

A.F.R

RESERVED

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW

COMPLAINT CASE NO. 126 OF 2001

Sunil Singh
S/o Sri Vijay Prakash Singh
R/o Village & Post Sadauna
District Lakhimpur Kheri

...Complainant

Vs.

01. Poly Care Nursing and Maternity Home
47 Sadar Bazar(Near Railway Crossing)
Lucknow

Through Dr. Rabiya Khan

...Opposite Party (Deleted)

02. Dr. Shariq Kamal, M.B.B.S. Diploma Ortho
Poly Care Nursing and Maternity Home
47 Sadar Bazar, Lucknow.

...Opposite Party (Died/Deleted)

03. Nishat Hospital
J C Bose Marg, Lalbagh
Lucknow

Through Dr. Tauseef Ahmad

...Opposite Party

BEFORE:

HON'BLE MR. JUSTICE VIRENDRA SINGH, PRESIDENT
HON'BLE MR. CHANDRA BHAL SRIVASTAVA, MEMBER
HON'BLE MRS. BAL KUMARI, MEMBER

For the Complainant : Sri Anil Kumar Mishra and Sri Sushil Kumar
Sharma, Advocate.

For the Opposite Party : Sri Sarvesh Kumar Sharma, Advocate for
O.P. No.3

Dated : 10-07-2014

JUDGMENT

PER MR. JUSTICE VIRENDRA SINGH, PRESIDENT

The complainant Sunil Singh filed this complaint seeking a sum of



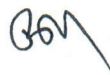
:2:

Rs.80,000/- as medical expenses, Rs.10,00,000/- for treatment of spine fracture, Rs.7,00,000/- towards loss of income, expenditure incurred and loss of education of kids and a sum of Rs.2,00,000/- compensation towards mental tension from the opposite parties.

Briefly stated the facts of the complaint are that the complainant had met with an accident on 16-05-1997 with mini rice plant machine and got injuries and fracture on his both legs. First aid was taken by him in the District Hospital, Lakhimpur from where he was referred to Lucknow for treatment. He was admitted in Poly Care Nursing and Maternity Home, Lucknow Opposite Party No.1 on 17-05-1997 wherein the Opposite Party No.2 took up his treatment. It was the responsibility of Opposite Party No.2 Dr. Shariq Kamal that the entire investigation should have been done as per the case of accident to treat the applicant but he deliberately committed wrong and harassed the complainant. The complainant came to know that there was a fracture in his spine and in the right leg. The treatment of spine was not done by opposite parties while the spine is the only limb on which the entire body of a person rests. The Opposite Party No.2 Dr. Shariq Kamal fixed a traction on the left hip of the complainant on 17-05-1997 while the hip was worth operation. The fracture in right leg, thigh and the compound fracture in nearby portion of the leg was left unattended resulting infection in the wound on the leg of the complainant. On 31-05-1997 skin flapping (plastic surgery) was done and on the same day steel rod and screw were fixed in a wrong manner. Dr. Shariq Kamal used the same instruments which were used for the wounds having infection and consequently the wound on the thigh of the complainant was also infected while there was a simple fracture. On 15-06-1997, again the plastic surgery was done on right leg of the complainant thereby fixing ring



