IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

RESERVED ON: 23.06.2026
PRONOUNCED ON: 29.07.2026

FIRST APPEAL NO. 1495 OF 2017

(Against the Order dated 04.05.2017 in CC NO. 47/2014 of the State Consumer Disputes Redressal Commission, Punjab, Chandigarh)

1.Dr. Sudheer Saxena
DM, Cardiology Consultant
Interventional Cardiology
Coordinator Cardiac Sciences
Near Civil Hospital, Phase VI
Mohali, Punjab-160015

2. Max Super Specialty Hospital
Through its Director
Near Civil Hospital, Phase VI
Mohali 160055 Punjab ..... Appellants

Versus

1. Pooja Gupta
Widow of late Sh. Rishi Gupta
House No. B-2/1261
Vishkarma Colony
Pinjore, District Panchkula, Haryana

2. Medical Superintendent
Max Hospital
Near Civil Lines
Phase –VI, Mohali-160055 Punjab

3. Dr. Pawan K. Kansal
Cardiac Rehabilitation & Medical Centre
House No. 3201
Sector-21 D, Chandigarh

4. St. Jude Medical India Private Limited
House No. 1-11-25/A, Matarani Sensation Building
Lane besides Syndicate Bank
Begumpet, Hyderabad ..... Respondent(s)

FIRST APPEAL NO. 1751 OF 2017

(From the order dated 04.05.2017 in CC No. 47 of 2014 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh)

Pooja Gupta
Widow of late Sh. Rishi Gupta
House No. B-2/1261
Vishkarma Colony
Pinjore, District Panchkula,
Haryana-134102 ..... Appellant (s)

Versus

1.Max Super Specialty Hospital
Through its Director
#Near Civil Hospital, Phase VI
Mohali, Punjab-160055

2. Medical Superintendent
Max Hospital
Near Civil Lines
Phase –VI, Mohali-160055 Punjab

3. Dr. Sudheer Saxena
DM (Cardiology),
Principal Consultant,
Interventional Cardiology
Coordinator Cardiac Sciences
#Near Civil Hospital, Phase VI
Mohali, Punjab -160015

4. Dr. Pawan K. Kansal
Cardiac Rehabilitation & Medical Centre
House No. 3201
Sector-21 D, Chandigarh

5. St. Jude Medical India Private Limited
Through its General Manager,
House No. 1-11-25/A, Matarani Sensation Building
Lane besides Syndicate Bank
Begumpet, Hyderabad
Andhra Pradesh, India-500016 ..... Respondent(s)

6. United India Insurance Company Ltd.
Through its Branch Manager,
#42C, 3rd Floor, Moolchand Commercial Complex,
New Delhi-110 024 .....Proforma-Respondent(s)

BEFORE:
HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER
HON'BLE MR.SHASHI NANDKEOLYAR, MEMBER

FIRST APPEAL NO. 1495 of 2017

For the Appellants : Mr. Sanjeev Puri, Sr. Advocate with
Mr. Abhinav Tyagi, Advocate

For the Respondents : Mr. Bhavnik Mehta, Advocate along with
Mrs. Puja Gupta, Respondent No.1 and her son
Mr. Vinay Gupta in person

FIRST APPEAL NO. 1751 of 2017

For the Appellant : Mr. Bhavnik Mehta, Advocate along with
Mrs. Puja Gupta, Appellant and her son

For the Respondents No. 1 & 3 : Mr. Sanjeev Puri, Sr. Advocate with
Mr. Abhinav Tyagi, Advocate

ORDER

DR. INDER JIT SINGH, PRESIDING MEMBER

1. These two cross-appeals (First Appeals No. 1495 of 2017 and No. 1751 of 2017) have been filed under Section 19 of the Consumer Protection Act, 1986, against the common order dated 04.05.2017 of the State Consumer Disputes Redressal Commission, Punjab, (hereinafter referred to as the 'State Commission'), in Consumer Complaint (CC) no. 47 of 2014.

2. FA No. 1495 of 2017 has been filed by the treating Doctor (Dr. Sudheer Saxena) and the Hospital (Max Super Specialty Hospital), who were Opposite Parties No. 3 and 1 respectively before the State Commission. FA No. 1751 of

2017 has been filed by the original Complainant (Pooja Gupta). Both Appeals arise from the same set of facts and challenge the same impugned order. For the sake of convenience, the parties shall be referred to as per their status in the original Consumer Complaint.

3. As both the Appeals have been filed against the same order of the State Commission, and the issues are related, these are being taken up together under this order.

