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### Judgment 1.

#### Maharashtra State Consumer Disputes Redressal Commission, Mumbai

Dr. J. G. Kini...Appellant

Versus

Jagannath Zagade & Anr....Respondents

#### Before:

Hon'ble Mr. Justice A. P. Bhangale, President

Mr. D. R. Shirasao, Judicial Member

**Dated:** 18th July 2018

**Order:** Mr. D. R. Shirasao, Judicial Member

1. Being aggrieved by the judgment and order passed by Ld. Additional District Consumer Disputes Redressal Forum, Mumbai Suburban in Consumer Complaint No.270 of 2003 on 21/06/2010 directing opponents to pay compensation of Rs.4,00,000/- to complainant along with costs of litigation, opponent No.1 – Dr. Kini has preferred this appeal.

2. Brief facts of this are as under: Respondent no.1 – Jagannath Zagade had filed consumer complaint against the appellant and respondent no.2 for getting compensation on account of giving medical negligence while giving treatment to his son. Complainant submitted that his son – Minesh had high temperature on 28/08/2002. Hence, his son – Vilas had taken him to the clinic of appellant/opponent no.1. The opponent no.1 had given injection to Minesh on his left hip and had also prescribed some tablets to him. He submitted that although there was marginal improvement in the health of Minesh he had again high fever on 02/09/2002. He submitted that, hence, Minesh had gone to clinic of opponent no.1. However, as the same was closed he had gone to the clinic of opponent no.2. After some time his brother Vilas had also come to that clinic. He submitted that both of them had informed opponent no.2 that on 28/08/2002 Minesh had high temperature and opponent no.1 had given injection to him on his left hip and prescribed tablets to him. He submitted that thereupon opponent no.2 had also prescribed some medicines to Minesh and wanted to give injection to Minesh. He submitted that, however, at the time of giving injection to Minesh the needle and syringe fell down on the floor. He submitted that the opponent no.2 had picked up that syringe and needle and without sterilizing the same he had given injection by that needle to Minesh. He submitted that after taking injection in the hospital of opponent no.2 Minesh had some giddiness. Hence, opponent no.2 had given water to him and asked him to sit for some time in the clinic. He submitted that thereafter Vilas had brought Minesh to the house in auto rickshaw. He submitted that on next day i.e. 03/09/2002 Minesh started getting severe pain on left side of his hip and there was swelling at the place where injection was given to him by the opponent no.2. He submitted that, hence, Minesh had again gone to the hospital of opponent no.2 and opponent no.2 had prescribed some medicines to him. He submitted that on 04/09/2002 the swelling on the left hip of Minesh was increased considerably. Hence, Vilas had taken Minesh to the clinic of opponent no.1. Minesh and Vilas had told about the tablets prescribed by opponent no.2 to Minesh and also informed him that opponent no.2 had given injection to Minesh. They also informed opponent no.1 that now there is swelling on the left hip of Minesh and he has difficulty to move. Complainant submitted that at that time Vilas had shown his readiness to admit Minesh in Harkisandas hospital. He submitted that, however, opponent no.1 had informed Vilas that there is no urgency to admit Minesh in Harkisandas Hospital. However, both, opponent no.1 and opponent no.2 submitted that there is no need of the same. He submitted that although medicines prescribed by opponent nos. 1 and 2 were given to Minesh there was no improvement in the health of Minesh. He submitted that on 05/09/2002 Minesh was admitted in Harkisandas Hospital and from there he was referred to Kasturba Hospital. From Kasturba Hospital he was referred to Nair Hospital. He submitted that after carrying out different tests of Minesh, Doctors of Nair Hospital informed that urgent surgery is required to be conducted on Minesh. They also informed that, however, condition of Minesh is not proper to conduct operation on him. He submitted



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that, hence, urgent operation could not be conducted on Minesh. Ultimately on 06/09/2002 at about 06.00 a.m. Minesh died. He submitted that post mortem examination was conducted on the dead body of Minesh and it was opined that death was due to massive right sided haemothorax and disseminated intravascular coagulation and septicemia (unnatural). Complainant submitted that after collecting necessary documents son of complainant by name Vilas had approached to Consumer Guidance Society of India. However, they had directed to seek expert's opinion of ACASH (Association for Consumers Action on Safety and Health) in respect of death of Minesh. He submitted that accordingly he had submitted all the papers to ACASH and thereupon the expert had given opinion that death of Minesh had taken place due to gross negligence shown by the Doctors while giving treatment to him. He submitted that his son Minesh was aged about 18 years and as opponents had not given proper medical treatment to him he died. Hence, he claimed compensation of Rs.5,00,000/- in that respect from the opponents along with amount spent by him on medical treatment of his son Minesh.