ilazarov fixator while Dr. Shariq Kamal was not the surgeon for fixing ring ilazarov fixator and there was no experience of it with Dr. Kamal. The Opposite Party No.2 Dr. Shariq Kamal since did not treat the fracture of the spine of the complainant, which happened to be a hard work, therefore it was got done at third time in the Raj Nursing Home. Though the surgery was successful but due to negligence of Dr. Shariq Kamal, the complainant become handicapped upto 75%. The treatment of Dr. Shariq Kamal continued atleast for one year but instead of improvement, the condition of the complainant continued to be worsen due to negligence and unexperienced plastic surgery by Dr. Shariq Kamal. Since there was no improvement in the condition of the complainant, therefore, the complainant was got admitted at Nishat Hospital, Opposite Party No.3 where the fixator in the body of the complainant was removed and plaster was done by which the joint of the bone in lower portion of the leg which happened to be joint, again fractured. Thereafter the screws were removed but no proper device is adopted to stop the infection by way of treatment which was taken a spreaded state of affairs in the body of the complainant thereby creating the danger for the life of the complainant. The Opposite Party No.3 Dr. Tauseef Ahmad of Nishat Hospital was not the bone expert. He is merely a physician. He instead of getting the treatment of the complainant by some orthopedic surgeon, himself took up the treatment of the complainant. There was a fracture in the spine of the complainant which too was not discovered by Dr. Tauseef Ahmad even after being under obligation to get the entire investigation done. The complainant took the advise of other doctors and it was revealed that there had been negligence on the part of Opposite Party Nos. 1, 2 and 3 i.e. Dr. Rabiya Khan of Poly Care Nursing and Maternity Home, Dr. Shariq Kamal of Poly Care



Nursing and Maternity Home and Dr. Tauseef Ahmad of Nishat Hospital as none of them could detect the spine fracture of the complainant. Lastly the complainant was got admitted in King Georg Medical College, Lucknow wherein the ring fixator was again fixed in the lower side of the leg of the complainant. After some days again an operation was conducted on the thigh of the complainant thereby cleaning infected wound and bone. The doctors there told to the complainant that the earlier doctors did not treat him properly as the ring fixator should have not been removed because the removal of that resulted in the fracture again on the bones which were happened to be joint. The treatment of the complainant is still going on. The treatment of the spine is possible merely at Bombay, Madras, Calcutta and Delhi wherein the estimate cost will come atleast Rs.10,00,000/- while Rs.8,00,000/- has already been spent by the complainant due to faulty treatment of Opposite Party Nos. 2 and 3. There had been loss of education of the children of the complainant and the income of the complainant for which the complainant could be compensated as per the relief claimed in this complaint. The complaint was earlier filed by the complainant before the District Consumer Forum, Lakhimpur Kheri but since that Forum was not having jurisdiction to hear this complaint and the complainant was not aware of the legal position, therefore, the complainant not pressed the complaint before the District Consumer Forum, Lakhimpur Kheri which was dismissed there on 22-08-2000.

A perusal of the record shows that vide orders dated 19-04-2013 and 12-02-2014, on the request of the complainant, since opposite party no.2 Dr. Shariq Kamal has died and the complainant did not want to proceed this complaint against opposite parties no. 1 and 2, the name of opposite parties no.1 and 2 stood deleted. Thus this complaint remains against opposite party



:5:

no.3 only. The Opposite Party No.3 Nishat Hospital through Dr. Tauseef Ahmad pleaded that the complainant had sought the opinion of Dr. Mishra the Orthopaedic specialist in respect to his treatment and on the advise of Dr. Mishra the complainant was admitted in the hospital of opposite party no.3 on 20-04-1998. At the time of his admission it was revealed that somewhere in accident the bone of the leg of the complainant was broken, for which the treatment was taken up by the complainant somewhere else also and ring fixator was fixed to the complainant earlier to get the bone fixed on its place and there was a serious infection and the pus was coming out due to ring fixator creating intolerable pain to the complainant. As per advise of Dr. Mishra the ring fixator was removed to control the infection. Since upto that time the bone could not join its place due to infection, therefore, plaster was done to keep the bone intact. There are established medical norms that the joint of the bone is not possible till the infection survives. The ring fixator was removed, the infected part of the wound was cleaned and dressed with required medicines to get the infection over. There was no negligence on the part of opposite party no.3 in the treatment of the complainant because Dr. Tauseef himself is a competent doctor and the treatment was give to the complainant through the trained staff of the hospital on the advise of Dr. Mishra. It was expected by the Orthopaedic Surgeon that as and when the infection is over, the ring fixator shall be fixed again. On 14-05-1998 it was found that almost the wound was healed but since due to regular dressing the plaster was damaged, therefore, it was again repaired so that the broken bone should be kept intact. The complainant was discharged on the advise of Dr. Mishra as almost the infected wound was healed and the complainant was advised to come to the hospital as and when required otherwise he has to

