

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

NEW DELHI

FIRST APPEAL NO. NC/FA/628/2019

(Against the Order dated 1st March 2019 in Complaint 78/2011 of the State Consumer Disputes Redressal Commission Andhra Pradesh)

DR. P. YASHODHARA

PRESENT ADDRESS - W/O. DR. P.S. REDDY , D NO 15/266, BRUNDAVANAM NELLORE
ANDHRA PRADESH ,

.....Appellant(s)

Versus

K. SREELATHA

PRESENT ADDRESS - W/O. RAJASEKHAR, ZETLAKONDURU MANUBOLU MANDAL, SPSR
NELLORE ANDHRA PRADESH ,

.....Respondent(s)

BEFORE:

HON'BLE MR. BINOY KUMAR , PRESIDING MEMBER

HON'BLE MRS. JUSTICE SAROJ YADAV , MEMBER

FOR THE APPELLANT:

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FOR THE RESPONDENT:

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DATED: 06/06/2025

ORDER

Appeared at the time of arguments:

For the Appellant : Mr. V. Sridhar Reddy, Advocate

For the Respondent : Mr. S. Ravi Kumar, Advocate (VC)

Binoy Kumar, Presiding Member

1. The present First Appeal has been filed under Section 19 of the Consumer Protection Act, 1986 (*for short "the Act"*) assailing the Order dated 01.03.2019 passed by the Andhra Pradesh State Consumer Disputes Redressal Commission,

Vijayawada (*hereinafter referred to as the "State Commission"*), by Dr. P. Yashodhara (*hereinafter referred to as the Appellant/Opposite Party*) against Mrs. K. Sreelatha (*hereinafter referred to as the Respondent/Complainant*) seeking to set aside the impugned order of the State Commission.

2. Brief facts of the case as narrated in the Complaint are that the Respondent/Complainant was admitted to the Appellant's hospital at Nellore on 16.04.2011 during an advanced stage of pregnancy. On 17.04.2011, she gave birth to a male child through forceps delivery performed by the Appellant. The Respondent alleged that due to the Appellant's negligence during the delivery, the baby suffered serious crush injuries to the scalp and necrosis, which later became necrotic. The right ear pinna was also crushed and detached. As a result of these injuries, the baby sustained brain damage and has become mentally disabled. The Respondent further stated that the child was taken to CHILDS Trust Hospital in Chennai for further treatment, where they incurred expenses of approximately Rs.4,00,000/-. The doctors at the said hospital confirmed that the injuries were caused due to improper handling and negligence during the forceps delivery by the Appellant. The hospital issued medical reports and certificates supporting this finding. The Respondent also submitted that the Appellant had conducted an ultrasound scan in her hospital, which showed the baby's weight as 3.6 kg. The Respondent had requested a caesarean section surgery considering the size of the baby, but the Appellant insisted on a forceps delivery. The Appellant took the Respondent's signatures on certain documents without properly informing her of the risks involved in a forceps delivery. The medical records from CHILDS Trust

Hospital clearly establish that the baby suffered severe injuries during the forceps delivery conducted by the Appellant, which amounts to gross medical negligence. Aggrieved by the act of Appellant, the Respondent filed the Complaint before the State Commission with the following prayer: -

“Therefore, it is prayed that this Hon’ble Commission may be pleased to direct the Opposite Party to pay a sum of Rs. 40.00 Lakhs as a compensation to the Complainant towards expenditure for the treatment to the baby, mental agony and loss suffered by the Complainant’s family due to negligence of Opposite Party in performing forceps delivery of the baby of the Complainant born on 17.04.2011 at Opposite Party Hospital, Nellore and grant such other reliefs as this Hon’ble Court feels fit and proper in the circumstances of the case, including costs.”