4. Brief facts of the case, as presented by the Complainant and as emerged from the FAs, Order of the State Commission and other case records, are that: -

4.1 The Complainant's husband, Late Sh. Rishi Gupta (hereinafter referred to as the 'Patient'), aged 43, was admitted to the ICU of OP-1 Hospital (Max Super Specialty Hospital, Mohali) on 17.09.2013 with a history of prolonged chest pain. He had a severe pre-existing heart condition, having undergone a Coronary Artery Bypass Graft (CABG) at the age of 27. He was under the care of OP-3 (Dr. Sudheer Saxena). OP-3 advised a biventricular (triple chamber) pacemaker manufactured by St. Jude Medical India Pvt. Ltd. (OP-5). A four-day package costing around Rs. 5.5 Lakhs was discussed.

4.2 The Complainant alleged that OP-3 did not perform the surgery until the fourth day. On 20.09.2013, after the Complainant deposited Rs. 3 Lakhs, the Patient was taken for surgery. It is alleged that OP-3, without the complete kit, implanted a cheap 'double chamber pacemaker' (costing Rs. 45,000, as per the bill). The surgery remained incomplete, with OP-3 citing the unavailability of the third wire.

4.3 On 22.09.2013, OP-3 performed another surgery, implanting the actual biventricular pacemaker (costing Rs. 4,47,869/-). The Complainant alleged that this was to replace the wrong pacemaker. The Patient was discharged

on 24.09.2013 in a hasty manner despite being in pain. On 27.09.2013, the Patient suffered a severe heart attack, was brought back to the hospital, and died. A DDR was lodged, and a post-mortem was conducted. Alleging gross medical negligence, cheating, and unfair trade practice, the Complainant sought a total compensation of Rs. 84,73,036/-.

5. Vide Order dated 04.05.2017, the State Commission held OP-3 (Dr. Sudheer Saxena) guilty of medical negligence and OP-1 (Max Super Specialty Hospital) vicariously liable. It directed them to pay a sum of Rs. 32,94,000/- jointly and severally to the Complainant, along with interest @9% p.a. in case of delay. The complaint against other Opposite Parties (Medical Superintendent, Dr. Pawan Kansal, St. Jude Medical India, and the Insurance Company) was dismissed.

6. FA No. 1495 of 2017 has been filed by OP-1 and OP-3 (hereinafter 'Appellants/Doctors-Hospital') challenging the State Commission's order, mainly on the following grounds: -

(i) The State Commission erred in holding the Appellants liable for medical negligence without proper appreciation of the complex medical procedure. The procedure was carried out in two stages due to the Patient's fragile condition, which is a standard protocol. No second pacemaker was implanted; only the third lead was placed in the second stage.

(ii) The State Commission ignored the expert report from the Medical Board of PGIMER, Chandigarh, which concluded that the procedure was carried out as per protocol and that the Complainant's statement regarding a cheap double chamber pacemaker was incorrect because even the cheapest such device has a much higher cost.

(iii) The finding of negligence was based on presumptions, surmises, and conjectures, without concrete proof. The mention of 'double chamber pacemaker' in the bill was a typographical error in the hospital's billing software and referred to surgical/procedure charges, not the cost of the device.

(iv) The State Commission erroneously ignored the CD of the procedure (cineangiograms) on a vague pretext. The CD is the standard medical record of a Cath Lab, where continuous recording is not possible due to harmful radiation. The X-ray films were digital and were handed over to the Patient's relatives, who failed to produce them; an adverse inference should be drawn against the Complainant.

(v) The Patient died of a Sudden Cardiac Death (SCD) or Myocardial Infarction due to his pre-existing severe heart condition (Class IV), not due to the surgery. The Post-Mortem report confirms the presence of the pacemaker in situ and leads in RA & RV, consistent with a triple chamber device. The implants used were of standard make and properly registered with the company.

7. FA No. 1751 of 2017 has been filed by the Complainant (Pooja Gupta) seeking enhancement of the compensation awarded by the State Commission, mainly on the following grounds: -

(i) The compensation of Rs. 32,94,000/- is inadequate considering the loss of her husband, who was the sole breadwinner, and the mental agony suffered by the family.

(ii) The State Commission should have awarded the full amount prayed for (Rs. 84,73,036.52/-), calculated based on the deceased's income and applying the appropriate multiplier.

(iii) The State Commission erred in not awarding punitive damages against the erring doctors and hospital for their gross negligence and unethical conduct.

8. Heard counsels for both sides. Contentions/pleas of the parties, based on their FAs/Replies, Written Arguments, additional documents placed on record (including the subsequent judgment dated 11.03.2024 of the Hon'ble Punjab & Haryana High Court in CRM-M-3458), and oral arguments advanced during the hearing, are summed up below.

8.1 The learned counsel for the Appellants/Doctors-Hospital argued that: -

(i) The entire case is based on a misunderstanding of the complex medical procedure. Implanting a biventricular pacemaker is often done in two stages. On 20.09.2013, the Patient was tired, and only two leads were implanted. The third lead (LV lead) and the pulse generator were implanted on 22.09.2013. This is an accepted standard practice, confirmed by the PGIMER expert committee.