3. Opponent no.1 contested the complaint by filing written version on record. He submitted that he is running his clinic at Charkop, Kandivali (West), Mumbai. He submitted that Minesh had come to his dispensary on 28/08/2002 as he was having high fever, body ache and cold. He submitted that he diagnosed that Minesh had viral fever and he had prescribed tablets to him. He had also given names of the tablets prescribed by him to Minesh. He also admitted that he had given injection Vivoron I.M. to Minesh on left side of his hip with a disposal syringe and needle. He submitted that thereafter Minesh had come to his clinic on 04/09/2002. He submitted that at that time Minesh had also informed him that he had taken medicines and injection from Opponent no.2. He also admitted that at that time there was swelling on the hip of Minesh and he had also having fever. He submitted that at the request of Minesh he had examined him and prescribed medicines to him. However, he directed him to get it confirmed from Opponent no.2 as he had taken treatment from Opponent no.2. At that time the condition of Minesh was not critical. He submitted that at that time he had diagnosed that abscess was developing on the left hip of Minesh and hence, he had prescribed injection Monocel 1 mg. to him along with some tablets. He submitted that he had directed Minesh to get the same confirmed from opponent no.2 and thereafter take those medicines. He has specifically denied the opinion given by ACASH in respect of negligence given by him while giving treatment to Minesh. He submitted that he had not given any medical negligence to Minesh while giving medical treatment to him. Hence, he submitted that he is not liable to pay compensation to the complainant claimed by him.

4. Opponent no.2 had also filed written version on record.

5. Complainant had given his affidavit of evidence on record along with affidavit of Vilas and expert opinion of Dr. Sanjay Nagral, who were cross examined by the opponents. Considering rival contentions of parties, evidence adduced by them on record and documents filed on record, Ld. District Forum had come to conclusion that both opponents had shown medical negligence while giving treatment to Minesh. The Ld. District Forum Directed both the opponents to pay Rs.4,00,000/- as compensation jointly or severally to the complainant along with costs of litigation. Being aggrieved by the same the opponent no.1 – Dr. J. G. Kini has preferred this appeal.

6. Opponent no.2 had preferred appeal bearing No.A/10/875. However, during pendency of appeal, opponent no.2 died and hence, appeal was abated.

7. Heard Ld. Advocate appearing for the appellant/opponent no.1. He submitted that death of Minesh took place due to massive Right sided haemothorax and disseminated intravascular coagulation and septicemia. He submitted that septicemia had caused due to the injection given by opponent no.2 to Minesh which was not sterilized. Hence, he submitted that appellant/opponent no.1 has no direct nexus with the death of Minesh. He submitted that appellant/opponent no.1 had only given initial medical treatment to Minesh by prescribing medicines to him. Septicemia had not caused to deceased Minesh because of the injection given by opponent no.1. He submitted that deceased Minesh had taken further treatment from opponent no.2. The injection which caused gas gangrene to Minesh on left side of his hip was also given by opponent no.2 by unsterilized needle and syringe. He submitted that on 04/09/2002 when deceased Minesh was brought to the hospital of opponent no.1 at



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that time also opponent no.1 had advised Minesh to take medical treatment as per advice of opponent no.2 as opponent no.2 had given medicines to him. He submitted that on that day also the medicines were given to deceased Minesh by opponent no.2. He submitted that on that day the condition of Minesh was not critical and hence, there was no question of hospitalization of Minesh. He submitted that irrespective of that as Minesh was patient of Opponent no.2 he had to take initial instructions in respect of hospitalization from opponent no.2. Hence, he submitted that appellant/opponent no.1 had not given any wrong treatment to Minesh and he had not shown any negligence to Minesh while giving medical treatment to him. However, Ld. District Forum had not considered the same and held opponent no.1 responsible along with opponent no.2 for giving medical negligence to Minesh. Hence, he submitted that order passed by the Ld. District Forum in respect of appellant/opponent no.1 be set aside by allowing this appeal. In the alternative he submitted that if appellant/opponent no.1 is also held responsible for causing negligence to deceased Minesh along with opponent no.2 then as opponent no.2 now died the amount of compensation awarded to the complainant be reduced to that extent.

