Date of Filing: 11.09.2025.
Date of Order: 30.06.2026.

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, KAKINADA.

P r e s e n t:

Sri. Ch. Raghupathy Vasantha Kumar, B.Com., B.L., … President.
Smt. Chakka Susi, B.Com., M.A., B.Ed., LL.B., … Member.
Sri. Chaganti Nageswara Rao, B.Sc., LL.M., … Member.

THURSDAY, the 30th day of July, 2026.

C.C. No. 169/2025.

Between

1. Smt. Pothula Marian Marcelina**,**
W/o. late Vijay Kumar, Occ: Teacher, Age 40 years,
R/o. Door No. 70-17-1/5/510/3, Flat No:510,
near Prasad Mansion, RTO Office Road, Opp. BSNL office,
Vakalapakala, Kakinada-533005, Kakinada District, A.P.

2. Pothula Uma Nyneishia**,**
D/o. late Vijay Kumar, Age 13 years,
R/o. Door No. 70-17-1/5/510/3, Flat No. 510,
near Prasad Mansion, RTO Office Road,
Opp. BSNL office, Vakalapakala, Kakinada-533005,
Kakinada District, A.P. (Being minor represented
by mother as guardian, Smt. Pothula Marina Marcelina) ...Complainants.

And

1. Medicover Hospitals (Managing Director) Nellore
(a Unit of Abhayanjaneya Health care Pvt. Ltd.),
NH-5, Chinthareddy Palem Cross Road, Alahari Nagar,
Chinthareddy Palem, Nellore – 524002, A.P.

2. Paluru Manohar Reddy**,**
Cardiologist, Medicover Hospitals,
NH-5, Chinthareddy Palem Cross Road,
Alahari Nagar, Chinthareddy Palem,
Nellore – 524002, A.P. …Opposite Parties.

This case is coming on 22.06.2026 for hearing before this Commission in the presence of Sri. T. Purna Chandra Rao, Advocate for the complainants and Sri. R. Uma Maheswara Rao, Advocate for the opposite parties, having stood over to this date for consideration, this Commission pronounced the following.

ORDER

(By Sri Raghupathy Vasantha Kumar, President on behalf of the Bench)

1. a. The complaint filed under Section 35 of the Consumer Protection Act, 2019, for a direction to pay an amount of Rs.99,00,000/- towards compensation for (damages) and mental agony. To pay Rs. 3,00,000/- paid to the hospital and to pay an amount of Rs.10,000/- towards costs etc., etc.

b. The complainant filed the present complaint contending that her husband Late Vijay Kumar was admitted in 1st Opposite Party's hospital on 28.02.2025 for treatment. It is alleged that the deceased was initially stable and the Opposite Parties failed to properly diagnose and treat his condition. According to the complainant, the doctors administered improper treatment including dialysis despite the patient suffering from serious cardiac complications and thereby worsened his condition resulting in death on 02.03.2025.

c. The complainant further pleaded that the Opposite Parties issued false and manipulated medical reports and failed to provide proper explanation regarding the deteriorating condition of the patient. It is also alleged that the hospital authorities gave evasive replies when questioned regarding negligent treatment. The complainant further contended that huge amounts were collected from her during the hospitalization and the dead body was not handed over unless the payment was made. It is the further case of the complainant that the deceased was an earning member of the family and due to his untimely death, the complainant and her family suffered irreparable mental agony, financial hardship and loss of dependency. Hence, alleging deficiency in service and medical negligence, the complainant sought the compensation.

2. a. The Opposite Parties filed their written version denying all the allegations of negligence and deficiency in service. They contended that the patient was admitted in a critical condition with serious co-morbidities including uncontrolled diabetes, renal complications and cardiac issues. According to them, all treatment was rendered in accordance with accepted medical protocol and with due care and caution.

b. The Opposite Parties further contended that the deceased had prior medical history and that his condition deteriorated naturally due to complications

associated with his illness. It was specifically pleaded that dialysis was medically indicated and administered under expert supervision.

c. The Opposite Parties denied the allegations of false reports, wrongful treatment, coercion for money or suppression of facts. They further contended that the complainant failed to produce any expert medical opinion to establish negligence.

d. The Opposite Parties relied upon several judgments including 1. Jacob Mathew v. State of Punjab. 2. Kusum Sharma v. Batra Hospital. 3. Martin F. D'Souza v. Mohd. Ishfaq. 4. Dr. Neeraj Sood v. Jaswinder Singh to contend that mere death of a patient does not amount to negligence and that courts should not substitute medical wisdom with hindsight analysis.

