

Jaswinder Singh & Another

v.

Santokh Nursing Home & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE S.J. MUKHOPADHAYA

Civil Appeal No. 699-701 Of 2012 | 16-01-2012

1. Leave granted.

2. The appellants are aggrieved by the order Santokh Nursing Home v. Jaswinder Singh, First Appeal No. 506 of 2005 order dated 7-7-2009 (NC) of the National Consumer Disputes Redressal Commission (for short “the National Commission”) whereby the appeals filed by Respondents 1, 2, 3 and the insurance company were partly allowed the compensation awarded by the State Consumer Disputes Redressal Commission, Union Territory, Chandigarh (for short “the State Commission’) was reduced from Rs.12,34,414.50 to Rs.8,00,000.

3. The appellants filed a complaint under Section 17 of the Consumer Protection Act, 1986 alleging medical negligence and deficiency in service on the part of the respondents resulting in the death of Smt. Ravinder Kaur (wife of Appellant 1). They pleaded that Smt. Ravinder Kaur was admitted in Santokh Nursing Home (Respondent 1) on 8-6-2004 for removal of fibroid from her uterus as well as for total hysterectomy; that she was operated upon by Dr. Rashmi Jain (respondent 3) and was discharged from the nursing home on 13.6.2004; that on a subsequent visit to the nursing home, ultrasound was done on her abdomen and it was discovered that two mops/gauges measuring 13½ X 9½ were left in her abdominal cavity. Thereupon, Dr. Kuldip Singh (Respondent 2) performed a colostomy in the intestine. On 6-9-2004 Smt. Ravinder Kaur was admitted in PGI, Chandigarh of removal of mops/gauges. On 13-10-2004 she was admitted in Fortis Heart Care and Multi-Speciality Hospital, Mohali and after one month she died due to septicaemia inside her abdomen. The appellants claimed total compensation of Rs.50,00,000/-. The respondents contested the complaint and denied the allegation of medical negligence.

4. After considering the pleading of the parties and evidence produced by them, State commission concluded that Respondent 3 was guilty of gross negligence and she was liable to compensate the appellants. Respondents 1 and 2 were also held vicariously liable. Accordingly, the complaint filed by the appellants was allowed and Respondent 1, 2, 3 and the insurance company were directed to pay compensation of Rs.12,34,414.50 with interest @ 6% per annum from the date of filing the complaint till actual payment and cost of Rs.10,000/-.

5. Respondents 1 and 2 as also Respondent 3 and the insurance company appealed against the order of the State Commission. The National Commission concurred with the State Commission that Respondent 3 was guilty of medical negligence. This is evident from para 10 of the impugned order *Santokh Nursing Home v. Jaswinder Singh*, First Appeal No. 506 of 2005 order dated 7-7-2009 (NC), which is extracted below:

“On consideration of the respective pleas and the wavering stand taken by Dr. Rashmi Jain at different stages of the complaint, we must conclude that Dr. Rashmi Jain has not denied the factum of pieces of swab/mop having been left inside the abdomen of the deceased at the time of surgical procedure conducted on the patient for removal of the uterine fibroid. Even otherwise there is ample material, in the form of ultrasound report and the subsequent treatment/surgical procedure the patient underwent to show that a foreign body, like a mop was left inside the abdomen of the deceased at the time of surgery conducted by Dr. Rashmi Jain. It is true that in such a surgical procedure, the surgeon is assisted by other doctor and paramedical staff like nurses, etc. who also owe a duty to count the mops used during the surgical procedure to ensure that all the mops/swabs so used had been retrieved before the operated organ is sutured. However, the surgeon cannot be abjure of his/her overall responsibility even in that behalf and cannot be allowed to take the plea that it was not his/her concern to ensure that no mop/swab was left in the abdomen. The pieces of mop/swab left inside the abdomen of the patient had led to infection and septicaemia which ultimately led to her death despite the best possible treatment the patient could be given in other upgraded hospital. The State Commissioner was therefore, fully justified in holding the nursing home as well as Dr. Rashmi Jain guilty of negligence and deficiency in service in giving the medical treatment to the deceased. The said finding is based on correct appreciation of evidence and

material placed on record and calls for no interference from this commission. This finding also finds some support from the recent judgment of the Hon'ble Supreme Court in *Martin F. D'Souza v. Mohd. Ishfaq* (2009) 3 SCC 1 : (2009) 1 SCC (Civ) 735 : (2009) 1 SCC (Cri) 958 : (2009) 1 CPJ 32".

6. The national Commission then considered the question whether the compensation awarded by the State Commission was excessive, took cognizance of the assertion made before it that the deceased was not generating any income by practising any occupation for gain and she was merely a homemaker and reduced the amount of compensation to Rs.8,00,000/-.

7. Shri Himanshu Gupta, learned counsel for the appellants argued that the impugned order *Santokh Nursing Home v. Jaswinder Singh*, First Appeal No. 506 of 2005 order dated 7-7-2009 (NC), is liable to be set aside because the National Commission has not assigned cogent reasons for reducing the amount of compensation by Rs.4,34,414.50. The learned counsel submitted that the particular perception entertained by the members of the National Commission about the value of the services rendered by a housewife could not be made basis for reducing the amount of compensation awarded by the State Commission.

8. Shri Rajiv Kataria, learned counsel appearing for respondent 3 argued that the National Commission did not commit any error by reducing the amount of compensation because the appellants did not produce any evidence to show that the deceased was gainfully employed. He further argued that the State Commission committed grave error by applying the multiplier of 13 ignoring that the deceased was fifty years old at the time of surgery and death.

9. The learned counsel for Respondent 1 and 2 submitted that the hospital was insured with Respondent 4 and the insurance company has already paid a sum of Rs.5,00,000/-.

10. We have considered the submissions of the learned counsel and carefully perused the record.

11. In our view, the National Commission committed serious error by reducing the amount of compensation by assuming that the award made by the State Commission was on higher side. The mere fact that the deceased was a homemaker was not sufficient to deny adequate compensation to the appellants in lieu of the services rendered by her see *Arun Kumar Agrawal v. National Insurance Co. Ltd.* (2010) 9 SCC 218 : (2010) 3 SCC (Civ) 664 : (2010) 3 SCC (Cri) 1313. In that case, this court considered the questions whether compensation could be awarded keeping in view the gratuitous services rendered by a housewife, referred to several precedents including some judgments of the English courts and held: (SCC pp.237-38, paras 26-27)

“26. In India the courts have recognized that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by the wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is hours. She takes care of all the requirements of the husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean, etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

27. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. the husband and children. However, for the purpose of award of compensation to the dependants, some pecuniary estimate has to be made of the services of the housewife/mother. In that context, the term ‘services’ is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like grand-mother may volunteer to render some of the services to the family which the deceased was giving earlier”.

12. By applying the ratio of the aforesaid judgment in Arun Kumar Case (2010) 9 SCC 218 : (2010) 3 SCC (Civ) 664 : (2010) 3 SCC (Cri) 1313 to the facts of this case, we hold that the National Commission committed grave error by reducing the amount of compensation determined by the State Commission.

13. In the result, the appeals are allowed, the impugned order Santokh Nursing Home v. Jaswinder Singh, First Appeal No. 506 of 2005 order dated 7-7-2009 (NC) is set aside and the one passed by the State Commission is restored. Respondents 1 and 2 are directed to pay to the appellants the balance amount of compensation with interest @ 6% per annum from the date of filing of complaint. The needful must be done within a period of three months from today.