

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4809 of 2013

MAMTA W/O VIJAYKUMAR AGRAWAL & ORS.

Appellant(s)

VERSUS

BOMBAY HOSPITAL MED.RESEARCH CENTRE &ORS

Respondent(s)

O R D E R

We have heard learned counsel for the parties.

The broad facts of the case are that on 8<sup>th</sup> October, 1998 Vijay Kumar Agrawal (husband of appellant No.1) injured his forearm. On 2<sup>nd</sup> November, 1998, he was admitted for surgery at Bombay Hospital in Bombay where the surgery was immediately conducted. A revision surgery was conducted on 6<sup>th</sup> November, 1998 which unfortunately resulted in Vijay Kumar Agrawal going into a coma. He continued to remain in a coma till 13<sup>th</sup> February, 1999. We are told that because of the rising hospital bills, the appellants had to take him back to the native place i.e. Amravati (Maharashtra).

On 3<sup>rd</sup> March, 2000, the appellants filed Original Petition No. 83 of 2000 before the National Consumer Disputes Redressal Commission, New Delhi (for short 'the NCDRC'). The petition was taken up for consideration on 27<sup>th</sup> September, 2000. In the meanwhile, Vijay Kumar Agrawal passed away on 6<sup>th</sup> August, 2000. This was brought to the notice of the NCDRC when the hearing

took place on 27<sup>th</sup> September, 2000. Thereupon the NCDRC passed the following order:-

"The Original Petition is returned to the Complainant with liberty to amend and represent."

Based on the order passed by the NCDRC, the appellants preferred a fresh Original Petition No. 361 of 2001 on 20<sup>th</sup> November, 2001. This original petition was admitted for final hearing and pleadings were also completed. When the original petition was taken up for consideration by the NCDRC on 18<sup>th</sup> April, 2013 it was dismissed on the ground that it was barred by limitation. The NCDRC relied upon the averments made by the appellants and held that since the accident took place on 8<sup>th</sup> October, 1998, the surgery took place on 6<sup>th</sup> November, 1998 and Vijay Kumar Agrawal was taken out of the hospital on 13<sup>th</sup> February, 1999 the cause of action had arisen at that point of time and therefore the original petition filed on 20<sup>th</sup> November, 2001 (after a gap of more than two years) is barred by limitation.

Having heard learned counsel for the parties, we are not in agreement with the view expressed by the NCDRC. The cause of action continued from 6<sup>th</sup> November, 1998 when Vijay Kumar Agrawal went into a coma and continued till his death on 6<sup>th</sup> August, 2000. The Original Petition No. 361 of 2001 filed on 20<sup>th</sup> November, 2001 was, therefore, within the two year limitation period. That apart, when the first Original Petition No. 83 of 2000 was taken up for consideration by the NCDRC on

27<sup>th</sup> September, 2000 the NCDRC was fully aware that Vijay Kumar Agrawal had gone into a coma on 6<sup>th</sup> November, 1998 and had been taken away / discharged from the hospital on 13<sup>th</sup> February, 1999 by the appellants. Notwithstanding this the NCDRC gave liberty to the appellants to amend the petition and represent it. In any event, Original Petition No. 361 of 2001 filed on 20<sup>th</sup> November, 2001 was within two years from the date of hearing i.e. 27<sup>th</sup> September, 2000. As such, whichever way one looks at it, there was no delay by the appellants in moving the NCDRC.

Our attention has been drawn by learned counsel for the respondent to a decision of this Court in *V.N. Shrikhande v. Anita Sena Fernandes* [(2011) 1 SCC 53] paragraph 23 wherein it has been observed that:-

*"In cases of medical negligence, no straitjacket formula can be applied for determining as to when the cause of action has accrued to the consumer. Each case is to be decided on its own facts."*

In so far as the facts of the present case are concerned, we are of the opinion that the cause of action arose upon the death of Vijay Kumar Agrawal i.e. 6<sup>th</sup> August, 2000. Taking this date as the starting date for limitation, the complaint filed by the appellants was well within time.

Under the circumstances, we set aside the order passed by the NCDRC and remand the matter to the NCDRC for adjudication on its merits without being influenced by the observations made by us in this order.

Since the matter is quite old, we request the NCDRC to

expedite the hearing of the original petition.

The appeal is allowed.

.....J.  
[Madan B. Lokur]

.....J.  
[N.V. Ramana]

NEW DELHI  
FEBRUARY 23, 2016

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(s). 4809/2013

MAMTA W/O VIJAYKUMAR AGRAWAL &amp; ORS.

Appellant(s)

VERSUS

BOMBAY HOSPITAL MED.RESEARCH CENTRE &ORS  
(With office report)  
(For final disposal)

Respondent(s)

Date : 23/02/2016 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MADAN B. LOKUR  
HON'BLE MR. JUSTICE N.V. RAMANAFor Appellant(s) Mr. Manish Pitale, Adv.  
Mr. Chander Shekhar Ashri, Adv.For Respondent(s) Mr. Siddharth Bhatnagar, Adv.  
Mr. Sidharth Mohan, Adv.  
Ms. Garima Tiwari, Adv.  
Mr. T. Mahipal, Adv.Mr. Gaurav Mitra, Adv.  
Mrs. Nandini Gore, Adv.  
Mr. Abhishek Ray, Adv.  
Ms. Devina Sehgal, Adv.  
Ms. Trishala Kulkarni, Adv.  
Mrs. Manik Karanjawala, Adv.  
M/s. Karanjawala & Co.

UPON hearing the counsel the Court made the following

O R D E R

The appeal is allowed in terms of the signed order.

(Meenakshi Kohli)  
Court Master(Jaswinder Kaur)  
Court Master

[Signed order is placed on the file]