

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 7660/2025

Dr. V. Vaid (Vivek Vaid), S/o Shri Vijay Kumar Vaid, Neuro Surgeon, Fortis Escorts Hospital, J.I.n. Marg, Malviya Nagar, Jaipur-302017

-----Petitioner

Versus

1. Shri Bhagchand Meena S/o Shri Narain Sahai Meena, R/o Village Tilwar, Tehsil Rajgarh, District Alwar (Rajasthan).
2. Fortis Health Care (India) Ltd. (Presently Fortis Health Care Ltd.), Okhla Road, New Delhi-110025, Through Its Chairman.
3. Medical Superintendent, Fortis Escorts Hospital, J.I.n. Marg, Malviya Nagar, Jaipur-302017
4. Dr. H. Bhartiya, S/o Late Harish Chandra Neuro Surgeon, Fortis Escorts Hospital, J.I.n. Marg, Malviya Nagar, Jaipur-302017

-----Respondents

For Petitioner(s) : Mr. Susshil Daga with
Mr. Chitransh Mathur &
Ms. Parul Singhal

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN
Order

02/07/2025

1. Learned counsel for the petitioner submits that an order dated 16.02.2018 was passed by the Rajasthan State Consumer Disputes Redressal Commission, Jaipur (in short, the State Commission'), whereby the complaint filed by the respondent no.1/complainant was allowed and opposite parties i.e., petitioner as well as respondents nos.2 to 4 herein jointly and severally were directed to pay Rs.50,00,000/- to the complainant/respondent No.1 for medical negligence for the death of his son with simple interest @ 9% per annum. The said order was assailed by the opposite parties/non-petitioners in first appeal (No.1093/2018) before National Consumer Disputes Redressal Commission, New Delhi.

Vide judgment dated 06.11.2024, the order of the State Commission was upheld in part and the appeal of the appellants Fortis Health Care (India) Ltd. and Medical Superintendent, Fortis Escorts Hospital are allowed whereas the appeal of appellants Dr. H Bhartiya (respondent No.4 herein) and Shri Bhagchand Meena, petitioner herein are dismissed and they were held jointly and severally liable for deficiency in service qua the deceased son of the respondent.

2. Learned counsel draws attention of the Court to the order dated 05.08.2019 passed by National Consumer Disputes Redressal Commission. He submits that looking to the intricate question of medical negligence, in a person suffering from serious disease known as "Mobile Atlanto Axial Dislocation" termed as AAD and subsequent diagnosis of Cranio-vertebal Junction (CVJ) and other issue arising therein, the National Consumer Disputes Redressal Commission observed that the assistance of a medical expert is required and therefore, it was opined that the matter be heard by the Bench of which Hon'ble Dr. S.M. Kantikar is a Member. Liberty was also granted to the appellants to file an application seeking a report from the medical Board/Expert's Committee. Thereafter, the appellants therein filed an application praying therein to constitute a medical board. But surprisingly, the observations and directions made in the order dated 05.08.2019 were overlooked and neither the matter was heard by the Bench of which Hon'ble Dr. S.M. Kantikar was a Member nor the application seeking a report the medical board/expert's committee was decided and the appeal has been decided finally. Counsel submits that review petition has also been filed by the petitioner against non-consideration of the

application preferred for expert opinion however, same was also dismissed without considering the grounds taken by the petitioner.

3. It is further submitted that vide order dated 27.06.20218, Hon'ble National Consumer Disputes Redressal Commission, passed interim stay order in favour of the appellants subject to deposit of 50% of the decretal amount in the Commission. The petitioner has already deposited 50 per cent of the decretal amount before the Commission, which is still lying there.

4. Matter requires consideration.

5. Issue notice to the respondent No.1 only, through both the process, returnable on next date of hearing. Requisites be filed within a period of two weeks, failing which, this petition shall stand dismissed without any further reference to the bench.

6. If the requisites are filed within given time, list this matter after eight weeks.

7. Since, as per the statement of counsel for the petitioner, 50 per cent of the decretal amount is still deposited in the National Consumer Disputes Redressal Commission, the petitioner is directed to file an appropriate application before Hon'ble National Commission for either releasing the aforesaid amount in his favour so as to deposit the same forthwith before the concerned executing court or transmitting/transferring the aforesaid amount directly to the executing court.

8. Meanwhile, further proceedings in execution petition shall remain stayed.

(ANIL KUMAR UPMAN),J