

**STATE CONSUMER DISPUTE REDRESSAL COMMISSION
BIHAR, PATNA**

Complaint Case no. 37 of 2014

Neeraj Kumar Jain, Son of Late prafhul Chandra Jain, resident of Mohalla-
Ratanpura Near Mahavir Asthan, P.S. Bhagwan Bazar, District- Chapra.

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Complainant

Versus

1. Dr. (Smt.) Bimla Shahi; Bhumija Chikitsa Kendra and Shahi Maternity Centre, Thana Road, Bhagwan Bazar, Chapra.
2. Dr. Krishnanand, North of Bharat Milap Chowk, Chapra (Saran).
3. Ford Hospital and Research Centre Pvt. Ltd. Through its Managing Director, New Bypass, Khemnichkl, P.O.- New Jaganpura, P.S.- Ram Krishnanagar, Patna-27.

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Opposite Parties

Counsel for the Complainant: Mr. Sanjay Kumar

Mr. Kumar Gaurav

Counsel for the Opposite party no.1: Mr. S.K. Dubey

Before,

Hon'ble Mr. Justice Sanjay Kumar, President

Md. Shamim Akhtar, Judicial Member

Dated- 01.09.2026.

As per Sanjay Kumar, President

Order

1. Complaint petition has been filed for grant of adequate compensation alleging deficiency in service as well as unfair trade practice on the part of the opposite parties as a result of which complainant lost his wife.
2. Complaint case is well within the limitation as prescribed under consumer protection Act. The course of action arose firstly on 15.07.2013 when the wife of complainant visited the clinic of opposite party no.1, on 09.08.2013 and again on 04.10.2013 when the opposite party no.1 advised for ultrasound, on 06.10.2013 when he visited opposite party no.2, on 09.10.2013 when he visited opposite party no.2 & 3 and lastly on 11.10.2013, when due to deficiency in service and unfair trade practice adopted by the opposite parties, the complainant's wife died.

3. Complaint has not moved any application before this Hon'ble Commission for the same cause of action earlier.
4. The fact of the complaint is as follows:-
 - (i) In anticipation of pregnancy, complainant with his wife visited the Maternity Center of opposite party no.1 namely Dr. (Smt.) Bimala Shahi on 15.07.2013. Opposite party no.1 after listening the history of complainant's wife and after clinical examination prescribed some medicine without obtaining any investigation report.
 - (ii) On 09.08.2013, complainant's wife again visited the clinic of opposite party no.1 for checkup. Opposite party no.1, after listening the complications of the complaint's wife again prescribed medicines. Complainant's wife requested opposite party no.1 for complete checkup so that the problem could be identified as to why she is not feeling well. Upon request opposite party no.1, referred her to Suraksha Diagnostics for Ultra Sound.
 - (iii) Complainant's wife visited Suraksha Diagnostics on 09.08.2013 for Ultra Sound, which reported pregnancy of about 5 weeks 3 days. The report of Ultra Sound was obtained by the complainant on the same day and visited clinic of opposite party no.1, for further suggestions. After going through the Ultra Sound report opposite party no.1, suggested the complainant's wife for taking prescribed medicine.
 - (iv) Complainant's wife started taking prescribed medicines dated 09.08.2013 and also followed the advise of opposite party no.1, but in the night of 03.10.2013 complainant's wife felt some complications, hence she immediately visited the clinic of opposite party no.1, on 04.10.2013.
 - (v) Opposite party no.1, after listening the complications i.e. pain and non-movement of child in the stomach prescribed another medicines and again referred for Ultrasound which reported the age of fetus 13 weeks 6 days. Ultra sound report was obtained by the complainant on 04.10.2013 and contacted doctor with the said report. The opposite party no.1, after going through the report did not change the medicine and told that there is nothing to worry as everything is all right and required medicine is going on.
 - (vi) As per the doctor's advice complainant's wife took medicine. In the night of 05.10.2013 she felt severe pain in her stomach. In the early morning of 06.10.2013, complainant's with her wife rushed to the clinic of opposite party no.1, who scolded the complainant as well as his wife and said that "एक फीस में प्रत्येक दिन दिखाना चाहते हैं। कुछ नहीं है दवा खाओ सब ठीक हो जाएगा।" But the complainant was not satisfied with the



version of Dr. Bimla Shahi (O.P. No.1), as she was in trouble and suffering from acute pain. He requested the doctor O.P. No.1, for treatment of present complication i.e. pain in the abdomen but the doctor did not even listen the complications of complainant's wife and directed the compounder to send the patient out of clinic.

