

“IS CIVIL SOCIETIES HELPING CONSUMERS”? - CASE VIEWS

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ABSTRACT

There will be a paradigm shift from the stone age to the modern age and many acts covered for the protection of consumers through the Consumer Protection Act, 1986 and amended in 2019 and 2020 and many consumers are not aware of the laws and hence the civil societies come forward to help the consumers in a befitting way and to get compensation for the loss or damage including an extra component for mental torture and agony together with time loss. This can be understood with the provisions of law which is essential and especially in online provisions for purchases goods and services, surprisingly even online treatment and supply of medicines encouraged by many during the period of COVID-19. Civil Societies have a vital role in helping victim consumers especially hospitals, doctors, pharmacy and warrier of COVID-19 and who have made the consumers suffer a lot.

KEYWORDS: *Consumers, Definitions, Civil Societies, Victim Consumers, Remedial Measures through Consumer Protection Act, 1986, Cases, Conclusions*

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INTRODUCTION

Any living being needs help from the civil society since from the ages all living being lives in organized or unorganized societies, they may move from one place to another place in search of food and water. Over time there is a big paradigm shift and people started to live permanently in one place. And needs help from each other. From the informal to formal help is started at a fixed place. From this, any person who has problems can go and contact at one particular place. And the further shift in support with special objectives and from the people to the people and for the people to help systematically makes to emerge civil societies, in other words, it is also called as Non-Government Organization. Such as

- Public Relations Society of India
- Federation of Karnataka Chamber of Commerce & Industry
- National HRD Network
- Sri Sara Devi Rehabilitation Centre
- Mediation Centre

- Consumer Forums

And many other and runs more than 1000 organizations.

RELEVANT DEFINITIONS

Sara Devi: Defines consumer is the person who consumes from producer or supplier or seller. Further, the expansion of person leads not only a person but also includes any person who belongs to the undivided family or a cooperative society or firms with registered or not registered in her book titled “**Who is a person**”? 1st Revised Edition, Published and Printed in France at Sara Devi Printers and Publishers Page No. 1, 4, 19, 85-89.

Sharanya Mathaji: Defines consumer as a person who is benefitted either by receiving the product or services or purchase of the product or service which includes the child and adolescent even though he is not attained the age of 18 years of legalage directly or indirectly in her book titled “**Child Consumer**” which is Printed and Published at Prasant Tarafdar Printers, Kumbalgotu Industrial Area, West Bengal, 1st Edition Page No 01, 12, the year 2020.

Asma Banu: Defines consumer means patient to doctors, plaintiff to advocates, medical representatives to the pharmacy, priests to temple management, devotees to temple priests for pooja and receiving prasadam and tirtha whether associated with government or private and who have public contacts and services consumers are entitled to compensation for any damage or loss. While calculating compensation sympathy or influences will not be a matter. Explained in the manuscript “**Is Sympathy a Component for Compensation**” prepared as end solution on 1st December 2020.

Case 1

One Dr. Ramachandra Gowda is an expert in Bharatiya Medicine Systems (BMS) (Ayurveda) Panchakarma and Shalya who was working in a big private hospital where both Ayurveda and Allopathy systems were functioning for the treatment of patients. Dr. Ramachandra Gowda who treats the patients will get good relief immediately whereas in the same region other doctors are not as famous as Dr. Ramachandra Gowda. One day Narasimha along with his wife and daughter visited the hospital and contacted Dr. Ramachandra Gowda for his breathing problems bronchitis and also having a viral fever.

Narasimha has survived with wife Nandhini and 8 year old daughter Amrutha who is also suffering from viral fever the Dr. Ramachandra Gowda received a notice from Bangalore Development Authority to demolish his house as he has constructed the house without taking prior permission from the authorities. He was totally upset and his mind was disturbed and he could not concentrate on his work properly.

Since Dr. Ramachandra also knew some English medicines i.e. Allopathy and hence, he was using both Ayurveda and Allopathy for practice. On 22 November 2020, Dr. Ramachandra Gowda gave English medicine for the viral fever and asthma the consumer Narasimha and his daughter 8 year old Amrutha as per prescription were taken medicine. Unfortunately, the viral fever turned it into pneumonia and he was declared dead on 01.12.2020.

On the other hand, his 8 year old minor daughter Amrutha suffered from a vegetative state permanently, irreparable damage. Narasimha's wife Nandhini cried and one civil society came to her help and asked her to approach the Consumer Forum as per Section 6 Rights and Explained as laid down in Consumer Protection Act, 1986 and asked for compensation.

- Dr. Ramachandra Gowda who has the certificate to practice only Ayurveda and not Allopathy.
- Due to a disturbed mind, he has prescribed the wrong English medicine instead of Ayurveda medicines.
- During the treatment period and COVID-19 pandemic negligence of duty results in the death of the patient.
- How Narasimha's wife Nandhini can be treated as a consumer.
- Breach of Contract by the doctor as he has to practice only Ayurveda.
- Can Narasimha be treated as a consumer and avail the damages for dereliction of duty?
- Doctor and patient will come under the Consumer Protection Act.
- Administering the damage amount to be given to the deceased wife.
- Find out the legal heir of the deceased.
- Will the court admit the case for an argument?

Nandhini wife of Narasimha claimed compensation from Dr. Ramachandra Gowda but hospital authorities and Doctor both refused to give compensation and civil societies came forward to help and assist to follow the said procedure as laid down in the Consumer Protection Act, 1986.

In the court the advocate of the hospital authority argued that Nandhini cannot be the consumer and requested the honorable judge to dismiss the case itself for the reason hospital and service of the doctor is not covered under the above said Act.