(ii) The X-ray report dated 20.09.2013 shows "ECPM with wires". 'ECPM' stands for External Chamber Pacemaker, which is a different component, not the permanent implanted pacemaker (pulse generator). The Complainant has deliberately confused this to create a false narrative.

(iii) The bill entry for Rs. 45,000/- was for the procedure charges for the first stage, which due to a software glitch was labeled 'Double Chamber

Pacemaker'. This was never the cost of a device, as no pacemaker costs as low as Rs. 45,000/-. The same billing software anomaly is seen in other patients' bills.

(iv) The report of the PGIMER Medical Board, comprising eminent cardiologists, is conclusive proof that the procedure was as per protocol. The State Commission was not justified in discarding this expert opinion without any contrary expert evidence, placing reliance on the judgment in V. Kishan Rao vs. Nikhil Super Speciality Hospital (2010) 5 SCC 513.

(v) The quashing petition filed by the Appellants before the Hon'ble Punjab & Haryana High Court was dismissed on 11.03.2024. However, the findings of the High Court are under challenge in the Hon'ble Supreme Court, and a stay has been sought. The High Court's observations are not binding on this Commission in a civil dispute, especially concerning findings of 'cheating' which require a higher standard of proof.

(vi) The Appellants have recently obtained documents from the supplier (Radical Health Technologies) confirming that the biventricular pacemaker and all three leads were delivered to the hospital on 19.09.2013 and 20.09.2013, i.e., before the first stage of the surgery. This demolishes the core allegation that the doctor started the surgery without the necessary equipment. These documents are being placed on record vide IA/10034/2024.

(vii) The Punjab Medical Council, vide its order dated 25.04.2024, has closed the complaint against Dr. Sudheer Saxena, relying on the PGIMER report that the procedure was as per protocol, further exonerating the doctor. Reliance is placed on the judgments in Jacob Mathew v. State of Punjab, (2005) 6 SCC 1 and Kusum Sharma v. Batra Hospital, (2010) 3 SCC 480, to argue that a

medical professional is not negligent if he acts in accordance with a practice acceptable to a responsible body of medical men.

8.2 The learned counsel for the Complainant argued that: -

(i) The State Commission's order is well-reasoned and based on a thorough appreciation of evidence. The inconsistencies in the Appellants' stand are apparent. The medical notes dated 20.09.2013 clearly state "Patient CRT (Cardiac Resynchronization Therapy) done," which means the full procedure was complete, contradicting their two-stage theory.

(ii) The X-ray report dated 21.09.2013 (based on X-ray taken on 20.09.2013) unequivocally shows "Left ECPM with wires... seen in situ," confirming an ECPM (which is the pulse generator/pacemaker) was already implanted on 20.09.2013, despite the doctor's denial. No amount of argument can change this irrefutable documentary evidence.

(iii) The billing clearly shows two distinct items: a "Double Chamber Pacemaker" for Rs. 45,000/- on 20.09.2013 and a "Bivent Pacemaker" for Rs. 4,47,869/- on 22.09.2013. The hospital's attempt to explain it as a typographical error or a package break-up for another patient is an afterthought and a clear admission of falsification of records. Reliance is placed on Samira Kohli v. Dr. Prabha Manchanda, (2008) 2 SCC 1, regarding informed consent.

(iv) The Hon'ble Punjab & Haryana High Court, in its detailed judgment dated 11.03.2024 dismissing the quashing petition, has already held that the material on record prima facie shows a case of cheating and conspiracy against the Appellants. The High Court noted the contradictions in the medical notes, the X-ray reports, and the bill. This judgment is now final and binding as no stay has been produced.

(v) The internal medical notes of the hospital itself, dated 22.09.2013, state "TODAY LV LEAD THROUGH CORONARY SINUS PLACED," which contradicts the Appellants' own snapshots showing the LV lead was already in place on 20.09.2013. This proves the manipulation of records.

(vi) The CD produced by the Appellants contained only 23 hand-picked, edited clips totaling less than 2 minutes, instead of the complete procedure recording. This amounts to withholding of best evidence, and an adverse inference must be drawn against them, as held in various consumer cases. The PGIMER report also initially requested complete medical records for verification, but the final opinion was given without addressing these major inconsistencies.

8.3 The learned counsel for the Complainant relied on the following judgements:

(i) Jacob Mathew v. State of Punjab, (2005) 6 SCC 1 (to distinguish the standard of care).

(ii) V. Kishan Rao v. Nikhil Super Speciality Hospital, (2010) 5 SCC 513 (to argue that the Consumer Forum is not bound by expert opinion where the facts speak for themselves).

(iii) Samira Kohli v. Dr. Prabha Manchanda, (2008) 2 SCC 1 (on the requirement of informed consent).