- (vii) As the wife of complainant was serious, so he visited another Dr. namely Dr. Krishnannad for present complications. Dr. Krishnananad also without any investigation prescribed medicine on verbal report as is evident from the prescription of Dr. Krishnanand itself. The complainant's wife started using medicine of Dr. Krishnanand but the complainant's wife did not recover. Complainant again contacted Dr. Krishnanand on 09.10.2013, seeing the seriousness of patient Dr. Krishnanand referred the patient to higher center.
 - (viii) Complainant immediately rushed to Patna for better treatment and visited Ford Hospital Khemnichak, Patna on 09.10.2013: Ford Hospital admitted the patient. After thorough investigation Ford Hospital found that the unborn child is not alive in the womb. Doctors at Ford Hospital immediately operated but unfortunately Ford Hospital could not save the life of patient and ultimately complainant's wife died on 11.10.2013.
 - (ix) The medical officer of Ford Hospital issued death certificate. After going through the death certificate it transpires that the complainant's wife died due to septicemia.
5. Complainant under right to information demanded information relating to cause of death. The Ford Hospital in his report dated 13.12.2013 reported that the cause of death is septicemia. Para-C of the report postulated that septicemia occurred due to death of child in ovary long time back.
 6. It is humbly submitted that it is the duty of the doctor to investigate & diagnose the patient and then only prescribe the suitable medicines. In the instant case neither opposite party no.1 nor opposite party no.2 followed the aforesaid norms for treatment of complainant's wife, resulting in to death of child in the mother's womb and as result of which septicemia developed in the mother's body which resulted into death of the mother. This act of the opposite party no.1 and opposite party no.2 comes under acute deficiencies in service.
 7. It is further submitted that under medical profession it is duty of the Doctor to obtain investigation report first to come to a concrete conclusion and then prescribe the medicines, which must not harm the fetus in the womb. If the doctor feels that the case is complicated one and beyond his control then they should immediately referred the patient to a higher center for better treatment. In the present case opposite party no.1 in the one hand prescribed medicine without investigation and on the other hand did not refer the patient to a higher

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center for better treatment when the condition of patient was deteriorating gradually. Opposite party no.2 also for earning money without investigation prescribed medicine on oral report. These acts of opposite party no.1 and opposite party no.2 comes within purview of deficiency in service as well as unfair trade practice.

8. From perusal of information received by the complaint on 13.12.2013 it transpired that complications of the deceased wife of the complainant arose only due to deficiency in service and ill advice of the opposite party no.1 and opposite party no.2.
9. Opposite party no.1 did not entertain the patient on 06.10.2013, which is also another kind of deficiency in service on the part of opposite party no.1.
10. It is humbly submitted line of treatment of opposite party no.1 and 2 were absolutely wrong and against the established norms and medical practice.
11. Due to act of opposite party no.1 and 2 the fetus in the womb of mother as well as mother i.e. wife of the complainant died, which cannot be compensated by the opposite parties in any manner what so ever it may be.
12. In the entire episode complainant passed through great mental as well as physical torture including huge monetary loss.
13. During the entire treatment the complainant had expended not less than of Rs. 2,50,000/- towards expenses in treatment.
14. Wife of complainant was an earning member of his family be used to earn Rs.1,50,000/- approx. yearly as is evident from IT return of the wife of complainant. At the time of death complainant's wife was 33 years old and if the longevity of his wife was assessed minimum 60 years. She has lost her 27 years of earning totaling Rs.1.5 lacs X 27 years = Rs.40.50 lacs approx.
15. The complainant is victim of the negligent and wrong medical treatment given by the opposite party no.1 and 2. Opposite party no.1&2 are fully liable for loss and injury suffered by the complainant and for this the complainant should be compensated as per law.
16. Notices were issued to opposite parties upon which opposite party no.1 appeared however in of valid service of notice, opposite party no.2 and 3 did not appear.
17. Complaint case was heard on 21.09.2016 and was dismissed on ground of pecuniary jurisdiction against which complainant filed appeal before the National Commission being First Appeal No. 1632 of 2016 and by order dated 02.08.2016 order passed by this Commission was set aside and the case was remanded to this Commission to be heard afresh on merit. Accordingly, complaint case was heard on merit giving adequate opportunities to both the parties of hearing and to file their evidence on affidavit as well as written notes of argument. Opposite party no. 2 and 3 did not appear even after valid service of notices as such case proceeded ex-parte against them.