^

1

Gov

follow up the hospital after one month. It was also advised to the complainant to get the dressing regularly done so that the infection may not revive. There was no symptom on the person of the complainant that there would have remained any injury on his spine except the complaint of the complainant pertaining to pain due to fracture of the bone of his leg, therefore, there was no occasion to treat the spine of the complainant by opposite party no.3. The complainant again came to the hospital of opposite party no.3 on 03-06-1998 and he was found in depression at that time, therefore, he was referred to Psychologist and thereafter he had started to walk slowly with the help of the walker. The entire allegations of the complainant against opposite party no.3 are false. A proper and best treatment was given to him by the opposite party no.3.

An affidavit dated 07-08-2003 has been filed by the complainant in support of his complaint thereby annexing some photocopies of annexures out of which we chose to refer only those annexures which are relevant for this complaint against opposite party no.3 and such photocopies of annexures are annexure nos. 6 and 7 the discharge card from Nishat Hospital and Annexure No.8 which is the photocopy of prescription of Dr. U S Mishra, Orthopaedic Surgeon, Ex. Professor of Orthopaedics, K. G. Medical College, Lucknow. Annexure nos. 9 and 10 are the photocopies of prescription papers from Gandhi Memorial & Associated Hospitals, Lucknow and Annexure Nos. 11 and 12 are the notices sent by the complainant to the opposite party no.3. One more affidavit dated 09-01-2006 has been filed by the complainant in reply to the pleadings of the opposite party no.3.

On behalf of the opposite party no.3 an affidavit dated 17-12-2004 of Dr. Tauseef Ahmad has been filed thereby verifying the facts pleaded in the



written statement of the opposite party no.3. A supplementary affidavit dated 13-09-2010 sworn by Dr. Tauseef Ahmad has also been filed thereby annexing annexure no.1 the case sheet of Nishat Hospital pertaining to the complainant Sri Sunil Singh.

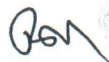
In the light of the aforesaid pleadings of both the parties and the facts and circumstances on record, we have restricted the complaint case to be heard against the opposite party no.3 only who alongwith other opposite parties have been charged by the complainant for the medical negligence in the treatment of the complainant alleging thereby that the opposite party no.3 Dr. Tauseef Ahmad of Nishat Hospital was not the bone expert and instead of getting the treatment of the complainant by some Orthopaedic Surgeon, he himself took up the treatment of the complainant thereby committing medical negligence apparently and remained negligent too to get detected and investigated the injury on the spine of the complainant. In this regard, the opposite party no.3 has pleaded before this Commission that in the hospital of opposite party no.3 the complainant was treated by Dr. Mishra the name of whom has been later disclosed by the opposite party as Dr. Parshuram Mishra and stated that Dr. Parshuram Mishra is an Orthopaedic Surgeon. The affidavit dated 09-01-2006 of Sri Sunil Singh in the shape of evidence against the reply of opposite party no.3 shows that the complainant was not treated by Dr. Parshu ram Mishra and he was not got even admitted in the Hospital of O.P. 3 on the advise of Dr. Mishra as is pleaded by opposite party no.3. Therefore, the fact remains to be decided as to whether the treatment of the complainant was done by Dr. Mishra in the hospital of the opposite party no.3.

The burden to prove that the treatment of complainant Sri Sunil Singh



:8:

was done by Dr. Parshuram Mishra in the hospital of Dr. Tauseef Ahmad, Nishat Hospital lies on the opposite party no.3. In the written statement filed by opposite party no.3 it has been merely mentioned that the treatment was done and the operation was conducted by Dr. Mishra. Half heartedly stating it in the written statement without giving the complete name and address of Dr. Mishra revealed that till filing written statement the opposite party no.3 was avoiding to name in full initial of the person/doctor by whom the treatment to the complainant was given in the hospital of opposite party no.3. However, in additional pleadings and affidavits it has been mentioned by the opposite party no.3 that the treatment was given to the complainant by Dr. Parshuram Mishra but the fact does not stand proved on record by the opposite party no.3 as there is no admission of any such person/doctor on record that he (Dr. Parshuram Mishra) had conducted operation of the complainant and/or on his advise the complainant was admitted in the hospital of opposite party no.3 and the opposite party no.3 continued the treatment of the complainant under supervision and advise of someone named Dr. Parshuram Mishra. It was incumbent upon the opposite party no.3 to examine Dr. Parshuram Mishra or to file the affidavit of Dr. Parshuram Mishra to show that the complainant was treated by Dr. Parshuram Mishra. Whatever may be the papers brought on record either by the complainant or by the opposite parties, there is no mention on any of the piece of paper that Dr. Parshuram Mishra was the doctor giving treatment and conducting operation of the complainant in the hospital of opposite party no.3. However, Dr. Parshuram Mishra is said to be a competent Orthopaedic Surgeon but since Dr. Parshuram Mishra has not filed his affidavit nor this fact has been admitted even directly or indirectly and even no where the name of Dr. Parshuram Mishra is mentioned in any of the



:9:

paper of the treatment of the complainant, therefore, this fact cannot be deemed to have been proved that the complainant's treatment and operation was done by some doctor named Parshuram Mishra a competent Orthopaedic Surgeon.

More so the case-sheet of Nishat Hospital filed by Dr. Tauseef Ahmad himself shows that in Nishat Hospital, at registration no.231, Sunil Singh Bed No. GW-2 had been in the treatment of Physician/Surgeon Incharge Dr. Tauseef Ahmad with effect from 03-06-1998 to 24-06-1998. Hence, it is an admission of Dr. Tauseef Ahmad that he himself had been the Incharge Physician/Surgeon of Sunil Singh the complainant.

It is on record that the treatment of the complainant remained relating to the field of Orthopaedic surgery. Dr. Tauseef Ahmad of opposite party no.3 is not an Orthopaedic Surgeon rather he is a Physician. It is not only stated by the complainant in his affidavit that Dr. Tauseef Ahmad is not the Orthopaedic Surgeon rather there is no evidence adduced even by the opposite party no.3 for the fact that Dr. Tauseef Ahmad had been the Orthopaedic Surgeon for giving treatment to the complainant who had been the patient of Orthopaedic surgery. Hence, we found that Dr. Tauseef Ahmad of opposite party no.3 was not having the qualification of Orthopaedic surgery and, therefore, he cannot be said to be a competent doctor taking in hand the case of Orthopaedic surgery of the complainant. This is the clear negligence of Dr. Tauseef Ahmad thereby admitting the complainant in his hospital on 20-04-1998 even it finding that somewhere in accident the bone of the leg of the complainant was broken and a ring fixator was fixed somewhere else earlier to get the bone fixed on its place. The relevant law in this regard as follows is worth perusal :



Hon'ble Supreme Court has held in the case of **Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka, (2009) 6 SCC 1** in reference to Surgical operation and qualification to perform operation requiring competence in two different specialities that performing of such operation by a doctor qualified in only one of such specialities is improper amounting medical negligence.

A mere misjudgement or error in medical treatment by itself would not be decisive of negligence towards the patient and the knowledge of medical practice and procedure available at the time of the operation and not at the date of trial, is relevant. Moreover, a doctor rendering treatment to a patient is expected to have reasonable competence in his field (Bolam principle).
(Para 51)

Dr. P 's evidence shows a great measure of negligence in the operation. In his affidavit he has stated that if it had been found that the tumour had penetrated into the spinal column, the patient would have been referred to a neurosurgeon as well. That statement itself when read with the incomplete diagnostic procedures that had been adopted, show that had the necessary tests been performed, the fact that the tumour had penetrated into the vertebral column, would have been revealed. The half-baked diagnosis of the neurosurgeon at the stage of the operation only after the excision of the tumour does no credit to the doctor. The operation record dated 23-10-1990 shows that the tumour mass had extended into the intervertebral foramen and that there was an opening 1 cm in size in the vertebral body exposing the spinal cord. (Paras 58 to 60)

