

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,ROPAR,
CAMP COURT AT S.A.S. NAGAR (MOHALI)**

RBT/Complaint No.	:	115 of 2021
Date of Institution	:	05.02.2021
Date of Decision	:	05.03.2026

Krishna Rani wife of Shri Prem Nath, aged 74 years, resident of House No.353, Sector 40-A Chandigarh

....Complainant

Versus

1. Max Super Speciality Hospital, Near Civil Hospital, Phase 6, Mohali, through its Chairman and Managing Director.
2. Dr. Harjinder Singh Bhatoe, Sr. Director and Head of Department, Max Super Specaility Hospital, Near Civil Hospital, Phase 6 Mohali.
3. New India Assurance Company Limited, 301, RG City Center, NSC Centre, NSE Block-B, Lawrence Road, New Delhi-110035
4. United India Insurance Company Limited, MO Office, 44/2 Church Road, Bhogal Near Lajpat Nagar, South Delhi, 110014.

....Opposite Parties

Complaint Under Section 35 of the Consumer Protection Act.

QUORUM:-

Sh. Kuljit Pal Singh	President
Smt. Ranvir Kaur	Member

PRESENT:

For the complainant	: Sh.Dev Raj, Adv.
For the Ops No.1 &2	: Sh. Nakul Sharma, Adv.
For the OP No. 3	: Sh.Nitin Gupta, Adv.
For the OP No.4	: ex-parte

ORDER:-

RANVIR KAUR, MEMBER

1. The present complaint has been received from the District Consumer Disputes Redressal Commission, SAS Nagar (Mohali) by the order of

the Hon'ble State Consumer Disputes Redressal Commission, Punjab, Chandigarh dated 21.07.2025 for its disposal.

2. Brief facts of the complaint are that the complainant is a 74 years old senior citizen. She and her husband were taken in by the unfair trade practices and tall claims of the Ops that they have specialization in treating the patients suffering from Degenerative LCS and Listhesis L5/S1 and during the period from 19th March-6th April 2020, the husband of the complainant was hospitalized, operated upon and remained under treatment in Max Super Speciality Hospital, Mohali, in three spells and a sum of Rs.5,93,129/- was charged by the said hospital from the complainant. Before admission in the OP's hospital, on 19.3.2020, the husband of the complainant though suffering from said problem. But was able to carry on his daily chores himself. Instead of even slightest improvement in his condition, post surgery, he has been rendered bed-ridden and is unable to move. In the first instance, husband of the complainant was admitted to the OP's Hospital on 19.3.2020 and diagnosed were "degenerative LCS and Listhesis L5/S1 and attending the doctor/surgeon recorded following surgery:-

"76 OLD PATIENT, CAME TO MSSH WITH COMPLAINT OF LOW BACK ACHE SINCE 5 YEARS, GRADUAL IN ONSET, PROGRESSIVE IN NATURE. PATIENT COMPLAINTS OF B/L HIP PAIN, RIGHT MORE THAN LEFT, SEVERE, SHOOTING PAIN RADIATING TILL ANKLE. PATIENT ALSO HAD DIFFICULTY IN WALKING DUE TO WEAKNESS.

PATIENT HAD SIMILAR COMPLAINT IN PAST FOR LEFT LEG FOR WHICH PATIENT UNDERWENT LAMINOTOMY WITH

DISSECTOMY OF L5-S1, IN 2017 FOLLOWING WHICH HE DEVELOPED FOOT DROP. NOW PATIENT HAS BEEN ADMITTED TO MSSH FOR FURTHER MANAGEMENT.

Further, local examination by the Ops hospital doctor/surgeon was as under:-

Foot drop: Left with wasting with Anterior Tibial Muscles sensory blunting over left L5-S1 Distribution Left Ankle Jerk absent.

Review of systematic examination was recorded as under:-

CVS:

S1,S2 Heard

Respiratory:

B/L Normal BREATH SOUNDS

Per Abdomen:

Soft, Non tender

Neurological

Claim, Conscious, Oriented to time, Place and Person

Differential Diagnosis:

Degenerative LCS with LISTRESIS L5/S1

Plan of Care

Instrumental Decompression L4-S1

PAC

CONSENTS

It is further submitted that husband of the complainant was admitted in the OP hospital at Mohali on 19.3.2020 and was operated upon and surgery performed on 21.3.2020 which lasted for three hours. He was discharged from the hospital on 25.3.2020. The complainant had already paid in advance a sum of Rs.3,50,000/- to the Ops and on

discharge and again the bill of Rs.3,97,380/- the balance amount of Rs.47,380.79 was also paid to the Ops. Having remained under treatment from 19.3.2020 to 25.3.2020 after undergoing surgery and spending an amount of Rs.3,97,381/- the condition of the husband of the complainant did not improve and rather deteriorated compelling the patient to again approach the OP hospital/doctors. Thereafter, the husband of the complainant again admitted in the OP hospital on 26.3.2020. He remained under treatment from 26.3.2020 to 29.3.2020 and was discharged on 29.3.2020. A sum of Rs.62,392/- was charged by the Ops. In the discharge summary, under the caption, 'course of hospital'. After discharge from the OP hospital on 29.3.2020 when the condition of my husband did not improve, we again approached the OP hospital on 31.3.2020 where he was again admitted and operated upon and was under treatment in the hospital from 31.3.2020 to 6.4.2020. He was diagnosed as "Degenerative LCS & Listhesis L5/S1. During admission from 31.3.2020 till 6.4.2020, the Ops hospital told that the implants/screws went loose due to poor quality of bones and the same needed to be extracted. The patient was a known case of diabetes for the last about 15 years and the OP's surgeon was duty bound to visualize the condition of bones in view of his patient suffering from diabetes coupled with old age. Husband of the complainant was again operated upon and this third spell of treatment a sum fo Rs.1,33,356/- was charged by the Ops and total Rs.5,93,129/- was charged by the hospital in three spells. Against the said expenditure/payment to the Ops hospital, the appellant has been sanctioned reimbursement in the sum of Rs.2,68,827/- only by the State of Punjab. It is further stated that sequence of events, i.e.

admission of 76 years old diabetes patient in the OP hospital thrice during a span of 19 days, clearly suggests that the Hospital through the attending surgeon without even slightly assessing the fitness of the patient for operation and visualizing the post surgery complications/adverse impact as also without considering the fact that the patient was operated upon in 2017 went ahead to perform the surgery, only with a view to extort huge amount and played with the life of a senior citizen who has been rendered bed ridden making his life miserable, and thus acted with apparent negligence besides including in unfair trade practice. In fact that before undergoing the two surgeries in the OP hospital the condition and state of health of the patient was much better and he was leading a life undertaking daily chores himself without depending upon other family members. Hence, prayed for the following reliefs by the complainant:-

- a) Ops be directed to pay a sum of Rs.3,25,000/- (along with interest @ 10%) being difference of expenditure incurred in the Ops hospital and the amount of reimbursement sanctioned.
- b) Ops be directed to compensate the complainant with a sum of Rs.10,00,000/- for mental and physical agony suffered by my husband and family.
- c) Ops be directed to compensate in the sum of Rs.5,00,000/- for indulging in unfair trade practices and deficiency in service.
- d) Ops be directed to pay Rs.55,000/- as litigation expenses.
- e) Any other relief which this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case may also kindly be granted in favour of the complainant.

Hence, this complaint.

3. Notice of this complaint has been given to the Ops No.1 &2, and Ops No.1 &2 have appeared and filed written statement taking preliminary objections that there is no deficiency in service on the part of the answering Ops. The complainant has concealed the facts and has made false allegation in order to claim false compensation by misuse of the law. The complainant has also failed to produce any expert opinion regarding any expert opinion regarding any lapse on the part of answering Ops. The complaint is based on assumption and unfounded motion on the part of complainant and does not disclose any cause of action by filing the complaint. The answering OP hospital adheres to the most stringent quality assurance principles. It is fully equipped with the last technology advanced medical gadgets, including fully equipped critical care facilities backed by state of art mechanical equipment. The hospital has the prestigious certifications like NABH accreditation etc. The hospital is also staffed by highly qualified and experienced medical, nursing and paramedical staff. The OP No.2 is also highly qualified medical practitioner with enormous experience in his respective area of practice and the present complaint has been filed against answering Ops, which is unfounded, perverse, untenable and the same deserves to be dismissed. On merits, it is stated that patient visited the OPD of the hospital in the month of March 2020, with complaint of severe back pain over past several months, inability bear weight on the left leg and muscle wasting of the left leg. He had undergone surgery of the lumbar spine in 2017 at another hospital for back pain. In fact, immediately after surgery, he had developed paralysis of left foot (foot drop) indicating injury to his nerve which moves the foot at the ankle. He was of late having persistent pain over

