

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2539 OF 2011

JAGANARAYAN LAL

Appellant(s)

VERSUS

DOCTOR SMT. GIRIJA TIWARI

Respondent(s)

O R D E R

The present appeal is directed against an order passed by the National Consumer Disputes Redressal Commission [in short, "NCDRC"] in R.P. No. 170 of 2006 on 21.10.2009, whereby the revision against an order of the State Dispute Redressal Commission dismissing the complaint was upheld.

The appellant is the brother-in-law of one Kiran Srivastava, who was four months' pregnant when she was taken for treatment to the clinic of the respondent on 22.12.2001. It is not necessary to examine the allegations on merits, however, the question required to be examined is as to whether the appellant could file a complaint in respect of deficiency in service on part of the respondent regarding the treatment given to his sister-in-law Kiran Srivastava.

The argument of the appellant is that his brother is a Constable and, therefore, the appellant had availed the services for consideration on behalf of

his sister-in-law, being the Karta of Joint Hindu Family. Therefore, the complaint on his behalf would be maintainable.

A 'complainant' is defined under Section 2(1)(b) of the Consumer Protection Act, 1986, whereas a 'consumer' is defined under Section 2(1)(d) of the Act as under :-

"(b) "complainant" means -

(i) a consumer; or

(ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force; or

(iii) the Central Government or any State Government, or

(iv) one or more consumers, where there are numerous consumers having the same interest;

(v) in case of death of a consumer, his legal heir or representative; who or which makes a complaint

(d) "consumer" means any person who—

*(i) ******

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person [but does not include a person who avails of such services for any commercial purpose]"

Learned counsel for the appellant relied upon two judgments of this Court reported as (1998) 4 SCC 39 - Spring Meadows Hospital & Anr. Vs. Harjol Ahluwalia & Anr., and (2020) 3 SCC 455 - Canara Bank Vs. United India Insurance Company Ltd. and Ors. We have heard the learned counsel for the parties and find no merit in the present appeal.

A consumer as mentioned above, means any person who hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised and includes a beneficiary of services. The brother-in-law of a pregnant woman would not be a beneficiary of any services rendered by the respondent. There is no allegation that he has paid or promised any consideration for engaging the services of the respondent. The only assertion in the complaint is that he is the 'Karta' of a Joint Hindu Family, therefore, he is entitled to file a complaint on account of the alleged deficiency of service by the respondent. Spring Meadows (supra) was a case of medical negligence in respect of a child. It was the parents of the child, who had filed a consumer complaint, which was found to be maintainable in terms of Section 2(1)(d)(ii). This Court held as under :-

"12. In the present case, we are concerned with clause (ii) of Section 2(1)(d). In the said clause a consumer would mean a person who hires or avails of the services and includes any beneficiary of such services other than the person who hires or avails of the services. When a young child is taken to a hospital by his parents and the child is treated by the doctor, the parents would come within the definition of consumer having hired the services and the young child would also become a consumer under the inclusive definition being a beneficiary of such services. The definition clause being wide enough to include not only the person who hires the services but also the beneficiary of such services which beneficiary is other than the person who hires the services, the conclusion is irresistible that both the parents of the child as well as the child would be consumer within the meaning of Section 2(1)(d)(ii) of the Act and as such can claim compensation under the Act."

Further, Canara Bank (Supra) was a case arising out of a claim on account of fire in the cold storage, which was used to store the crop of the farmers. It was, in these circumstances, it was held that the complaint on behalf of the farmers, who were the beneficiaries, was maintainable. This Court held as under :-

"29. The definition of 'consumer' under the Act is very wide and it includes

beneficiaries who can take benefit of the insurance availed by the insured. As far as the present case is concerned, under the tripartite agreement entered between the Bank, the cold store and the farmers, the stock of the farmers was hypothecated as security with the Bank and the Bank had insisted that the said stock should be insured with a view to safeguard its interest. We may refer to the penultimate clause of the tripartite agreement which reads as follows :

“WHEREAS the Third Party has agreed to insure the produce/goods stored in the cold storage to indemnify the produce in case of any casualty or accident by any means to cover the risk and also to cover the loan amount to avoid loss at the cost of the Second Party till the release order or repayment of the loan amount.”

30. The aforesaid clause in unambiguous terms binds the cold store to insure the goods, to indemnify the produce, to cover the risk and cover the loan amount. This insurance policy has to be taken at the cost of the second party which is the farmer. Therefore, there can be no manner of doubt that the farmer is a beneficiary under the policy. The farmer is, therefore, definitely a consumer and we uphold the

orders of both the Commissions that the complaint under the Act is maintainable."

The appellant herein is the 'Karta' of a Joint Hindu Family. He cannot be said to be availing the services of a medical practitioner in respect of the pregnancy of his sister-in-law. The concept of Joint Hindu Family does not extend to the treatment of a pregnant sister-in-law. It is needless to mention that no objection regarding maintainability of complaint was raised either before the State Commission or the National Commission, but such issue of maintainability of the complaint goes to the root of the case and we have found it to be non-maintainable on the bare assertions of the complaint alone. We find that the complaint itself was not maintainable and, therefore, the present appeal is dismissed.

There shall be no order as to costs.

Pending interlocutory application(s), if any, is/are disposed of.

.....J.
[HEMANT GUPTA]

.....J.
[V. RAMASUBRAMANIAN]

New Delhi;
SEPTEMBER 15, 2021.

ITEM NO.109

COURT NO.11

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 S

Civil Appeal No(s). 2539/2011

JAGANARAYAN LAL

Appellant(s)

VERSUS

DOCTOR SMT. GIRIJA TIWARI

Respondent(s)

Date : 15-09-2021 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Appellant(s) Mr. Santosh K. Mishra, Adv.
Mr. Dharmendra Kumar Sinha, AOR

For Respondent(s) Mr. Gaurav Khetarpal, Adv.
Ms. Snehpreet Kaur, Adv.
Mr. Ranjan Kumar Pandey, AOR

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

The appeal is dismissed in terms of the signed order.

Pending interlocutory application(s), if any, is/are disposed
of.

(JAYANT KUMAR ARORA)
COURT MASTER

(RENU BALA GAMBHIR)
COURT MASTER

(Signed order is placed on the file)