

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO. 1853 OF 2004

K.S. BHATIA

Appellant (s)

VERSUS

JEEVAN HOSPITAL & ORS.

Respondent(s)

With appln(s) for stay,permission to place addl. documents on record

Date: 24/01/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL
HON'BLE MR. JUSTICE C.K. THAKKER

For Appellant(s) Mr.Anil Karnwal,adv.
Dr. Sushil Balwada,Adv.

For Respondent(s) Mr.G.L. Sanghi,Sr.Adv.
Mr.Vipin Sanghi,Adv.
Mr. Hari Shankar K,Adv.

Mr. Sanjeev Sachdeva ,Adv
Ms.Priya Puri,Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed.

[USHA BHARDWAJ]
P.S. TO REGISTRAR

[MADHU SAXENA]
COURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1853 OF 2004

K.S. Bhatia

...Appellant

vs.

Jeevan Hospital & Ors.

...Respondents

O R D E R

The appellant had undergone laser surgery in his right eye on 25th May, 1995. On the allegation that the surgery had resulted in the loss of vision in his right eye, the appellant filed a complaint before the National Consumer Disputes Redressal Commission on 3rd September, 1997. In support of his case the appellant relied upon the prescriptions which have been given to him by Dr. Chadha and Dr. Hari Mohan prior to the operation. The appellant also relied upon the prescriptions given by Dr. Chadha and Dr. Hari Mohan subsequent to the operation. These documents, according to the appellant, showed that the appellant had normal vision in his right eye before the surgery which was lost subsequent thereto.

The appellant also relied upon a certificate issued by Dr. Sachdev of the Hindu Rao Hospital Delhi dated

5th September, 1997 to the effect that the appellant had lost vision in the right eye consequent upon the laser surgery. A similar certificate was also issued by the Safdarjung Hospital on 13th December, 2002.

The respondents have contended that the operation was duly conducted, that the appellant had a macular degenerative disease of the right eye which was a hopeless condition and that the laser treatment conducted by the respondents was the only step that could have been taken. It is further submitted that at least one of the doctors namely, Dr. Hari Mohan who was claimed by the appellant to have examined the appellant after the operation, had written a letter to the respondent denying that the appellant had suffered any loss of vision by reason of the laser surgery.

There is some dispute as to whether the appellant had gone back to the respondent No.1 institute after the operation. It appears to us likely on the basis of the pleadings that he has done so but that the respondent Nos.2 and 3 were not present. Be that as it may, the appellant's complaint was rejected by the National Forum by holding that the evidence adduced by the appellant did not support the appellant's case. Doubt was also expressed in respect of the certificates submitted. It was also held

that the appellant had failed to produce any expert evidence or medical literature in support of his case. The Commission came to the conclusion that the appellant had made "a false and uncorroborated statement in the complaint" which was accordingly dismissed with costs fixed at Rs.5000/-.

We are unable to accept the reasoning of the National Commission and we

deprecate the language in which the appellant's complaint was rejected. Merely

because the complainant is unable to prove his case, that does not mean that he

has come forward with a false case. However, in our opinion, the appellant was

bound to produce expert evidence in support of his case. He made no attempt to

summon either Dr. Chadha or Dr. Hari Mohan. It is true that he filed an

application for summoning Dr. Sachdev and Dr. Sahai of the Safdarjung Hospital.

No steps were, however, taken to move the application. The various prescriptions

relied upon by the appellant use

terminology which may have supported the appellant's case. But in the absence of

any literature or evidence in support of the prescriptions, they have no value. The

lacuna in the appellant's evidence can only result in the dismissal of his complaint.

The appellant has submitted that he may be referred to a medical expert of the

Court's choice for

the purpose of verifying whether the appellant's case was true. Apart from the fact that about 9 years have passed since the date of the operation, we are of view that the procedural lacuna before the National Commission cannot be permitted to be made good at the appellate stage particularly when there is nothing on record to show that the appellant could not have made a similar prayer before the Commission which he did not do.

We accordingly dismiss the appeal. However, we expunge the remarks of the Commission against the appellant and also delete the requirement for payment of cost.

.....J.

(RUMA PAL)

.....J.

(C.K. THAKKER)

New Delhi,
 JANUARY 24, 2005.