

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.1442 OF 2019
(Arising out of SLP(C)No.14301/2015)

SHILABEN ASHWINKUMAR RANA ... APPELLANT(S)

VS.

BHAVIN K. SHAH & ANR. ... RESPONDENT(S)

O R D E R

1. Leave granted.
2. The appeal arises from a judgment of the National Consumer Disputes Redressal Commission¹ dated 15 May 2014. The finding of a deficiency of service is based on medical negligence.
3. The compensation that was granted by the District Consumer Disputes Redressal Forum² has been enhanced to Rs.10,00,000 (Rupees Ten Lakhs). The District Forum granted compensation in the amount of Rs.5,00,000 (Rupees

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1 "NCDRC"

2 "District Forum"

Five Lakhs) together with interest @ 9% per annum and costs of Rs.25,000 (Rupees Twenty Five Thousand). The State Consumer Disputes Redressal Commission³, deleted the order for the payment of costs. The SCDRC also held that the liability would be joint and several as between the general surgeon and the anesthetist.

4. The Son of the appellant was admitted to the Jivanshri Hospital, Balasinor at which the respondents were attached as surgeon and anesthetist. The child who was 2^{1/2} years of age was suffering from penile phimosis. On 25 December 2008, the first respondent performed a procedure of surgical circumcision. The procedure took about fifteen minutes. Soon after it was over, the child developed respiratory distress. In consequence, he has been reduced to a vegetative state, from which he has not recovered.

5. The appellant moved a complaint before the District Forum, which by its order dated 31 January 2011 found that the respondents were negligent in the discharge of their professional duties. The District Forum was of the view that the principle of *res ipsa loquitur* applies to the situation. Soon after the surgery, the child suffered from a constriction of the larynx. Due to a spontaneous aspiration of vomit material into the respiratory passage,

3 "SCDRC"

he has suffered the consequence of a physical and mental disability.

6. The finding of the District Forum on medical negligence has been confirmed both by the SCDRC and NCDRC. The appeal before the SCDRC against the order of the District Forum was filed by the respondents, the two treating doctors. However, aggrieved by the order of the SCDRC, the appellant moved a revision before the NCDRC which enhanced the compensation to Rs.10,00,000 (Rupees Ten Lakhs) together with interest @ 6% per annum. An amount of Rs.30,000 (Rupees Thirty Thousand) was awarded towards the costs of litigation. The present appeal has been instituted in order to seek a further enhancement.

7. Learned counsel appearing on behalf of the appellant submits that the child who is now 12 years old, continues to remain in a vegetative state. The amount which has been awarded by the NCDRC, it has been urged, is inadequate to meet the requirement of nursing care. Learned counsel submitted that the child continues to survive, but in a condition which is tragic. Given the requirements of qualified care and help, an enhancement is sought.

5. Learned counsel appearing on behalf of the respondents submitted that under Section 24 of the Consumer Protection Act, 1986, orders of the District Forum, the State Commission or the National Commission are final if no appeal has been preferred. In the present case, it was

urged that the appeal was filed by the treating doctors against the order of the District Forum. Hence it was urged that in law, the appellant must be treated as having accepted the finality of the order passed by the District Forum. Learned counsel submitted that the appeal before the NCDRC was filed since the SCDRC had deleted the direction for payment of interest and for costs. Hence, it has been submitted that only that part of the order of the SCDRC which took away a portion of the relief which was granted by the District Forum could be the subject for consideration.

6. There is a concurrent finding in the present case of medical negligence. For the purposes of the present appeal, it would be appropriate to advert to the counter affidavit which has been filed by the first respondent. It vividly indicates, what even according to the respondent, has transpired :

"7.The decision to perform the surgery was taken as the child was suffering from phimosis (tightening of the foreskin of the penis). The operation was successfully completed in approximately 15 minutes. The surgery was completed and the child came out of anesthesia/unconsciousness but was sleepy when he was shifted to a nearby ward where h was being monitored. After some time, the doctors were called because the child had respiratory trouble. They rushed to the child and found that the breathing passage was blocked due to spontaneous vomiting and aspiration of the vomit material into the respiratory passages. Such aspiration of vomitus, along with laryngospasm