3. Evidence Affidavits of both parties filed. Ex. A-1 to Ex.A-13 marked for the complainants. Ex.B-1 to Ex.B-9 marked for the opposite parties. Written Arguments of both the parties were filed. Heard the arguments and the following issues are framed.

Issue No. 1. **Whether the complainant proved that the Opposite Parties were negligent in treating the deceased patient. ?**

Issue No. 2. **Whether the complainant proved the deficiency in service on the part of the Opposite Parties. ?**

Issue No. 3. **Whether the complainants are entitled to the compensation.? If so, to what extent.?**

Issue Nos.1 & 2.

4. These issues are taken up together for common discussion as they are interconnected. The complainant alleged that dialysis was wrongly administered despite the patient suffering from cardiac complications and that such negligent management resulted in the death of the patient.

5. Appreciation of Documentary Evidence filed by the parties is as under. The complainants relied upon Exs.A-1 to A-13. Ex. A-1 comprises the previous medical reports of the deceased. Ex.A-2 is the offer letter establishing that the deceased was employed and earning a livelihood. Exs.A-3, A-5 and A-7 are the medical records relating to the treatment administered by the Opposite Parties. Exs.A-4 and A-6 are the ECG reports relied upon by the complainants to demonstrate the cardiac condition of the deceased. Ex. A-8 is the Death Certificate while Ex. A-9 is the Death Summary issued by the hospital. Ex. A-10 evidences the medical expenses incurred

by the complainants. Ex. A-11 establishes the legal heirs of the deceased and Exs. A-12 and A-13 establish issuance and service of legal notice prior to institution of the complaint.

6. On behalf of the Opposite Parties, Exs. B-1 to B-9 were marked. Exs. B-1 to B-3 are only authorization documents and Board Resolution empowering the deponent to represent the hospital. These documents do not throw any light on the treatment rendered to the deceased and therefore have no evidentiary value on the issue of negligence. Ex. B-4 is the ER-IP Assessment prepared at the time of admission. The document records the diagnosis as "Acute AWMI with Severe LVD", thereby showing that the patient was suffering from serious cardiac complications. Significantly, the witness examined by the Opposite Parties admitted during cross-examination that he was not even aware what is "Acute AWMI with Severe LVD" recorded in Ex. B-4. This admission considerably weakens the evidentiary value of his testimony. Ex. B-5 is a Pen Drive produced by the Opposite Parties. However, except for marking the same, neither was any witness examined to prove its contents. Consequently, no evidentiary value can be attached to Ex. B-5. Exs. B-6 and B-7 are merely replies issued to the complainant's legal notices and postal tracking reports. They only establish exchange of correspondence and do not establish that the treatment administered was in accordance with accepted medical practice. Exs.B-8 and B-9 comprise the Doctor Progress Notes and Nursing Notes for the period from 28.02.2025 to 02.03.2025. Though these documents were produced by the Opposite Parties, significantly the complete case sheet of the patient was admittedly not produced before the Commission, as categorically admitted by their own witness during cross-examination. The progress notes and nursing notes are only part of the hospital record. The complete case sheet would ordinarily include admission notes, ICU chart, dialysis requisition, nephrology consultation, cardiology consultation, investigation reports, informed consent, dialysis order sheet, dialysis monitoring chart, medication chart, treatment protocol, discharge/death records.

