

RAMUTHAI & 3 ORS. V. DR. K.G. MOHAN PRASATH

Ramuthai & 3 Ors. Vs. Dr. K.G. Mohan Prasath

1. RAMUTHAI & 3 ORS.

S/O S. CHINNAALAGU(DIED)

2. S. CHINNAALAGU S/O SUBRAMANIA PILLAI,
NOW RESIDING AT 502, DR. RADHAKRISHNAN ROAD,
NEAR OM SAKTHI KOIL, TATABAD,
COIMBATORE-641012

TAMIL NADU

3. C.MEENAKRSHISUNDARESWARAN S/O S.CHINNA
ALAGU

NOW RESIDING AT 502, DR. RADHAKRISHNAN ROAD,
NEAR OM SAKTHI KOIL, TATABAD,
COIMBATORE-641012

TAMIL NADU

4. C.KARTHIGAISELVI D/O S.CHINNAALAGU

NOW RESIDING AT 502, DR. RADHAKRISHNAN ROAD,
NEAR OM SAKTHI KOIL, TATABAD,
COIMBATORE-641012

TAMIL NADU

.....Petitioner(s)

Versus

1. DR. K.G. MOHAN PRASATH

12, WEST AVANI MOOLA STREET,
MADURAI-625001

TAMIL NADU

.....Respondent(s)

Case No. : REVISION PETITION NO. 2782 OF 2015

Date of Judgement : 05 December 2023

Judges : MR. BINOY KUMAR

For Petitioner : MR. RAJINDER SINGH, ADVOCATE

MR. R. SHARATH, ADVOCATE

MR. MOHIT KUMAR, ADVOCATE

For Respondent : MR. T.R.B. SIVAKUMAR, ADVOCATE

Facts:

- *Complainants filed a complaint against Dr. K.G. Mohan Prasath alleging deficiency in service leading to death of complainant 1's wife.*
- *Wife was operated by respondent doctor and later prescribed TB medicines. When health didn't improve, she consulted another doctor who diagnosed thyroid issue. She died 4 months later.*
- *District Forum and State Commission dismissed the complaint finding no deficiency of service by respondent. Complainants have now filed this revision petition.*

Arguments: For Petitioners:

- *Respondent doctor was deficient in service by unnecessarily operating and wrongly prescribing TB medicines without proper diagnosis.*

For Respondent:

- *Petitioners have not provided any proof of deficiency. No expert opinion obtained to prove medical negligence.*

Court's Elaborate Opinions:

- *No reason to differ from the concurrent findings of the District Forum and State Commission that there was no*

deficiency of service.

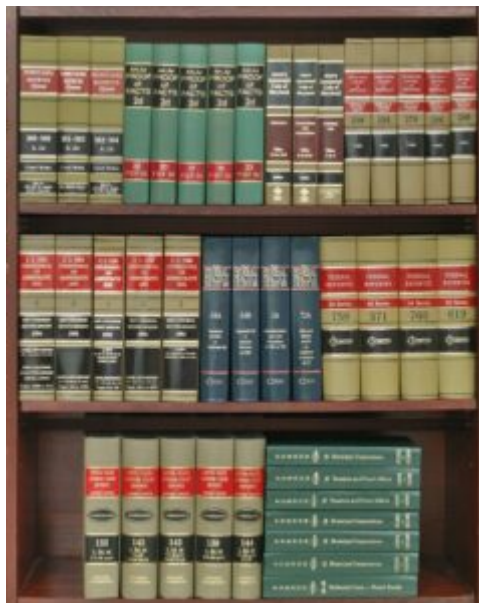
- *No fault can be attributed to the doctor based on available records that the surgery or diagnosis was done with ill intent.*

Referred Laws and Sections:

- *Revision petition filed under Section 21(b) of Consumer Protection Act.*
- *Supreme Court judgments in Rajiv Shukla v Gold Rush (2022), Narendran Sons v National Insurance (2022), Rubi Dutta v United India Insurance (2011), Lourdes Society v H&R Johnson (2016) and Sunil Maity v SBI (2022) cited related to scope of revisional jurisdiction.*

Conclusion:

- *No illegality or material irregularity found in the orders of the fora below.*
- *Revision petition dismissed upholding State Commission's order.*



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Full text of Judgement :

1. Aggrieved by the concurrent findings and Orders passed by the District Consumer Disputes Redressal Forum, Madurai (for short, the District Forum) and the State Consumer Disputes Redressal Commission, Tamil Nadu, Madurai Bench (for short, the State Commission), the Complainants filed the present Revision Petition No. 2782 of 2015 under Section 21(b) of the Consumer Protection Act, 1986 (for short, the Act). The Complaint filed by the Complainants (Petitioners herein) in District Forum was dismissed.

