

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2527/2013

M.K. KHAMBATTA

APPELLANT(S)

VERSUS

VENKATRAMA NURSING HOME & ORS.

RESPONDENT(S)

O R D E R

The appellant is before this Court assailing the order dated 06.12.2012 passed in Original Petition No. 396 of 2000 by the National Consumer Disputes Redressal Commission, New Delhi (For short "NCDRC"). The appellant herein was before the Commission seeking compensation from the respondents by alleging that there is medical negligence in administering treatment to the appellant.

The brief facts on which such claim was made is that the appellant was an employee of M/s. Tata Iron and Steel Company Limited Jamshedpur, while travelling by train through Vishakhapatnam on 24.01.1998 had stepped out of the train to the platform and while walking towards the shop to purchase certain things his left leg suddenly snapped from the tibia. He could not stand, therefore fell down. He was thereafter taken to the Railway Hospital, who advised him to consult any other private Nursing Home due to which he was thereafter admitted to

the respondent No.1-Nursing Home. The appellant contends that he was assured the best possible treatment by Respondent No.2 and he was thereafter attended to by Respondent No.3. At this stage, it is necessary to observe that Respondent No.3- Dr. C. Dharma Rao who had examined the appellant and had suggested a corrective surgery for proper reunion of the bone has expired and his legal representatives have been brought on record.

In the above said circumstance, the respondents had operated upon the appellant on 25.01.1998 and had inserted the implant. The appellant was discharged on 09.02.1998. Thereafter the medical condition of the appellant was being monitored by the Tata Memorial Hospital and as per the case of the appellant himself they had declared him medically fit and he had resumed duty on 21.04.1998. However, subsequently the implant had snapped during July, 1999 due to which he was thereafter treated at Apollo Hospital, Chennai. It is in that circumstance, since the appellant had suffered the subsequent fracture during July, 1999 the appellant contends that the operation conducted by the respondents herein and the implant which was put on the appellant was not done as per the medical procedure due to which it snapped and therefore the appellant contends that there is negligence on the part of the respondents.

The respondents had appeared before the NCDRC and disputed the claim of the appellant. The NCDRC having

noting the contentions put forth by the appellant and on referring to the materials available on record has recorded the conclusions as hereunder:

"24. The genesis of the complaint lies in the recurrence of the problem in July, 1999, one and half years after surgery at Venkatrama Nursing Home, in 1998. Detailed consideration of the evidence on record in the forgoing paras, shows that -

1. The X-Ray at Tata Main Hospital, Jamshedpur shows broken tibia implant and crack fracture of tibia. Similar is the finding of Apollo Hospital Chennai, which calls it "non-union of left tibia with failed implant". But no evidence has been led by the Complainant to show that it was due to any negligence on the part of the OPs in his treatment.

2. Evidence produced by the Complainant itself shows that after the treatment at OP-1 in January-February, 1998, followed by bed rest of two months, he was medically fit to perform his official duties for the next 15 months, till July, 1999.

3. The problem occurred in the same place of the Complainant's left leg in 1989 due to an accident and 1998 due to a fall at the railway station. But, the Complainant has not disclosed the cause for its recurrence in 1999. In this background, the finding of osteoporosis at TMH in 1999 acquires a special significance.

4. His medical condition of osteoporosis was not revealed in the complaint and the supporting affidavits by the complainant. In fact, in his cross examination, it was specifically denied.

5. The complainant has not disproved the medical finding that he was suffering from osteoporosis in 1999. His subsequent attempt was only to show that in 2006 he was not suffering from it. This was not permitted by the Commission, as it was not relevant to the cause of action.

6. Medical literature brought on record shows a definite possibility of osteoporosis being the cause of recurrent fractures of the tibia.

7. There is no evidence to show that the problem in 1999 was caused due to poor quality of the implant material.

8. There is no evidence on record to show that OP-3, Dr. C. Dharma Rao, did not have the

requisite professional qualification to perform the surgery on the Complainant."

Learned counsel for the appellant contends that though the NCDRC has taken note that the appellant had suffered a fracture earlier in the year 1989 and there is certain indication that we had not disclosed the same, the medical records which has now been placed on record through an application for bringing the additional material on record would indicate that the Discharge Summaries dated 09.02.1998 at Annexure A2, at A5 and at A6 referred to the past history wherein the fracture suffered on 27.05.1989 is indicated. He therefore contends that the appellant had not concealed the fact before the NCDRC. To that extent we take note of the said documents and in our opinion in any event the same does not become material to decide the nature of the allegations made in the petition. Hence, the said documents are of no consequence in the instant case.

Further, though the learned counsel for the appellant vehemently contends that the conclusions as recorded by the NCDRC is not justified inasmuch as the observation relating to 'Osteoporosis' is not borne out from the records and also the conclusion that there is no negligence on the part of the respondents is not justified, we notice that except for the allegations as made by the appellant in the complaint filed before the NCDRC and the medical records relating to the subsequent

treatment which was followed up at the Tata Memorial Hospital, Jamshedpur and the records of the subsequent operation conducted by the Apollo Hospital at Chennai there is no substantial material produced before the NCDRC to establish the allegation that there was negligence on the part of the respondents in treating the appellant. Further no Doctor has been examined to speak about the medical records to indicate that the operation conducted initially and the manner in which implant was placed was the cause for the subsequent snapping during July, 1999. In that circumstance, a perusal of the conclusion as extracted above would indicate that the NCDRC taking into consideration the legal position and the available records has arrived at its conclusion which does not call for interference in an appeal of the present nature.

Accordingly, the appeal being devoid of merits stands dismissed.

.....J
(A.S. BOPANNA)

.....J
(VIKRAM NATH)

NEW DELHI;
15th JUNE, 2022