7. The Opposite Parties contended that the treatment was administered according to accepted medical standards and that the patient had serious co-morbid conditions. The evidence on record reveals that the Opposite Parties themselves issued an ECG report pertaining to a period prior to admission of the deceased into the hospital. No convincing explanation was offered as to why reliance was placed

on such pre-admission report instead of contemporaneous cardiac evaluation during hospitalization. This circumstance creates serious doubt regarding the adequacy of assessment prior to administering critical treatment. More importantly, the witness examined on behalf of the Opposite Parties, namely Nitin Kumar, S/o. Sajjan Lal, a Company Secretary, admitted during cross-examination that “When a heart stroke to anybody one should not give dialysis treatment as per ICMR norms.” He further admitted that dialysis was nevertheless administered twice to the deceased patient. Dr. Madhav Desai examined the patient for the 1st time on 01.03.2025 at 09.554 AM and that he is the nephrologist who treated the patient. The counsel suggested that the hospital has done the dialysis to the patient on 28.02.2025 without the advice of Dr. Madhav Desai to which the witness denied but admitted to not filing any document advising dialysis on 2802.2025 by Dr. Madhav Desai.

8. The witness admitted that the opposite parties did not file the case sheet of the patient before the Commission. The worst part of the opposite parties witness is that he stated that “it is true that we have charged on 28.02.2025 the professional charges twice for Dr. Paluru Manohar Reddy and Dr. Tatiparthi Sri Ranganath. I do not know what surgery was done to the patient on 28.02.2025. I do not know the specialization of Dr. Tatiparthi Sri Ranganath. I do not know the diagnosis mentioned in Ex. B – 4 shown as ACUTE AWMI SEVERE LVD. Such is the evidence led by the opposite parties to discredit the contentions of the complainant.

9. This admission materially weakens the defence of the Opposite Parties. Once their own witness admitted that dialysis is ordinarily contraindicated in such cardiac condition, the burden shifted upon the Opposite Parties to establish through cogent expert evidence and treatment protocol that the dialysis administered in the present case was medically justified despite the cardiac condition. No such independent expert evidence or convincing nephrology/cardiology opinion was produced by the Opposite Parties.

10. The Commission is conscious that medical negligence cannot be presumed merely because a patient died during treatment. Equally, once the complainants establish circumstances giving rise to a reasonable inference of negligence and the relevant medical records remain exclusively in the custody of the hospital, the burden shifts upon the hospital to satisfactorily explain the course of treatment adopted. In the present case, the Opposite Parties failed to discharge that burden by producing the treating nephrologist, the dialysis requisition, the complete case sheet

or any contemporaneous expert opinion justifying dialysis in a patient suffering from Acute AWMI with Severe LVD.

11. The Opposite Parties, despite being the custodians of these records, withheld the complete case sheet without assigning any satisfactory explanation. This omission assumes considerable significance because the principal defence of the Opposite Parties is that dialysis was medically indicated. The best evidence to establish such medical justification would have been the contemporaneous treatment records.

12. Failure to produce the best available evidence invites an adverse inference under Section 114(g) of the Bharatiya Sakshya Adhiniyam, 2023, namely that had such records been produced, they would have been unfavourable to the Opposite Parties.

13. The admission of opposite parties deponent Nitin Kumar, S/o. Sajjan Lal, assumes significance not because the witness is a medical expert, but because it constitutes an admission made by the Opposite Parties through the witness chosen by them. More importantly, despite such controversy, the Opposite Parties failed to examine the treating nephrologist or cardiologist or produce any contemporaneous medical record justifying dialysis. The failure to produce the best available medical evidence justifies drawing an adverse inference.

14. The opposite parties also cross examined the 1st complainant but no useful purpose is made to discredit the 1st complainant's depositions.

15. The learned counsel for the Opposite Parties placed considerable reliance upon Jacob Mathew v. State of Punjab, (2005) 6 SCC 1, Martin F. D'Souza v. Mohd. Ishfaq, (2009) 3 SCC 1, Kusum Sharma v. Batra Hospital, (2010) 3 SCC 480, C.P. Sreekumar (Dr.) v. S. Ramanujam, (2009) 7 SCC 130, Dr. Neeraj Sud v. Jaswinder Singh (2024), Achutrao Haribhau Khodwa v. State of Maharashtra, (1996) 2 SCC 634, and certain decisions of the National Consumer Disputes Redressal Commission and High Courts. There can be no quarrel with the legal propositions laid down in the aforesaid decisions. The law relating to medical negligence is now well settled.

