IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION AT NEW DELHI

NC/CC/281/2014

WITH

NC/IA/2480/2018(CONDONATION OF DELAY IN FILING THE REJOINDER)
NC/IA/2481/2018(CONDONATION OF DELAY)
NC/IA/2482/2018(CONDONATION OF DELAY IN FILING THE EVIDENCE)
NC/IA/5108/2021(PLACING ADDL. DOCUMENTS)

Veer Singh & Ors. … Complainants

Versus

Dr. Rajeev Lochan … Opp. Party

BEFORE:

HON'BLE MR. JUSTICE A. P. SAHI, PRESIDENT
HON'BLE MR. BHARATKUMAR PANDYA, MEMBER

Appeared at the time of arguments:

For Complainants : Mr. Sudarshan Rajan, Advocate
Mr. Sambhav Sharma, Advocate
Ms. Ria Setiya, Advocate

For the OP : Mr. V.K. Garg, Sr. Advocate
with Mr. Neeraj Kumar Sharma, Advocate
Mr. K. S. Rekhi, Advocate
Mr. Parv Garg, Advocate

Pronounced on: 18th May 2026

ORDER

JUSTICE A. P. SAHI, PRESIDENT

1. This complaint has been instituted by the family members of the deceased late Smt. Shanti Devi where the allegation made is of a very serious dimension about the removal of a left kidney of the deceased patient, who had been diagnosed for hydronephrosis of a right kidney. The complainants have relied on evidence that shall be discussed hereinafter, but

what is more peculiar is the defence which has been set up by the opposite party in response to this complaint. We shall therefore first embark upon the preliminary facts that led to the surgery and then the complications that developed whereafter the patient left for her heavenly abode.

2. The complainant complained of pain in her abdomen and visited the OP in his Ashirwad Nursing Home on 17.04.2012. The OP is a Surgeon and he diagnosed her with symptoms relating to her right kidney. The prescription dated 17.04.2012 also records and advice of certain tests to be carried out. On 18.04.2012, an X-ray KUB region was carried out. An ultrasonography was also carried out and a report of the same rendered by the OP himself is extracted hereinunder:

LOCHAN ULTRASOUND

Patient : SHANTI DEVI AGE: …. SEX : F

Ref. Dr. : SELF

CLINICAL HISTORY:

DATE: 18-04-2012

ABDOMEN REPORT

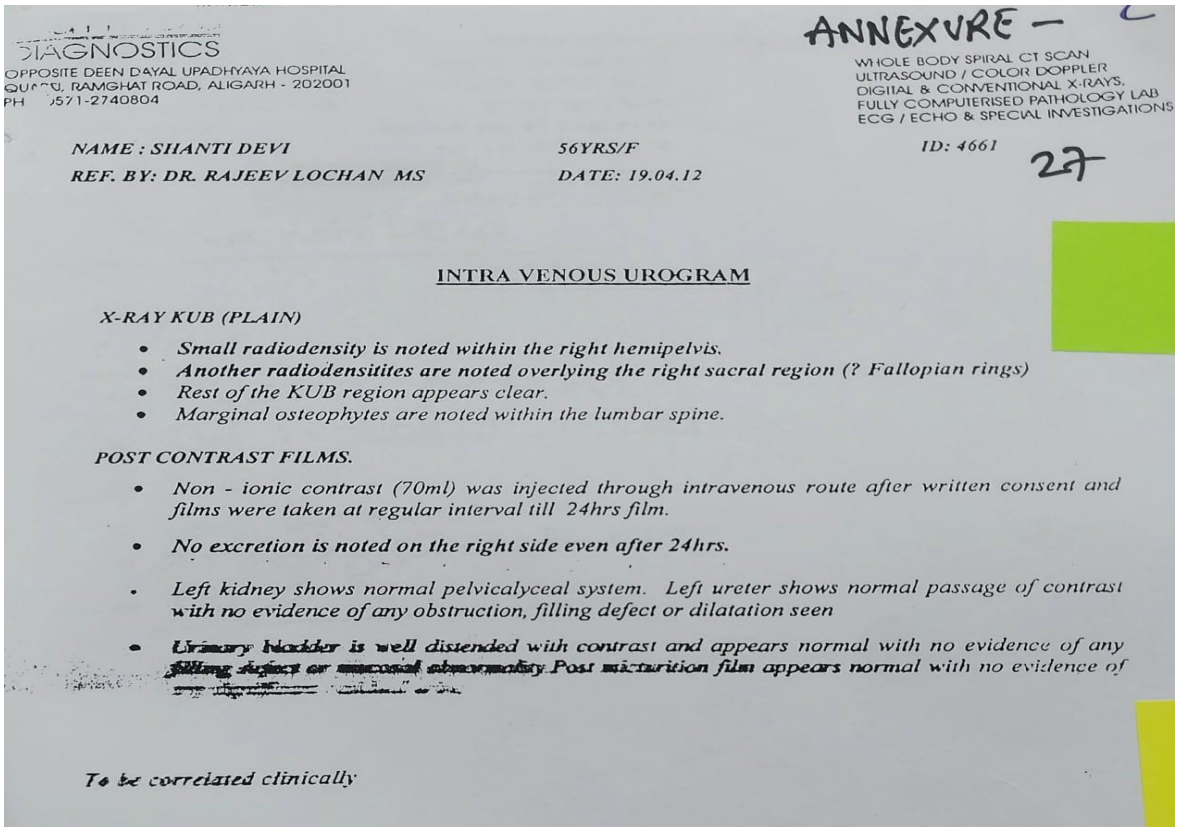
Real time USG of abdomen and pelvis reveals -

- *Liver appears normal in size and shape, contour and echopattern. There is no evidence of any focal lesion seen on the parenchyma. Intra-hepatic vascular and biliary radicles appear normal. …… vein and common bile duct are normal.*
- *Gall bladder is physiologically distended. The wall, thickness is normal. There is no evidence of any intraluminal mass lesion or calculi seen*

- *Pancreas is normal in size, shape and …….. lesion seen. Pancreatic duct is not dilated.*
- *Spleen shows normal size, shape and homogeneous echopattern.*
  No focal lesion is seen in parenchyma
- ***Both the kidneys are normal in size, shape, position and axis.*** *Parenchymal echopattern is normal bilaterally. No focal solid or cystic lesion is seen.* ***There is evidence of severe hydronephrosis on right side****, adv-IVP.*
  Right kidney *measures 106.9mm x 47.3mm.*
  Left kidney *measures 120.4mm x 47.2mm.*
- *Urinary bladder is normal in size, shape, and contour. No intra-luminal lesion seen.*
- *Uterus and both ovaries are normal in size, shape and echopattern. No focal lesion is seen. Bilateral adnexal regions are normal.*
- *There is no evidence of ascites or para-aortic adenopathy seen.*
  Retroperitoneal structure appear normal.

IMPRESSION - ***Right sided hydronephrosis, adv-IVP****.*

3. On 19.04.2012, an intravenous Urogram was carried out at a Diagnostic Centre the report whereof is extracted hereinunder:



ANNEXURE – C

DIAGNOSTICS
OPPOSITE DEEN DAYAL UPADHYAYA HOSPITAL
QUARSI, RAMGHAT ROAD, ALIGARH - 202001
PH 0571-2740804

WHOLE BODY SPIRAL CT SCAN
ULTRASOUND / COLOR DOPPLER
DIGITAL & CONVENTIONAL X-RAYS,
FULLY COMPUTERISED PATHOLOGY LAB
ECG / ECHO & SPECIAL INVESTIGATIONS

NAME : SHANTI DEVI 56YRS/F ID: 4661
REF. BY: DR. RAJEEV LOCHAN MS DATE: 19.04.12

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INTRA VENOUS UROGRAM

X-RAY KUB (PLAIN)

- Small radiodensity is noted within the right hemipelvis.
- Another radiodensitites are noted overlying the right sacral region (? Fallopian rings)
- Rest of the KUB region appears clear.
- Marginal osteophytes are noted within the lumbar spine.