the back at the operative site and was unable to sit or stand or walk. He also had difficulty in passing urine, indicating neurological damage to the bladder. He was evaluated with radiology. Post consultation, patient was apprised of the problems he had, in addition to advancing age, diabetes mellitus. His imaging studies showed that he had compression of nerves in the vertebral column, which were causing him persistent pain and making him bed ridden. Such, compression of nerve roots are usually seen in senior citizens and surgical treatment is offered with a view to improve his quality of life. Because of pain and being bed ridden, surgery was planned. So that his pain could be relieved and he could sit or stand and have better quality of life. These aspects of treatment were discussed with him and his wife in detail, with favourable outcome and risk thereof. At no stage, was a cure guarantee and accordingly, the patient was admitted in answering OP No.1 hospital with due consent of patient and his attendants on 19.3.2020. The necessary preoperative investigations were carried out to assess his fitness for anesthesia and his surgery was accordingly done on 21.3.2020. On 21.3.2020, he was taken up for surgery as planned. Anesthesia and surgery were held without any issue. The titanium implants to provide support to the spine were placed as planned, under radiographic control and even he was transfused one unit blood. After recovery from anesthesia, he was conscious and could move his limbs well. As anticipated, he had pain over the operated site, which was relieved by pain-relieving medication. After 48 hours in intensive care, he was shifted to the room and then he was discharged on 25.3.2020, where he was given clear instructions to report back in case of problems related to the back or any other

problem. Patient was received in ER on 26.3.2020 with complaints of breathlessness and back pain. He was administered pain-relieving medication and made comfortable. However, he developed low oxygen levels, for which he was shifted to intensive care unit and treated with oxygen supplementation under care of Pulmonary physician. His oxygen saturation improved and his pain relieved to a large extent and he was discharged on 29.3.2020. On 31.3.2020, patient was reviewed, when he complained of constant back pain. Imaging showed that one of the screw inserted in the spine had become mal-positioned, accordingly, he was taken to operation theater and the offending screw was taken out and quality of construct was not compromised and he felt better and was discharged on 6.4.2020. Degenerative changes in the lumbar spine occur commonly in senior citizen. When these changes cause mal-alignment of the spine and compress the nerves, surgery restores the alignment and relieves compression. So, in view of the extent of decompression required, surgery also mandates insertion of spinal implants that would provide stability to the spine and relieve pain. Infact, age is not a criteria for denying surgical treatment to senior citizens, as majority of them show that distinct improvement in their painful state, ability to walk and overall quality of life. Hence, they are able to manage the comorbid conditions better when they are pain free. It is with these fundamental principles that surgery was discussed with the patient and his family and carried out most diligently. Before surgery, complainant as well as patient was consulted thoroughly about the pros and cons of the operation and thereafter, they gave consent for the surgery. Hence, using the terms 'extortion' and 'usurping' money from the

complainant are totally malafide and obnoxious as these terms are downright derogatory to the dealing with medical profession, which shows malicious and bad intention towards the medical profession on the part of the complainant. At no stage ever was the decision for surgery forced upon complainant or attendant of the patient. It was discussed freely and agreed to by them. Only then surgery was carried out. Moreover, it is very important to mention here that no surgeon anywhere in the world guarantees favourable outcome, since human body is a biological system and cannot be viewed with a medical prism. While giving the parawise reply on merits, same facts have been reiterated by the answering Ops. Hence, prayed to dismiss the complaint.

4. During the pendency of this complaint, OP no.3 has impleaded as new opposite party in this complaint vide order dated 8.8.2023 of this Commission.
5. OP No.3 has filed separate written statement taking preliminary objections that the complainant has made false, concocted and baseless averments and allegations in the present complaint to get illegal and undue compensation from the Ops for which the Ops are not liable at all. The present complaint has been filed in utter disregard and violation of Consumer Protection Act and rules. The present complaint has been filed without any basis and substance against the Ops. OP no.1 was insured from the answering OP under Professional Indemnity-Medical Establishment Insurance Policy. However, no prior notice was ever received by the answering OP from the insured hospital with regard to the alleged treatment and loss thereof if any, therefore, the answering OP is not liable to pay any compensation.

Without admitting any liability and without prejudice to its rights, it is submitted that in such a complaint where the allegations of professional and medical negligence and misconduct are made against the Doctors, the complainant is strictly required to prove as to what the doctors had not done which they should have done and what was done by the doctor which they should not have done. Therefore, a heavy burden lies upon the complainant to prove this by way of leading an expert and cogent evidences. Rather as per the law of the land such matters are required to be referred to be experts/specialists of the subject matter seeking their expert opinion with regard to the acts and conducts of the treating doctors. The learned counsel for the OP No.3 has relied upon the law laid down by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi, in case No.589 of 2015 titled as Ram Kumar Sharma Vs Columbia Asia Hospital. Hence, prayed to dismiss the complaint.

