

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.1700 OF 2024
(@ PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO.6872 OF 2018)

**J. DOUGLAS LUIZ (SINCE DECEASED)
THROUGH LEGAL REPRESENTATIVES**

APPELLANTS

VERSUS

MANIPAL HOSPITAL

RESPONDENT

WITH

CIVIL APPEAL NO.1701 OF 2024
**(@ PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO.3206 of 2024 (@ DIARY NO.
42889 OF 2018)**

ORDER

1. Delay condoned in Petition for Special Leave to Appeal (Civil) No.3206 of 2024.
2. Leave granted.
3. The appellant is aggrieved by the common impugned judgment and order dated 15th November, 2017 passed by the National Consumer Disputes Redressal Commission, New Delhi¹ whereby the revision petitions² filed by the sole appellant and the respondent were dismissed while upholding the common order dated 24th August, 2007³ by the Karnataka State Consumer Disputes Redressal Commission, Bangalore⁴ that had confirmed the order dated 10th May, 2006 passed by the District Consumer

1 For short 'NCDRC'
2 Revision Petition No.3766 of 2007 and 2300 of 2008
3 In Appeals No.1479/2006 and 1481/2006
4 For short 'the State Forum'

Disputes Redressal Forum, Bangalore⁵. *Vide* order dated 10th May, 2006 the District Forum had allowed the complaint⁶ filed by the appellant and it had directed the respondent-Hospital to pay a sum of ₹5,00,000/- (Rupees Five lakhs only) to the appellant as compensation along with ₹5,000/- (Rupees five thousand only) as litigation expenses. However, the complaint against opposite parties Nos.2 to 4 and 6 namely, the doctors concerned, was dismissed.

4. It is stated by learned counsel for the appellants that despite deficiency of services being proved against the respondent-Hospital and the deceased-complainant having claimed a sum of ₹18,00,000/- (Rupees Eighteen lakhs only) as compensation with interest, the District Forum had *suo moto* arrived at a rough and ready figure of ₹5,00,000/- (Rupees Five lakhs only) payable as compensation to the appellant without furnishing any reasons for arriving at the said figure.

5. Learned counsel for the appellants draws the attention of this Court to the impugned judgment passed by the National Commission in particular, paras 8 to 12 thereof, wherein, it has been recorded that the deceased appellant had undergone a major surgery of the left lung on 31st October, 2003 and post operation, he had developed hoarseness in his voice. Though an assurance was given by the operating surgeon to the deceased appellant that the hoarseness could be due to the operation that involved complete removal of the tumor along with the lymphnodes around the Recurrent Laryngeal Nerve⁷ and had given an assurance that the patient could regain his voice within 6 to 8 months with nebulization and voice therapy, the voice of the

5 For short 'the District Forum'

6 In Complaint No.992/2005

7 For the short 'the RLN'

deceased-appellant was not restored and remained hoarse all through. Subsequently, the appellant took opinions from two other expert doctors in the field. Both the doctors opined that there was subluxation of the left arytenoid process, which had happened due to wrong intubation during the anaesthesia procedure at the Hospital. On the aspect as to who had performed the intubation during the induction of anaesthesia, it is not in dispute that surgery relating to cancer of the lung is a specialized surgery and needs a specialized anaesthetist. Though the Head of the Department of Anaesthesia was to administer anaesthesia to the deceased-appellant, the same was administered by a doctor who was qualified but was a trainee anaesthetist in Cardiac Anaesthesia Department.

6. The NCDRC frowned on the delegation of such a critical duty on a trainee anaesthetist and treated the same as a breach of duty of care and observed that having regard to the material on record and the medical literature, the dislocation of the left Arytenoid was on account of the trauma caused which led to the paralysis of the vocal cord of the deceased-appellant and that the RLN injury does not cause dislocation of Arytenoid. In other words, the paralysis of the left vocal cord of the deceased-appellant was attributed to the faulty insertion of the Double Lumen Tube in the course of administering anaesthesia to him for undergoing the surgery.