16. In Jacob Mathew, the Hon'ble Supreme Court held that negligence cannot be attributed merely because the treatment did not produce the desired result. A doctor is expected to possess and exercise the ordinary skill expected of a reasonably competent practitioner, and negligence arises only when there is a breach of that

duty. The Court also adopted the well-known Bolam principle, namely that a doctor is not negligent if he acts in accordance with a practice accepted as proper by a responsible body of medical professionals.

17. In Martin F. D'Souza, the Supreme Court cautioned consumer fora against drawing conclusions of negligence solely because a patient died or suffered complications. It was observed that courts should not substitute their own views for medical judgment and that professional decisions must ordinarily be evaluated with reference to accepted medical practice.

18. Similarly, Kusum Sharma reiterated that courts should be slow in attributing negligence to medical professionals, that every mishap or unfortunate result does not constitute negligence, and that a doctor cannot be held liable merely because another course of treatment might also have been possible.

19. In C.P. Sreekumar, the Supreme Court held that where two acceptable courses of treatment are available, the mere choice of one over the other does not amount to medical negligence.

20. More recently, in Dr. Neeraj Sud v. Jaswinder Singh, the Hon'ble Supreme Court reiterated that post-operative complications or an unsuccessful outcome by themselves are insufficient to establish negligence unless there is cogent evidence of a breach of the standard of care and a causal connection between that breach and the injury complained of.

21. The above principles represent settled law and are respectfully accepted by this Commission. However, the present case does not fall within the category of cases where negligence is sought to be inferred merely because the patient unfortunately died. The findings recorded herein are founded upon specific documentary and oral evidence available on record.

i. Ex. B-4 itself records the diagnosis of Acute AWMI with Severe LVD, indicating a serious cardiac condition.

ii. Despite such diagnosis, dialysis was admittedly administered on 28.02.2025.

iii. The Opposite Parties have failed to produce any contemporaneous nephrology advice recommending dialysis prior to its administration. Their own witness admitted that no such document has been filed before this Commission.

iv. The witness further admitted that the complete case sheet of the patient was not produced before the Commission. The complete case sheet as observed earlier constitutes the best evidence regarding the clinical findings, diagnosis, consultations, treatment decisions, informed consent, dialysis requisition, dialysis monitoring and medical justification. These records admittedly remained in the exclusive custody of the Opposite Parties. The deliberate non-production of the best available evidence attracts the principle embodied in Section 114 illustration (g) of the Bharatiya Sakshya Adhiniyam, 2023, warranting an adverse inference that, had such records been produced, they would not have supported the defence of the Opposite Parties.

v. The witness examined by the Opposite Parties is admittedly a Company Secretary. He was neither one of the treating doctors nor was he present while the treatment was administered. During cross-examination, he admitted that he was unaware of the surgery performed, the specialisation of one of the treating doctors and even as to the diagnosis recorded in Ex. B-4.

Such admissions considerably diminish the evidentiary value of his testimony in relation to the medical treatment rendered. Most significantly, when the Opposite Parties did not examine the treating nephrologist, the treating cardiologist, the ICU consultant or any independent medical expert to justify the course of treatment adopted.

22. Once the complainants established circumstances raising a prima facie inference of negligence, namely (i) administration of dialysis despite serious cardiac complications, (ii) absence of contemporaneous nephrology advice, (iii) reliance upon a pre-admission ECG, (iv) non-production of the complete case sheet, (v) failure to examine the treating specialists, the evidentiary burden shifted upon the Opposite Parties to establish that the treatment nevertheless conformed to accepted medical standards but no such evidence has been forthcoming.

23. The Opposite Parties merely relied upon general propositions of law without substantiating, by reference to contemporaneous medical records or expert testimony, that the treatment administered in the present case satisfied the standard of care expected of reasonably competent medical professionals. The Supreme Court decisions relied upon by them do not dispense with the obligation of the

hospital to explain its treatment where the relevant records are in its exclusive possession.

