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STATE CONSUMER DISPUTES REDRESSAL COMMISSION
UTTAR PRADESH LUCKNOW

APPEAL NO.1839/2008

(against the judgment and order dated 07.04.2006 in Complaint case no. 218/2002 passed by the District Consumer Forum, Varanasi.)

Dr. Amichand Gupta son of Late Bachai Ram,
r/o House no. B-34/118, Plot no.4, Manas Nagar
Colony, Durga Kund , District Varanasi

Appellant

Versus

Smt.Meera Devi w/o Sri Arun Kumar Chaurasia,
r/o D-59/8339, C-1, Mohalla Jai Prakash Nagar
Shiv Purva, District Varanasi

Respondent

BEFORE

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT
HON'BLE MR. SYED ALI AZHAR RIZVI, MEMBER
HON'BLE MR. RAM PAL SINGH, MEMBER

For the Appellant : Sri Srish Kumar, Advocate
For the respondent : Sri Rajesh Chadha, Advocate

DATED: 04.02.2011

JUDGMENT

MR.JUSTICE BHANWAR SINGH, PRESIDENT

By means of the impugned judgment dated 07.04.2006 the District Consumer Forum, Varanasi had allowed the complaint of Smt. Meera Devi and awarded a sum of Rs.5,00,000/- as compensation for failure of the tubectomy she had under gone in Primary Health Centre, Chirai Gaon, District Varanasi.

The complainant pleaded in her complaint that even after the family planning operation conducted upon her by the female doctor, she had conceived and was thus placed in an awkward condition. She has

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submitted that she was not economically sound so as to nurse her fifth child but under the circumstances and on account of the negligence on the part of the tubectomy conducting doctor she had to bear the burden of the fifth child. The District Consumer Forum as mentioned above allowed the complaint holding the surgeon guilty of medical negligence and awarded a sum of Rs.5,00,000/- as compensation.

Sri Rajesh Chadha, learned counsel for the respondent/complainant submitted that the present appeal is barred by time as it was filed more than two years after the impugned judgment. In this context, Dr. Ami Chand Gupta has explained by means of his affidavit that he was never served with the notice of the complaint nor he had an opportunity to contest it and when he came to learn about the impugned judgment he filed a recall application which was rejected on 02.09.2008. The present appeal was filed on 24.09.2008. He came to learn about the ex-parte judgment in the third week of March, 2008 when a recovery certificate was served upon him. He immediately filed a recall application but it was rejected on technical ground. There is nothing on record to rebut Dr. Ami Chand Gupta's averment that neither he was served with the notice of the complaint, nor he had an opportunity of hearing in the absence of any kind of knowledge about the complaint. Relying upon his unrebutted version we hold that the present appeal in the circumstances disclosed above is not barred by time.

Dr. Amichand Gupta the appellant filed this appeal with a categorical averment that he was never posted in the aforesaid Primary Health Centre and question of his having performed operation upon the complainant would have thus not arisen. The Certificate of the Chief Medical Officer, Varanasi, a copy whereof is Annexure-2 on record, supports Dr. Amichand Gupta's version. A careful perusal of this certificate dated 30.08.2007 would show that Dr. Amichand Gupta had never been Incharge Doctor of the aforesaid Primary Health Centre. This certificate duly issued by the Chief Medical Officer leaves no room for doubt that Dr. Amichand Gupta has been wrongly impleaded and unnecessarily dragged into the litigation.

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Moreover, the name of the doctor who had attended the complainant and who had performed the operation has not been disclosed by the complainant. Further the finding of the medical negligence is based on presumption simply because the complainant had conceived subsequent to the operation. It is a settled proposition of the medical science on the subject that there are chances of 2 to 5% failure of tubectomy. Such failure is not akin to either the medical negligence of the doctor/surgeon or the deficiency in service, rather such consequence is related to numerous biological factors. For ten long years there was no pregnancy, although she throughout this period cohabited with her husband.

And top of the above, the medical aid and services both provided at a Government Primary Health Centre are not subject to receipt of any money or fees, rather it is under the family planning programme and policy of the Government that such facility, is provided to the needy persons, free of charge. In other words it may be observed that since the complainant had not paid any fees for the tubectomy and there was no specific averment of medical negligence, the complaint of the respondent was liable to be dismissed. Reliance placed on State of Orissa versus Divisional Manager, LIC and another (1996) 8 Supreme Court Cases 655.

The decision in Achutrao Haribhau Khodwa & Ors. Versus State of Maharashtra & Ors. IV(2006) CPJ 8(SC), cited by Sri Rajesh Chadha is not attracted to the present case as the above decision does not relate to the provisions of Consumer Protection Law; rather, it was a case under ^{tortious} ~~tortuous~~ liability wherein the principle of vicarious liability was followed. The respondent of the instant appeal could claim her relief elsewhere but not in Consumer Fora.

The District Consumer Forum perhaps could not take notice of the fact that the complaint of Smt. Meera Devi filed in 2002 for failure of her tubectomy held in Dec. 1992 was utterly barred by time. As provided under Section 24(a), a complaint under the Consumer Protection Act may be filed within two years from the date of the cause of action. No satisfactory explanation has been offered for the delay. In the case in hand the operation was concluded in the year 1992 and for about ten

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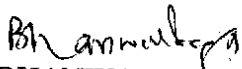



years the complainant did not conceive and this very fact shows that the tubectomy conducted by the government doctor was successful at that juncture of time and for a period of ten years but may be on account of other biological developments she became pregnant. The doctor who conducted tubectomy cannot be accused of any medical negligence.


Accordingly, we hold that this appeal deserves to be allowed.

In the result it is allowed and the impugned judgment is set aside. The complaint of Smt. Meera Devi stands dismissed. The statutory amount of Rs.25,000/- may be released in favour of the appellant.

Smt. Meera Devi may seek any other legal remedy either from the Government or from any other court subject to admissibility of her rights in the circumstances laid above.


(JUSTICE BHANWAR SINGH)
PRESIDENT


(SYED ALI AZHAR RIZVI)
MEMBER


(RAM PAL SINGH)
MEMBER

Asif