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STATE CONSUMER DISPUTES REDRESSAL COMMISSION,  
UTTAR PRADESH, LUCKNOW

APPEAL NO. 1929 OF 2009

(Against the judgment/order dated 12-10-2009 in Complaint  
Case No.901/2007 of the District Consumer Forum, Kanpur Nagar)

Dr. S K Pant

.....Appellant

Vs.

Mohd. Ummar Azaz

.....Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT**  
**HON'BLE MR. RAMPAL SINGH, MEMBER**

For the Appellant : Sri Hemendra Kumar Srivastava, Advocate.

For the Respondent : Sri Talib Masood, Advocate.

Dated : 20-01-2011

**JUDGMENT**

**MR. JUSTICE BHANWAR SINGH, PRESIDENT (ORAL)**

Heard Sri Hemendra Kumar Srivastava, learned Counsel for the appellant and Sri Talib Masood, learned Counsel for the respondent and perused the record.

The instant appeal has been preferred against the judgment dated 12-10-2009 of the District Consumer Forum, Kanpur Nagar whereby the complaint of the respondent for recovery of Rs.50,000/- as damages was allowed alongwith the litigation charges amounting to Rs.5,000/-. There was a default clause also according to which if the appellant failed to make the payment good within 30 days from the date of judgment, he will incur liability of interest @ 8% per annum on the amount of Rs.50,000/-.

Dr. S K Pant, the appellant felt aggrieved of the said judgment and filed this appeal reiterating his version that the complainant, who in fact was not a consumer himself, failed to establish that the death of his child was a consequential effect of the medicines he had prescribed for the tuberculosis treatment of his wife Smt. Shahida. The complainant is a homeopath doctor and he has taken his wife to the appellant for treatment of prolonged cough and temperature she was suffering from. The doctor

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advised pathological test and x-ray and after examining the test reports he diagnosed that the complainant's wife was suffering from tuberculosis in her left lung and prescribed medicines. At the time of the medicines being prescribed Smt. Shahida was under the treatment of a gynecologist for hypogonadism (infertility). The treatment of the appellant went on for quite sometime and as pleaded by the complainant his wife became pregnant and delivered a male child on 07-07-2007. The complainant pleaded further in his complaint that since the drugs prescribed by Dr. S K Pant had side effects and adverse bearing upon his wife and the child both, the child could not survive and eventually expired on 12-07-2007 i.e. five days after the delivery. The complainant then filed his complaint <sup>claiming</sup> ~~and then~~ damages.

The District Consumer Forum having examined the pleadings and evidence of the parties arrived at a conclusion that there was a strong presumption on the basis of which it could be inferred that the death of the child had a nexus with the tuberculosis treatment of Dr. S K Pant. Merely on the basis of this presumption the District Consumer Forum allowed the complaint and gave an award of Rs.50,000/- against the appellant.

We find it extremely difficult to subscribe to the presumption drawn by the Forum below. It has categorically observed in the last but one para of its judgment that in so far as adverse bearing of the drugs prescribed by the appellant upon the child is concerned, there was no direct evidence to establish the side effects. However, as has been observed further since the child died it could be inferred that the drugs which were prescribed by the doctor for treatment of the child's mother might have some or the other adverse bearing. It's a very poor reasoning. No such presumption can be drawn unless the repercussions of the drugs would have been positively established with the help of an expert opinion of a doctor. The complainant had not filed the affidavit or any other evidence of any doctor who could support his version that the child's death was consequent to the adverse bearing of the medicines Smt. Shahida had taken on the prescription of the appellant. What further

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important to note is that the complainant has also not relied upon any medical text or literature in support of his case that the medicines which were prescribed were in fact responsible for the child's death. In the absence of an expert opinion of a doctor or the medical text it is extremely difficult to draw an inference in support of the complainant's case and arrive at a conclusion that the treatment of Dr. S K Pant had in fact led to the death of the child. The plea of medical negligence cannot be inferred on the basis of mere assumption and presumption, rather it is required to be established by way of positive piece of evidence – either of a doctor or the medical literature. The complainant failed to establish his version through either of the two modes. Therefore, his complaint was liable to be dismissed.

Moreover, it is surprising to note that the complainant had not taken his wife into confidence by asking her to join as a complainant; she has not filed an affidavit that she was the victim of wrong treatment of the appellant in consequence whereof she lost her child.

In view of the discussions made above, we are of the decisive opinion that this appeal deserves to be allowed.

Accordingly it succeeds and is hereby allowed, the judgment in appeal is quashed and the complaint of Mohd. Umar Azaz stands dismissed. The amount of Rs.25,000/- deposited by the appellant at the time of presenting this appeal may be refunded to him.

  
(JUSTICE BHANWAR SINGH)  
PRESIDENT

  
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(RAMPAL SINGH)  
MEMBER