(iv) Martin F. D'Souza v. Mohd. Ishfaq, (2009) 3 SCC 1 (on the need for expert opinion in criminal cases, which is distinct from consumer law).

9. After the conclusion of the hearing on 23.06.2026, both sides filed detailed written notes of arguments on 29.06.2026 (Complainants) and 30.06.2026 (OPs) respectively. Brief summary of these is given in the succeeding paras.

9.1 Summary of Written Synopsis filed by the Respondent (Original Complainant).

Respondent No. 1's case is not built on speculation but on the Appellant's (OP's) own contemporaneous records such as the X-ray reports, the medical notes, the appellant-doctor's own snapshot evidence and the appellant's own prior statements before the High Court and the criminal court which, she submits, contradict each other and contradict the version now put forward in this appeal. Her core submission is that a pacemaker (referred to in the hospital's own reports as "ECPM") was already implanted in the Patient on 20.09.2013 itself, and that the Appellants' story of a staged, two-day procedure with only two leads placed on 20.09.2013 and the pacemaker and the third (LV) lead following only on 22.09.2013 does not hold up against the documents the Appellants themselves generated and produced.

(a)The ECPM/pacemaker terminology and the contradiction between the two X-ray reports:

Respondent No. 1 explains that there are two kinds of pacemakers — conventional pacemakers with wires and non-conventional, wireless ones. "ECPM" refers to an Electric Conventional Pacemaker with wires, not to some temporary "external" device as the Appellants now suggest. The two X-ray reports relied upon are the report dated 21.09.2013 (for the X-ray taken on 20.09.2013) and the report dated 23.09.2013 (for the X-ray taken on 22.09.2013), both filed by the complainant as Exh. C-6. Both reports use the identical phrase, describing an ECPM with wires and sternal sutures in situ. The Appellants, however, take two different positions on the same term: in respect of the second report (22.09.2013), they accept that the ECPM shown is the pacemaker they implanted; but in respect of the first report

(20.09.2013), they deny that any pacemaker was implanted at all. Respondent No. 1 submits that the same word cannot mean a permanent pacemaker on one date and something else entirely two days earlier and that this inconsistency is itself telling.

(b) The "standard procedure" argument — a pacemaker cannot be implanted before all its leads:

Both sides agree on one point of procedure: a pacemaker cannot be implanted until all its leads are first placed — a position taken by the Appellant himself in his quashing petition (Para 16(viii)) and reiterated by Respondent No. 1. If accepted, the X-ray of 20.09.2013 showing the ECPM in situ means all leads, including the LV lead, were already in place by that date, contradicting the Appellants' case that the LV lead came only on 22.09.2013. The Ld. SCDRC accepted this reasoning in Paras 14-15 of the Impugned Order, also noting that the Appellants' own snapshot Exh. R-5 (20.09.2013) shows the LV lead, the RA guidewire and the RV lead all present that day. Three forums — the Ld. State Commission, the Ld. Trial Court in the criminal complaint, and the Hon'ble High Court (Para 10.8) — have independently found a pacemaker already reflected in the 20.09.2013 X-ray. Even the Appellants' own peer review (Exh. C-25, Max Hospital) flagged that proof of an X-ray showing the CRT-P procedure ought to have been produced, which was never done. The Appellants have also never explained why the 20.09.2013 notes record "CRT Done" and "Post CRT-D" with no hint of an incomplete procedure, or how PGIMER could say the LV lead is commonly placed later when their own snapshot shows it already present that day.

(c) The Appellants' own snapshot evidence undermines their case:

Of the only video evidence the Appellants produced (Exh. R-5 to R-7), the snapshot dated 20.09.2013 (Exh. R-5) itself shows the LV lead already implanted, Respondent No. 1 submits, to dislodge the Appellants' entire case and the PGIMER/PMC opinions built on the opposite premise. Any further snapshots sought to be introduced during arguments go beyond the Appellants' pleadings and their own stated evidence, since they had earlier claimed to possess nothing beyond a CD of 23 hand-picked clips totalling about 98 seconds already the subject of an adverse inference by the Ld. SCDRC for withholding fuller footage. The Appellants have also never produced the actual X-ray films, despite admitting before the Ld. SCDRC that the hospital's digital X-ray films remain with them.

(d) The St. Jude report is inconsistent with a staged, two-day procedure:

Respondent No. 1 also relies on the report issued by St. Jude Medical (Exh. C-9), which records the date of implant as 22.09.2013 and describes the entire implantation procedure — including the placement of all three leads and the pulse generator — as having been carried out in a single sitting, with no complications during the procedure. She submits that this document does not contain any reference to an earlier, partial procedure on 20.09.2013, and in fact records that the patient tolerated the procedure well, which sits uneasily with the Appellants' explanation that the procedure had to be broken into two stages because the Patient was exhausted.