2. Aggrieved by this Order dated 10.02.2010 of the District Forum, the Complainants filed Appeal before the State Commission, which, vide its Order dated 12.08.2015, dismissed the Appeal.

3. As the District Forum and the State Commission have comprehensively addressed the facts of the case, which led to filing of the Complaint and passing of the Orders, I do not find it relevant to reiterate the same, when the findings of both the fora are concurrent on facts.

4. I have heard the learned Counsel for the parties and considered their submissions.

5. The learned Counsel for the Petitioners / Complainants submitted that the Complaint has been wrongly dismissed by both the District Forum and the State Commission. There is deficiency of service on the part of the Respondent doctor, who has performed surgery on the deceased wife of the Petitioner / Complainant No. 1. Thereafter, he prescribed medicines for tuberculosis. When the deceased was not getting well, she went to another doctor, who found that she was suffering from thyroid problem and that there was no tuberculosis. The patient died after four months of consultation with the second doctor. The learned Counsel submitted that the Respondent doctor has unnecessarily operated upon the deceased and prescribed medicine for tuberculosis and therefore is deficient in service.

6. The learned Counsel for the Respondent submitted that both the District Forum and the State Commission have not found fault with the Respondent doctor. The Complainant has not been able to provide any proof of how the doctor was deficient in service. No opinion of an expert has been taken or filed. Therefore, the Revision Petition should be dismissed.

7. I have gone through the submissions and after careful consideration, I do not find any reason to differ from the Order of the State Commission, which is in order. I find that no new question of law or facts have been submitted by the Petitioner, which has not been already submitted before the District Forum and the State Commission. It is difficult to find any fault or deficiency of service on the part of the Respondent doctor and based on the record available to arrive at a view that the operation performed was done with any ill intent or based on a wrong diagnosis.

8. In view of the concurrent findings, I would like to cite the following Orders of the Hon'ble Supreme Court in this regard:

a. ***Rajiv Shukla v. Gold Rush Sales & Services Ltd., (2022) 9 SCC 31 decided on 08.09.2022***, wherein it was held as under:

"In exercising of revisional jurisdiction the National Commission has no jurisdiction to interfere with the concurrent findings recorded by the District Forum and the State Commission which are on appreciation of evidence on record. Therefore, while passing the impugned judgment and order [Goldrush Sales and Services Ltd. v. Rajiv Shukla, 2016 SCC OnLine NCDRC 702] the National Commission has acted beyond the scope and ambit of the revisional jurisdiction conferred under Section 21(b) of the Consumer Protection Act.

b. ***Narendran Sons v. National Insurance Co. Ltd., 2022 SCC OnLine SC 1760 decided on 07.03.2022***, wherein it was held as under:

"The NCDRC could interfere with the order of the State Commission if it finds that the State Commission has exercised jurisdiction not vested in it by law or has failed to exercise its jurisdiction so vested, or has acted in exercise of its

jurisdiction illegally or with material irregularity. However, the order of NCDRC does not show that any of the parameters contemplated under Section 21 of the Act were satisfied by NCDRC to exercise its revisional jurisdiction to set aside the order passed by the State Commission. The NCDRC has exercised a jurisdiction examining the question of fact again as a court of appeal, which was not the jurisdiction vested in it"

c. *Mrs. Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd. (2011) 11 SCC 269* decided on 18.03.2011, wherein it was held as under:

"23. Also, it is to be noted that the revisional powers of the National Commission are derived from section 21(b) of the Act, under which the said power can be exercise only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a dif erent view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the court below, but on a dif erent (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21(b) of the Act has been transgressed. It was not a case where such a view could have been taken, by setting aside the concurrent findings of two fora."

d. ***Lourdes Society Snehanjali Girls Hostel and Ors Vs. H & R Johnson (India) Ltd. and Ors. (2016 8 SCC 286) decided on 02.08.2016***, wherein it was held as under:

"23. The National Commission has to exercise the jurisdiction vested in it only if the State Commission or the District Forum has failed to exercise their jurisdiction or exercised when the same was not vested in their or exceeded their

jurisdiction by acting illegally or with material irregularity. In the instant case, the National Commission has illegally or with material irregularity. In the instant case, the National Commission has certainly exceeded its jurisdiction by setting aside the concurrent finding of fact recorded in the order passed by the State Commission which is based upon valid and cogent reason”

e. Sunil Kumar Maity v. SBI, 2022 SCC OnLine SC 77 decided on 21.01.2022 , wherein it was held 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. In view of the aforesaid discussion, no illegality, material irregularity and jurisdictional error are found in the Orders of the State Commission and the District Forum. Accordingly, the present Revision Petition is dismissed and the Order of the State Commission is upheld.

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