3. The Appellant/Opposite Party in its written version before the State Commission denied all allegations of negligence and specifically denied that the baby suffered any brain injury or became mentally retarded due to the delivery conducted by her. She stated that she had no knowledge about the Respondent admitting the child in CHILDS Trust Hospital, Chennai, and denied the claim that Rs. 4,00,000/- was spent on medical treatment. She also denied that any medical reports or certificates from the said hospital attributed negligence by her. According to her, the reports were vague and suggested the child might have had a rare medical condition unrelated to the delivery. She claimed that the consent of Respondent for forceps delivery was valid and voluntarily given, and no undue influence was involved. She asserted that at the time of delivery and discharge, the baby was healthy, had a good APGAR score, and was examined by a specialist paediatrician, Dr. P. Ramdass, who found the baby normal and only prescribed antibiotics as a precaution. The Appellant also stated that the Respondent was readmitted to her hospital on 21.04.2011 for anaemia and stayed until 27.04.2011,

which, she argued, would not have occurred if there had been any negligence during the delivery. She alleged inconsistencies in the medical records of Kanchi Kamakoti Childs Trust Hospital. According to her, the discharge summary from CHILDS Trust Hospital indicated complications like subgaleal haemorrhage and necrotizing fasciitis, which she claimed were secondary complications arising during treatment and not due to the delivery.

4. The Respondent contends that the consent obtained was under undue influence and is not valid in the eyes of law. The Respondent further contended that she issued a legal notice dated 29.07.2011 to the Appellant, seeking an explanation. In response, the Appellant issued a vague and evasive reply on 02.08.2011, denying any injury or negligence.

5. After appreciating the facts of the case, the State Commission allowed the Complaint with directions to the Opposite Party/Appellant :-

“34) The Complainant has not given separate statement of claim towards the expenditure for the treatment of the boy, but Rs.40,00,000/- compensation was claimed towards the expenditure for the treatment to the boy, mental agony and loss suffered by the Complainant family. However, the counsel for the Complainant during arguments has submitted that a sum of Rs. 4,00,000/- was spent towards medical expenses of the boy in Chennai, but we find only medical bills in Exs.A-6 and A-7 and the amount covered under Ex.A-6 comes to Rs. 12,855/- and the amount under Ex.A-7 comes to Rs. 59,675/- and a total sum of Rs.72,530/-. Therefore, the said sum of Rs.72,530/- is awarded under the head medical expenses. Thus, the Complainant is entitled to Rs.30,72,530/- in all.17

35)It is summarized that the Complainant is entitled to the following amounts under two heads:

i) Towards compensation for the loss and mental agony – Rs.30,00,000/- (Rupees thirty lakhs only)

ii) Towards treatment expenses - Rs. 72,530/- (Rupees seventy two thousand five hundred and thirty only)

Total - Rs. 30,72,530/- (Rupees thirty lakhs seventy two thousand Five hundred and thirty only)

Thus, a total amount under the aforesaid two heads comes to Rs.30,72,530/- (Rupees thirty lakhs seventy two thousand five hundred and thirty only) and the Opposite Party has to pay the said amount with interest at 9% p.a. from the date of complaint, ie., from 26.08.2011.

36) In the result, the complaint is allowed in part awarding a sum of Rs.30,72,530/- (Rupees thirty lakhs seventy two thousand five hundred and thirty only) to the Complainant. The Opposite Party is directed to pay the said amount of Rs.30,72,530/- (Rupees thirty lakhs seventy two thousand five hundred and thirty only) within eight weeks from the date of this order with interest at 9% p.a. from the date of complaint, i.e., 26.08.2011 till realization. A sum of Rs.25,000/- (Rupees twenty five thousand only) is awarded towards costs of litigation to the Complainant.”

6. Aggrieved by the Order of the State Commission, the Opposite Party/Appellant has filed the present Appeal before this Commission with the following prayer:

“a) allow the First Appeal against the Interim Impugned Order dated 01.03.2019 of the A.P. State Consumer Disputes Redressal Commission at Vijayawada passed in C.C. NO. 78 of 2011, and

b) order (s) as this Hon’ble Commission may deem fit and appropriate in the facts and circumstances pass such other or further es of the case.”