(e) Expert evidence is not mandatory where negligence is evident from the record:

Respondent No. 1 does not dispute that expert opinion can assist the Commission, but submits it is not indispensable once the record speaks for itself. In *V. Kishan Rao v. Nikhil Super Specialty Hospital*, (2010) 5 SCC 513,

Paras 42-55, the Supreme Court cautioned against treating expert evidence as a rigid precondition in every case, holding that where the facts point more probably to a want of care, the doctrine of res ipsa loquitur shifts the burden onto the treating doctor to explain the outcome, rather than requiring the complainant to prove every technical detail through a rival expert. She submits her case — built on the Appellants' own X-rays, notes and snapshot — is exactly of this kind. She further relies on *Maharaja Agrasen Hospital v. Master Rishab Sharma*, (2020) 6 SCC 501, Para 12.3, where the Court held that an expert committee's opinion is only advisory and does not bind the forum, which must independently examine the treatment records and may discard an expert report whose basis is shown to be incomplete or unreliable — as, she submits, the PGIMER and PMC opinions are here, having never engaged with the X-ray reports, the post-mortem findings, or Exh. R-5.

(f) Consent was not validly obtained for the procedure actually carried out:

The consent form (Exh. C-14) records consent for a "pacemaker," while the medical notes elsewhere speak of a CRT-D plan (with defibrillator function), and no fresh consent was taken for whatever occurred on 22.09.2013. Respondent No. 1 relies on *Samira Kohli v. Dr. Prabha Manchanda*, (2008) 2 SCC 1, Para 32, where the Supreme Court held that consent must track the procedure actually performed, that consent for one intervention cannot cover a different one, and that the patient or family must be told enough to make a genuine, informed choice. On this basis, she submits that a mismatch between the consent taken and the procedure contemplated, coupled with the absence of any second consent, means informed consent for the procedure actually carried out was never obtained.

(g) The post mortem report and conduct of appellant post the patient's death:

Respondent no.1 states that the Appellants then declined to release the body and pressed the family to sign a consent form permitting removal of the pacemaker, which the family refused since they had already paid for the device; it was only after the family involved the police that the body was released for post-mortem. The Post-Mortem Report (Exh. C-8) is relied upon to show that, on dissection, the pacemaker was found in situ and its leads were located in the right atrium and right ventricle, with no separate mention of an LV lead. . It further records that both coronary arteries were 90% blocked and that the heart was enlarged and flabby with a pale area over the left ventricle. In its opinion, the cause of death is recorded as myocardial infarction consequent to the injuries described, with those injuries being ante-mortem in nature and sufficient, in the ordinary course, to cause death — with death following the injury almost immediately, some twenty hours and forty minutes before the post-mortem examination was conducted. Respondent No. 1 submits that this timeline and these findings are consistent with her case that something went wrong with the implantation procedure itself, rather than with a pre-existing, unrelated cardiac condition alone.

9.2 Summary of Written Synopsis filed by the Appellant (OPs).

The Patient, late Mr. Rishi Gupta, was 42 years old, but he was already a known cardiac patient with a long history of severe coronary artery disease, having undergone a CABG (bypass) surgery in 1999, at the age of just 27, at AIIMS. The Appellants submit (Paras 1-2 of the Written Arguments) that this itself shows the disease was aggressive and longstanding, and this is reinforced by a risk assessment score of 20/30 on admission on 17.09.2013, placing him in

the extremely high-risk category. The admission record (Paras 3-6) further shows he arrived with fresh markers of a serious cardiac event: new-onset Left Bundle Branch Block, a positive Troponin test, an LVEF of only 28% with significant LV dyssynchrony, chest pain and sinus tachycardia. The cumulative submission (Para 7) is that his condition was critical and his prognosis guarded from the moment of admission, independent of any treatment that followed, and any adverse outcome must be read against this background.

The Respondent's (Complainant's) case is that A-1 first implanted a cheap "Double Chamber Pacemaker" on 20.09.2013 and only implanted the correct Biventricular (Triple Chamber) pacemaker on 22.09.2013 after the first allegedly failed — based solely on a bill of Rs. 45,000/-.

(a) The Appellants' response to this is built up in several layers:

i) First, and most importantly, this was not a fresh point of dispute. The Ld. SCDRC itself, in the last five lines of Para 17 of the Impugned Order, has already examined and rejected this very theory, holding that the Complainant failed to prove that any double chamber pacemaker was ever implanted. Since the Respondent has not specifically challenged this finding anywhere in the present appeal, it has attained finality and cannot now be reopened through a different route.

ii) Second, the manufacturer's own record via a document issued by St. Jude Medical at Pg 134 of the Appeal confirms that the Biventricular pacemaker, bearing its own serial number and the Patient's name, was implanted on 22.09.2013. This is not even disputed by the Respondent, who herself admits in Para 8 of her own Complaint that the Biventricular pacemaker was successfully implanted on that date.

iii) Third, and this is where the medical board evidence becomes important, the PGIMER report of 29.09.2015 records in terms that "this medical board feels that Mrs. Pooja Gupta's statement regarding the double chamber pacemaker may not be correct because even the cheapest double chamber pacemaker has much higher cost." This is corroborated independently by contemporaneous price lists placed on record which show that no double chamber device, whether standalone or as part of an ICD, could realistically cost as little as Rs. 45,000/-. Put together, the explanation offered by the Appellants is that the Rs. 45,000/- entry was simply a billing software error reflecting the cost of the procedure, not a separate cheap device.

