

## IN THE SUPREME COURT OF INDIA

## CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1152 OF 2012  
(arising out of SLP(C)No.17833 of 2011)

MONTU

... APPELLANT

Versus

PT. BHAGWAT DAYAL SHARMA, PGIMS,  
ROHTAK, THROUGH ITS DIRECTOR & ANR.

... RESPONDENTS

## JUDGMENT

Leave granted.

2. Whether appellant contacted HIV+ infection due to supply and transfusion of blood by the respondents is the question which arises for consideration in this appeal filed against the order passed by the National Consumer Disputes Redressal Commission (hereinafter to as the 'National Commission') whereby the revision petition filed by the appellant was dismissed and the orders passed by the State Consumer Disputes Redressal Commission, Haryana (hereinafter referred to as the 'State Commission') and District Consumer Disputes Redressal Forum, Rohtak (hereinafter to as the 'District Consumer Forum') were affirmed.

3. The appellant was suffering from Thalassemia since his age of 2 years, and was under regular treatment of the respondents and his regular blood transfusion was done since 1991. The appellant was admitted in PGIMS on 17 th April, 2004 and on 6th May 2004, when 'Elisa test' was done, it was detected that the appellant was HIV+. Another test, known as 'Western Blot' was done on 26th May 2004 by

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'Dr.Lal Path Labs. Private Ltd., Delhi', when it was confirmed that the appellant is HIV+ .

4. Appellant filed a Complaint Case before the District Consumer Disputes Redressal Forum, Rohtak. It was alleged that due to negligence of respondents- HIV+ infected blood was transfused to him. For his treatment and to save his life his parents had to incur expenses of more than Rs.20 lakhs, as he was required to get different tests conducted after every three months for which had to incur travelling expenses, expenses towards test, stay at Delhi besides the cost of medicines etc.

5. The respondents denied the allegation and opposed the prayer on the ground that the appellant was not a 'consumer' as defined under Section 2(1)(d) of the Consumer Protection Act, 1986. However, it was not denied that the appellant was under treatment of respondent and blood was supplied by them and blood transfusion was done by its doctors since 1991.

6. A number of documents were exhibited before the District Consumer Forum, Rohtak, including Ex.P-54 which shows that regular treatment and blood transfusion to the appellant was done by respondents from 1991 to 1998. Ex.P-55 was brought on record to show that the appellant was admitted under respondents on 17th April, 2004, administered blood transfusion and was detected HIV+.

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7. The District Consumer Forum by order dated 4th October, 2007 dismissed the complaint which on appeal was affirmed by State Commission by order dated 13th October, 2010 passed in Appeal No.3202 of 2007 with following observation:

"In the instant case in order to prove his case the complainant has produced on record the treatment record Ex.P-54 vide which the complainant had taken treatment from the opposite parties w.e.f. 1991 to 1998. As per record Ex.P-55 the complainant was admitted in PGIMS Rohtak on 14.4.2005 and as per elisa test dated 6.5.2004 he was detected HIV positive patient. The contention of the complainant that he had suffered HIV positive on account of infected blood transfused by the opposite parties is not proved on record because the complainant has not tendered in evidence the treatment record from the year 1998 to 14.4.2004 proving that he had taken regular treatment from PGIMS Rohtak. More so there is no expert evidence produce on behalf of the complainant to prove that opposite parties were deficient or negligence in rendering treatment to the complainant during the period mentioned above.

In view of the facts and circumstances and the evidence produced on record as the complainant was detected HIV positive on 6.5.2004 by the opposite parties and that the complainant had not taken treatment from the opposite parties for the year 1998 to 14.4.2004, therefore, the opposite parties cannot be blamed for the HIV positive detected by the opposite parties during the treatment provided to the complainant. Thus, it is ease of lack of evidence. No deficiency of service or medical negligence can be attributed to the opposite parties for want of any cogent and convincing evidence."

8. The appellant challenged the orders before the National Consumer Disputes Redressal Commission, Delhi. During the pendency of the case, an application under Right to Information Act, 2005 was filed on behalf of appellant before the Public Information Officer-cum-Deputy Commissioner, Rohtak asking for information regarding treatment of appellant under PGIMS. The aforesaid facts were brought to the

notice of the National Commission by filing a petition. However, without referring to  
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those facts the National Commission by impugned order dated 24th February, 2011  
dismissed the Revision Petition.

9. We have heard learned counsel for the parties and carefully perused the  
records.

10. In the complaint case the appellant took specific plea that he was suffering  
from 'Thalassemia' since his age of 2 years and was under regular treatment of  
respondents since 1991. Blood was supplied and transfusion was regularly done by the  
Doctors of PGIMS at the interval of 15 to 20 days, every month. In Elisa Test Report  
No.25 dated 6th May, 2004, it was detected that he was HIV+, which was also confirmed  
in 'Western Blot' test conducted on 26th May, 2004. Negligence on the part of  
respondents was alleged.