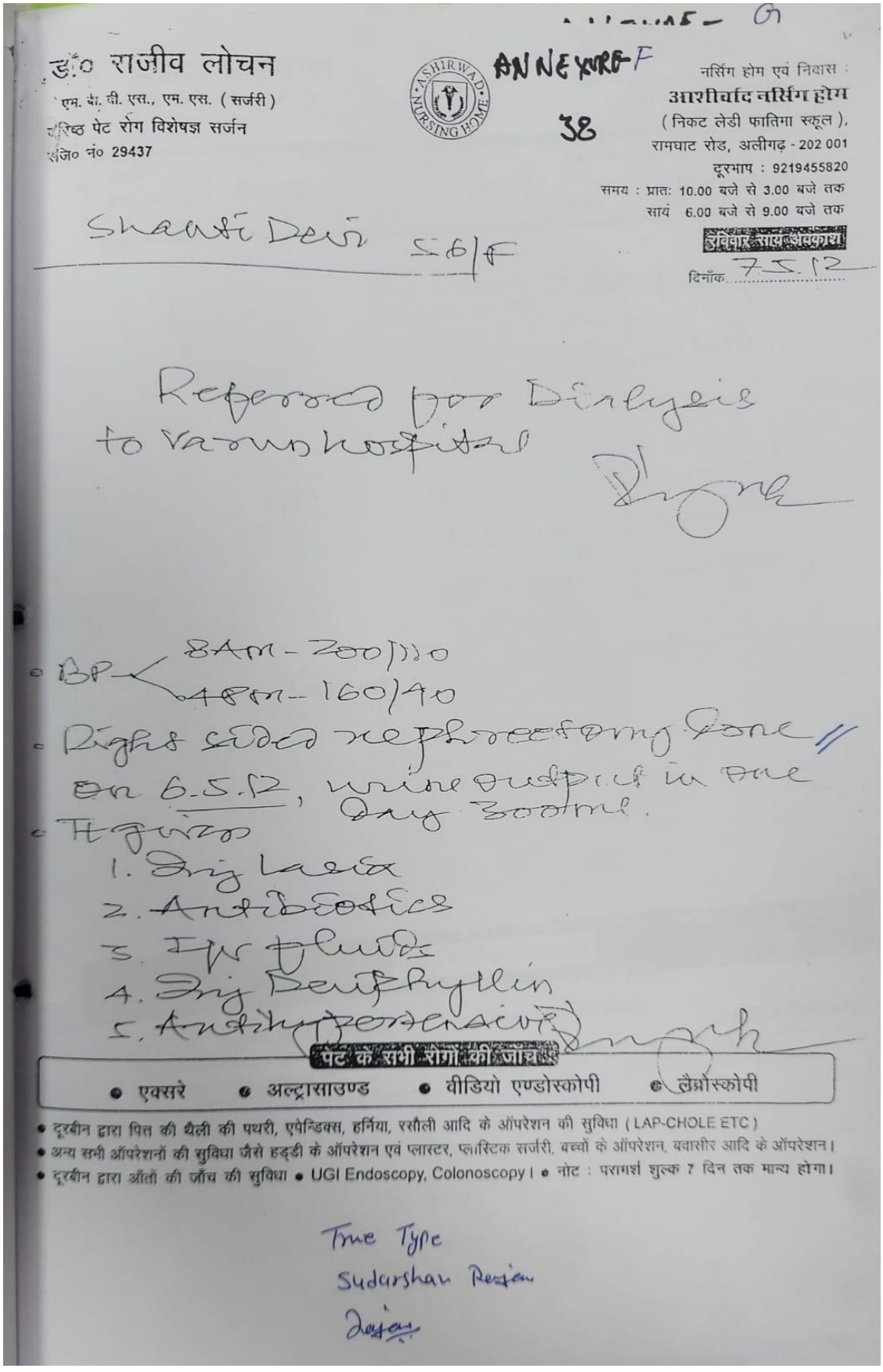
POST CONTRAST FILMS.

- Non - ionic contrast (70ml) was injected through intravenous route after written consent and films were taken at regular interval till 24hrs film.
- No excretion is noted on the right side even after 24hrs.
- Left kidney shows normal pelvicalyceal system. Left ureter shows normal passage of contrast with no evidence of any obstruction, filling defect or dilatation seen
- Urinary bladder is well distended with contrast and appears normal with no evidence of any filling defect or mucosal abnormality. Post micturition film appears normal with no evidence of

To be correlated clinically

4. The complainant on 05.05.2012 visited the OP at his nursing home who again wrote down a prescription and on his advice on the next day, the patient was admitted for removal of the right kidney.

5. The surgery was accordingly performed on 06.05.2012 and on 07.05.2012, the patient was referred for dialysis to Varun Hospital. According to the complainant, the patient was advised to undertake this dialysis as a necessity after the right sided nephrectomy had been performed. This referral letter dated 07.05.2012 has a significance and is therefore extracted hereinunder:



डॉ० राजीव लोचन
एम. बी. बी. एस., एम. एस. (सर्जरी)
वरिष्ठ पेट रोग विशेषज्ञ सर्जन
रजि० नं० 29437

ANNEXURE-F

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नर्सिंग होम एवं निवास :
आशीर्वाद नर्सिंग होम
(निकट लेडी फातिमा स्कूल),
रामघाट रोड, अलीगढ़ - 202 001
दूरभाष : 9219455820
समय : प्रातः 10.00 बजे से 3.00 बजे तक
सायं 6.00 बजे से 9.00 बजे तक
रविवार सायं अवकाश

Shanti Devi 56/F

दिनाँक 7.5.12

Referred for Dialysis
to varun hospital

- BP 8AM - 200/110
  4PM - 160/90
- Right sided nephrectomy done on 6.5.12, urine output in one day 3000ml.
- Rx
  1. Inj Lasix
  2. Antibiotics
  3. IV fluids
  4. Inj Deriphyllin
  5. Antihypertensive

पेट के सभी रोगों की जाँच

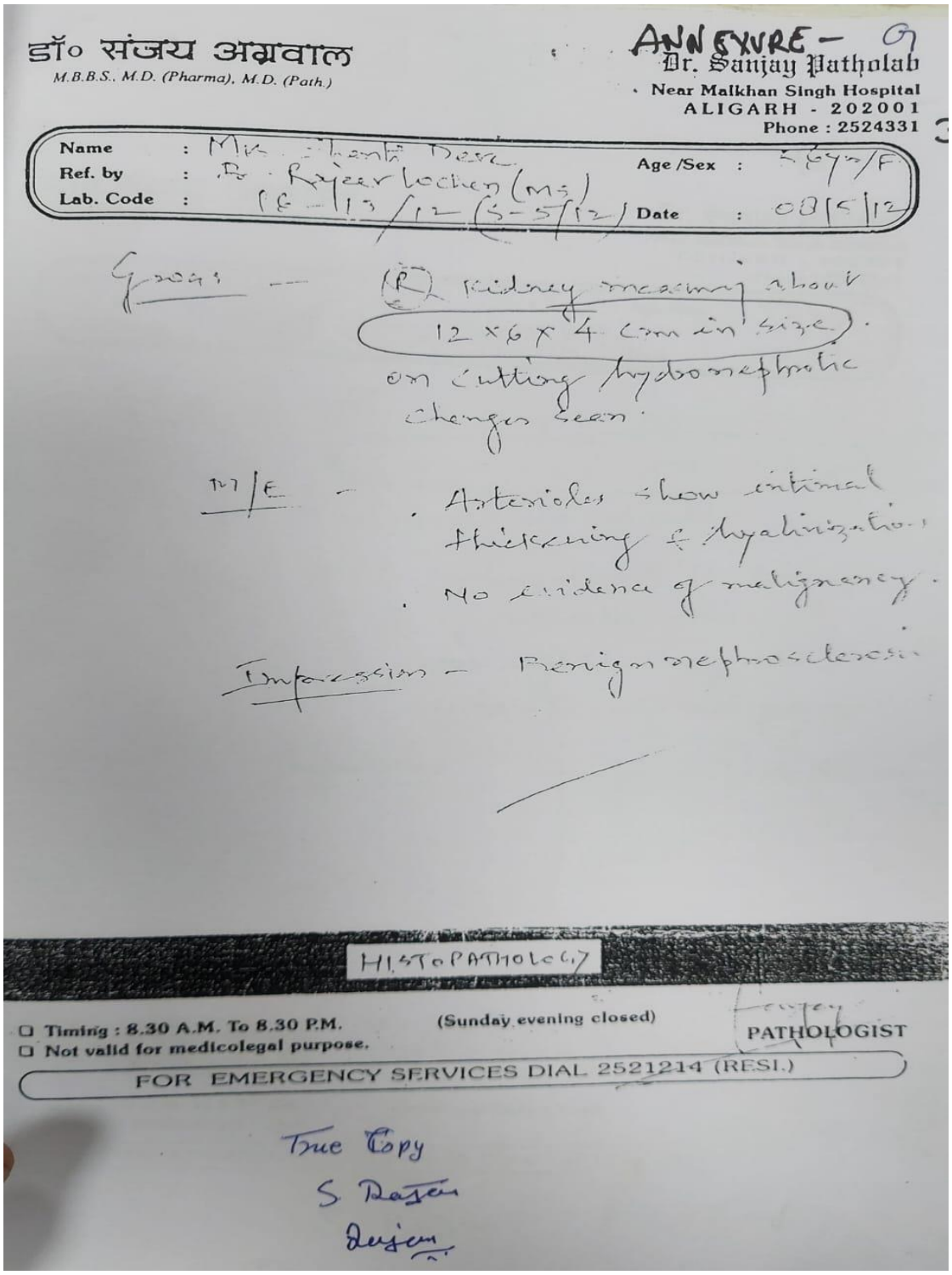
- एक्सरे
- अल्ट्रासाउण्ड
- वीडियो एण्डोस्कोपी
- लैप्रोस्कोपी