(b) The third wire (LV lead) was available, not missing:

The Respondent's case is that A-1 told her at 4:30 p.m. on 20.09.2013 that the LV lead was unavailable, requiring the procedure to be split across two days. The Appellants respond that cath lab video snapshots (timestamped 1:43:35 p.m. and 3:04 p.m. on 20.09.2013) show the LV lead was in fact present and partly introduced, but could not be fully implanted due to the Patient's fatigue under local anaesthesia — recorded in Para 11 of the Impugned Order as a deliberate two-stage approach for the Patient's safety. An invoice dated 20.09.2013 (relied on via I.A. 15541/2024) confirms the entire pacemaker kit, including the LV lead (Quartet 1458 Q/86cm, S.N. BPU039379), was already delivered that day. In any event, the "missing wire" story is not even the Respondent's pleaded case, which instead rests on the already-rejected double chamber theory.

(c) The Post-Mortem Report does not help the Respondent:

The Respondent next relies on the Post-Mortem Report dated 28.09.2013 to argue two things: first, that the Patient died of external, ante-mortem injuries leading to a myocardial infarction sufficient to cause death on its own, and second, that since the report records the pacemaker leads as being found in the RA and RV, and does not mention the LV lead, this proves the LV lead was never actually implanted.

The Appellants' answer starts with an anatomical point: the LV lead itself is not placed directly into the left ventricle but is routed and anchored through the coronary sinus, which is accessed via the right side of the heart. As a result, all three leads: RA, RV, and LV will physically be found together on the right side of the heart during a post-mortem examination, and the report's reference to "RA + RV" without a separate mention of the LV lead does not mean the LV lead was absent; it simply reflects where all pacemaker leads are anatomically found. More importantly, the Appellants point out that the Post-Mortem Report, does record that a pacemaker was found in the Patient's body. The Appellants also argue, separately, that the Post-Mortem Report independently confirms the severity of the Patient's underlying heart disease recording that all his coronary arteries were blocked and that his heart was flabby, meaning it was already poorly functioning and thinned out well before his death.

(d) The date of LV lead implantation is clearly on record:

The Respondent contends that no document specifies when the LV lead was implanted. The Appellants respond that progress notes dated 20.09.2013 (procedure begun, LV lead pending due to fatigue), 21.09.2013 (LV lead still pending) and 22.09.2013 (LV lead placed) together give a clear, continuous

timeline — already explained in Para 4 of the Written Statement before the Ld. SCDRC.

(e) Unrebutted expert opinion supports the Appellants:

The PMC Ethics Committee (24.06.2015) found no negligence prima facie and referred the matter to PGIMER; PGIMER's first report (29.09.2015) found the procedure as per protocol; and its final report (18.01.2016), by four cardiologists after a full record review, confirmed the same — with no competing expert opinion from the Respondent. The Appellants rely on: *Neeraj Sud v. Jaswinder Singh* (25.10.2024), Para 17 — the Complainant must bring expert evidence to show a failure of skill; *Sharad Lakhotia v. Prakash Sharma*, MANU/CF/0215/2025 (14.05.2025), Para 12 — expert opinion should not be disregarded absent competing testimony; *Harkanwaljit Singh Saini v. Gurbax Singh*, MANU/CF/0426/2002 (20.11.2002), Para 6 — a forum should not substitute its own view over a doctor supported by expert material; *Harnek Singh v. Gurmit Singh*, (2022) 7 SCC 685 (18.05.2022), Para 26 — conclusions must rest on the documentary evidence on record; *Dr. Harish Kumar Khurana v. Joginder Singh*, (2021) 10 SCC 291 (07.09.2021), Para 16 — medical evidence is necessary to hold negligence; and *Kusum Sharma v. Batra Hospital*, (2010) 3 SCC 480 (10.02.2010), Para 66 — a doctor's choice of surgery is not, by itself, negligence, supporting the decision to stage the implant over two days for the Patient's safety.