24. Jacob Mathew, Martin F. D'Souza, Kusum Sharma, C.P. Sreekumar and Dr. Neeraj Sud deal with cases where the medical professionals had produced adequate material demonstrating that the treatment adopted was an accepted course of medical practice and the allegation of negligence rested merely upon an unsuccessful outcome or difference of professional opinion.

25. The present case is materially different. Here, the finding of negligence is not based on hindsight or the unfortunate death of the patient. It is based upon failure to produce the complete treatment records, absence of contemporaneous medical advice justifying dialysis, reliance upon a pre-admission ECG instead of a contemporaneous assessment, failure to examine the treating specialists, admissions elicited during cross-examination, failure to rebut the complainants' evidence with cogent medical material. Therefore, the ratio of the decisions relied upon by the Opposite Parties does not advance their case.

26. On the contrary, the present case squarely attracts the principles laid down in Achutrao Haribhau Khodwa, Spring Meadows Hospital v. Harjol Ahluwalia, Nizam Institute of Medical Sciences v. Prasanth S. Dhananka, and Balram Prasad v. Dr. Kunal Saha, wherein the Hon'ble Supreme Court recognised that hospitals are liable where the standard of reasonable medical care is not maintained and such failure results in injury or death.

27. Accordingly, this Commission is satisfied that the complainants have proved, on the touchstone of preponderance of probabilities applicable to proceedings under the Consumer Protection Act, 2019, that the Opposite Parties were guilty of deficiency in service and medical negligence. The issue nos. 1 and 2 are thus answered in favour of the complainants.

Issue No.3

28. The evidence on record establishes that the deceased was earning Rs.90,000/- per month, the compensation can be quantified on the principles laid down by the Hon'ble Supreme Court in National Insurance Co. Ltd. v. Pranay Sethi, Sarla Verma v. Delhi Transport Corporation and the medical negligence compensation principles laid down in Nizam Institute of Medical Sciences v. Prasanth S. Dhananka and Dr. Balram Prasad v. Dr. Kunal Saha.

29. The evidence on record establishes that the deceased was aged 42 years and earning about Rs.90,000/- per month. The 1st complainant lost her husband at an young age and the 2nd complainant, a minor daughter, lost the care, protection, guidance and financial support of her father at a tender age. The death of the deceased has deprived the family of its breadwinner. While assessing compensation under the Consumer Protection Act, the principles governing determination of compensation in fatal negligence cases laid down by the Hon'ble Supreme Court in Pranay Sethi, Sarla Verma, Nizam Institute of Medical Sciences and Dr. Kunal Saha, this Commission derives the amount payable as follows. Considering the monthly income of the deceased, his future earning prospects, loss of dependency suffered by the family, medical expenses incurred, mental agony suffered by the complainants and the principles laid down in the matters referred above as the deceased was aged 42 years, the multiplier applicable as per the principles laid down in Sarla Verma v. Delhi Transport Corporation is 14 (for age group 41–45 years).

30. The deceased was in private employment earning Rs.90,000/- per month**,** future prospects can be added at 25% in terms of National Insurance Co. Ltd. v. Pranay Sethi.

Computation of Compensation

Monthly Income	: Rs.90,000/-
Annual Income	: Rs.10,80,000/-
Add 25% Future Prospects	: Rs.2,70,000/-
Total Annual Income	: Rs.13,50,000/-
Less 1/3rd towards personal expenses (wife and one minor child being dependants)	: Rs.4,50,000/-
Annual contribution to family	: Rs.9,00,000/-
Multiplier applicable (Age 42 years)	: 14
Loss of Dependency	**:** Rs.9,00,000 × 14 = Rs.1,26,00,000/-

Other Heads

Particulars	Amount
Loss of dependency	Rs.1,26,00,000
Loss of consortium to wife	Rs. 1,00,000
Loss of parental consortium to minor child	Rs. 1,00,000
Medical expenses incurred	Rs. 3,00,000
Funeral and incidental expenses	Rs. 50,000
Compensation for mental agony and suffering due to medical negligence	Rs. 8,50,000

Particulars	Amount
Total Compensation	Rs.1,40,00,000

Applying the multiplier of 14 corresponding to the age of 42 years and considering future prospects, loss of dependency, consortium, medical expenses, mental agony and other consequential losses, though the complainants will be entitled to a total compensation of Rs.1,40,00,000/- (Rupees One Crore Forty Lakhs only) but since the complainants restricted the claim to Rs. 99,00,000/- (Rupees ninety-nine lakhs only) we are inclined to allow only the amount claimed by the complainants.