7. We have heard the learned Counsel for both the parties and perused the material available on record.

8. The Learned Counsel of the Appellant argued that the disability certificate dated 06.09.2017, allegedly showing 90% mental retardation with an IQ of 25, is fabricated and cannot be relied upon. The said certificate is dated prior to the Order of the State Commission dated 01.03.2019, it was never filed or brought on record

during the proceedings before the State Commission. The Learned Counsel for Appellant submitted that the Respondent was again admitted to the hospital from 21.04.2011 to 27.04.2011 for treatment of anaemia, which clearly shows there was no medical negligence during the forceps delivery.

9. The Learned Counsel submitted that the Respondent was admitted to the hospital of Appellant on 16.04.2011 in an advanced stage of pregnancy and delivered a male child on 17.04.2011. Immediately after delivery, the child was examined by specialist paediatrician Dr. Ramadoss, and no injuries or abnormalities were noted or complained of at that time.

10. The Learned Counsel for the Respondent argued that the discharge summary clearly shows the Respondent was admitted with obstructed labour, which, as per standard medical practice, makes forceps delivery unsafe and requires an emergency caesarean section. The Respondent further argued that the Appellant, instead of performing a medically warranted caesarean section surgery in light of obstructed labour and the baby's weight, negligently opted for a forceps-assisted delivery, which caused severe injuries and permanent disability to the child. He further submitted that the consent was obtained under undue influence and not valid in the eyes of the law.

11. This is a matter relating to alleged medical negligence on the part of the Appellant doctor. The State Commission has given a detailed Order holding the Appellant guilty of medical negligence and awarding certain compensation to the Respondent. On perusal of record, certain facts are clear which would enable determining whether there has been a medical negligence committed by the

Appellant. The first document to be relied upon is the discharge summary of Kanchi Kamakoti Child's Trust Hospital where the patient and son of the Respondent/Complainant was admitted on 19.04.2011. It would be worthwhile to reproduce the relevant portion for better appreciation of the problem:

"DIAGNOSIS: TERM/AGA / INTRAUTERINE HYPOXIA / SUBGALEAL BLEED /CELLULITIS / NECROTISING FASCIATIS / COAGULOPATHY /SEPSIS / SHOCK / ACUTE RENAL FAILURE / VENTILATED /VENTILATOR ASSOCIATED PNEUMONIA

MATERNAL HISTORY:

Mrs. Srilatha, 21 Yrs Old, with previous 3 abortions. Blood group: O Positive. Antenatal USG done was normal. Antenatally mother had history of PIH.

DELIVERY HISTORY:

Infant was delivered by forceps assisted delivery. Said to have cried well at birth. Birth weight: 3.6 Kgs.

Blood group: O Positive.

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SUMMARY:

Infant was admitted on day 3 of life, with history of lethargy, refusal of feeding. irritability and swelling of the scalp. At admission, infant was dull looking, hypothermic with poor pulses, tachycardic, tachypneic with grunt and prolonged CF with subgaleal hemorrhage.

SUBGALEAL BLEED/CELLULITIS / NECROTISING FASCIATIS

Baby was developed subgaleal bleed which was gradually increased with signs[↑] of inflammation and necrotizing fasciitis with perichondritis of both ears. Pediatric surgeon Dr. Priya Ramachandran's opinion was taken and infant underwent wound debridement and scab removal. Plastic surgeon Dr. Mathangi Ramakrishnan's opinion was taken and baby underwent daily wound dressing.

COAGULOPATHY/SEPSIS/SHOCK / ACUTE RENAL FAILURE

Baby was admitted with poor pulses, tachycardia, tachypnea, prolonged CRT, low BP, requiring ventilator and inotropic support (Dobutamine and Dopamine).

Baby was oliguric with raised renal parameters. Pediatric nephrologist Dr. Sairam

opinion was taken. As renal parameters gradually improved, with improvement in sepsis peritoneal dialysis was deferred.

Baby had clinical bleed in the form, of NG bleed with prolonged PT and PTT with thrombocytopenia, requiring FFP and Platelet transfusions.

Baby had tachycardia, tachypnea, grunting, prolonged CRT with leucocytosis, thrombocytopenia, positive CRP and procalcitonin. Pus culture grew E.Coli, acinetobactor and Klebsiella. CSF analysis was normal. Blood and urine cultures were sterile.