11. Before the National Commission, the appellant brought on record the letters  
dated 1st December, 2010 and 10th December, 2010, alongwith medical test reports for  
the period from 17th July, 1997 to 2nd August, 2005 [Annexure -P/1(Colly)A]. From the  
letter dated 1st December, 2010[Annexure -P/1(Colly)B] it is clear that the photocopies  
of PGIMS, Rohtak letters Nos. Ped/07/111/203 dated 19th November 2007 and  
Ped/07/1898 dated 20th November 2007 were enclosed along with relevant portion of  
page no. 1 to page no. 113 of Transfusion Blood & Treatment Register. Therein details  
of Date of Blood Transfusion, Date of Collection of Blood, BT No./Bottle No., Time of  
Transfusion and Patient No./CR No. have been shown, relevant extract of which are as  
follows:

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SL.No.	Date of Blood Transfusion	Date of collection of Blood	BT No./ Bottle No.	Time Transfusion	of	Patient No./CR No.
1	2	3	4	5		6
1.	16.9.1997	14.9.1997	17557	1.10P.M.		6/97
2.	25.9.1997	22.9.1997	17967	2.00P.M.		6/97
3.	03.10.997	30.9.1997	19506	2.00P.M.		6/97
4.	09.10.1997	2.10.1997	19716	2.10P.M.		6/97
-	-	-	-	-		-
-	-	-	-	-		-
87.	7.8.2000	5.8.2000	15983	12.40P.M.		82/00
88.	18.8.2000	15.8.2000	17082	11.45A.M.		82/00
89.	1.9.2000	30.8.2000	18364	11.45A.M.		82/00
90.	14.9.2000	11.9.2000	19380	11.10A.M.		82/00
-	-	-	-	-		-
-	-	-	-	-		-
211.	3.6.05	2.6.05	10631	12.36P.M.		66/04
212.	3.6.05	2.6.05	10420	2.10P.M.		66/04

213.	6.7.05	4.7.05	13716	1.00P.M.	66/04
214.	7.8.05	1.8.05	15769	2.00P.M.	66/04

12. The aforesaid facts were brought to the notice of the National Commission by the appellant, which were not denied by the respondent. But the National Commission neither noticed the relevant facts nor referred to the aforesaid documents.

13. In our considered opinion, once the appellant stated that he was under treatment of respondents since 1991, and enclosed documents relating to treatment of certain period, in absence of any denial of such statement by respondent, appellant was not required to place further evidence relating to day to day treatment of the last 16 years. Further, evidence relating to treatment for the period from 1998 to 2005 having brought on record by the appellant before the National Commission, in absence of any objection or denial by the respondents, the National Commission was required to decide

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the claim taking into consideration the relevant stand taken by parties and evidence on record.

14. As the District Consumer Redressal Forum, State Commission and National Commission failed to discuss the aforesaid facts not disputed by respondents, the orders of the National Commission, State Commission and District Consumer Forum are fit to be set aside.

15. The appeal is allowed. The orders of the National Commission, State Commission and District Consumer Forum are set aside and the matter is remitted to the District Consumer Disputes Redressal Forum, Rohtak for fresh disposal of the complaint filed by the appellant. The parties may, if so advised, file additional affidavits and documents before the District Consumer Redressal Forum, Rohtak within ten weeks.

.....J.

.....  
(G.S. SINGHVI)

.....J.

.....  
(SUDHANSU JYOTI MUKHOPADHAYA)

NEW DELHI,  
JANUARY 30, 2012.

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ITEM NO.63

COURT NO.6

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No. 1152 of 2012 in  
Petition(s) for Special Leave to Appeal (Civil)  
No(s).17833/2011

(From the judgement and order dated 24/02/2011 in RP  
No.307/2011 of The NATIONAL CONSUMERS DISPUTES REDRESSAL  
COMMISSION, NEW DELHI)

MONTU Petitioner(s)

VERSUS

BHAGWAT DAYAL SHARMA THR. DIR. & ANR. Respondent(s)

(With office report )

Date:30/01/2012 This Petition was called on for hearing  
today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioner(s) Mr. Amit Kumar,Adv.

For Respondent(s) Mr. Rajender Prasad,Adv.

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

Leave granted.

The appeal is allowed in terms of the signed  
judgment. The orders of the National Commission,  
State Commission and District consumer Forum are set  
aside and the matter is remitted to the District  
Consumer Disputes Redressal Forum, Rohtak for fresh  
disposal of the complaint filed by the appellant.

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The parties may, if so advised, file additional  
affidavits and documents before the District Consumer  
Redressal Forum, Rohtak within ten weeks.

(Parveen Kr.Chawla)  
Court Master

(Phoolan Wati Arora)  
Court Master

[signed judgment is placed on the file]