- दूरबीन द्वारा पित्त की थैली की पथरी, एपेन्डिक्स, हर्निया, रसौली आदि के ऑपरेशन की सुविधा (LAP-CHOLE ETC)
- अन्य सभी ऑपरेशनों की सुविधा जैसे हड्डी के ऑपरेशन एवं प्लास्टर, प्लास्टिक सर्जरी, बच्चों के ऑपरेशन, बवासीर आदि के ऑपरेशन।
- दूरबीन द्वारा आँतों की जाँच की सुविधा • UGI Endoscopy, Colonoscopy। • नोट : परामर्श शुल्क 7 दिन तक मान्य होगा।

True Type
Sudarshan Region

This records that a right side nephrectomy was done.

6. The kidney that was removed was sent for histopathological reports to Dr. Sanjay Aggarwal at Dr. Sanjay Patholab and the histopathological report dated 08.05.2012 is extracted hereinunder:



डॉ० संजय अग्रवाल
M.B.B.S., M.D. (Pharma), M.D. (Path.)

ANNEXURE – 7
Dr. Sanjay Patholab
Near Malkhan Singh Hospital
ALIGARH - 202001
Phone : 2524331

Name : Mr. Shanti Devi
Ref. by : Dr. Rajeev Lochan (MS)
Lab. Code : LG-13/12 (S-5/12)
Age /Sex : 54 Yrs/F
Date : 08/5/12

Gross – (R) kidney measuring about 12 x 6 x 4 cm in size. On cutting hydronephrotic changes seen.

M/E – . Arterioles show intimal thickening & hyalinization.
. No evidence of malignancy.

Impression – Benign nephrosclerosis.

HISTOPATHOLOGY

☐ Timing : 8.30 A.M. To 8.30 P.M. (Sunday evening closed)
☐ Not valid for medicolegal purpose.

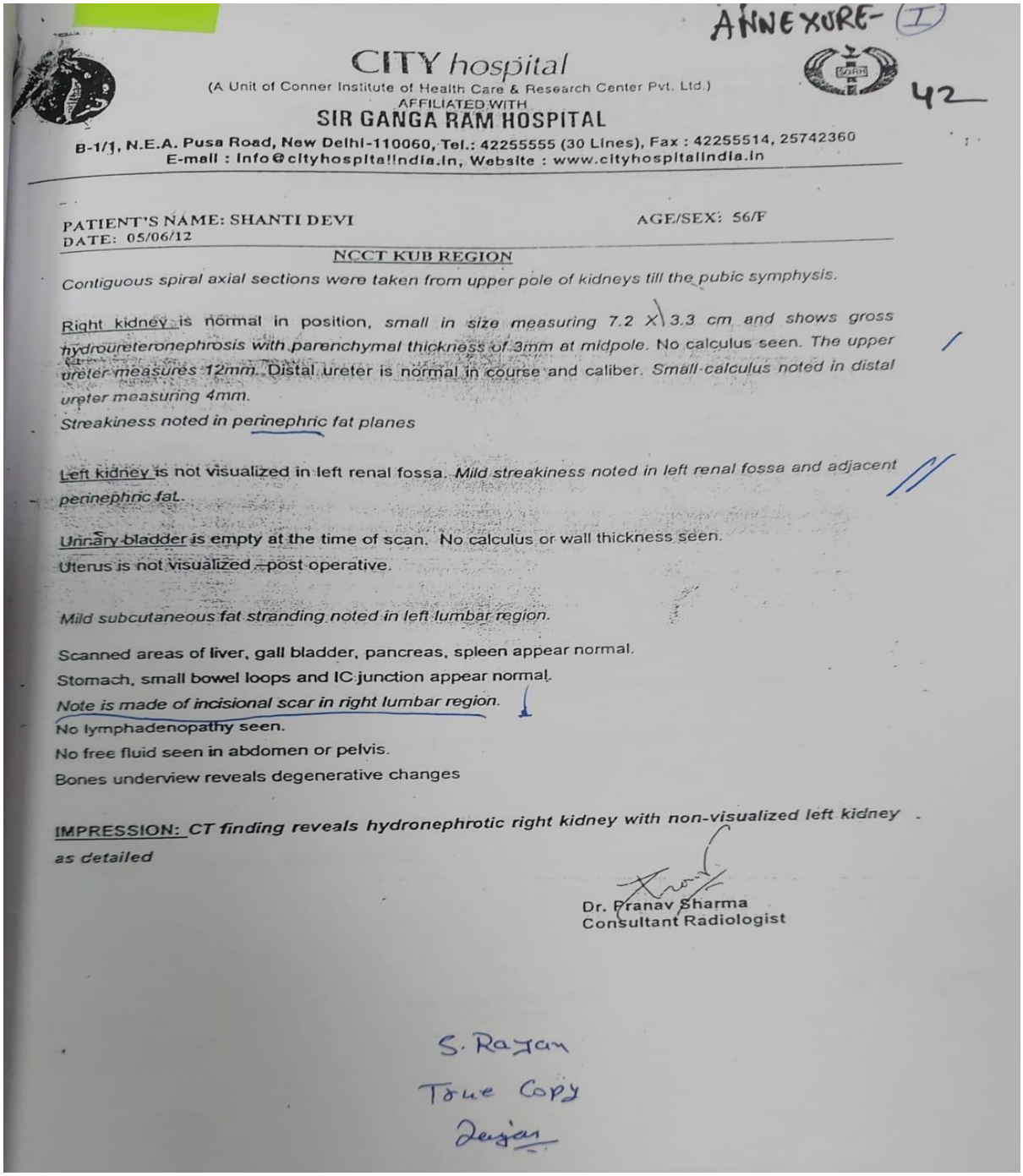
PATHOLOGIST

FOR EMERGENCY SERVICES DIAL 2521214 (RESI.)

True Copy
S. Rajan
Design.

A clear impression was given that the kidney is benign.

7. The patient was then put on dialysis and was being treated at Varun Hospital. However, on account of her continued ailment, she visited City Hospital where her radiological examination was conducted of the KUB region on 05.06.2012. The same is extracted hereinunder:



ANNEXURE- (I)

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CITY hospital
(A Unit of Conner Institute of Health Care & Research Center Pvt. Ltd.)
AFFILIATED WITH
SIR GANGA RAM HOSPITAL
B-1/1, N.E.A. Pusa Road, New Delhi-110060, Tel.: 42255555 (30 Lines), Fax : 42255514, 25742360
E-mail : info@cityhospitalindia.in, Website : www.cityhospitalindia.in

PATIENT'S NAME: SHANTI DEVI AGE/SEX: 56/F
DATE: 05/06/12

NCCT KUB REGION

Contiguous spiral axial sections were taken from upper pole of kidneys till the pubic symphysis.

