

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 331 OF 2021

(Against the Order dated 31/12/2019 in Appeal No. 927/2016 of the State Commission West Bengal)

1. DINABANDHU ALUNI & ANR.Petitioner(s)
Versus
1. DR. ALOKE KUMAR BHUSHAN & 2 ORS.Respondent(s)

BEFORE:

HON'BLE DR. S.M. KANTIKAR, PRESIDING MEMBER

For the Petitioner :

For the Respondent :

Dated : 30 Sep 2022

ORDER

Appeared at the time of arguments

For the Petitioners : Mr. Utpal Roy Chowdhury, Advocate

Pronounced on: 30th September 2022

ORDER

1. The present Revision Petition has been filed by the Petitioner against the Order dated 31.12.2019, passed by the West Bengal State Consumer Disputes Redressal Commission, Kolkata (in short, the 'State Commission') in First Appeal No. A/927/2016, whereby the Appeal was dismissed and the Order passed by the District Consumer Disputes Redressal Commission, Nadia (in short, the 'District Commission'), dismissing the Complaint, was affirmed.

2. The case of the Complainant is that her wife, Smt. Jharna (hereinafter referred to as the 'patient') was operated at SNR Carnival Hospital on 17.01.2013 and suffered post-hysterectomy Vasicovaginal Fistula (VVF). Therefore, the patient further got operated at CMC, Vellore and incurred huge expenditure. It was further alleged that the hysterectomy was performed without informed consent.

3. The learned Counsel for the Petitioner argued that the couple approached SNR Carnival Hospital for treatment. There was no definite indication of malignancy in the uterus / ovary of the patient but the Hysterectomy was performed by unnecessarily. The alternative methods of treatment were not told, and without obtaining "Informed Consent" from the couple, the Hysterectomy was performed under RSBY Scheme for making profit, violating the principles of ethics framed by "Medical Council of India" and similar Organizations.

4. The District Forum sought an opinion of expert from Chief Medical Officer of Health, Nadia at Krishnanagar. The expert committee consisted of four doctors including one Gynaecologist and Obstetrics, one Surgeon, one Physician, which submitted the enquiry report where it has been categorically mentioned –

“Since the choice of operation by Dr. A.K. Bhusan at
Carnival Hospital was justified and post-operative VVF is a known complication of TAH with BSO in

the background of post LUCS Adhesion, it cannot be concluded, based on the available evidences that VVF resulted from any negligence in operation.

On perusal of available evidences, the Enquiry Committee is of the opinion that the charges of negligence against S.N.R. Carnival Hospital, Kalyani cannot be established due to lack of conclusive evidence.”

5. Having heard the learned Counsel for the Petitioner and going through the medical record and *inter alia* orders of the District Forum and the State Commission, I do not find any need to interfere with the reasoned Orders of both the for a below. It is pertinent that, the Enquiry Committee concluded that the treatment given by OP-1 and / or the SNR Carnival Hospital did not show any deviation from standard protocol. The Complainant made just mere averments in the complaint and I do not find by any stretch of imagination proved the negligence by placing cogent evidence. It was necessary for the Complainant to provide the *facta probanda* as well as *facta probantia*. In entirety, the opinion of the expert committee establishes the duty of care and reasonable standard of practice from the OPs.

6. Both the fora have given concurrent findings of fact and the scope of this Commission in the revisional jurisdiction is limited. I do not find any illegality, material irregularity or jurisdictional error in the Orders passed by the fora below warranting any interference in the revisional jurisdiction under Section 21(b) of the Consumer Protection Act, 1986. This view dovetails from the decisions of the Hon’ble Supreme Court in ‘**Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd.**’^[1] and in the recent judgment in the case of ‘**Sunil Kumar Maity vs. State Bank of India & Anr.**’^[2] it was held as under:-

“9. It is needless to say that the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity. In the instant case, the National Commission itself had exceeded its revisional jurisdiction by calling for the report from the respondent-bank and solely relying upon such report, had come to the conclusion that the two fora below had erred in not undertaking the requisite in-depth appraisal of the case that was required.”

7. Based on the foregoing discussion and the principles laid down by the Hon’ble Supreme Court *supra*, I do not find any merit in the present Revision Petition and the same is dismissed. However, there shall be no order as to costs.

[1] 2011 11 SCC 269

[2] Civil Appeal No. 432 / 2022 Order dated 21.01.2022

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DR. S.M. KANTIKAR
PRESIDING MEMBER