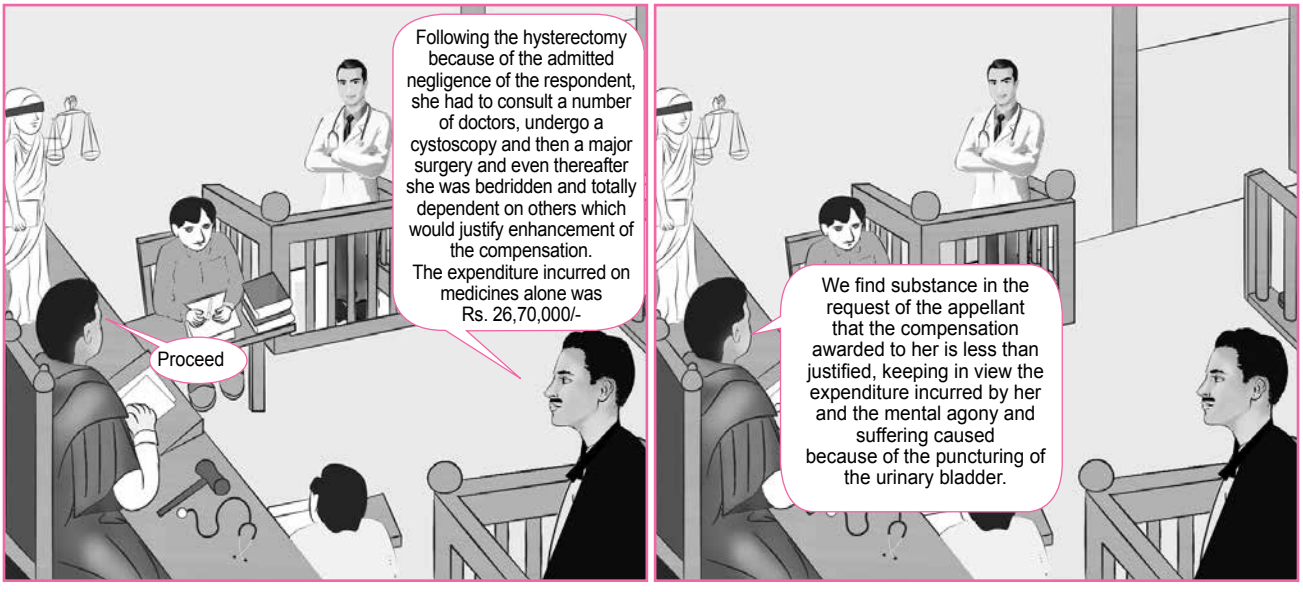
Enhancement of Compensation in Case of Medical Negligence



Lesson: In the case no. 382 of 2007 NCDRC, The Commission ruled in the favor of the appellant saying that this is a fit case where the compensation is enhanced from Rs. 1 lakh to Rs. 2,50,000/- taking into account the medical expenditure incurred as also compensation for mental agony and harassment.

COURSE OF EVENTS

- Appellant approached the respondent/doctor with complaints of severe pains during her menstrual period. After examination, respondent advised her to undergo an abdominal hysterectomy for removal of uterus. She accordingly got admitted in the nursing home for the said surgery and paid the Respondent a package fee of Rs. 20,000/- which included the cost of the surgery, postoperative care as also expenditure on medicines.
- 19.11.2000: The Appellant was operated by the respondent; latter informed the appellant's spouse that the operation was successful.
- 24.11.2000: On removal of the catheter it was noted that the urine kept on dripping and this fact was immediately brought to the notice of the respondent. Appellant was thereafter referred to a urology specialist, Dr A at Nellore who after examining her opined that the urinary bladder had got punctured during the surgery and if the hole was minute it would have healed within a day or two.
- 26.11.2000: The appellant was admitted to Hospital A since this problem continued and Dr B another urology specialist advised immediate surgery.
- 29.11.2000: Cystoscopy was conducted and the problem was diagnosed as vesicovaginal fistula (VVF) for which she was initially prescribed conservative treatment.
- The appellant also consulted Dr C, a urologist in Hyderabad for a second opinion who opined that the appellant's urinary bladder had got punctured on account of negligence of the respondent while suturing the upper portion of the vagina during the hysterectomy and a surgery to repair the VVF was recommended.
- 08.02.2001: A team of doctors at Hospital A in Chennai conducted this surgery.