31. Out of the compensation amount of Rs.99,00,000/-, a sum of Rs.50,00,000/- shall be apportioned to the 2nd complainant/minor daughter. The said amount shall be deposited in a Fixed Deposit in any Bank in the name of the minor till she attains majority. The 1st complainant, being the natural guardian, shall be entitled to withdraw the accrued interest periodically for the welfare, education and maintenance of the minor.

32. In the result, the complaint is partly allowed, by directing the Opposite Parties jointly and severally to pay Rs.99,00,000/- (Rupees ninety nine lakhs only). Out of the compensation amount of Rs.99,00,000/-, a sum of Rs.50,00,000/- shall be apportioned to the 2nd complainant/minor daughter. The said amount shall be deposited in a fixed deposit in any Bank in the name of the minor till she attains majority. The 1st complainant, being the natural guardian, shall be entitled to withdraw the accrued interest periodically for the welfare, education and maintenance of the minor. The principal amount shall not be withdrawn, encumbered or pledged until the minor attains majority, except with prior permission of this Commission. The complainants are also entitled to the cost of the complaint at Rs.10,000/- (Rupees ten thousand only). Time for compliance is 45 days from the date of order, failing which the awarded amounts will carry interest at 9% per annum, then onwards.

- Applications pending if any, stand disposed of in terms of the aforesaid order.
- A copy of this judgment be provided to all parties free of cost as mandated by the Consumer Protection Act, 2019.
- The judgment be uploaded forthwith on the website of this commission for the perusal of the parties.

- File be consigned to record room along with copy of this judgment.

Typed to my dictation to Jr. Stenographer and pronounced by us on this the 30th day of July, 2026.

MEMBER MEMBER PRESIDENT

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

For complainants: PW1- Smt. Pothula Marian Marcelina.

For opposite parties: DW1- Mr. Nitin Kumar.

DOCUMENTS MARKED:

For Complainants:

Exhibits	Date	Description	Remarks
Ex. A-1	01.01.2024	Medical reports.	Attested copy
Ex. A-2	01.12.2024	Offer letter.	Photo Copy
Ex. A-3	28.02.2025	Medical records.	Attested Copy
Ex. A-4	28.02.2025	ECG report.	Original
Ex. A-5	01.03.2025	Medical reports.	Attested Copy
Ex. A-6	02.03.2025	ECG report.	Original
Ex. A-7	02.03.2025	Medical reports.	Attested Copy
Ex. A-8	02.03.2025	Death certificate.	Original
Ex. A-9	03.03.2025	Death summary.	Office copy
Ex. A-10	03.03.2025	Medical bill.	Photo copy
Ex. A-11	16.04.2025	Family Member certificate.	Original
Ex. A-12	28.06.2025	Legal notice.	Office copy
Ex. A-13	01.07.2025	Acknowledgement.	Original

For opposite parties:

Exhibits	Date	Description	Remarks
Ex. B-1	16.12.2024	Board resolution.	Photo Copy
Ex. B-2	26.09.2025	Authorization letter.	Photo copy
Ex. B-3	31.10.2025	Authorization letter.	Photo Copy
Ex. B-4	28.02.2025	ER-IP Assessment.	Photo Copy
Ex. B-5	-	Pendrive.	Digital Copy
Ex. B-6	26.09.2025	Reply and Postal track consignment.	Photo Copy

Ex. B-7	15.10.2025	Reply and Postal track consignment.	Photo Copy
Ex. B-8	28.02.2025-02.03.2025	Doctor progress notes.	Photo Copy
Ex. B-9	28.02.2025-02.03.2025	Nursing notes.	Photo Copy

MEMBER MEMBER PRESIDENT