8. Heard Ld. Advocate appearing for the respondent/complainant. He submitted that Minesh was basically patient of appellant/opponent no.1. Opponent no.1 had prescribed medicines to Minesh on 28/08/2002 as deceased Minesh was having high temperature. On that day also appellant/opponent no.1 had given injection to Minesh on left side of his hip. He submitted that although appellant/opponent no.1 had given medical treatment to Minesh there was no improvement in his health and again he had come to the clinic of opponent no.1 on 02/09/2002. However, as on that day the clinic of opponent no.1 was closed, he was required to go to hospital of opponent no.2 for getting further medical treatment. He submitted that opponent no.2 had given injection to Minesh by unsterilized syringe and needle which caused gas gangrene to Minesh. He submitted that, hence, on 04/09/2002 again Minesh had come to opponent no.1 and informed this fact to opponent no.1. He submitted that on that day brother of respondent no.1 had shown his readiness to admit Minesh in hospital. However, opponent no.1 advised brother of Minesh that condition of Minesh is not critical and there is no need to admit him in hospital. He submitted that ultimately on 05/09/2002 the condition of Minesh was worsened and he was required to be admitted in hospital. However, as delay had taken place in admitting Minesh in hospital he could not be operated upon and which resulted into the death of Minesh. He submitted that opponent no.1 by not advising Minesh to get hospitalized had given wrong advice to him which resulted into death of Minesh. He submitted that as gas gangrene had developed to Minesh there was no alternative for Minesh to get himself hospitalized for draining out pus from the gas gangrene. He submitted that because of the wrong advice given by appellant/opponent no.1 Minesh could not be admitted in hospital in time which resulted into causing his death. Hence, he submitted that appellant/opponent No.1 is also equally responsible with opponent no.2 in giving medical negligence to Minesh. The Ld. District Forum has considered this fact correctly and directed both opponents to give compensation to the complainant in respect of death of Minesh. Hence, he submitted that appeal be dismissed. He submitted that the compensation is to be given on the basis of loss sustained to complainant due to death of Minesh. The same cannot be reduced only because one of the opponents died.

9. Perused record of the case. On perusal of the same it has become clear that deceased Minesh was son of complainant. On 28/08/2002 he was having high temperature. Hence, brother of Minesh had taken him to the clinic of opponent no.1. On that day opponent no.1 had given one injection on the left side of the hip of Minesh and had also prescribed some medicines to him. On perusal of record it has become clear that although opponent no.1 had prescribed medicines to Minesh, there was no recovery in the health of Minesh and hence, he had again come to the clinic of opponent no.1 on 02/09/2002. However, on that day the clinic of opponent no.1 was closed and hence, he was required to go to hospital of opponent no.2. He had informed opponent no.2 about the medicines prescribed by opponent no.1 to him on 28/08/2002. On perusal of record it appears that on 02/09/2002 opponent no.2 had given one injection to Minesh by unsterilized needle and syringe. He had also prescribed medicines to him. However, because of the same gas gangrene was developed on left side of his hip. On perusal of record it appears that as condition of Minesh had become serious he had again come to clinic of opponent no.1 on 04/09/2002. At that time he had informed opponent no.1 about medicines given by opponent no.2 to him and injection given by opponent no.2 to Minesh.



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He had also shown the gas gangrene developed on left side of his hip to opponent no.1. He had also shown his readiness to get admitted in hospital. However, it appears that opponent no.1 had come to conclusion that condition of Minesh is not serious and advised him that there is no need to get him hospitalized. He had given some medicines to Minesh and directed him to take the same after consulting with opponent no.2 as he was taking medical treatment from opponent no.2. It appears that opponent no.2 had given some medicines and injection to Minesh and he had also advised Minesh that his condition is not critical and there is no need of hospitalization of Minesh. It appears that, however, in the night the condition of Minesh had become critical and ultimately he was admitted in hospital on 05/09/2002. Initially he was admitted in Harkisandas Hospital and from there he was referred to Kasturba Hospital and finally from there he was taken to Nair Hospital. In Nair hospital due to weak health of Minesh no operation could be conducted on him and ultimately on 06/09/2002 he died. On perusal of post mortem report of Minesh it has become clear that he died due to right sided haemothorax and disseminated intravascular coagulation and septicemia (unnatural).