6. In spite of issuance of notice, none has appeared on behalf of OP no.4, therefore, it was proceeded against exparte vide order dated 5.10.2023 of this Commission.
7. The learned counsel for the complainant has tendered into evidence affidavit Ex.CW1/1 along with documents Ex.C1 to Ex.C6 and closed the evidence.
8. In rebuttal, the learned counsel for the Ops No.1 & 2 has tendered into evidence . The learned counsel for the OP No.3 has tendered into evidence affidavit Ex.OP3/1 along with document Ex.OP3/2 and closed the evidence.
9. The learned counsel for the complainant and Ops have filed written arguments.

10. We have heard the learned counsel for the parties and have gone through the record of the file, along with written arguments filed by the counsel for the complainant and Ops, carefully.
11. After perusal of the pleadings, evidence led by the parties and also for written arguments filed by the parties, it reveals as follows:-
12. That the husband (deceased) of the complainant late Sh. Prem Nath, 76 years old was diagnosed with “Degenerative LCS and Histesis L5/51 and hospitalized during the period w.e.f. 19th March to 6 April 2020 in the OP hospital. Surgery was done on 21.3.2020 and remained under treatment in Max Super Specialty Hospital, Near Civil Hospital, Phase 6, Mohali, Punjab, in three spells. A sum of Rs.5,93,129/- was charged by the OP hospital. The need for admission/treatment from 26.3.2020 to 29.3.2020 and 31.3.2020 to 6.4.2020 arose as the operation/surgery done on 21.3.2020 during the first spell of treatment, was not successful surgery was performed without ascertaining/assessing the condition of the bones of the patient. No preoperative assessment by way of X-ray, Dexa Scan, CT Scan MRI that the patient was fit for complex surgery was carried out and without assessing the condition/strength of bones. There is no observation in either of the treatment records i.e. Ex.C1 to Ex.C3 that patient was fit for undergoing surgery.
13. As the OP No.2 in his cross examination deposed that lossening of screw could be due to patient suffering from diabetes, hyper tension and old age, however, these factors were not taken into consideration before the surgery. The implants (rod and screw) planted during surgery on 21.3.2020 become mal-positioned and screws were protruding the margin and there was chipping of bones (Ex.C3) within

couple of days of first surgery makes it evident that the surgery was performed by OP No.2 in OP No.1 hospital without assessing the condition of bones of the patient.

14. The Ops, after cross examination, placed on record report dated 12.2.2019 (AnnexureRA4) and RA5 is not relevant as the patient was operated upon after more than a year and a fresh X ray report/Dexa Scan ought to have been done before surgery on 21.3.2020 but the OP No.2 proceeded to operate the patient on the basis of X ray allegedly conducted more than a year before. Thus, Ops No.1 & 2 proceeded to operate the patient without carrying out required and basic investigations resultantly the condition of the deceased/patient did not improve and rather deteriorated. A perusal of Ex.C1 reveals that the condition of deceased/patient was much better before surgery. Moreover, during cross examination OP No.2 admitted that the patient was able to walk before the surgery which falsifies the stand taken by the Ops No.1 & 2 in their written statement/affidavit/ That the deceased due to the severe pain at the operated site was again admitted the second time in the OP No.1 on 26.3.2020 (just one day after getting discharge from OP No.1 on 25.3.2020) and remained under treatment from 26.3.2020 to 29.3.2020. The fact of admission of the patient due to the severe pain at the operated site in OP No.1 hospital was also admitted by OP no.2 during cross examination. The fact in written statement of Ops No.1 & 2 that deceased was received in ER on 26.3.2020 with complaints of breathlessness which is contrary to the medical record (Ex.C2). After treatment the condition of the patient/deceased did not improve and was again admitted third time in OP No.1 hospital on 31.3.2020 till 6.4.2020 and surgery was again

done on 2.4.2020 under which screw/rod implanted during surgery on 21.3.2020 were removed.