7. Learned counsel appearing for the Hospital submits that the District Forum has erred in discarding the evidence of the doctors who stated that there was nothing wrong in giving anaesthesia through a Double Lumen Tube. He also seeks to question the reliance placed by the District Forum on the testimony of two expert doctors

produced by the deceased-appellant during the course of evidence. However, the records reveal that the Hospital did not object to the said expert doctors deposing in the case, nor did the Hospital file an application for an expert to be appointed by the District Forum for giving an opinion in the instant case.

8. Mere reliance on medical literature would not be sufficient to exonerate the Hospital from its duty of ensuring that the Head of the Department, Anaesthesia ought to have inserted the Double Lumen Tube. Instead, he was not available and the task was delegated to a trainee anaesthetist.

9. Learned counsel for the appellants submits that the deceased was working as an Area Sales Manager in the private sector and was deprived of his promotions and his career nosedived due to the hoarseness of his voice. He submits that the appellant had virtually lost his voice and continued on the same post from the year 2003 onwards without promotion till he expired at the end of the year 2015. He was working on the same salary as was being paid to him at the time of his initial engagement, i.e., ₹30,000/- (Rupees thirty thousand only) per month.

10. Given the aforesaid facts and circumstances of the case, we are of the opinion that the District Forum ought to have taken all the aforesaid aspects into consideration for arriving at a rightful compensation payable to the deceased which in the instant case, has not been done.

11. Having regard to the fact that the appellant expired during the pendency of the proceedings before the NCDRC, no useful purpose would be served in remanding the matter back for reappraisal of the evidence to arrive at a just and fair

compensation. Instead, it is deemed appropriate to direct that the compensation awarded by the District Forum be doubled from ₹5,00,000/- (Rupees Five lakhs only) to ₹10,00,000/- (Rupees Ten lakhs only) with simple interest calculated @ 10% per annum from the date of filing of the claim petition till the amount is paid, subject to the adjustment of the amounts already released in favour of the deceased - appellant.

12. As requested by learned counsel for the appellants, the amount awarded as above be released by the Hospital in favour of the widow of the deceased complainant namely, appellant No.1 in Civil Appeal No.1700 of 2024 within a period of four weeks from today.

13. The appeals are disposed of on the aforesaid terms along with pending application.

.....J.
(HIMA KOHLI)

.....J.
(AHSANUDDIN AMANULLAH)

NEW DELHI
06th FEBRUARY, 2024

ITEM NO.16

COURT NO.11

SECTION XIV-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

CIVIL APPEAL NO.1700/2024

(@ SLP (CIVIL) NO.6872 OF 2018)

(Against the impugned judgment and order dated 15th November, 2017 passed by the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No.2300 of 2008)

J. DOUGLAS LUIZ (SINCE DECEASED)
THROUGH LEGAL REPRESENTATIVES

Petitioner(s)

VERSUS

MANIPAL HOSPITAL

Respondent(s)

(IA No. 41491/2018 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

C.A. No. 1701/2024 (XVII-A)

(@ SLP (CIVIL) NO.3206/2024 (@ Diary No.42889 OF 2018)

(IA No. 178838/2018 - CONDONATION OF DELAY IN FILING

IA No. 178839/2018 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 06-02-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

For Appellant(s)/ Mr. Susmit Pushkar, AOR
Item 16 Mr. Gaurav Sharma, Adv.

Iem 16.1 Dr. S.V Joga Rao, Adv.
Ms. Radha Pyari, Adv.
Mr. S. Yashwant Prasad, Adv.
Mr. Shivam Bajaj, Adv.
Mr. Ashish Choudhury, Adv.
Mr. Akash Tandon, Adv.
Mr. Rohit Amit Sthalekar, AOR

For Respondent(s)/ Mr. Sahil Bhalai, AOR
Item 16

Item 16.1 Mr. Susmit Pushkar, AOR
Mr. Gaurav Sharma, Adv.

**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 in terms of the signed order.

(Geeta Ahuja)
Assistant Registrar-cum-PS

(Signed Order is placed on the file)

(Nand Kishor)
Court Master (NSH)