(f) Valid consent was obtained, and no second consent was required:

The Respondent contends that no consent exists for the procedure, and none was taken for the "second surgery" on 22.09.2013. The Appellants respond by pointing to the actual consent document at Pgs 167 to 169 of the Appeal, which was signed by the Patient's wife — the Respondent herself — on

20.09.2013, and which covers the implantation of the Biventricular (Triple Chamber) pacemaker. Since the procedure completed on 22.09.2013 was not a separate or new surgery but simply the continuation and completion of the very same implantation procedure on the very same organ, the Appellants submit that no fresh or second consent was legally necessary. This is supported by the Hon'ble Supreme Court's decision in S.K. Jhunjhunwala v. Dhanvanti Kaur & Anr., (2019) 2 SCC 282, which holds, at Para 31, that a second consent is not required for operating on the same organ. Applying this holding, since the entire pacemaker implantation including the eventual placement of the LV lead was one continuous procedure on the Patient's heart, staged only for his own safety and comfort, the absence of a second signed form is not a legal defect, and the single consent taken on 20.09.2013 fully covers the completion of the procedure on 22.09.2013

10. We have carefully perused the entire record, including the State Commission's order, the voluminous medical documents, the bills, the post-mortem report, the PGIMER expert opinion, the subsequent judgment of the Hon'ble Punjab & Haryana High Court in CRM-M-3458-2015, and the new documents filed by the Appellants regarding the supply of the pacemaker.

11. The primary issue for determination is whether the Appellants/Doctors-Hospital (OP-1 & OP-3) are guilty of medical negligence and deficiency in service, thereby making them liable to compensate the Complainant.

12. The State Commission's finding of negligence is primarily based on three key contradictions that emanate from the Appellants' own records. These are:

(i) The presence of an ECPM (pacemaker/pulse generator) in the X-ray report dated 20.09.2013, versus the doctor's consistent stand that no pacemaker was implanted on that day.

(ii) The internal nursing note dated 20.09.2013 stating "Patient CRT done" (CRT being Cardiac Resynchronization Therapy, which requires a pacemaker), versus the two-stage surgery claim.

(iii) The bill containing an entry for a "Double Chamber Pacemaker" for Rs. 45,000/- on 20.09.2013, which the Appellants claim is a typographical error for procedure charges, despite the patient having paid for and consented to a biventricular device.

13. The Appellants' contention that the X-ray report shows an 'External Chamber Pacemaker (ECPM)' and not the permanent pacemaker is unpersuasive. The document itself is titled 'X-Ray Chest AP View' taken post-surgery to check the placement. The radiologist's report notes "ECPM with wires... in situ." In common medical parlance within the context of a permanent pacemaker implantation report, ECPM refers to the implanted pulse generator. The Appellants' attempt to create a distinction between an 'external' and 'implanted' pacemaker in this context is a distinction without a difference and appears to be an afterthought to explain away a damaging piece of evidence.

14. This conclusion is further strengthened by the nursing progress note of the same date (20.09.2013 at 5:52 PM), which states, "Special instructions to handover staff: Patient CRT done." CRT (Cardiac Resynchronization Therapy) is a treatment that specifically uses a biventricular pacemaker. If, as the Appellants claim, only two leads were implanted and the pacemaker was to be installed later, the notation "CRT done" would be factually incorrect and misleading. This inconsistency was rightly seized upon by the State Commission and also highlighted by the Hon'ble High Court.

15. The bill (Exhibit C-4) is another significant piece of evidence. It unmistakably lists a "Double Chamber Pacemaker" as an item with a cost of Rs. 45,000/-. The

Appellants' explanation that it is a typographical error and actually represents the procedure charges for the first stage, supported by a breakup for another patient, is not credible. A hospital's billing software is expected to maintain a standard chart of accounts. If the amount was for 'Procedure Charges', it should have been listed as such. Listing it specifically as a 'Double Chamber Pacemaker' creates a strong presumption that such a device was, in fact, used. This finding is not a technical one but a factual finding based on documentary evidence.

16. While the Appellants have now placed on record documents to show that the biventricular pacemaker and its leads were delivered to the hospital on 19.09.2013 and 20.09.2013, this does not fully resolve the contradictions in the record. If the correct device was available, why does the bill show a cheaper, different device? Why do the medical notes prematurely state "CRT done"? Why does the X-ray report show a pacemaker in situ on 20.09.2013 if only leads were implanted? These documents, provided after the impugned order, seem to raise more questions than they answer and do not erase the glaring inconsistencies in the contemporaneous medical records.

17. The expert opinion from PGIMER (dated 18.01.2016), stating that the "procedure was carried out as per protocol," is an important piece of evidence. However, the value of this opinion is considerably diminished by the fact that the Medical Board itself did not have or did not comment upon the critical inconsistencies in the record. The Hon'ble Punjab & Haryana High Court, while dismissing the quashing petition, observed:

> *"14. Interestingly, though the Board assessed the medical record, but did not make out any detailed discussion with regard to the inconsistency in the record... The Board of Doctors remained silent regarding the X-ray reports dated 20.09.2013 and 22.09.2013..."*

A blanket opinion that the procedure was 'as per protocol' loses its sanctity when it fails to address specific, contradictory, and contemporaneous documentary evidence from the hospital's own file. The principle laid down in **V. Kishan Rao (supra)** is that a Consumer Forum is not bound by an expert opinion if the facts on record are clear. In this case, the facts on record are not clear; they are deeply contradictory, and the expert opinion fails to resolve them.