Infant was treated with IV fluids, IV antibiotics (Taxim, amikacin, meropenam, Teicoplanin; Piptaz, Vancomycin metrogyl, Cefipime Tazobactam, local soframycin); inotropic support (Dobutamine, dopamine), ventilator support. PRBC, FFP and Platelet transfusions, Vitamin K and daily dressings.

At discharge baby was alert, with good cry and tone, taking paladai feeds well and wound in the scalp, healing red granulation tissue. Parents want to get IV antibiotics and alternate wound dressing at local place, hence baby was discharged at request.”

12. In the discharge summary issued by the Appellant's hospital in the diagnosis, it has been clearly mentioned that it was a case of obstructive labour and outlet forceps delivery. It also records that the male child was delivered normally with a right medio lateral episiotomy through forceps on 17.04.2011 at 08.34.37 a.m. There is no record of any other finding on the status of the new born.

13. It is also a fact that the hospital obtained the consent for carrying out the surgery. However, a perusal of the consent form indicates that no specific mention of carrying out such procedure mentioned. The word used is “permission for doing operation for the sickness” (*jabbu*). Evidently, the consent is vague and appears to be a pre-printed form which has been used in a routine manner. It cannot be called an informed consent.

14. On the question whether the operation should have been done through caesarean section or not and whether forceps should have been used or not, cannot be commented upon as this is the discretion of the treating surgeon/gynaecologist,

who would have taken the procedure as deemed fit in the given circumstances. However, the fact remains that the baby suffered certain injuries on his scalp and perichondritis of the ears which is evidenced by the discharge summary of the second hospital wherein the boy was admitted for further treatment. We would not like to rely on the document submitted by the Respondent regarding disability suffered by the baby since the same has been filed at the time of the Appeal and was not part of the State Commission's Order. It would be difficult to correlate the injuries suffered on the scalp with the subsequent mental retardation suffered by the boy as no evidence for and against has been produced by either party. Therefore, we are not relying on the disability certificate submitted by the Respondent.

15. The fact remains that the baby had to be taken to another hospital in Chennai for further treatment. There is an injury on the scalp and perichondritis of the ears which has been confirmed by the discharge summary of the second hospital which has not been contradicted by the Appellant. The State Commission has gone into detail and given a well-reasoned Order and we find no illegality in holding the Appellant doctor responsible for the injury caused on the scalp of the baby which had necessitated further treatment in an another hospital. Thus, medical negligence is established.

16. The question remains whether the compensation given by the State Commission is justified. The Complainant has mentioned that she had spent Rs.4,00,000/- towards medical expenses at Chennai. The State Commission has awarded a sum of Rs.72,530/- based on the bills produced by the Respondent/Complainant. The other compensation is Rs.30,00,000/- for the loss and mental agony and Rs.25,000/- as the litigation cost. In so far as the loss for mental agony, the State Commission has not given any finding on how the amount

has been arrived at. In our considered opinion, this appears to be on the higher side though the family definitely suffered mental agony till the time of discharge from the second hospital which happened on only

04.06.2011. There is a stay of around 1 ½ months in Chennai for the treatment in the second hospital. For this period, the amount of Rs.10,00,000/- as compensation would be in Order considering the quantum of injury and the gravity of negligence in using of forceps.

17. In view of the aforesaid discussion, the Appellant is directed to pay the following amounts to the Respondent for the medical negligence committed by her:

(a) Rs.72,530/- for the treatment expenses.

(b) Rs.10,00,000/- as compensation for the medical negligence and mental agony.

(c) Rs.50,000/- towards litigation cost.

All the above three payments shall be made within eight weeks of this Order along with interest @ 9% p.a. from the date of filing of Complaint till realisation, failing which, the rate of interest shall stand enhanced to 12% p.a. for the same period.

18. The First Appeal stands accordingly disposed of.

19. Pending Applications, if any, stand disposed of.

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BINOY KUMAR
PRESIDING MEMBER

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SAROJ YADAV
MEMBER