A reading of the three texts relied on by the complainant pointedly refers to



the fact that in a case of a tumour in the posterior mediastinal, the possibility of the extension of the tumour into the foramen and the vertebral column must be kept in mind and a neurosurgeon must be associated with the diagnosis and the actual operation. (Para 64)

It has, therefore, to be concluded that the attending doctors were seriously remiss in not associating a neurosurgeon at the preoperative as well as at the stage of the operation. (Para 67)

Moreover, in a case involving medical negligence, once the initial burden has been discharged by the complainant by making out a case of negligence on the part of the hospital or the doctor concerned, the onus then shifts on to the hospital or to the attending doctors and it is for the hospital to satisfy the court that there was no lack of care or diligence. (Para 77)

Therefore, it is held that the attending doctors were seriously remiss in the conduct of the operation and it was on account of this negligence that the paraplegia had set in. (Para 79)

Hence looking into the entire facts and circumstances on record before us in the case in hand, we are of this view that removal of ring fixator already fixed to join the bone of the complainant, Dr. Tauseef Ahmad opposite party no.3 committed gross negligence thereby taking a decision to do the plaster. Though Dr. Tauseef Ahmad has submitted that he himself is a competent doctor and the treatment was given to the complainant through the trained staff of the hospital on the advise of Dr. Mishra an Orthopaedic Surgeon thereby removing the ring fixator for the purpose of healing of the wound by regular dressing but since there is no evidence that Dr Parshu Ram Misra orthopedic surgen was any way in picture conducting the operation of



:12:

complainant, this much action of Dr. Tauseef Ahmad being not a competent surgeon for Orthopaedic surgery, the submission of Dr. Tauseef Ahmad is not considerable for, that there was no negligence on the part of Dr. Tauseef Ahmad. The record filed by the complainant and the treatment given by Dr. Tauseef Ahmad shows that opposite party no.3 being merely a Physician admitted the complainant in his hospital and treated him representing himself as Orthopaedic specialist. He removed the ring fixator and plastered the leg without having knowledge of Orthopaedic patient complications due to reason the bone of leg again broken down and severe infection repeated resulting the bone of legs happened to be short and weak. He even could not get culture sensitive test of antibiotic on the complainant due to reason second time infection arose which is a severe medical negligence on the part of the opposite party no.3. The opposite party no.3 remained failed too to diagnose the spinal injury on the person of the complainant. The complainant while consulted Dr. U S Mishra, the Senior Orthopaedic specialist, Ex. Professor of K.G.M.C. on 20-07-1998 came to know that inspite of joining the bone, the opposite party no.3 should have not removed the ring fixator. The complainant again was admitted in K.G.M.C. on 15-02-1999 and further operation and treatment of the complainant was done during the span of about eight months but due to medical negligence and incompetency of opposite parties, the complainant not only suffered financial loss but also happened to be handicapped with his leg to the extent of 75%. There is no doubt that the complainant suffered a lot due to medical negligence of the opposite parties for which he is entitled to the relief claimed but we are of this view that since all the opposite parties have been charged for the medical negligence of the opposite parties and out of them opposite party nos. 1 and 2 have already been



exonerated by the complainant, we are of this view that whatever may be the compensation to be determined in this case we will like it to be divide in between both the Hospitals/Doctors of opposite party and to the extent of 1/2 compensation shall be paid by the opposite party no.3.