10. On perusal of record it has become clear that gas gangrene had developed to Minesh due to injection given by opponent no.2 by unsterilized needle and syringe. Hence, it is the contention of Ld. Advocate appearing for the appellant/opponent no.1 that death of Minesh had taken place due to septicemia which was developed to Minesh because of injection given by opponent no.2 by unsterilized syringe and needle. Hence, he submitted that opponent no.1 is not liable in respect of death of Minesh. However, the contention of Ld. Advocate for the appellant/opponent no.1 in this respect cannot be accepted. As gas gangrene developed to Minesh and because of which his condition had become serious he was taken to clinic of opponent no.1 on 04/09/2002. At that time Minesh had told Opponent no.1 about medical treatment given by opponent no.2 to him and had also informed him that opponent no.2 had given injection to him by unsterilized syringe and needle. He had also shown part of his left hip where gas gangrene had developed to him to opponent no.1. We are of the opinion that when gas gangrene had developed to Minesh on left side of his hip due to injection given to him by unsterilized syringe and needle, only remedy was to get him admitted in hospital for operation and to drain the pus from the gas gangrene. In this case it is particular to note that when Minesh was brought to clinic of opponent no.1 on 04/09/2002 Minesh and his brother was willing to admit Minesh in hospital. Brother of Minesh had also informed that he can admit Minesh in Harkisondas Hospital as staff of that hospital is known to him. In this case it is particular to note that, however, opponent no.1 had advised Minesh that his condition is not critical and he is not required to be hospitalized. On the contrary he had prescribed some medicines to Minesh and advised him to take the same after taking opinion of Opponent no.2 as at that time he was taking medical treatment of opponent no.2. It appears that opponent no.2 had also not advised Minesh to get admitted in hospital for operation and advised some medicines to him. We are of the opinion that because of this wrong advice given by, opponent no.1 and opponent no.2 to Minesh, condition of Minesh had become critical due to gas gangrene developed on left side of his hip. Ultimately, in the night of 04/09/2002 condition of Minesh had become critical and on 05/09/2002 he was required to be hospitalized. In this case it appears that due to weak health of Minesh he could not be operated upon and ultimately he died in the morning of 06/09/2002. In this case complainant has filed expert opinion of Dr. Sanjay Nagral by filing his affidavit of evidence on record. He has mentioned in his affidavit that "by not admitting Minesh in hospital both opponents had shown gross negligence while giving medical treatment to Minesh". The Ld. Advocate appearing for opponents cross-examined this witness at length. However, nothing has come on record to disbelieve opinion given by him. Hence, it has become clear that the advice given by opponent no.1 to Minesh that his condition is not critical and there is no need of hospitalization of Minesh was totally wrong and because of which delay had been caused in admitting Minesh and because of which death of Minesh had taken place. Hence, we are of the opinion that considering all these facts Ld. District Forum had rightly come to the conclusion that opponent no.1 was also responsible along with opponent no.2 in giving medical negligence to Minesh.

11. It is the contention of Ld. Advocate appearing for the appellant/opponent no.1 that if both the opponents were responsible for giving medical negligence to Minesh, as now opponent no.2 died, the amount of compensation awarded be reduced to that extent. However, the contention of Ld. Advocate appearing for the appellant/opponent no.1 in this respect cannot be accepted. The compensation is to be given to the complainant in respect of loss caused to him due to death of Minesh. Only because of



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death of one of the opponents had taken place loss caused to the complainant would not be minimized. Hence, the amount of compensation on the ground of death of one of the opponents cannot be reduced. The Ld. District Forum had directed both the parties for giving compensation to the complainant. However, as opponent no.2 died, now, it is the responsibility of opponent no.1 to pay entire amount of compensation to the complainant. Looking to these facts of the case we are of the opinion that the order passed by the Ld. District Forum is legal and correct and hence, appeal filed by the appellant/opponent no.1 is to be dismissed. Hence, we pass the following order:

### **ORDER**

- (i) The appeal is hereby dismissed by directing appellant/opponent no.1 to pay additional costs of Rs.10,000/- (Rupees Ten Thousand only) to the complainant of this appeal.
- (ii) The appellant/opponent no.1 is also hereby directed to pay costs of appeal to the complainant within a period of one month from the date of passing of this order, otherwise, he will have to pay interest on that amount @9% per annum to the complainant from the date of this order till realization of the amount.