(sudden constriction of the larynx) is a common and known complication after surgery/anesthesia. Medical literature shows that in a large prospective study of 1,36,929 patients, the overall incidence of laryngospasm was 8.7 per 1000 patients. On the other hand, this rises to 96 per 1000 (almost one in 10) in case of children with recent respiratory infection. That is why it is advised in medical literature to avoid giving anesthesia to children upto 6 weeks after respiratory infection. It is extremely pertinent to note that before giving anesthesia, the respondent anesthetist had carried out pre-anesthetic check-up and had asked the parents whether the child had any recent infection and they answered in the negative. However, during cross examination before the Ld. District Forum, it was revealed that the patient had URTI (Upper Respiratory Tract Infection) within one week preceding operation. Thereafter, on 06.03.2009, the patient was discharged from Sterling Hospital Ahmedabad. The diagnosis as per the discharge summary was - "Hypoxic ischaemic encephalopathy following cardio-respiratory arrest after circumcision with aspiration pneumonia". On 07.11.2009, the child was examined by Dr. Sudhir V. Shah, Neurologist. He wrote in his notes that the child "identifies parents". On 11.08.2010, a disability certificate issued to the child stated that : He was a case of severe mental retardation. This shows that patient was never in state of coma or vegetative state. In fact this is a case where the child's breathing was handicapped by aspiration of vomiting leading to sudden laryngospasm as well as blockage of the respiratory passages by the vomited material. This resulted in brain hypoxia and mental retardation."

7. The above extract, taken from the version of the first respondent himself, clearly establishes a case of medical negligence. The aspiration of vomit material took place soon after the surgery. This was a complication which was known to the surgeon and the anesthetist.

Failure to take adequate precautions establishes in our view, a clear case of medical negligence. That apart, the affidavit is a clear admission of the fact that the child has suffered severe mental retardation and brain hypoxic ischaemic encephalopathy.

8. The tragic condition of the child and of the parents, who have to look after him, needs redressal by this Court. We are inclined to do so in the exercise of our jurisdiction under Article 142 of the Constitution for the purposes of doing complete justice. In Nizam's Institute of Medical Sciences Vs. Prasanth S. Dhananka⁴, a three Judge Bench of this Court emphasized that cases involving disability are in many respects even more tragic than cases of death, particularly where the disability is of a nature involving a life long condition of despair and helplessness. This Court observed :

"90. At the same time we often find that a person injured in an accident leaves his family in greater distress, vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and

emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity."

9. While some element of redress has been provided to the appellant by the enhancement of compensation by the NCDRC, the enhancement, in our view, does not take into account the requirements of nursing care, medical help and other attendant requirements of the child for the future. Taking an overall view of the matter, we are of the view that the ends of justice would be served by enhancing the compensation, which has been awarded by the NCDRC, by an amount of Rs.7,00,000 (Rupees Seven Lakhs), which shall carry interest at the rate which has been awarded by the NCDRC.

10. The civil appeal and all pending applications shall stand allowed accordingly. There shall be no order as to costs.

.....J
[Dr. DHANANJAY Y. CHANDRACHUD]

.....J.
[HEMANT GUPTA]

New Delhi;
4 February 2019.

ITEM NO.52

COURT NO.9

SECTION XVII

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

Petition(s) for Special Leave to Appeal (C) No(s).14301/2015

(Arising out of impugned final judgment and order dated 12-05-2014 in RP No.2938/2012 passed by the National Consumers Disputes Redressal Commission, New Delhi)

SHILABEN ASHWINKUMAR RANA

Petitioner(s)

VERSUS

BHAVIN K. SHAH & ANR.

Respondent(s)

Date : 04-02-2019 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE HEMANT GUPTA

For Petitioner(s) Mr. Rabin Majumder, AOR
Mr. Joydeep Mukherjee, Adv.

For Respondent(s) Mr. Tejveer Singh Bhatia, Adv.
Mr. Rohan Swarup, Adv.
Ms. Vishakha Ahuja, Adv.
Mr. Vivek Ranjan, Adv.
Ms. Archana S., AOR
Mr. Gaurav Sharma, Adv.

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

Leave granted.

The appeal is allowed with no order as to costs in terms of the signed order.

(Saroj Kumari Gaur)
Branch Officer

(Sarita Purohit)
AR-cum-PS

(Signed order is placed on the file)