

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

Civil Appeal No(s). 6937/2008

S.K.JAIN

Appellant(s)

VERSUS

KAMLESH GUPTA. & ORS.

Respondent(s)

O R D E R

1. Heard the learned senior counsel for the parties and perused the appeal papers.

2. The appellant is before this Court assailing the Order dated 14.07.2006 passed by the National Consumer Disputes Redressal Commission (*for short 'NCDRC'*). Through the said order, the NCDRC, which has quantified the compensation payable, has apportioned the same at 60% and held the appellant herein, to be liable to pay to that extent. The said amount is quantified at Rs.5,40,000/- with interest at 9% per annum.

3. Learned senior counsel on either side have taken us through the impugned order as also the evidence that was tendered and considered by the NCDRC.

4. At this juncture, when the instant appeal is taken up for consideration, it is brought to our notice that Dr.Om Prakash Sardana, who was party no.1 before the

NCDRC, has since expired and in that light, the appellant alone has put forth his contentions.

5. Though, the learned senior counsel for the respondent(s) has taken us through the evidence, more particularly, the cross examination of the appellant herein, to contend that the NCDRC had held the appellant liable based on such evidence, as already noted, Dr. Om Prakash Sardana, who was also alleged to be deficient is not alive at present and from the records, we notice that the patient had been admitted to Chauhan Nursing Home and the incident has occurred while he was in the said hospital. Ideally, the said Nursing Home also ought to have been made a party in the proceedings and a consideration based on composite negligence was to be made.

6. Be that as it may, since, the incident had occurred as far back as in the year 1994, and the re-consideration of the matter on all aspects after rectifying these defects at this juncture would not be appropriate or practicable. We have also taken into consideration the fact that the amount, as payable by the appellant, has already been paid and the respondents stand compensated. In that view, we make it clear that notwithstanding the payment made, the observations

touching upon the professional conduct of the appellant herein, shall not be held against the appellant in any other proceedings and shall not be considered as a stigma with reference to his professional competence.

7. With the said clarification, the appeal stands disposed of along with the pending application(s), if any.

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

.....J.  
(M.M. SUNDRESH)

New Delhi  
20<sup>th</sup> July, 2023

ITEM NO.103

COURT NO.7

SECTION XVII-A

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 SCivil Appeal No(s). 6937/2008

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KAMLESH GUPTA . &amp; ORS.

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Date : 20-07-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.S. BOPANNA  
HON'BLE MR. JUSTICE M.M. SUNDRESHFor Appellant(s) Dr. Harshvir Pratap Sharma, Sr. Adv.  
Mr. Tejas Patel, AOR  
Mrs. Meera Kaura, Adv.  
Mr. Raghvendra Upadhyay, Adv.  
Mr. Amit Kumar, Adv.  
Mr. Akshu Jain, Adv.  
Ms. Stuti Jain, Adv.For Respondent(s) Mr. Manoj Swarup, Sr. Adv.  
Mr. Neelmani Pant, Adv.  
Ms. Kirti Dang, Adv.  
Mr. Ajay Kumar, AORUPON hearing the counsel the Court made the following  
O R D E RThe appeal stands disposed of in terms of  
the signed order along with the pending  
application(s), if any.(NISHA KHULBEY)  
SENIOR PERSONAL ASSISTANT

(signed order is placed on the file)

(DIPTI KHURANA)  
ASSISTANT REGISTRAR