18. The subsequent judgment of the Hon'ble Punjab & Haryana High Court in CRM-M-3458-2015, dismissing the Appellants' quashing petition and directing them to face trial for offences under Sections 304-A, 420, and 120-B IPC, is a significant development. While the findings in a criminal proceeding are not binding on a civil consumer forum, the High Court's detailed analysis of the same set of medical records and its conclusion that a prima facie case of cheating and gross negligence is made out, is highly persuasive. The High Court found the Appellants' stand to be self-contradictory and noted the same discrepancies (X-ray showing ECPM, nursing note showing CRT done, bill showing double chamber pacemaker). This strengthens the Complainant's case that the Appellants' version of events is not credible.

19. The doctrine of res ipsa loquitur (the thing speaks for itself) may not be strictly applicable in complex medical negligence cases. However, in this case, the Appellants' own documents create a situation where the events speak loudly of a lack of transparency and probable negligence. A patient was taken for surgery, an X-ray and medical notes indicate the procedure was complete, and the bill shows a cheaper device was used, only to be followed by a second surgery and, tragically, the patient's death. The Appellants have failed to provide a satisfactory, coherent, and consistent explanation for these multiple, glaring discrepancies in their own records. Their shifting explanations and afterthought

documents do not inspire confidence. The unexplained contradictions in the hospital's own records are sufficient to draw an adverse inference of deficiency in service.

20. This case is about the unexplained presence of a pacemaker on an X-ray and a cheaper device on a bill, where the doctor claims neither existed. This is not a case of an error of judgment during a complex procedure, but one of potential misrepresentation and a fundamental lack of clarity about what was actually done to the patient. The Hon'ble Supreme Court in **Jacob Mathew (supra)** held that a medical professional is not liable for an error of judgment. However, that protection applies when the facts are undisputed, and the only question is the choice of treatment. Here, the facts themselves are hotly disputed and stand contradicted by the hospital's own documents. The protection of Jacob Mathew cannot be extended to cover a situation where the professional's account of the treatment is contradicted by the hospital's official medical records and billing documents.

21. After a thorough reassessment of the entire evidence, we find ourselves in agreement with the conclusion reached by the State Commission and the Hon'ble High Court. The Appellants have failed to provide a cogent and consistent explanation for the contradictions in the medical records and the bill. The X-ray report and nursing note of 20.09.2013 strongly suggest that a procedure beyond the mere implantation of two leads was performed on that day. The bill entry for a "Double Chamber Pacemaker" stands unrebutted by any credible evidence. The expert opinion of PGIMER, while noted, does not resolve these specific factual inconsistencies. The Appellants have, therefore, failed to prove that there was no negligence or deficiency in service on their part.

22. Consequently, the finding of the State Commission that OP-3 (Dr. Sudheer Saxena) is guilty of medical negligence/deficiency in service and that OP-1 (Max Super Specialty Hospital) is vicariously liable for the acts of its consultant doctor is upheld.

23. As far as the cross-appeal (FA No. 1751/2017) by the Complainant for enhancement of compensation is concerned, we find that the State Commission's award of Rs. 32,94,000/- is just, fair, and based on a reasoned assessment. The State Commission took into account the loss of income, cost of treatment, pain and suffering, and litigation costs. While the loss of a life is invaluable, the compensation awarded is substantial and meets the standard of being "just and proper" under the circumstances. No case for enhancement is made out.

24. Regarding the liability of Respondent No. 4 (St. Jude Medical India Pvt. Ltd.), there is no evidence of any defect in the pacemaker supplied. Therefore, no liability can be fastened upon them.

25. In light of the detailed findings, we conclude that the impugned order of the State Commission holding the Appellants (Dr. Sudheer Saxena and Max Super Specialty Hospital) liable for medical negligence/deficiency in service is based on a correct appreciation of evidence and law and does not suffer from any infirmity warranting our interference.

26. **Accordingly, FA No. 1495 of 2017 filed by the Appellants (OP-3 and OP-1 before the State Commission) is dismissed and** the order of the State Commission is upheld.

27. **FA No. 1751 of 2017, filed by the Appellant (Complainant before the State Commission) for enhancement of compensation, is also dismissed** and the order of the State Commission is upheld.

28. Pending IAs, if any, in both the cases stand disposed off.

Sd/-

(DR. INDER JIT SINGH)
PRESIDING MEMBER

Sd/-

(SHASHI NANDKEOLYAR)
MEMBER

Shubhendra/jr/bench3/AB