Right kidney is normal in position, *small in size measuring 7.2 X 3.3 cm and shows gross hydroureteronephrosis with parenchymal thickness of 3mm at midpole.* No calculus seen. *The upper ureter measures 12mm.* Distal ureter is normal in course and caliber. *Small calculus noted in distal ureter measuring 4mm.*
Streakiness noted in perinephric fat planes

Left kidney is not visualized in left renal fossa. *Mild streakiness noted in left renal fossa and adjacent perinephric fat.*

Urinary bladder is empty at the time of scan. No calculus or wall thickness seen.
Uterus is not visualized –post operative.

Mild subcutaneous fat stranding noted in left lumbar region.

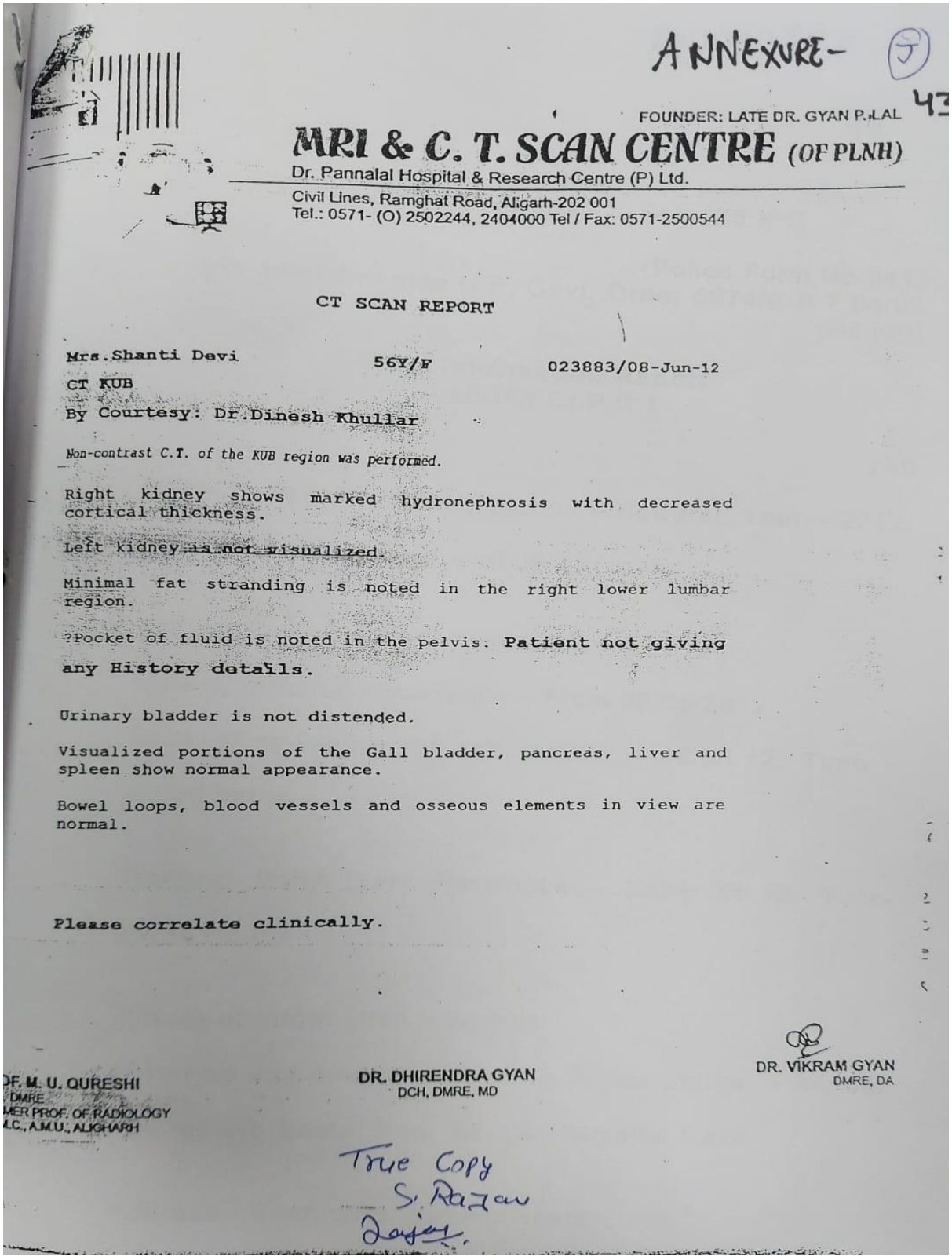
Scanned areas of liver, gall bladder, pancreas, spleen appear normal.
Stomach, small bowel loops and IC junction appear normal.
Note is made of incisional scar in right lumbar region.
No lymphadenopathy seen.
No free fluid seen in abdomen or pelvis.
Bones underview reveals degenerative changes

IMPRESSION: ***CT finding reveals hydronephrotic right kidney with non-visualized left kidney as detailed***

Dr. Pranav Sharma
Consultant Radiologist

S. Rajan
True Copy
Rajan

8. On 08.06.2012, a CT scan was conducted at MRI & CT Scan centre and the following report was given:



ANNEXURE- (J)

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FOUNDER: LATE DR. GYAN P. LAL

MRI & C. T. SCAN CENTRE (OF PLNH)

Dr. Pannalal Hospital & Research Centre (P) Ltd.

Civil Lines, Ramghat Road, Aligarh-202 001

Tel.: 0571- (O) 2502244, 2404000 Tel / Fax: 0571-2500544

CT SCAN REPORT

Mrs.Shanti Devi 56Y/F 023883/08-Jun-12

CT KUB

By Courtesy: Dr.Dinesh Khullar

Non-contrast C.T. of the KUB region was performed.

Right kidney shows marked hydronephrosis with decreased cortical thickness.

Left kidney is not visualized.

Minimal fat stranding is noted in the right lower lumbar region.

?Pocket of fluid is noted in the pelvis. **Patient not giving any History details.**

Urinary bladder is not distended.

Visualized portions of the Gall bladder, pancreas, liver and spleen show normal appearance.

Bowel loops, blood vessels and osseous elements in view are normal.

Please correlate clinically.

DR. M. U. QURESHI
DMRE
SENIOR PROF. OF RADIOLOGY
J.N.M.C., A.M.U., ALIGARH

DR. DHIRENDRA GYAN
DCH, DMRE, MD

DR. VIKRAM GYAN
DMRE, DA

True Copy
S. Razan
Sanjay.

9. A perusal of both these documents indicates that the right kidney was found to be in normal position with indications about the same having marked hydronephrosis with decreased cortical thickness, but surprisingly both these reports indicated that the left kidney was not visual.

10. The complainants have alleged that there was no improvement of the medical condition of the patient and that she was unable to pass urine as a result of which these tests were carried out and to the utter shock and dismay of the complainants, it was discovered that instead of the right kidney infected with hydronephrosis that had to be removed, the normal and healthy left kidney of the patient had been removed by the OP.

11. An FIR of criminal negligence was lodged on 16.06.2012 under Section 326 IPC at Police Station Kawarasi, Ramghat Road, Aligarh, later on converted into an FIR under Section 338 IPC.

12. In view of the legal position then existing, the criminal prosecution had to be initiated only after obtaining a medical report as a result whereof the Chief Medical Officer of the District constituted a medical board that tendered its report on 18.07.2012. The said enquiry report is extracted hereinunder:

SG

CONFIDENTIAL

Enquiry Report

On 29.06.2012, we have attended the first meeting with Dr. V.P. Gupta, Chief Medical Officer in the office of Chief Medical Officer Aligarh, taken cognizance of the situation and perused available necessary documents.

A hand written report has been handed over to Chief Medical Officer Aligarh on 29.06.2012, a copy thereof has been made available to the Principal Office of Medical College Meerut on 30.06.2012.

Thereafter, elaborate report with updated status provided to the Principal Office of Medical College Meerut on 07.07.2012 which has been referred by the Principal to appropriate levels in the Government.

On 14.07.2012, again a Review Meeting was conducted in the chamber of CMO Aligarh.

