

JPD-12
Ct No.01
29.07.2025
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CO 32 of 2025

Dr. M. Arif Ansari @ Dr. M. Arif
Vs.

Saira Bibi and another

Mr. Subhankar Dutta,
Ms. Somdutta Patra,
Ms. Swagata Mitra

.... for the petitioner

1. Affidavit-of-service and the supplementary affidavit filed by the petitioner today be kept on record.
2. The present challenge has been preferred against the order of the National Consumer Disputes Redressal Commission, whereby an order of the State Commission of West Bengal was affirmed.
3. The genesis of the case is that the opposite parties made an application before the State Commission for compensation against the present petitioner, who is a medical surgeon and operated on the opposite party no.1-Saira Bibi for the purpose of extracting her gallbladder stones. It transpires from the records and the judgments of both the fora that there were two surgeries conducted by the petitioner on the opposite party no.1 in that regard.
4. As a part of the procedure adopted in the operation, which was by way of Laparoscopy,

certain metal chips were left in the body of the opposite party no.1.

5. Learned counsel for the petitioner argues that leaving of the said metal chips is a regular part of such an operation and, as such, has no direct nexus with the ulcer subsequently complained of by the opposite party no.1.
6. It transpires from the impugned orders that the State Commission proceeded to adjudicate the liability of the petitioner to pay compensation without any material basis, even without calling for an expert opinion to assess as to whether there was any negligence on the part of the petitioner.
7. There were several components in the matter which were left unanswered by the State Commission.
8. First, as to whether the ulcer caused to the opposite party no.1 was directly related to the surgeries conducted on her by the petitioner. Secondly, even if so, whether such possibility of ulcer was within the normal zone of side effects of such an operation. Thirdly, if so, whether the risk of such side effect was informed to the opposite party no.1.
9. Without seeking any expert opinion in that regard, the State Commission, apparently on the basis of the opinion of a Homeopathic

practitioner, proceeded to hold that the petitioner, a qualified surgeon, was guilty of negligence.

10. The appellate forum, that is, the National Commission, while deciding the appeal, observed that the forum was not bound in every case to accept the opinion of the expert witness. Without adverting to the material evidence, the National Commission went on to affirm the findings of the State Commission.
11. It transpires that the orders of both the fora, that is, the National Commission as well as the State Commission, are vitiated by non-consideration of the evidence on the germane facts involved in the case as indicated above. The National Commission proceeded tangentially, merely by observing that the report of an expert is not necessarily binding on the Commission, without considering the fact that without an expert opinion, it was not possible for either of the fora, who are not experts in the field of surgery or medical practice, to arrive at a proper conclusion as to the involvement of the petitioner and/or if there was at all any negligence on the part of the petitioner leading to the ulcer complained of by the opposite party no.1.
12. Since the opposite parties were the complainants, the burden of proof lay on the present opposite

parties to prove, if necessary by calling an expert, the fact that there was a direct nexus between the ulcer, if any, caused to the opposite party no.1 and the surgeries conducted by the petitioner. In the absence of the same, merely on the basis of the opinion of a Homeopathic practitioner, who is not a specialist in surgery, the fora below acted perversely in holding the petitioner guilty of negligence and awarding compensation.

13. Thus, this Court is of the clear view that the impugned judgments of both the fora cannot stand the scrutiny of law.
14. Accordingly, CO 32 of 2025 is allowed, thereby setting aside the judgment and order dated September 03, 2024 passed by the National Consumer Disputes Redressal Commission in Appeal No. 893 of 2022, affirming the judgment and order dated July 25, 2022 passed by the State Consumer Disputes Redressal Commission, West Bengal, Circuit Bench at Siliguri in connection with Complaint Case No. C.C./23/2018 and remanding the matter to the State Consumer Disputes Redressal Commission, West Bengal, Circuit Bench at Siliguri to re-adjudicate the proceeding afresh upon giving opportunity to both sides to adduce adequate evidence and, if necessary, by appointing an

expert to ascertain as to whether there was any nexus between the ulcer, if any, suffered by the opposite party no.1 and the surgeries performed by the petitioner as well as the other relevant considerations germane to the case in the light of the above observations, including whether there was any medical negligence at all on the part of the petitioner.

15. It is made clear that in view of the long pendency of the matter, it is expected that the State Commission shall dispose of the proceeding afresh, upon giving further opportunity to the parties to adduce evidence, as expeditiously as possible, preferably within eight months from the date of communication of this order to the State Commission.
16. The parties shall act on the server copy of this order without insisting upon prior production of a certified copy thereof.
17. There will be no order as to costs.
18. Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)