- 19.02.2001: The appellant was discharged with advice to take full bed rest for about 3 months and also be under regular medical supervision for another 6 weeks.
- 10.12.2001: The appellant was finally declared finally cured. During the intervening period, she had to depend on others for all her daily requirements and suffered mental agony and huge financial expenditure on account of the negligence of the respondent while conducting the hysterectomy surgery and puncturing her urinary bladder.
- Appellant filed a complaint before the State Commission on grounds of medical negligence and requested that the respondent be directed to pay her Rs. 2,67,137/- towards medical treatment and incidental expenses, Rs. 6 lakhs towards mental agony with interest @ 18% per annum from 16.02.2001 till realization.
- Respondent denied that there was any medical negligence and stated that the problem occurred because the patient did not cooperate and on the 6th day removed the catheter against medical advice. It was further stated that the appellant had already undergone two cesarean sections and during the surgery. Respondent found that the bladder was very much adherent to the uterus, which often occurs because of cesarean sections. The complication that occurred during the surgery is known to occur in respect of patients who have undergone previous surgeries and it was not because of any medical negligence on the part of the Respondent.
- The State Commission after hearing the parties and examining the evidence filed before it observed that due to the negligence on the part of respondent the appellant had suffered the problems of undergoing several clinical and diagnostic tests. Apart from that she had suffered pain and agony while undergoing hysterectomy surgery, cystoscopy and VVF surgery.
- The State Commission directed the respondent to pay Rs. 1 lakh towards medical expenses and compensation within a period of 6 weeks failing which the said sum shall carry interest @ 9% per annum till the date of payment. Rs. 3,000/- was awarded as litigation cost.
- This order was accepted by the respondent who did not file an appeal. The present first appeal has been filed by the appellant for enhancement of the compensation.

COMPLAINANT ALLEGATIONS

Counsel for appellant stated that following the hysterectomy because of the admitted negligence of the respondent, she had to consult a number of doctors, undergo a cystoscopy and then a major surgery and even thereafter she was bedridden and totally dependent on others, which would justify enhancement of the compensation. The expenditure incurred on medicines alone was Rs. 26,70,000/- for which evidence was filed.

RESPONDENT REJOINDER

Counsel for respondent on the other hand stated that there was no case for enhanced compensation and the State Commission after taking into account the expenditure incurred and assessing the appellant's contention of mental agony and harassment awarded a compensation of Rs. 1 lakh which under the circumstances is not a lesser compensation.

SOME SALIENT COURT OBSERVATIONS

- The respondent has not filed an appeal against the finding of medical negligence against him.
- On going through the evidence filed by the appellant on the expenditure incurred by her as also the undisputed fact that she had to undergo several tests and another major surgical procedure to repair the damage to her urinary bladder caused during a reasonably common surgery, i.e., hysterectomy, we find substance in the request of the appellant that the compensation awarded to her is less than justified, keeping in view the expenditure incurred by her and the mental agony and suffering caused because of the puncturing of the urinary bladder.
- We are of the view that the statement showing the medical and related expenditure incurred by the appellant of Rs. 2,67,137/- is on the higher side and is not supported by receipts.

FINAL JUDGEMENT

The Commission ruled in the favour of the appellant saying that this is a fit case where the compensation is enhanced from Rs. 1 lakh to Rs. 2,50,000/- taking into account the medical expenditure incurred as also compensation for mental agony and harassment. Respondent is therefore directed to pay the appellant, Rs. 2,50,000/- for medical expenses and compensation and Rs. 3,000/- as litigation cost within a period of

8 week from the date of receipt of this order failing which the entire amount will carry interest @ 9% per annum from the date of default till realization. The Counsel for Respondent states that Rs. 1 lakh has already been deposited by the respondent before the State Commission. If that be so, this amount be adjusted against the compensation awarded to the appellant by us and the balance be paid to the appellant within the stipulated period.

REFERENCE

1. Case no. 382 of 2007, NCDRC; Order date 11.09.2012.