

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 2716 OF 2016

(Against the Order dated 19/07/2016 in Appeal No. 2228/2008 of the State Commission Uttar Pradesh)

1. DR. INDRA CHOPRA

W/O. DR. V.K. CHOPRA, R/O. CHOPRA NURSING HOME,
NAURANGABAD,
DISTRICT-LAKHIMPUR KHIRI
UTTAR PRADESH

.....Petitioner(s)

Versus

1. RASHMI SAXENA

W/O. SHRI MANOJ KUMAR SAXENA, R/O. MOHALLA
MUNNUGANJ, KASBA & THANA GOLA, PARGANA
HAIDERABAD
DISTRICT-LAKHIMPUR KHIRI
UTTAR PRADESH

.....Respondent(s)

BEFORE:

HON'BLE DR. S.M. KANTIKAR, PRESIDING MEMBER

For the Petitioner :

For the Respondent :

Dated : 13 Mar 2023

ORDER

Appeared at the time of arguments:

For the Petitioner : Mr. Sanjeev Bahadur Srivastav, Advocate

For the Respondent : Mr. Nikhil Jain, Advocate

Mr. Manoj Kumar Saxena, Advocate

Pronounced on: 13th March, 2023

ORDER

1. The present Revision Petition has been filed by the Petitioners under Section 21(b) of the Consumer Protection Act, 1986 (hereinafter referred to as the "Act") against the impugned Order dated 19.07.2016, passed by the State Consumer Disputes Redressal Commission, Lucknow Uttar Pradesh (hereinafter referred to as the "State Commission") in First Appeal No. 2228/2008, whereby the Appeal filed by the Petitioner/Opposite Party was dismissed and the Order of District Consumer Disputes Redressal Forum, Lakhimpur (hereinafter referred to as the "District Forum") in Consumer Complaint No. 255/2004 was upheld.

2. For the convenience, parties are referred to as placed in the original Complaint filed before the District Forum. Dr. Indra Chopra as OP-1, the assistants Ms. Usha Devi and Ms. Uma Devi as OP-2 & 3 respectively.

3. As per Dr. Indra Chopra (OP-1), the Complainant was admitted to her Chopra nursing home for delivery. However, during the delivery, the Complainant's condition deteriorated due to severe pain, the doctor's assistants, OP-2 and OP-3 were present. The OP-1 doctor was called, but she did not respond. The OP-1 told her assistants not to disturb her. The Complainant's condition continued to deteriorate, and the doctor was eventually came to the labour room. The case of the Complainant that due to delay and negligence on the part of OP-1 and her assistants, the child born was dead and there was injury to both the ureters during caser operation. Thereafter the patient had to undergo another operation which incurred further expenses. The Complainant's husband filed an FIR under Sections 316, 326 of IPC against the OP. Further being aggrieved, the Complainant filed the Complaint before the District Forum, Lakhimpur.

Defense:-

4. Dr. Indra Chopra (OP-1) in her reply denied negligence. Due to increased labour pains, OP performed caesarian delivery with written consent from the Complainant. The operation was successful, but unfortunately, the child could not be saved. OP-1 submitted that no fees was charged due to good relationship and trust with the complainant from the past and her elder brother-in-law Sri Arun Kumar Saxena who promised to make the payment later on, but he failed. The OP denied any involvement of her maid servant or assistant during the delivery. She also denied that her ureter was damaged during the operation and as a result urine was leaking continuously. After discharge from the nursing home, the patient did not come for follow up. The complaint was filed with bad intention to defame the doctor and nursing home.

5. The District Forum upon hearing the parties, held OP No. 1 negligent and partly allowed the Complaint and directed the OP-1 to pay Rs.3,00,000/- and Rs.15,000/- towards litigation cost within one month.

6. Being aggrieved by the Order of the District Forum, the OP-1 filed the First Appeal before the State Commission, Lucknow, U.P. The same was dismissed and the Order of the District Forum was affirmed with the following observation:-

“From the entire facts of the case, it is evident that in case of the Appellant/Opposite Party conducting delivery without the help of any trained or untrained nurse and without any nurse, then she committed gross negligence and she carried out operation in the morning of 14.01.2004 hurriedly without finding out in time the status of the child and from these we find that in the instant case the Opposite Party No. 1/Appellant has committed deficiency in service and we find that the Judgment and Order passed by the District Consumer Forum against the Opposite Party No. 1/Appellant in this regard is legally sustainable and there is no scope for any intervention. The Appeal filed by the Appellant deserves to be dismissed.”

7. Being aggrieved, the OP-1 filed the instant Revision Petition.

8. Heard the learned Counsel for both the sides. Perused the entire material on record *inter-alia* Orders of both the fora.

9. The learned Counsel for the Petitioner argued that the Complainant failed to produce any evidence of negligence. The District Forum misinterpreted the statement given by Dr. Rakesh Kapoor regarding the development of ureteral stricture after cesarean operation. The State Commission also erred which did not rely upon the medical literature filed by the OP-1 about the risks of ureteral injury during obstetric and gynecological operations. He further argued that an unfortunate incident or death does not necessarily amount to negligence. The award of compensation was excessive.

10. The learned Counsel for the Complainant argued that the petitioner /OP-1 was negligent and performed the operation hastily and negligently & resulting in the loss of her child and causing damage to urinary tract and. He further argued that the revisionist's negligence is the sole cause of the respondent's suffering and that if she had fulfilled her duties properly, the respondent would have been able to have a child and live a happy life without the need for costly medical treatment.

11. Considering the evidence on record and entirety of the facts in my view, there was failure of duty of care from the OP-1. She did not attend the patient immediately when she was in severe labour pains but

patient was left in the hands of assistants who were neither qualified nor trained. The caesarian operation was performed hurriedly at delayed stage which turned out to be the cause of fatal death. The revisional jurisdiction of this Commission is extremely limited, as held by the Hon'ble Supreme Court in '*Sunil Kumar Maity vs. State Bank of India & Anr.*^[1] and '*Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd.*^[2]. In the instant case, both the Fora have given concurrent findings on the facts and there is no error apparent to interfere in the reasoned orders under the revisional jurisdiction of this Commission under Section 21 of the Act, 1986.

12. The Revision Petition, being misconceived and devoid of merit, is dismissed.

[1] Civil Appeal No. 432 / 2022 Order dated 21.01.2022

[2] 2011 11 SCC 269

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DR. S.M. KANTIKAR
PRESIDING MEMBER