1- All available documents perused.

2- Patient Smt. Shanti Devi examined, spoken to her and seen her right side surgical operation scar.

T.C

S. Rajan

Rajan

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3- Discussion made with Veer Singh – the son of the patient, the main relative. The examination reports produced by him perused.

4- Shri Veer Singh has handed over a letter in which he has mentioned about getting conducted DNA test subject to some conditions. His letter can be examined and disposed off at the level of Administrative Officer Aligarh.

5- Dr. Rekha Lalwani, Assistant Professor and Head of the Department, Anatomy, conducted anatomy examination of the kidney, siding was not possible as tissues of renal pelvis not present.

6- Dr. Rajeev Lochan, appeared with kidney, discussion made, he was enquired about preoperative findings and his written statement recorded. According to him, he had taken out the right side kidney after incision on the right side of the patient.

7- Statement of Dr. Sanjay Aggarwal taken after discussions with him.

T.C

S. Rajan

8- Examination of the patients prior to the surgery and post-surgical reports perused.

9- Perused fresh summoned test reports like x-ray, KUB and ultrasound by District Hospital Aligarh. Made a perusal of the records of non-contract CT, MRI conducted in Aligarh Muslim University Hospital.

On 06.05.2013 itself, surgery – called Right Nephrectomy was performed on Shanti Devi w/o Shri Phool Singh by Dr. Rajeev Lochan in Aashirvad Hospital, Dr. Pawan Rajput was the Anaesthetist. In the pre-surgical examination, it was the case of Right Hydronephrotic and non-functional kidney and left normal kidney. In the pre-surgical kidney test, urea and creatinine were normal and there were normal relations between the surgeon and relatives of the patient.

The patient was to be kept on dialysis due to obstruction in passage in urine in post-surgical stage and till date the patient is on dialysis.

According to the test reports of post-surgical period, the right kidney which was suffering from

T. C
S. Rajan

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Hydronephrotic is in its place while the left normal kidney is absent.

In this way, the left normal kidney of the patient which was in existence before the surgery is not there now and the patient has become dependent on dialysis. She has undergone the lone surgery performed by Dr. Rajeev Lochan in Aashirvad Hospital Aligarh.

Thus, the liability, responsibility and blemish of the given situation lies on Dr. Rajeev Lochan and the concerned hospital and the State can take appropriate action on the same. // Expert opinion of senior urological panel can be taken on the averment of Dr. Rajeev Lochan that it is not possible to conduct Left Nephrectomy through right side incision but here it is also necessary to mention that even after planned and elective surgery called Right Nephrectomy after right side incision, Right Hydronephrotic kidney is in its place and the left kidney has become absent. //

With regards,

Sd/-
Dr. Arvind Trivedi
Professor Nephrology
Department of Medicine
Medical College Meerut

Sd/-
Dr. Abhishek Jain
Lecturer
Surgery and Urologist
Medical College Meerut

13. The Committee comprised of Professor Dr. Arvind Trivedi of the Nephrology Department of Medical College, Meerut and Dr. Abhishek Jain, Lecturer in the same Medical College in the Department of Surgery and Urology.

14. Accordingly, with the submission of the said report indicating that the dysfunctional kidney of the right side was still intact and the left kidney had been removed, a chargesheet was submitted in the criminal case. The OP preferred Writ Petition No. 8742/2012 before the High Court of Allahabad assailing the same which was dismissed on 26.11.2012.

15. The matter was also reported to the Uttar Pradesh Medical Council regarding the conduct of the OP and an order was passed on 12.03.2013 holding the OP to be negligent, not only for having removed the left normal kidney of the patient instead of the right kidney, but also for having submitted a forged case sheet in support of his defence. The OP was suspended of his medical registration for two years and his name was to be struck off from the register of the UP Medical Council. The order dated 12.03.2013 is extracted hereinunder:

ANNEXURE-

UTTAR PRADESH MEDICAL COUNCIL

5, Sarvapally, Mall Avenue Road, Lucknow-226 001
Phone : 0522-2238846, 2236600 Fax : 0522-2237800

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Ref. No. 1766/13

Date 12/03/2

OFFICE OF U.P MEDICAL COUNCIL, LUCKNOW

5, Sarvapalli, Mall Avenue Road, Lucknow

Dated: 12-03-2013

ORDER

Sub: Enquiry against Dr. Rajiv Lochan, MS,(Reg. no. 29437), resident of Ashirwad Nursing Home, Ramgaht Road, Aligarh. As alleged by Mr. Veer Singh, resident of Village Dhanipur, Thana Gandhi Park Aligarh for conducting an inquiry against treatment his mother Mrs. Shanti Devi. Mrs Shanti Devi was suffering from *hydronephrosis* of right kidney which was proved by Ultrasound report, IVP and other pathological investigations. Her left kidney was functioning normally at the time of surgery.

Dr. Rajiv Lochan performed nephrectomy for the right kidney on 06/05/2012 at his nursing home by a right sided incision. It was later diagnosed that left kidney instead of right kidney had been removed. When patient complained of not being able to pass urine, investigations were performed and it was established that the normal functioning left kidney had been removed. It had been main complaint of patient and her relatives that Dr. Rajiv Lochan had removed her left normal kidney.

T.C S. Rajan

UTTAR PRADESH MEDICAL COUNCIL

5, Sarvapally, Mall Avenue Road, Lucknow-226 001
Phone : 0522-2238846, 2236600 Fax : 0522-2237800

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Ref. No. .....

Date .....

After the reports, both pre and post operative, pathological, USG, IVP had been submitted by the patient. The matter has been investigated by Ethics Committee of U.P Medical Council. During the course of investigation all documents were thoroughly examined. Dr. Rajiv Lochan had been called to attend on more than one occasion and time to time and he cooperated with the Ethics Committee. Mr. Veer Singh too attended the Ethics Committee meeting.

A special meeting comprising of experts, too, was convened to particularly look into this case. It comprised of Dr. Rakesh Kapoor, Professor and Head, Department of Urology, S.G.P.G.I.M.S., Lucknow and Dr Nirmal Gupta, Professor and Head, Department of Cardiovascular and Thoracic Surgery, SGPGIMS, Lucknow along with the Ethics Committee. In between the investigations a member, Dr Vinod Jain had gone to Aligarh to personally examine the patient. He advised a free USG from A.M.U., Aligarh.

It has been established that Dr. Rajiv Lochan was fully aware at the time of surgery that patient's both kidneys were perfectly placed on both sides and right kidney was non functional. He accepted that he had performed the operation to remove right kidney but he had no explanation as to how left kidney was removed. As per his version, after opening the abdomen he could see the kidney and thus he removed it. He never attempted to ascertain whether it was the right or the left kidney. He also could not confirm the size of the kidney which

T.C S. Rajan

UTTAR PRADESH MEDICAL COUNCIL

5, Sarvapally, Mall Avenue Road, Lucknow-226 001
Phone : 0522-2238846, 2236600 Fax : 0522-2237800

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No. .....

Date .....

was quite different as per report of USG. (Right kidney 106.9mm x 47.3 mm, Left kidney 120.4 mm x 47.2 mm, pre operative). Further he also failed to recognize between normal thicknesses of renal cortex and thinned out renal cortex. Normal thickness of renal cortex is present in normal kidney, while thinned out renal cortex denotes abnormal kidney. EC feels that this difference could have easily been made during surgery.

During the course of inquiry, when asked about anatomy of region for which he performed surgery, he could not produce correct answers. He emphasized that it was an accident and probably both the kidneys of the patient were on the same side and hence it could be a congenital defect. Though investigations were opposite to his explanation. The fact of being both the kidneys on same side is not tenable.

Also, during the course of investigations, Dr. Rajiv Locan submitted a forged case sheet and he accepted that he had manipulated the case sheet. He was also called to appear before the Governing Body of U.P Medical Council.

T.C

(Sudarshan Rajan)

UTTAR PRADESH MEDICAL COUNCIL

5, Sarvapally, Mall Avenue Road, Lucknow-226 001
Phone : 0522-2238846, 2236600 Fax : 0522-2237800

61

Ref. No. .....

Date .....

