

SUPREME COURT OF INDIA

A.U. Sukumaran

Vs.

N.S.D. Raju

C.A.No.64 of 2009

(B.N. Agrawal and G.S. Singhvi JJ.)

09.01.2009

ORDER

1. The appellant-complainant filed a petition before the Kerala State Consumer Disputes Redressal Commission (for short, 'the State Commission') for award of compensation to the tune of Rs.13,96,500/- by alleging that due to negligence of the respondent-Cochin Hospital and doctors, he had lost vision in one eye and was forced to seek voluntary retirement from service. He claimed Rs.13,000/- as cost of treatment, Rs.7,500/- towards transportation charges, Rs.4,32,000/- as loss of income due to voluntary retirement, Rs.1,44,000/- which he would have earned by continuing in service, Rs.2,00,000/- by way of damages for pain and suffering, Rs.5,00,000/- by way of damages for mental agony to himself, wife and children and Rs.1,00,000/- as damages for disfigurement. Respondent Nos.1 to 3 contested the complaint by asserting that it was not a case of medical negligence and that the claim made by the appellant was exorbitant.

2. The State Commission, after considering the pleadings of the parties and record produced by them, held that the doctors who performed the surgery are not guilty of negligence and the loss of vision may have been caused due to infection. In the opinion of the State Commission, the hospital authorities may have been negligent in maintaining hygiene and this may have led to infection. The State Commission then observed that the complainant has not been able to prove that he suffered any pecuniary loss and awarded Rs.40,000/- as compensation, Rs.5,000/- towards expenditure and Rs.1,000/- by way of cost. On appeal, the National Consumer Disputes Redressal Commission (for short, the National Commission') criticized the observation of the State Commission that the complainant could not prove that he had suffered pecuniary loss and observed that loss of one eye for the entire life was an extremely serious matter which deserved a more sensitive approach by the State Commission. The National Commission held that the appellant has suffered due to gross negligence of the hospital authorities and enhanced the compensation from Rs.40,000/- to Rs.1,00,000/- and cost of treatment from Rs.5,000/- to Rs.13,000/-. The National Commission directed that the amount be paid to the appellant-complainant within six weeks, failing which he shall be entitled to interest at the rate of nine per cent per annum. Feeling dissatisfied, the complainant has filed this appeal by special leave.

3. We have heard learned counsel for the parties. Undisputedly, the appellant suffered loss of vision in one eye due to negligence of the hospital authorities to maintain hygiene, which led to infection. This finding of the State Commission was not challenged by the respondents before the National Commission and, therefore, the same will be deemed to have become final. The disability suffered by the appellant is of permanent nature. The appellant, who was in government service, was forced to take pre-mature retirement nine years before the date of superannuation apparently because he could not effectively discharge his duties. At the relevant time his salary was Rs.6400/-. On retirement, the appellant was given pension at the rate of Rs.2500/- per month. Thus, the difference in salary and retirement benefit was Rs.3,900/- per month. After taking into consideration the expected increase in salary, the appellant claimed compensation of Rs.4,32,000/- in lieu of the loss of salary. The respondents have not disputed the fact that the appellant had sought voluntary retirement and consequently, he suffered pecuniary loss. The State Commission awarded paltry amount of Rs.40,000/- without even considering the appellant's plea that he was forced to seek voluntary retirement nine years before the age of superannuation. The National Commission did enhance the compensation to Rs.1,00,000/- but without adverting to the pecuniary loss suffered by the appellant due to pre-mature retirement from service. In our considered view, the monetary loss suffered by the appellant furnishes valid basis for award of enhanced compensation to him.

4. Accordingly, the appeal is allowed in part with costs, impugned order is modified and the management of Cochin Hospital is directed to pay enhanced compensation of Rs.4,32,000/- to the appellant in addition to enhanced cost of treatment i.e. Rs.13,000/-. The appellant shall get cost of litigation which is assessed at Rs.50,000/-. The entire amount shall be paid to the appellant within three months from the date of receipt of copy of this order, failing which the hospital authority shall be liable to pay interest at the rate of twelve per cent per annum with effect from the date of this order till the date of actual payment. The Management shall be entitled to deduct the amount, if any, already paid to the appellant pursuant to the orders of the State and/or National Commission.