The court believes to protect the interest of the deceived person and clarified as follows

The patient Narasimha has taken the medical service i.e. Treatment from the Doctor and hence he is treated as a consumer. Further, the Act applies to all medical professionals including hospitals and private practitioners since Nandhini is the legal heir of Narasimha (Sapinda Relationship). And hence Nandhini is also called as a consumer and admitted the case and rejected the plea of the Doctor and hospital authorities.

The court identified the following observations during the argument and counter-argument

- The patient consulted the Ayurveda doctor and not the Allopathy doctor.
- The doctor has to treat with Ayurveda medicine only and not with Allopathy medicine.
- The doctor has the moral responsibility to treat the patient with the utmost care.
- Doctor's primary duty is to identify the disease based on the symptoms and thorough examination with laboratory investigation reports or the previous case history if any to give medicine and has to decide and monitor the patient which medicine is suitable and what type of treatment to be given to the patient.

Here Dr. Ramachandra Gowda was in disturbed mind and without taking priority for the patient and get the investigating report or the previous case history and advised to take Allopathy medicine in his prescription to buy from the pharmacy. This is a clear case of dereliction of duty or negligent act and leads to a Breach of Contract as per Section 73 of the Indian Contract Act, 1872.

Here this is a valid contract since both the parties are in the legal age above 18 years and sound mentally for the contract. Offer Section 2 (a) and Acceptance Section 2 (b) are also clearly defined here Doctor offered to take medicine and received the service charges. The patient accepted to take medicine and consumed it. Medicine means the services of the doctor are consumed by the patient. The Ayurveda doctor cannot practice Allopathy systems and hence it is a mistake and duty negligence further doctor has not given to increase the proper immune power boosters to the patient this is another negligence of his duty.

The doctor has not taken a prehistory or laboratory investigation report before issuing medicine. The doctor has not administered the patient properly this is also deliration Ayurveda, Homeopathy, Unani, Sidda, Biomedicals, and any other alternative therapy does not come under the preview of medical practitioners. At the time of issuing the registered certificate, it was mentioned to practice only Ayurveda and hence doctor is liable at law for the consequences of the dereliction and found guilty of his active dereliction of duty.

Order by Court

The court directed the hospital management to give compensation of Rs. 8 lakhs taking into account legal expenditure, number of dependents, remaining service of the deceased where he was working and the last pay drawn to the legal heir Nandhini on or before 31st December 2020.

Further, the court directed the hospital authorities to initiate appropriate proceedings against the action of the Ayurveda Dr. Ramachandra Gowda.

Dr. Ramachandra Gowda was pleaded in the court that he was in a disturbed mind due to the Bangalore Development Authorities have issued a demolition notice to my house and hence this situation occurred kindly be mercy on me at least in calculating the compensation benefits. The court ruled that taking previous Supreme Court order that “The award of compensation is a balance between many parties and interests, and sympathy for the patient must not come in way of awarding a fair and adequate compensation” and rejected his plea.

This was possible for the consumer to get justice only through the civil society's support and also creating awareness about the Consumer Protection Act, 1986.

Case 2

In continuation with case 1 now minor girl aged 8 Amrutha also have claimed the compensation minor child Amrutha 8 year old along with their father had taken treatment. Since on the advice of the Dr. Ramachandra Gowda Nurse Samyuktha gave the injection to Amrutha. And within an hour Amrutha's condition was deteriorated and shifted to hospital in Singapore for better treatment.

The doctors at Singapore identified that the injection is the cause for her deterioration in life condition and later slipped to a vegetative state where the brain just like will not work and it is possible only on auto respiratory systems and machines the mother Nandhini incurred heavy loss by this hospital again and again claimed compensation on the advice of the civil society Nandhini claimed compensation for her minor daughter problem on the case of medical dereliction.

Already for her husband, she claimed compensation and now the question is can she claim compensation on behalf of the minor child her daughter Amrutha?

Will law permit the award of compensation to the parents for mental torture and agony?

Hospital authorities and the nurse refused jointly to make compensation. In her daughter's case nurse was given an injection and she is professionally qualified and having a certificate to do the same. And hence there was no dereliction of duty. The nurse has taken her own decision but acted on the instructions of Dr. Ramachandra Gowda. The solution contained in the injection was administered and oral dosage being given and no reaction found and hence nurse did not do any test for the injection before injecting the complete solution. In this case Rangaraj, the paediatrician has also administered the case.

The hospital authorities refuse to make compensation and said both father and minor child cannot claim compensation and already compensation made once in Narasimha case and requested the High Court judge to dismiss this case. And we will assure that medical treatment will be given free of cost to the parents of the victim child offered voluntarily.

The court thinks that nurse had no affiliation from the medical college and hence hospital authority is responsible for this medical dereliction of duty and there was no resident doctor present during the time. The solution of the injecting was an overdose and led to the child's brain damage.

The minor child went along with the parents to get benefit from the hospital on a payment basis and the child was treated by the doctor and hence parents of the minor child would come within the preview definition of the consumer having hired the service and minor child is a consumer.

Order of Court

The court directed the hospital authorities to make the compensation of Rs. 38.5 lakhs is justifiable for the damages happened and lifelong care is required also for the medical expenses, equipment, etc., for the vegetative state where the child rendered in hence parents is also considered as beneficiary and entitled to seek compensation for the pain acute mental agony, also, to nurture the child and thinking about the future of the child's progress court upheld the award made by the Consumer Forum and is yet to receive the benefits before 3 months from the date of award on 7th December 2020.

CONCLUSIONS

The Consumer Protection Act, 1986 is not aware of the many consumers and civil societies will come into the front to guide the consumer to get justification. and creating awareness about the act. With this help consumers are getting benefited many times. The laws in India help the consumers.

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