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18. Heard learned counsel for the complainant and learned counsel for the opposite party no.1 and considered their submissions as well as evidence placed on record and written notes of argument filed by both the parties.
19. The only issue involved in present complaint case is whether a duty of care owed by opposite party no.1 as a medical professional was breached resulting in death of wife of complainant.
20. Wife of complainant was pregnant and was under treatment and checkup of opposite party no.1 who clinically examined the wife of complainant and found everything normal.
21. Wife of complainant visited maternity center of opposite party no.1 on 15.07.2013 and medicine was prescribed by opposite party no.1. Thereafter she visited on 09.08.2013 and she was referred for ultrasound from Surksha Diagnostics on 09.08.2013. Ultrasound was done on 09.08.2013 which reported pregnancy of about 5 weeks 9 days and after seeing ultrasound report opposite party no.1 advised to take medicines as prescribed.
22. Wife of complainant felt discomfort and uneasiness on 03.10.2013 and visited opposite party no.1 who advised ultrasound and same was done on same day and report was obtained on 04.10.2013 which reported fetus of 13 weeks 6 days and after seeing the ultrasound report opposite party no.1 found everything normal and advised to continue prescribed medicine.
23. In night of 05.10.2013 wife of complainant felt severe pain in abdomen and was rushed to the clinic of opposite party no.1 on 06.10.2013 but she refused to examine the wife of complainant although she was under acute pain and distress and without clinically examining her angrily told that everything was normal and to continue the medicine.
24. Complainant thereafter approached opposite party no.2 who after delay of two days referred the wife of complainant to higher center. Complainant admitted his wife in Ford Hospital, Patna on 09.10.2013 in a precarious condition where it was found that the unborn child had died in the womb of mother and she was immediately operated but could not be saved and died on 11.10.2013 due to septicemia.
25. A medical professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he/she did possess.
26. Negligence is breach of duty caused by omission to do something which a reasonable man guided by those considerations which regulate the conduct of human affairs would do or doing something which a prudent and reasonable man would not do. The definition involves three constitutes which are as follows:-
 - (i) A legal duty to exercise due care.

- (ii) Breach of duty
 - (iii) Resultant damage
27. Opposite party no.1 failed to exercise reasonable skill and competence while treating wife of complainant. She did not meet reasonable standard of care as expected from a medical professional.
 28. Opposite party no.1 overlooked and ignored the suffering and pain of wife of complainant and was preoccupied with report of ultrasound report unmindful of the fact that there can be error in ultrasound report and condition of patient did not match ultrasound report.
 29. In the ultrasound report itself note is given: (i) This report is only a professional opinion based on real time image findings and not a diagnosis by itself. (ii) It has to be correlated and interpreted with clinical and other investigation findings.
 30. There was clinical discrepancy in report of ultrasound and health condition of wife of complainant as she was under acute pain and distress whereas ultrasound was showing everything to be normal.
 31. Opposite party no.1 did not exercise reasonable competence and requisite skill which she possessed while treating wife of complainant and she overlooked the clinical discrepancy which was apparent.
 32. Had opposite party no.1 been more diligent, attentive, careful and noticed the pain and suffering of wife of complainant she ought to have got 2nd opinion from another ultrasound center but she blindly relied upon the ultrasound report which was incorrect and faulty as it is proven fact that child was dead in mothers womb and subsequently due to infection mother also died due to septicemia.
 33. Opposite party no.1 was very casual, careless and failed to diagnose the cause of suffering and pain of patient which she could have easily diagnosed had she been more cautious and careful. The misdiagnosis was preventable and could have been avoided by slight alertness.
 34. National Commission in case of M. Kochar Vs. Ispita Seal 2018-CPJ(NC)-1-41 in paragraph no.11 had held as follows:-

“ (11.) The complainant's allegation that OP was negligent in duty of care. The concept of duty of care has been discussed by the Hon'ble Supreme Court in the Laxman Balkrishna Joshi's case [1969 SCR (1) 206]. Court observed that,

A person who holds himself out ready to give medical advice and treatment impliedly holds forth that he is possessed of skill and knowledge for the Purpose. Such a person when consulted by a patient, owes certain duties, namely, a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give, and a duty of care in the administration of that treatment. A breach of any of these duties gives a right of action of negligence against him. The medical practitioner has a discretion

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in choosing the treatment which he proposes to give to the patient and such discretion is wider in cases of emergency, but, he must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care according to -the circumstances of each case."

