

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2024
(@ PETITION FOR SPECIAL LEAVE TO APPEAL (C) NO. 3545/2020)

M/S ERNAKULAM MEDICAL CENTRE & ANR.

APPELLANTS

VERSUS

DR. P.R. JAYASREE & ANR.

RESPONDENTS

WITH

CIVIL APPEAL NO. _____ OF 2024
(@ PETITION FOR SPECIAL LEAVE TO APPEAL (C) NO. 9814/2020)

CIVIL APPEALS NO. _____ OF 2024
(@ PETITIONS FOR SPECIAL LEAVE TO APPEAL (C) NO. 15689-15690/2020)

ORDER

1. Leave granted.
2. Out of the above appeals, two appeals have been preferred by M/s. Ernakulam Medical Centre and one by the two complainants.
3. Briefly stated, the facts of the case are that a patient by the name of Lt. Col. A.P. Kanthy, was admitted in the appellant-Hospital for treatment on 28th December, 2009. After two days, i.e. on 30th December, 2009 another patient by the name of Mr. R. Purushothaman, father of the complainants was also admitted in the appellant-Hospital for treatment. He expired in the night of

30th December, 2009. The family members of the deceased requested the appellants that the dead body be kept in the mortuary of the hospital. In the early hours of the very next day, Lt. Col. A.P. Kanthy also expired at the hospital. His dead body was also kept in the mortuary of the hospital. Few hours later, the dead body of R. Purushothaman was handed over to the family members of Lt. Col. A.P. Kanthy and they cremated his body. Subsequently, on 01st January, 2010, when family members of late R. Purushothaman (father of the complainants), came to the hospital for release of the dead body, they pointed out that the body in the mortuary was not the body R. Purushothaman. It then transpired that the corpse in question had been released to the family members of Lt. Col. A.P. Kanthy who had by then cremated the dead body.

4. Based on the aforesaid events, the complainants filed a complaint before the Kerala State Consumer Disputes Redressal Commission (For short 'the SCDRC')¹ claiming compensation of ₹1,00,00,000/- (Rupees One Crore only) with interest for the deficiency in service on the part of the Hospital.

5. *Vide* order dated 05th October, 2016, the SCDRC directed the appellant-Hospital to pay the complainant a sum of ₹25,00,000/- (Rupees Twenty Five Lakhs only) towards compensation with interest @ 12% p.a. from the date of the complaint along with cost of ₹10,000/- (Rupees Ten thousand only). Aggrieved by the said order, the appellant-Hospital filed an appeal before the National Consumer Disputes Redressal Commission (For short 'the

¹ CC No.21 of 2011

NCDRC')².

6. It is not in dispute that two sets of orders were passed by the NCDRC. The first was passed on 04th July, 2019 and the second order was passed on 12th March, 2020. The order passed on 04th July, 2019, is a three page order whereby, the NCDRC expressed an opinion that compensation of ₹5,00,000/- (Rupees Five Lakhs only) awarded to the complainants was just and equitable. Further, it was observed that a sum of ₹25,00,000/- (Rupees Twenty Five Lakhs only) should be deposited by the appellants in the Consumer Legal Aid Account of the State Commission. Subsequently, came the order of 12th March, 2020, after eight months, which was more elaborate, but the operative para was maintained as was dictated on 4th July, 2019.

7. Aggrieved by the aforesaid orders, both sides have filed the present appeals.

8. We have heard learned counsel for the parties and perused the records and are of the opinion that there was no justification for the NCDRC to have interfered in the order passed by the SCDRC particularly in view of the fact that the complainants were wronged. There was deficiency in service on the part of the appellant-Hospital having handed over the dead body of the father of the complaints to another family who cremated the said body. Therefore, the appellants could not have avoided their liability on account of deficiency of service.

² FA No.273 of 2017

9. The only aspect that engages this Court is the bifurcation of the compensation. The NCDRC directed the appellant - Hospital to pay only a sum of ₹5,00,000/- (Rupees Five Lakhs only) to the complainants and with a further direction that a sum of ₹25,00,000/- (Rupees Twenty Five Lakhs only) be deposited with the Consumer Legal Aid Account of the State Commission.

10. We are of the opinion that there was no justification for passing such an order. The SCDRC had applied its mind on entire conspectus of facts and the evidence produced by the parties and thereafter arrived at a conclusion that a sum of ₹25,00,000/- (Rupees Twenty Five Lakhs only) would be adequate compensation for the complainants.

11. Accordingly, the impugned orders are set aside and the order dated 05th October, 2016, passed by the SCDRC is restored except for the interest component which in our opinion is on the higher side. We are of the opinion that instead of 12% interest awarded in favour of the complainants, interest @ 7.5% p.a. would suffice. Ordered accordingly.

12. The complainants are at liberty to withdraw a sum of ₹10,00,000/- (Rupees Ten Lakhs only) with interest if any, accrued thereon, already deposited by the appellant - Hospital with the SCDRC. The Hospital shall pay the balance sum of ₹15,00,000/- (Rupees Fifteen Lakhs only) along with interest @ 7.5% p.a. to the appellants in terms of the order passed by the SCDRC.

13. This order shall dispose of all the present appeals along with pending application(s), if any. The parties are left to bear their own expenses.

.....J.
(HIMA KOHLI)

.....J.
(SANDEEP MEHTA)

NEW DELHI
06th AUGUST, 2024
GA

ITEM NO.21

COURT NO.9

SECTION XVII-A

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). 3545/2020

(Arising out of impugned final judgment and order dated 04-07-2019 in FA No. 273/2017 passed by the National Consumers Disputes Redressal Commission, New Delhi)

M/S ERNAKULAM MEDICAL CENTRE & ANR.

PETITIONER(S)

VERSUS

DR. P.R. JAYASREE & ANR.

RESPONDENT(S)

(IA No. 13077/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

SLP(C) No. 9814/2020 (XVII-A)

SLP(C) Nos. 15689-15690/2020 (XVII-A)

(IA No. 116038/2020 - EXEMPTION FROM FILING AFFIDAVIT)

Date : 06-08-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE SANDEEP MEHTA

For Petitioner(s)/ Mrs. K.Radha, Adv.
21, 21.1 Mr. K.Maruthi Rao, Adv.
Mrs. Anjani Aiyagari, AOR

21.2 Mr. V. Chitambaresh, Sr. Adv.
Mr. A. Karthik, AOR
Ms. Smrithi Suresh, Adv.
Mr. Sugam Agrawal, Adv.
Mr. C. Govind Venugopal, Adv.

For Respondent(s)/ Mrs. K.Maruthi Rao, Adv.
21.2 Mrs. K.Radha, Adv.
Mrs. Anjani Aiyagari, AOR

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

1. Leave granted.
2. The appeals are disposed of along with pending application(s), if any, in terms of the signed order.

(Divya Babbar)
Court Master (NSH)

(Signed Order is placed on the file)

(Geeta Ahuja)
Assistant Registrar-cum-PS