- 15.** As the first surgery was not successful then only the second surgery was necessitated and this is evident from the medical record of Ops No.1 & 2 annexed with the complaint Ex.C1 to Ex.C3. The chipping of bones of the deceased/patient shows that no pre-operative tests were done to ascertain the conditions of the bones of the patient, hence, the surgery was not successful. Moreover, the patient was again charged for the same treatment (for the removal of screw and rod implanted) Ex.C1 and Ex.C3. The Ops in their version/evidence in para No.6 of their written statement on merit have admitted that the patient/complainant's husband complained of constant back pain and imaging showed that one of the screws inserted in the spine had become mal-positioned and accordingly he was taken to Operation Thereafter the offending screw was taken out. While admitting the above, the Ops NO.1 & 2 have concealed the factual position as would be evident from the one recorded in the Discharge Summary dated 6.4.2020 (Ex.C3) which reads as hereunder:-

“Both the screws in the S1 vertebral body are seen protruding beyond anterior margin of S1 vertebral body-----

Procedure L5 (R) pedicular screw confirmed. Rod removed and L5 screw (R) removed.

Rod replaced bridging L4 and S1.

Closure with vacuum suction drainage”.

- 16.** That perusal of the Ex.C3 also reveals that there was chipping of bones and the screws in the S1 vertebral body were protruding beyond anterior margin of S1 vertebral body. The OP no.2 during cross

examination admitted and stated that the patient had to take admission in the hospital due to loosening of the right L5 screw and dislocation of the rod. It shows that implantation of (screw and rod) was not successful.

- 17.** The deceased remained under treatment in three spells from 19.3.2020 to 6.4.2020 in the OP No.1 hospital and the condition of the deceased deteriorated, rendering him bed ridden which eventually led to his death on 31.1.20221. During cross examination, the operating doctor (OP2) stated that he was not sure that Dexa Scan is Carried out to measure the strength thickness and density of bones before opting for surgery and then self stated it is not done in routine. No CT Scan report has been placed on record. The X Ray report which was placed on record is not much relevant as it was more than one year old and the genuineness of report is also in dispute. The Ops appearance, did not assess the suitability of the deceased/patient for surgery correctly and did not exercise due diligence which is evident from the fact, duly borne out on record and as admitted by the Ops that the screws got mal-positioned and screws/rd had to be removed, this happened due to apparent negligence during first surgery on 21.3.2020.
- 18.** In the light of above said discussion, it is evident that the deficiency in service and unfair trade practices on the part of the Ops is writ large. Based on the scenario described, the actions of the Ops failure to perform proper diagnostic tests (x-ray/Dexa Scan) improper diagnosis and a reoperation for the same issue (charging extra payment) constituted proves medical negligence. **Failure to diagnose and standard of case:** failing to perform essential tests like and X Ray or Dexa Scan, leading to a failed operation is a breach of the “duty of

care” owed to the patient. **Re-operation for the same issue**: A second surgery for the same issue, necessitated by the failure of the first due to poor planning or lack of diagnosis, proves deficiency in services.

19. **Charging for the second operation**: Charging again for the same procedure that failed due to the Ops negligence is an “unfair trade practice” in addition to negligence. It is settled law that in all cases of medical negligence, expert opinion is not required and each case has to be judged on its own fact. In this regard, we relied upon the case law of **Hon’ble Supreme Court of India, (2010) 5 SCC 513, titled as Kishan Rao Vs Nikhil Super Specialty Hospital and Anr.**
20. Hence, in the interest of natural justice, the complaint of the complainant partly allowed with the directions to the Ops No.1 &2 to pay a sum of Rs.3,25,000/- to the complainant along with interest @ 9% per annum from the date of filing of the complaint till its realization. Ops are also directed to pay a sum of Rs.1,00,000/- as compensation and Rs.50,000/- as litigation expenses to the complainant.
21. Copy of the order be supplied by the District Consumer Disputes Redressal Commission, Mohali, as per rules. File be sent back to the District Consumer Commission, Mohali, for consigning the same, to the Record Room, after due compliance.

(Kuljit Pal Singh)
President

(Ranvir Kaur)
Member

March 5th, 2026
gurmanpreet singh
Jr. scale stenographer

CC No. 115 of 2021 Krishna Rani Vs Max Hospital

PRESENT:

For the complainant : Sh. Dev Raj, Adv.
For the Ops No.1 & 2 : Sh.Nakul Sharma, Adv.
For the OP No. 3 : Sh. Nitin Gupta, Adv.
For the OP No.4 : exparte

Vide our separate detailed order of even date, the complaint is partly allowed. File be sent back to the District Commission, SAS Nagar, Mohali, for consigning the same to the record Room, after due compliance.

(Ranvir Kaur)
Member

(Kuljit Pal Singh)
President
05.03.2026