35. Present case is also covered by doctrine of res ipsa loquitur Apex Court in case of *V. Kishn Rao Vs. Nikhil Super Speciality Hospital and another* (2010-scc-5-513) in paragraph no.47 has held as follows:-
"(47) In a case where negligence is evident, the principle of res ipsa loquitur operates and the complainant does not prove anything as the thing (res) proves itself. In such a case it is for the respondent to prove that he has taken care and done his duty to repel the charge of negligence."
36. Patient goes by the reputation of the doctor with the hope that proper care will be taken. It is responsibility of the doctor to provide the best services when they charge for the services rendered by them. Patient accept better and efficient service. In case it is found that service rendered by the doctor is not up to mark and it involves negligence compensation become payable.
37. Complainant has successfully discharged the initial burden that doctor was negligent as a result of which his wife died than burden lies on the doctor who treated the wife of the complainant that there was no negligence involved in treatment. The medical professional is not negligent so long as he/she follows a practice acceptable to the medical profession of the day.
38. Opposite party no.1 in her written statement has admitted that wife of complainant had visited her on 04.10.2013 with some problem and she advised for ultrasound and after seeing the ultrasound report, she found everything normal which is her admission that she accepted and believed the ultrasound report and ignored the health condition, pain and suffering of wife of complainant and never gave a second thought that there is clinical discrepancy and second opinion from another ultrasound center was desirable by a medical professional and failure of which has resulted in loss of life of complainant's wife.
39. Ultrasound report is only an aid in diagnosis and such report has to be co-related with symptoms of patient by medical professional in order to decide line of treatment but depending only on ultrasound report is against established norms of medical practice.
40. The information supplied by Ford Hospital, Patna to complainant are as follows:-
 (a) That Smt. Shalu Jain, W/o- Niraj Kr. Jain, resident of :- Ratanpura, P.O.- Chapra, P.S.- Bhagwan Bazar, District- Chapra (Saran) was admitted in our Hospital and her registration no. is 20589 as per our Hospital- record.

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- (b) That she was admitted on 9.10.2013 at 10:25 A.M and immediately shifted to ICU as her condition was very critical and was unconscious and breathless and her B.P was 80/60 only.
 - (c) That since the expelled fetus was macerated in appearance therefore it is clear that the fetus was dead before coming to the hospital.
 - (d) That the dead fetus was carried in her womb for a long time which may have caused septicemia and later on she had died due to septicemia with multi organ dysfunction.
 - (e) That Smt. Shalu Jain was admitted in this Hospital on 09.10.2013 at 10.25 A.M and her general condition was very critical and all the concerned doctors and consultants tried their level best to save her but she did not gave the doctors enough time as she expired on 11.10.2013 at 5 A.M.
 - (f) That during course of treatment of aforesaid Smt. Shalu Jain it was well explained by the doctors and consultants to her husband Niraj Jain that her condition is very critical and the prognosis was very poor.
 - (g) That moreover no papers of previous treatment before coming to this Hospital was shown to us and it was only verbally submitted by her husband Ninay Kr. Jain that previously she was under treatment of Vimla Sahi so there is no paper regarding her previous treatment.
41. From the facts, evidence and legal precedents it is concluded that opposite party no.1 failed to exercise the requisite degree of skill, care and competence expected from a qualified gynecologist. The allegations of medical negligence and deficiency in service are established. Surksha Diagnostic center who conducted ultrasound has not been made opposite party in complaint case as such no compensation can be granted against it.
42. Apex Court in case of Malay Kumar Ganguly Vs. Sukumar Mukherjee, 2009 3 SCC 663 has held as follows:-

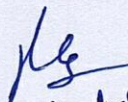
"(53.) In Malay Kumar Ganguly v Sukumar Mukherjee, 2009 3 SCC 663 Justice S B Sinha held thus:

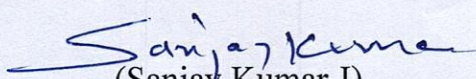
"172. Loss of wife to a husband may always be truly compensated by way of mandatory compensation. How one would do it has been baffling the court for a long time. For compensating a husband for loss of his wife, therefore, the courts consider the loss of income to the family. It may not be difficult to do when she had been earning. Even otherwise a wife's contribution to the family in terms of money can always be worked out. Every housewife makes a contribution to his family. It is capable of being measured on monetary terms although emotional aspect of it cannot be. It depends upon her educational qualification, her own upbringing, status, husband's income, etc."

Thus, in computing compensation payable on the death of a home-maker spouse who is not employed, the Court must bear in mind that the contribution is significant and capable of being measured in monetary terms.

Order

- (i) A Lump sum compensation of Rs.20,00,000/- (Twenty lakhs) shall be paid by the opposite party no.1 to the complainant within 60 days from the date of receipt/ production of a copy of order passed by this Commission failing which interest @ 8% p.a. shall become payable.
- (ii) Cost of litigation of Rs.20,000/- (Twenty thousand) to be paid within 60 days from the date of receipt/ production of a copy of order passed by this Commission failing which interest @ 8% p.a. shall become payable.
43. A copy of this order be supplied to both the parties free of cost as mandated by the Consumer Protection Act. The order be uploaded forthwith on the e-jagriti of the Commission.
44. Let the file be consigned in the record room along with copy of this order.


(Md. Shamim Akhtar)
Member


(Sanjay Kumar, J)
President

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