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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4809 of 2013

MAMTA W/O VIJAYKUMAR AGRAWAL & ORS.
Appellant(s)

Appellant(s)

VERSUS

BOMBAY HOSPITAL MED.RESEARCH CENTRE &ORS
Respondent(s)

Respondent(s)

O R D E R

We have heard learned counsel for the parties.

The broad facts of the case are that on 8th October, 1998

Vijay Kumar Agrawal (husband of appellant No.1) injured his
forearm.

On 2nd 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 th November,
1998 which unfortunately resulted in Vijay Kumar Agrawal going

into a coma. He continued to remain in a coma till
13th

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 3rd 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 27th September, 2000.
In the

meanwhile, Vijay Kumar Agrawal passed away on 6 th August, 2000.
Signature Not Verified

Digitally signed by
Meenakshi Kohli
Date: 2016.03.01

This was brought to the notice of the NCDRC when the hearing
11:44:50 IST
Reason:

1
took place on 27th 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 20th 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 18th 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 8th October, 1998, the surgery took place on 6th November, 1998 and Vijay Kumar Agrawal was taken out of the hospital on 13th February, 1999 the cause of action had arisen at that point of time and therefore the original petition filed on 20th 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 6th November, 1998 when Vijay Kumar Agrawal went into a coma and continued till his death on 6th August, 2000. The Original Petition No. 361 of 2001 filed on 20th 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

2

27th September, 2000 the NCDRC was fully aware that Vijay Kumar Agrawal had gone into a coma on 6th November, 1998 and had been taken away / discharged from the hospital on 13th 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 20th November, 2001 was within two years from the date of hearing i.e. 27th September, 2000. As such, whichever way one looks at

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. RAMANA

For 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]