DECISION

Ethics Committee and later Governing Body of U.P Medical Council have approved the leveled charges of submitting forged case sheet and careless/ negligent performance of surgery and removal of patient's left normal kidney instead of right kidney which was non functional. Presently patient is having right non functional kidney and is on continuous dialysis programme.

Both Ethics Committee and Governing Body of U.P Medical Council are of opinion that Dr. Rajiv Lochan should have differentiated between normal and abnormal kidney and confirmed it at the time of surgery before removing the normal kidney.

Governing Body of U.P Medical Council, keeping in mind, Professional conduct, Etiquette and Ethics Regulations-2002 has pronounced the suspension of medical registration for 2 (TWO) Years from 15/03/2013 to 14/03/2015, and his name to be struck off from the register of U.P. Medical Council. He will not be authorized to work as surgeon/ physician/ clinician during this period.

Registrar 11/3/13
12/3/13 For Ethics Committee

#1767-71/13

Copy to following-

1. Dr Rajiv Lochan, Ashirwad Nursing Home, Ramgaht Road, Aligarh

Rajan T.C
Sudarshan Rajan

16. The patient was struggling with her ailing right kidney and she ultimately on account of the excessive dialysis and all the treatment she had to undertake, she died of severe hyperkalemia coupled with hypoglycemia on 20.02.2014.

17. The present complaint was filed on 05.08.2014 complaining of gross medical negligence and an unfair practice on the part of the OP in which notices were issued on 27.03.2015 after admitting the complaint. The OP was granted time to file response who defaulted, but on the issue of filing of the written statement, the matter was taken up on 26.09.2016 before the Apex Court where with the consent of parties, and on payment of Rs. 75,000/- as costs, the written statement of the OP was directed to be taken on record with time to the complainant to file rejoinder. The complaint remained pending for one reason or the other, but could not be disposed off with adjournments with the Covid intervening. The complaint finally came up before us on 04.05.2026 when we heard the learned counsel for the parties.

18. Along with the written statement, the OP filed certain documents based on the averments contained in the written statement. One of the documents brought on record requires reference which is the order passed by the Medical Council of India on appeal by the OP whereby the order passed by the U.P. Medical Council was confirmed. The order dated 24.10.2014 is extracted hereinunder:

भारतीय आयुर्विज्ञान परिषद्

MEDICAL COUNCIL OF INDIA

75 YEARS Platinum Jubilee (1933 - 2008)

पॉकेट – 14 सेक्टर – 8 द्वारका ए नई दिल्ली – 110 077
Pocket – 14, Sector – 8, Dwarka, New Delhi – 110 077

No. MCI – 211(2)(24)/2013-Ethics/ 136769 Date: 24/10/14

Dr. Rajiv Lochan,
B-11, Vikram Colony,
Ramghat Road,
Aligarh-202001 (U.P)

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Sub.:- Appeal dated 16.05.2013 filed by Dr. Rajiv Lochan against order dated 12.03.2013 passed by U. P. Medical Council – Reg.

I am directed to inform you that the above matter was considered by the Ethics Committee at its meetings held on 27th & 28th September, 2013. The operative part of the decision of the Committee reproduced as under :-

"The Ethics Committee considered the appeal dated 16.05.2013 filed by Dr. Rajiv Lochan against Order dated 12.03.2013 passed by U.P. Medical Council. The summary of complaint reads as under:-

"patient Mrs. Shanti Devi was admitted in Aashirwad Nursing Home, Aligarh due to stomach pain on 17.04.2012 under the treatment of Dr. Rajeev Lochan. After various investigation, Dr. Lochan informed Sh. Veer Singh that the right side kidney of his mother is damaged and to save the life of the patient, he has to perform an operation to remove the kidney. Sh. Veer Singh admitted the patient on 06.05.2012 and the same day surgery of right kidney was done by Dr. Rajeev Lochan. But after the operation when the patient did not get any relief, Dr. Lochan sent her to Varun Heart Center for Dialysis where she had continued under dialysis from 07.05.2012 to 20.05.2012. Then, attendants came to know that Dr. Lochan removed the left side kidney instead of right side damaged kidney."

The U. P. Medical Council vide its order dated 12.03.2013 held that :-

"..... Ethics Committee and later Governing Body of U.P. Medical Council have approved the leveled charges of submitting forged case sheet and careless /negligent performance of surgery and removal of patient's left normal kidney instead of right kidney which was non functional. Presently patient is having right non functional kidney and is on continuous dialysis programme.

Both Ethics Committee and Governing Body of U.P. Medical Council are of opinion that Dr/ Rajiov Lochan should have differentiated between normal and abnormal kidney and confirmed it at the time of surgery before removing the normal kidney.

Governing Body of U.P. Medical Council, keeping in mind, Professional conduct, Etiquette and Ethics Regulations-2002 has pronounced the suspension of medical registration for 2 (Two) years from 15.03.2013 to 14.03.2015, and his name to be struck off from the register

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of U.P. Medical Council. He will not be authorized to work as surgeon/physician/clinician during this period."

The Ethics Committee noted that on 27.09.2013, Dr. Rajiv Lochan alongiwth his Counsel Mr. Ram Babu Sharma, appeared before the Ethics Committee and made their submissions.

Sh. Veer Singh, the Complainant had also appeared before the Ethics Committee and narrated the sequence of events leading to the removal of normal kidney of his mother instead of the diseased kidney, as a result of which her mother has been undergoing dialysis since 07.05.2012 and is in a very debilitating condition and Dr. Rajiv Lochan did not turn up to take post operative care at the dialysis centre.

Dr. Rajiv Lochan and his Counsel during their submissions admitted that the left kidney has been removed although the Surgeon, Dr. Rajiv Lochan approached from the right side through right sub-costal incisor. After taking into the account, the submissions of both the parties, the Ethics Committee observed that Dr. Rajiv Lochan has failed to take due care during the operation and also did not maintain proper case record pertaining to pre-operative and post-operative notes.

Therefore, the Ethics Committee directed Dr. Rajiv Lochan to appear before the Committee on 28.09.2013 with other doctors who were associated during the operation and post operative periods and the pathologist, who performed the biopsy. Mr. Veer Singh was directed to bring the CT Scan Report and photograph of his mother with the incision visible. Dr. Rajiv Lochan appeared before the Committee and informed the Committee that Dr. Tanuj Giri, the other Anesthetist will not be able to appear before the Ethics Committee because his father has expired. Dr. Pawan Rajput, Anesthetist, Dr. Sunil Gupta, Surgeon and Dr. Sanjay Aggarwal, Pathologist have appeared before the Committee for hearing on 28.09.2013. Mr. Veer Singh with his mother Smt. Shanti Devi, who had undergone operation by Dr. Rajiv Lochan appeared before the Ethics Committee with all relevant papers and CT Scan Report.

After deliberation, on 28.09.2013, the Committee observed that :-

"Dr. Rajiv Lochan has admitted that there was hydronephrotic changes in right kidney and the left kidney was normal as per the ultrasound report. Post operative CT scan has shown that right kidney is present in normal position and Dr. Rajiv Lochan while operating, did not exercise clinical judgement in differentiating the right kidney which was hydronephrotic and the normal left kidney. His submission that this could be a case of floating kidney did not convince the Ethics Committee as Dr. Rajiv Lochan could not explain the features of floating kidney when asked by the members."

The Ethics Committee deliberating the matter at length and was of the opinion that there has been medical negligence on the part of the treating doctor i.e. Dr. Rajiv Lochan.

भारतीय आयुर्विज्ञान परिषद्

MEDICAL COUNCIL OF INDIA

82

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The Ethics Committee discussed whether to uphold the decision of U.P. Medical Council or enhance the suspension to five years as opined by some of the members. It was decided by majority to uphold the decision of U.P. Medical Council. "

The above recommendation of the Ethics Committee was approved by the Executive Committee at its meeting held on 21st August, 2014.

This is for your information, please.