Now the question arises as to what should be the compensation to be awarded in this case. Hon'ble Supreme Court has held in the case of **Charan Singh v. Healing Touch Hospital, (2000) 7 SCC 668 : AIR 2000 SC 3138** in respect to Mode of quantification of Compensation *that attempt should be made to serve the ends of justice by awarding compensation if the case is established. Quantification would depend on facts and circumstances of each case and no hard and fast rules of quantification can be laid down for universal application. Consumer Forum should take into account all relevant factors and assess the compensation on the basis of legal principles, on moderation. Where the appellant, who had been an in-patient at the respondent Hospital, complained that due to negligence of its doctors his right side got paralysed and that they had illegally removed one of his kidneys and he also lost his job besides incurring huge amounts of money for treatment and his upkeep, claimed a compensation of Rs 34 lakhs, held, not only the alleged harm, mental pain, agony, physical discomfort, loss of emoluments suffered by him but also the conduct of the respondents required to be taken into account to quantify the compensation. While quantifying damages, Consumer Forums are required to make an attempt to serve the ends of justice so that compensation is awarded, in an established case, which not only serves the purpose of recompensing the individual, but which also at the same time, aims to bring about a qualitative change in the attitude of the service provider. Indeed, calculation of damages depends on the facts and*



circumstances of each case. No hard and fast rule can be laid down for universal application. While awarding compensation, a Consumer Forum has to take into account all relevant factors and assess compensation on the basis of accepted legal principles, on moderation. (Para 12)

It is not merely the alleged harm or mental pain, agony or physical discomfort, loss of salary and emoluments etc. suffered by the appellant which is in issue - it is also the quality of the conduct of the respondents upon which attention is required to be founded in a case of proven negligence. (Paras 13, 11 and 15)

In the light of the law as aforesaid and the facts and circumstances on record before us we found that complainant has sought a sum of Rs.80,000/- towards medical expenses which are, in our view, to be allowable without any deduction as in such type of cases this much amount is inevitable to be the expenditure. A sum of Rs.10,00,000/- have been sought by the complainant for treatment of his spine fracture but since neither of the doctor of opposite parties have taken up the treatment of spine fracture, the compensation for treatment of spine fracture as expenses to be incurred by the complainant is not allowable being no contribution of any of the opposite party in the spine fracture. However, since the fracture in the spine of the complainant could have not been detected for treatment by the opposite parties, which is sheer negligence of the opposite parties, therefore, a compensation in this regard may be allowed to the complainant to the tune of Rs.1,00,000/-. A sum of Rs.7,00,000/- has also been claimed by the complainant on account of hindrance in the education of the kids of the complainant due to loss of income of the complainant. Such type of compensation is very much remote



:15:

to be allowed in claiming a huge amount. More so, the loss of income and the hindrance in the education of the kids was inevitable in the state of accident of the complainant in the normal tenure of treatment. There may be no negligent part of the opposite parties in the accident occurred but since a considerable span of time due to negligence of the opposite parties have been taken in the treatment of the complainant due to negligence in treatment, therefore, merely on the guess work we do quantify compensation towards it to the tune of Rs.70,000/- only. Further a sum of Rs.2,00,000/- has been claimed by the complainant towards the compensation of mental tension. Since there had been medical negligence in the treatment of complainant and a considerable time is consumed in the treatment and even the complainant heppened to be handicapped to the extent of 75% we find this much amount is worth acceptable being not exaggrative. Hence we allow this amount of Rs. 2,00,000/- as compensation towards mental tension to the complainant and we arrive on this conclusion that this complaint may be allowed for a compensation to the complainant to the tune of Rs.4,50,000/-. Since opposite party no.3 has to pay merely the compensation to the extent of 1/2 of the compensation assessed, therefore, this complaint deserves to be allowed to the tune of Rs.2,25,000/- to be paid by the opposite party no.3 to the complainant.

ORDER


The aforesaid complaint is hereby allowed against the opposite party no.3 to this extent that the opposite party no.3 shall pay a sum of Rs.2,25,000/- (Rs two lac twenty five thousand) to the complainant as compensation. This amount shall be paid by the opposite party no.3 within two months, failing which the complainant shall be entitled to get 12% per annum interest on the aforesaid amount from the date of filing the complaint



:16:

till the date of payment.

Let copy of the judgment be sent to both the parties free of cost forthwith.


10-07-14
(JUSTICE VIRENDRA SINGH)
PRESIDENT ✓


(CHANDRA BHAL SRIVASTAVA)
MEMBER


(SMT. BAL KUMARI)
MEMBER

pnt