

DR. AHSAMUDDIN & ANR. V. HEERA LAL

1. DR. AHSAMUDDIN & ANR.

.....Petitioner(s)

Versus

1. HEERA LAL

.....Respondent(s)

Case No: REVISION PETITION NO. 1132 OF 2022

Date of Judgement: 19 Jan 2023

Judges:

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

For the Petitioners : Ms. Ankita, Advocate

Facts:

Complainant's wife fell ill on 15.02.2005 and was taken to Petitioner No. 1 Dr. Ahsamuddin (BUMS degree holder) at his hospital. She was treated with allopathic medicines like injections, tablets, glucose etc. and kept admitted. On 16.02.2005, she was discharged while still ill and died same day at another hospital. Complaint filed alleging negligence as Petitioner being BUMS doctor gave allopathic treatment without qualification.

District Forum:

Proceeded ex-parte against Petitioners. Allowed complaint directing payment of Rs 4 lakhs compensation with interest and costs.

State Commission:

Dismissed appeal and confirmed District Forum order. Held Petitioner had no right to provide allopathic treatment, hence indulged in unfair trade practice.

Revision Petition:

Revisional jurisdiction to be used sparingly for limited purposes. No reason to interfere with concurrent findings of fora below. Petition dismissed.

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Full Text of Judgment:

1. The present Revision Petition has been filed by the Petitioners under Section 58(1)(b) of the Consumer Protection Act, 2019 (hereinafter referred to as the "Act") against the impugned Order dated 02.08.2022, passed by the Rajasthan State Consumer Disputes Redressal Commission (hereinafter referred to as the "State Commission") in First Appeal No. 81/2020, whereby the Appeal filed by the Petitioners/Opposite Parties was dismissed and the Order of District Consumer Disputes Redressal Forum, Jaipur-III (hereinafter referred to as the "District Forum") was confirmed.

2. The facts in brief are that on 15.02.2005, the Complainant's / Respondent's wife Ms. Yashoda (patient) suddenly became ill and she was taken to the Petitioner No. 1 / OP-1 Dr. Ahsamuddin at ZBM Hospital. He treated the patient with some injections, pills and also with glucose drip. The patient was kept overnight in the hospital and discharged on 16.02.2005 despite her ill health and asked to show to another doctor. As the patient's health further deteriorated, her husband took her to S.M.S. Hospital at emergency, where the doctors declared her dead at 1.20 pm. The Complainant's in-laws lodged an FIR against the OP-1. It was further alleged that the OP-1 was BUMS degree holder and treated negligently

with allopathic medicines, which caused the death of the patient. Being aggrieved, patient's husband filed the Complaint before the District Forum.

3. The OPs remained absent before the District Forum despite opportunities, therefore, the District Forum proceeded ex-parte against the OPs.

4. The District Forum allowed the Complaint and directed to pay the Complainant Rs. 4 lakh with simple interest @ 9% p.a. from 19.07.2007 plus Rs. 25,000/- as cost within one month. In case of non-compliance, the Complainant was entitled to receive 9% interest p.a. till its realisation.

5. Being aggrieved, the OPs filed a First Appeal before the State Commission, Rajasthan. The State Commission dismissed the Appeal and confirmed the Order passed by the District Forum, with the following observation:

"7. Section 50 of the Rajasthan Indian Medicine Act-1953 follow The type is:

50. Special privileges of "A" class registered practitioners:
A registered practitioner of "A" class alone shall be deemed to be qualified for examining and investigating into cases and matters of medico- legal character, and

(ii) for giving expert evidence under Section 45 of the Indian Evidence Act 1872, at any inquest or in any Court of law in respect of any such cases and matters relating to the Indian system of medicine, surgery or midwifery.

According to the above provision "A" class registered practitioner has been given the first right to investigate and investigate the matter related to medico legal. According to section 50 "A" class registered practitioner has been given the second right to give expert evidence. Thus, according to section 50, the "A" class registered practitioner for the indigenous system of medicine has not been given any right to treat the patient by admission and treatment by the allopathic system. The appellants, the opposite parties, have also not written in their appeal that the doctor has examined the wife of the respondent complainant and referred the remedy as far as possible, but it has been written to be treated as much as

possible and The same fact, the respondent complainant has written that the opposition number 1 doctor had given pills and injections by keeping the wife of the respondent complainant admitted in his hospital and administered glucose and discharged on the second day. Thus it is proved in the case handled that the Opponent No. 1 doctor has treated the respondent complainant's wife in the Opposition No. 2 hospital by allopathic method, which is an unfair trade practice of the appellants and the opposite parties. The argument of learned counsel, appellants, and opposition is not valid that the death of the respondent's wife is not proved due to the treatment of the appellants, the opposite parties, because the point of contention in the case in hand has been that the appellants, the opposite parties, were not authorized by the allopathic method. Therefore, the case in hand is of unfair practice of the appellants and the opposite parties. The learned District Consumer Commission has also given the same conclusion in its impugned judgment, which deserves to be confirmed."

6. Being aggrieved, both the OPs have filed instant Revision Petition.

7. Heard the learned Counsel for the Petitioners and perused the material on record.

8. In the instant case, the OP-1 is BUMS doctor, treated the patient with allopathic drugs without having proper expertise and qualification. There are concurrent findings of fact and the revisional jurisdiction of this Commission is limited. Within the meaning and scope of section 21(b), I find no jurisdictional error, or a legal principle ignored, or miscarriage of justice, as may necessitate interference in the exercise of the revisional jurisdiction from this Commission. We would like to rely upon the decision of the Hon'ble Supreme Court in the case of 'Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd.[1]. Similarly, in the recent judgement of the Hon'ble Supreme Court in 'Sunil Kumar Maity vs. State Bank of India & Anr.' [2], it was held that the revisional jurisdiction of this Commission is extremely

limited by observing as under:-

“9. It is needless to say that the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity. In the instant case, the National Commission itself had exceeded its revisional jurisdiction by calling for the report from the respondent-bank and solely relying upon such report, had come to the conclusion that the two fora below had erred in not undertaking the requisite in-depth appraisal of the case that was required.”

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