Yours faithfully,

(Rajiv Kumar)
Section Officer

Endst. No.: MCI – 211(2)(24)/2013-Ethics/ **Date:**

Copy forwarded for information to :-

1. The Registrar. U.P. Medical Council, 5, Sarvapally Mall Avenue Road, Lucknow-226001,
2. Sh. Veer Singh, Village Dhanipur, Thana Ghandhi Park, G.T.Road, Aligarh (U.P)
3. The Deputy Secretary, IMR Section, Medical Council of India, New Delhi, for appropriate necessary action.
4. The Computer Section, Medical Council of India, New Delhi to upload the said matter on the Council website, for appropriate necessary action.
5. The Deputy Secretary, Administration Section, Medical Council of India, New Delhi for appropriate necessary action..

(Rajiv Kumar)
Section Officer

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19. Another document which is relevant for the controversy, and has been filed along with the application for additional documents, is the post-mortem report of the deceased patient wherein learned counsel for the OP has pointed out towards the status of the lungs indicating them to be congested. Cause of death has been shown as shock and septicaemia.

20. A rejoinder has also been filed to the reply whereafter written submissions have been filed by the OP that is on record.

21. Learned counsel for the complainant advancing his submissions urged that this is an open and shut case which demonstrates that the OP was not only negligent, but has performed his job unethically by removing the left kidney of the deceased patient instead of the right one that was diagnosed by him to be dysfunctional. For reasons best known that remained unexplained. The said act of negligence is admitted by the OP in the reply itself and supported with the medical expert reports of the expert body constituted by the Chief Medical Officer, the decision of the U.P. Medical Council and the decision of the Medical Council of India. There is no doubt about the negligent act of the OP and hence the complaint deserves to be allowed in the terms prayed for.

22. Learned counsel has relied on paragraphs 33 and 34 of the decision in the case of ***Harnek Singh & Ors. Vs. Gurmit Singh & Ors., (2022) 7 SCC 685*** urging that the findings recorded in the order recorded by the Medical Council of India have great relevance and therefore ought to be taken into account.

23. Coming to the claim of quantum, learned counsel submits that this horrendous act performed by the OP deserves to be heavily compensated keeping in view the status of the deceased and her family and the loss suffered by them. Learned counsel has pressed for the reliefs and the amount as prayed for in the prayer clause.

24. Learned senior counsel appearing for the OP, Mr. Garg has urged that there is no admission by the OP in the written statement as alleged, and the circumstances in which the surgery was performed does not amount to a negligence. He has however emphasized that the allegations about the extraction of the left kidney through a right incision on the patient's flank was impossible for which the learned counsel has tried to explain the same with anatomical diagrams filed along with the additional documents as also the averments contained in the reply as well as the written arguments filed by him. He has further relied on a sort of an opinion / certification given by the Association of Surgeons that has been filed as Annexure R2 to the reply. The same is extracted hereinunder:

Association of Surgeons, Aligar

ALIGARH- 202 001 (U.P.)

Dr. P. Kumar President Kumar Nursing Home Ramghat Road, Aligarh Mob. : 98373-94753	Dr. B.N. Awasthi Secretary Avas vikas Colony Agra Road, Aligarh Mob. : 98370-23802	Dr. G.P. Varsh Treas Central Hosp Masoodabad Cros G.T. Road, Alig Mob. : 9837 1-56

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Mob. :98370-44594

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Dr. Hassan Harris
Mo 98371-60585

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Mob. : 94114-91313

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Mob. :98372-27670
Dr. S.S. Paul
Mob. : 98970-11180

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Mob 98370-85362

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Dr. Jayant Sharma
Mob. : 98370-17404

Co-opted Member :
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Prof. L.M. Barriar
Mob. : 98970-32115
Dr. A.K. Gupta
Mob. : 94122-74272
Dr. Malkhan Singh
Mob. : 94128-19858
Dr. A.K. Singh (M.S. Hospital)
Mob. : 94124-87707
Dr. M.P. Singh
Mob. : 941 22-73434

ANNEXURE R-2

To All concerned respected authorities of District of Aligarh.

Sub.: Regarding matter of Dr. Rajeev Lochan, Sr. Surgeon of Aligarh in Private Practice Since Last 25 yrs.

Respected Sir,

We all the members of Association of Surgeons of District Aligarh want to say that our Association is an 18 years old. District Level Association having all the private practising surgeons of Aligarh District, Surgeons of J.N. Medical College Aligarh and Surgeons of district hospital Aligarh and at least 5 urological surgeons (urological surgeons) namely Dr. Y.V.S. Gahalaut Rtd. from J.N. Medical College, Dr. S.S. Paul, Dr. Jayant Sharma, Dr. Tanmay Shekhar, Dr. Gaurav Gupta and we all are associated with all the U.P. State and Our National Body of Association of Surgeons of India in the matter of Dr. Rajeev Lochan, who had operated the patient, Shanti Dev on 6th of may on right side for removal of damaged right kidney, We want to say with strong conviction and assure you that left kidney cannot be operated from right side neither here nor any where.

In this sorrowful circumstances we have full sympathy with the patient we are ready to render all sorts of help for betterment of patient.

Truly Yours

Dr. B.N. Awasthi
Secretary, A.S.A.

1. Dr Gupta
2. Dr A.K. Gupta

25. Learned counsel has also relied on a report of the All India Institute of Medical Sciences dated 03.06.2015 in some other case contending that in a similar situation, the AIIMS found that the two kidneys were so grossly enlarged and were fused together as such the removal of one of the kidneys did not amount to any negligence. He therefore submits that in the present case also, this is somewhat a similar situation and consequently in view of the aforesaid evidence led, the expert medical reports as relied on by the complainants should be rejected. Learned counsel has read the enquiry report as well as the prescriptions and the orders of the Medical Council and the post-mortem report to substantiate his submissions. He has also read out from Campbell's Urology Textbook to urge that the anatomy of the human body did not permit or rather it is impossible to carry out the surgery for removal of the left kidney with an incision on the right side.

26. Learned counsel has also pointed out to an Ultrasound report dated 24.04.2012 to contend that the diagnosis made by the OP about the right kidney was correct and that the OP has not committed any act of negligence. He has then countered the submissions on quantum by urging that the allegations made in paragraphs 15 and 16 of the complaint are unsubstantiated by any material and the hospital expenses claimed on the basis of the bills that have been appended, total to Rs. 6,57,600/- only, whereas the claim is of Rs. 1 Crores. He submits that the other claims on account of disability and the other reliefs prayed for have been made without

any basis and consequently the quantum is imaginary and cannot be granted in the absence of any appropriate or reasonable claim.

27. Learned counsel emphasized that the OP could not have imagined about having removed the left kidney and the allegation is therefore unfounded.

28. He has also raised issues of limitation in the filing of the complaint and it is urged that in view of the literature relied on as well as the explanation given, the legal position has also been answered in favour of the OP for which he relies on the following decisions:

i. ***Jacob Mathew vs. State of Punjab, (2005) 6 SCC 1***

ii. ***Bijoy Sinha Roy vs. Biswanath Das, (2018) 13 SCC 224***

iii. ***Arun Kumar Manglik vs. Chirayu Health and Medicare Pvt. Ltd. & Anr., (2019) 7 SCC 401***

iv. ***Maharaja Agrasen Hospital vs. Rishabh Sharma, (2020) 6 SCC 501***

v. ***Dr. Harish Kumar Khurana vs. Joginder Singh, Civil Appeal No. 7380 of 2009***

vi. ***Balram Prasad vs. Kunal Saha, (2014) 1 SCC 384***

vii. ***National Insurance Co. Ltd. vs. Pranay Sethi, (2017) 16 SCC 680***

viii. ***Sandeep Khanuja vs. Atul Dande, (2017) 3 SCC 351***

ix. ***United India Insurance Co. Ltd. vs. Satinder Kaur, 2020 SCC Online SC 410***

29. Having considered the submissions raised, we have no doubt in our mind that this is one of those gravest forms of negligence that is rarely witnessed for a judicial approximation before Courts and Tribunals. The fact of the surgery conducted on 06.05.2012 is nowhere disputed by the OP. The defence taken by the OP is very peculiar to the effect that the OP had incised the right flank of the patient for extracting the right kidney and then goes on to say something which, in our opinion, is a clear admission of this negligence with a strange unpalatable defence as contained in paragraph 15(i) of the reply extracted hereinunder:

> *i.* ***Admittedly, a right sided incision was made but the left kidney was removed. However, no intent cannot be imputed to this action of the respondent in as much as if something is medically impossible, the state of mind of the doctor was bound to be such that no further checking of the kidney was required. Hence, at the time of removal, the Respondent could not have even imagined that this medical impossibility could have happened in this case or at his hands, and hence did not question the correctness of the kidney so removed. The kidney removed from the body of Smt. Shanti Devi was then immediately sent for histopathological examination.***

30. A perusal of the said response by the OP leaves no room for doubt that the left kidney had been removed in spite of the fact that the entire diagnosis, prognosis, treatment and the subject matter of histopathology was the right kidney. This description was not only clearly recorded in the prescription of the OP, but it is also clear from the Radiological and Scan reports that have been extracted above confirming that both the kidneys at the pre-operative stage were clearly intact in their place, one on the left side and the other on the right side. The infected kidney was the right kidney for which the surgery

was planned and it stands confirmed from the case sheet diagnosis that it was the right side hydronephrosis that was to be treated by surgery. While referring for dialysis on 07.05.2012, the prescription also states “right side nephrectomy”.

