medical Sciences v. Prashanth S. Dhananka and Ors. : 2009 (6) SCC 1* where, on the facts and in the circumstances of the case, this Court had enhanced the compensation on the ground of medical

- E negligence. Learned counsel has strenuously argued that despite coming to the conclusion that the present one is a case of medical negligence, the National Commission has awarded a meagre sum of Rs. 2,00,000/- towards compensation without considering the immense loss suffered by the appellant, a person coming from poor and rural background, who

- F was 45 years of age at the time of such amputation. According to the learned counsel, the award of compensation deserves to be re-evaluated and enhanced to minimum Rs. 16,20,000/- together with interest @ 6% p.a. from the date of filing of complaint.

- G 12. *Per contra*, learned counsel for respondent No.1 has attempted to submit that the National Commission has awarded Rs. 2,00,000/- to the appellant over and above the ex gratia amount allowed by the State Commission and in the given circumstances, the appellant is not entitled to make a claim for any further enhancement of compensation. Learned counsel has refuted the contentions pertaining to medical negligence and submitted that there had not been any fault or negligence on part of

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the hospital staff i.e., doctors and nurses; and that the happenings due to unforeseeable and unpredictable rarest of rare complications cannot be considered to be of medical negligence. The learned counsel would submit that the respondents have adhered to their medical duties in treating and attending to the appellant's needs to the best that could be provided.

13. Having heard learned counsel for the parties and having examined the record, we are clearly of the view of that while the findings on medical negligence on the part of the respondents do not call for any interference, a clear case for enhancement of the amount of compensation is made out.

14. On perusing the order of the State Commission, it is but apparent that the State Commission though recorded that with the onset of gangrene, amputation of the right arm of the appellant was carried out with a view to save her life but dismissed the complaint on rather untenable grounds like that the surgery would not have been successful if sedation was not complete and proper; and that the appellant was referred to another hospital for more effective treatment after all the efforts at the respondent hospital were exhausted. In appeal, the National Commission minutely examined the evidence on record and concluded on the medical negligence of respondents for several counts such as: not providing or making arrangements for an ambulance for proper shifting of the appellant; not attending on the appellant at the first instance on her complaint about unbearable pain and the delay having aggravated the ischemic process; and though cannula was not used as it was a one-time prick for the procedure, yet it should have been used to prevent mishaps. We find no infirmity in the findings of the National Commission, in so far the issue of medical negligence is concerned. However, after having recorded clear findings on medical negligence and after taking note of the aforementioned directions of the State Commission regarding ex gratia payment, the National Commission considered it proper to award to the appellant an additional compensation to the tune of Rs. 2,00,000/. The question is: as to whether the amount so awarded to the appellant is that of just and reasonable compensation?

15. As regards the quantum of compensation in such cases, it is noticed that in the case of *Alfred Benddict v. Manipal Hospital: (2015) 11 SCC 423*, where, for the reason of medical negligence, a 2-year-old girl developed gangrene in right arm which resulted in its amputation,

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- A this Court, considering the age of the child and her life-long suffering, be it her education or marriage prospects, awarded a lump sum of Rs. 20,00,000/- as compensation. Likewise, in the case of *Nizam's Institute of Medical Sciences* (supra), where the complainant had suffered paraplegia as an outcome of the surgery and was thereafter confined to a wheelchair, this Court pointed out some of the factors that weigh in while quantifying compensation in such cases. This Court, *inter alia*, observed as under:-
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"90. At the same time we often find that a person injured in an accident leaves his family in greater distress, vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity.

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91. We can also visualize the anxiety of the complainant and his parents for the future after the latter, as must all of us, inevitably fade away. We, have, therefore computed the compensation keeping in mind that his brilliant career has been cut short and there is, as of now, no possibility of improvement in his condition, the compensation will ensure a steady and reasonable income to him for a time when he is unable to earn for himself.

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92. Mr. Tandale, the learned counsel for the respondent has, further submitted that the proper method for determining compensation would be the multiplier method. We find absolutely no merit in this plea. The kind of damage that the complainant has suffered, the expenditure that he has incurred and is likely to incur in the future and the possibility that his rise in his chosen field would now be restricted, are matters which cannot be taken care of under the multiplier method."

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16. In the ultimate analysis, the requirement in such cases of disablement due to medical negligence is of awarding just and reasonable compensation to the victim, while keeping in view the pecuniary damages as also the non-pecuniary damages like pain and suffering and loss of amenities of life. A

16.1 On the facts that have come on record, it appears that the appellant was 45 years of age when she suffered the medical negligence and consequences thereof, leading to amputation of her right arm. It is also apparent that the appellant comes from a very poor and rural background and is covered under Integrated Rural Development Programme. The National Commission, even after finding this one to be a case of medical negligence leading to amputation of right arm, quantified the amount of compensation only at Rs. 2,00,000/- . Even if the ex gratia proposed before the State Commission and the amount awarded by the National Commission are taken together, the total compensation to the appellant comes to Rs. 4,93,526/- only. B

16.2 We are constrained to observe that the National Commission, even after appreciating the troubles and trauma as also disablement and disadvantage suffered by the appellant, had been too restrictive in award of compensation. Ordinarily, the general damages towards pain and suffering as also loss of amenities of life deserve to be considered uniformly for the human beings and the award of compensation cannot go restrictive when the victim is coming from a poor and rural background; rather, in a given case like that of the appellant, such a background of the victim may guide the adjudicatory process towards reasonably higher amount of compensation (of course, after having regard to all the attending circumstances). C

16.3 Such granting of reasonability higher amount of compensation in the present case appears necessary to serve dual purposes: one, to provide some succour and support to the appellant against the hardship and disadvantage due to amputation of right arm; and second, to send the message to the professionals that their responsiveness and diligence has to be equi-balanced for all their consumers and all the human beings deserve to be treated with equal respect and sensitivity. We are impelled to make these observations in the context of an uncomfortable fact indicated on record that when the appellant was writhing in pain, she was not immediately attended at and was snubbed with the retort that D

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- A 'the people from hilly areas make unnecessary noise'. Such remarks, obviously, added insult to the injury and were least expected of the professionals on public duties.

- 16.4. Apart from the above, when the appellant is shown to be a poor lady from rural background, her contribution in ensuring the family meeting both ends also deserves due consideration. With her disablement and reduced contribution, the amount of compensation ought to be of such level as to provide relief in reasonable monetary terms to the appellant and to her family.

17. For what has been discussed and observed hereinabove and C in the given set of facts and circumstances, we are of the view that the appellant deserves to be allowed further an amount of Rs. 10,00,000/- towards compensation, over and above the amount awarded by the State Commission and the National Commission. Having regard to the quantum of enhancement being allowed herein, it is also considered proper to grant 3 months' time to the respondents to make the requisite payment and else, to bear the burden of interest.

18. Accordingly, this appeal is allowed. The appellant is awarded further an amount of Rs. 10,00,000/- (Rupees ten lakhs) towards compensation, over and above the amount awarded by the State Commission and the National Commission. The respondents shall make E the requisite payment within 3 months from today failing which, the enhanced amount of compensation shall carry interest @ 6% p.a. from the date of filing of the complaint before the State Commission.

Devika Gujral

Appeal allowed.