31. There is no explanation by the OP as to how did the left side kidney went missing when there was only one surgery performed and there is no evidence of any other surgery for removal of the left kidney. The pre-operative test confirmed the existence of both the kidneys separately with no adverse symptoms in the left kidney. There was therefore no occasion for the OP at all to remove the left side kidney. Even though principles of *res ipsa loquitur* are not commonly attracted in medical matters, but this is one of those cases where it was only the OP who performed the surgery with a right incision that resulted in the removal of the left side kidney.

32. It is here that the enquiry report dated 18.07.2012, after having heard the OP made a very convincing observation on the expert opinion, and the argument of the OP about the impossibility of conducting left nephrectomy through a right side incision, and went on to observe as follows:

> *…. Expert opinion of senior urological panel can be taken on the averment of Dr. Rajeev Lochan that it is not possible to conduct Left Nephrectomy through right side incision* ***but here it is also necessary to mention that even after planned and elective surgery called Right Nephrectomy after right side incision, Right Hydronephrotic kidney is in its place and the left kidney has become absent****.*

33. The matter does not rest there. The OP has referred to the opinion of the Association of Surgeons that has been relied on by the learned counsel

to urge that the left kidney cannot be operated from the right side neither here nor anywhere. We fail to understand the medical relevance of this sort of a typed opinion having any authentic value, that too even by an alleged company of Surgeons known as an Association of Surgeons at Aligarh, which bears no less than 19 signatures of doctors. We are surprised at such an opinion for which there is no supporting material except the argument of the learned senior counsel that given the human anatomy and the positioning of the kidneys, it is not possible to remove the left kidney from an incision of the right side. This argument is untenable in the absence of any cogent evidence. The certificate is not possessed of any probative evidentiary value as the same is not supported by any expert evidence. None of the doctors who have signed the certificate have filed their affidavit to support the same. We may reiterate that it was for the OP to explain as to how the left kidney vanished when it was very much in existence prior to surgery. In fact, it did not vanish and according to the own admission of the OP coupled with the explanation in his reply quoted above, the left side kidney was removed by the OP for which he seems to have no valid explanation.

34. We now come to the order of the U.P. Medical Council dated 12.03.2013. A perusal of the same would indicate that the OP was held to be fully aware of the patient's kidneys being perfectly placed on both sides and that the right side kidney was not functional. The U.P. Medical Council has categorically recorded that the OP had no explanation as to how the left kidney was removed and that he never attempted to ascertain whether it was

the left or the right kidney. This finding in itself, in our opinion, is a clear finding of gross negligence that a qualified doctor was unable to ascertain whether he was removing the right or the left kidney when he had clearly planned the removal of the right kidney only. The pre-operative tests were neither confusing nor was there any ambiguity in the location of the two kidneys. There was no overlapping or any fusion as was sought to be impressed upon by the learned senior counsel with the help of the report of AIIMS in some other case. We find that the said illustration is nowhere similar to the present case. The learned senior counsel therefore could not explain as to how the Association of Surgeons gave such an opinion without even examining the process of the surgery as discussed hereinabove.

35. We therefore find that the decision of the U.P. Medical Council and its findings recorded has gone unrebutted and consequently the said opinion of the U.P. Medical Council is of relevance and gets legal support with the observations made by the Apex Court in the case of ***Harnek Singh & Ors. Vs. Gurmit Singh & Ors. (supra).*** What is more surprising is that the U.P. Medical Council has recorded a finding that the OP has described the surgery as an accident and he could not offer the correct answers in respect of the anatomy of the region. It seems that a feeble contention was raised that both the kidneys were on the same side, but this was found to be untenable, and rightly so, in view of the pre-operative status of the radiological and the scanned reports.

36. We may point out that the OP has not produced any operative notes to confirm about his findings in this regard. This is yet another negligence and to the contrary, the State Medical Council has found that a forged case sheet had been submitted in defence.

37. The order of the State medical Council was taken up in appeal before the Medical Council of India by the OP which failed. The order of the Medical Council of India dated 24.10.2014 extracted hereinabove also indicates that some of the members who were deciding the said appeal were of the opinion that the punishment given to the OP by the State Medical Council deserved enhancement.

38. With the aforesaid evidence on record, we find that the decisions relied on by the learned counsel for the OP regarding medical negligence in the case of ***Jacob Mathew (supra)***, the Bolam test in the case of ***Arun Kumar Manglik (supra)*** and the other decisions relied upon do not in any way extend any aid to the OP. To the contrary, the tests laid down in the cases above on the other hand apply in favour of the complainants, in as much as, the manner in which the surgery has been conducted and as indicated in the reply of the OP himself, does not admit of any doubt or suspicion regarding negligence. The complainants have proved negligence at the hands of the OP who for reasons best known has removed the left kidney of the deceased patient instead of the right one.

39. The consequence of this was that the right kidney which was a failed and dysfunctional kidney remained with the patient who had to be put on

dialysis and suffered for almost two years before she finally expired, the cause of death being the kidney which ought to have been removed by the OP. The removal of the left kidney was a medical disaster and a negligence of the highest order. Had the left kidney remained intact, the patient would have survived longer.

40. Coming to the quantum prayed for, the fact remains that had the left kidney remained intact and had not been removed by the OP, the same would have helped in the survival of the patient, but with its removal and the right failed kidney, the complainant had no hope for survival. This act and negligence of the OP therefore deserves to be heavily compensated. The loss is irreparable, in as much as, the loss of a mother to her sons, a spouse to her husband and a housewife to a family, all combined together cannot be diluted, moreso with the nature of the negligence in the present case.

41. It is correct that the calculations which have been referred to in the prayer clause are not exactly substantiated and are more or less of a guess work, but the fact remains that the patient lost her life in these peculiar circumstances where there is a loss of consortium, loss of love and affection to the children and of course her own contribution as she was only 56 years of age at the time of the incident. Her longevity of life could have been expected had the left kidney remained intact.

42. We therefore find that given the nature of the losses, it would be appropriate to award Rs. 10 lakhs to each of the complainants for the loss of company, love and affection of the deceased, who departed at a premature

early age. Apart from this, we find it appropriate to award a lumpsum amount of Rs. 1.5 crores to the complainants for the act of negligence of the OP whom we hold to be liable and responsible for the negligent surgery and removal of the left kidney instead of the right one for which there is no valid explanation, much less a plausible explanation. Accordingly, the complainants will be entitled to a total sum of Rs. 2 Crores as compensation from the OP.

43. We do not find any reason to award any compensation for any disability nor do we find the claim of legal expenses of Rs. 20 lakhs as prayed for to be awardable. The legal expenses shall stand confined to Rs. 1 lakh. Accordingly, the aforesaid amounts shall be paid by the OP to the complainants within three months from today together with 6% interest from the date of death i.e. 20.02.2014 till the date of actual payment.

44. In the event of default, the rate of interest shall stand enhanced to 9% till the date of actual payment.

45. The complaint is accordingly allowed.

……
(A.P. SAHI, J)
PRESIDENT

……
(BHARATKUMAR PANDYA)
MEMBER

Pramod/VM/Court-1/CAV