

IN THE DELHI STATE CONSUMER DISPUTES
REDRESSAL COMMISSION

Date of Institution: 26.10.2013

Date of hearing: 16.05.2023

Date of Decision: 29.11.2023

COMPLAINT CASE NO.-579/2013

IN THE MATTER OF

MRS. SANGEETA PANDEY,

W/o MR. A.K. PANDEY (ADVOCATE),

R/o RZD-48, GALI NO. 9,

DABRI EXTN., NEW DELHI-110045.

PRESENTLY AT:

H.NO. A-1/221A, GALI NO. 2, MADHU VIHAR,

UTTAM NAGAR, NEW DELHI-110059.

(Through: A.K. Pandey & Associates)

...Complainants

VERSUS

1. DIRECTOR, AIIMS,

ANSARI NAGAR, AURVINDO MARG,

NEW DELHI-11029.

(Through: Dr. Vikrant Narayan Vasudeva, Advocate)

2. HOD, GYNAE,

(DR. SUNITA MITTAL & ASSOCIATES)

ANSARI NAGAR, AURVINDO MARG,

NEW DELHI-11029.

3. MINISTRY OF HEALTH & FAMILY WELFARE,

(THROUGH THE SECRETARY)

CENTAL GOVT.,

KESHAVN DESI RAJU,

ROOM NO. 156-A

NIRMAN BHAWAN, C-WING,

MAULANA AZAD ROAD, NEW DELHI.

...Opposite Parties

CORAM:

**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL,
(PRESIDENT)**

HON'BLE MS. PINKI, (MEMBER) JUDICIAL

HON'BLE MR. J.P. AGRAWAL, (MEMBER) GENERAL

Present: Mr. C.M. Gopal & Mr. Awadhesh Kr. Pandey, Counsel
for the Complainant.

Mr. Vikrant Narayan Vasudeva & Mr. Rohit Lochan,
Counsel for the OP.

**PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL,
(PRESIDENT)**

JUDGMENT

1. The present complaint has been filed by Mrs. Sangeeta Pandey (patient) alleging deficiency in service and medical negligence on the part of the Opposite Party no. 1 with respect to the treatment taken by her for the In Vitro Fertilization (IVF).
2. Brief facts necessary for the adjudication of the present complaint are that the Complainant (patient) in order to overcome infertility and to have a child, approached the Opposite Party no. 1 hospital for the necessary treatment and after the preliminary tests and examinations under the guidance of Dr. Sunita Mittal, HOD Gynae, AIIMS Delhi. After thorough examination, the Complainant was advised to opt for the In Vitro Fertilization (IVF) and accordingly admitted to the Opposite Party no. 1 Hospital on 07.01.2008 and a team of doctors was engaged to start laparoscopy and a mandatory process before IVF i.e. Mock ET was conducted on 26.03.2008 and IVF process was conducted by the operating doctor on 01.12.2008 and the complainant was discharged on the same day after charging an amount of Rs. 60,000/- for the said process. However, the Thyroid-test, which is necessary in cases of

fertility was not done or advised by the operating doctor before the commencement of the treatment.

3. The second plan for IVF was adopted between the period 20.05.2010 to 27.12.2020 with the help of frozen embryo, however, the doctors failed to advise Thyroid Test prior to the method adopted and therefore, no positive result came out from the second IVF process.
4. Thereafter, the third IVF process was proposed to be carried out on 21.04.2011. However, as the Complainant (patient) was putting on weight, she decided to go for the Thyroid Test through pathology named as 'Thyrocare', from where she got to know that she was suffering from thyroid and consulted Dr. S.R. Ganpati (specialist) who prescribed some medicine for the treatment of thyroid.
5. Further, after consulting Dr. S.R. Ganpati, the Complainant again approached the Opposite Party no. 1 Hospital, where the operating doctor advised for the Thyroid test on 09.08.2011 on the basis of report dated 27.06.2011. However, no such test was prescribed by them prior to such date. Therefore, the Complainant lost all her faith in the Opposite Party no.1 and deferred to go for third IVF process.
6. The Complainant in her complaint has alleged that:
 - a. at the time when the Complainant (patient) was admitted with Opposite Party, the operating doctor should at first instance, advise for the Thyroid-Test, since it is crucial to know about the success rate of the IVF and the process should run accordingly.
 - b. the negligence on the part of Opposite Party no. 1 is clear as the operating doctors have also failed to conduct the Thyroid test at the second phase of IVF.
 - c. the success rate in case of IVF is 25 to 30%, however, in case when the patient suffering from Thyroid, the success rate falls to

15%. However, no efforts were made by the Opposite Party to advice for the Thyroid Test.

7. On the aforesaid grounds, alleging utter Medical Negligence on the part of the Opposite Party no. 1, the Complainant approached this Commission.
8. Notice was issued to the Opposite Parties and Mr. Sumit Babbar, Advocate, who appeared for Opposite Parties was directed to file written statement vide order dated 03.04.2014. However, the Opposite Parties failed to file the written statement within the stipulated period of time and failed to appear before this Commission. therefore, the right of the Opposite Parties to file the written statement was closed and they were proceeded *ex-parte* vide order dated 24.09.2015.
9. The Complainant filed the *ex-parte* Evidence by way of Affidavit in order to prove her averments on record and also filed the Medical Record as per the directions given vide order dated 09.07.2019. Further, during the course of proceedings, on 13.07.2022, Mr. Gautam Dass, counsel for the Complainant submitted that the Complainant is not pressing her complaint against the Opposite Party no. 2 & 3. Therefore, in view of the submission made by the counsel for the Complainant, the Opposite Party no. 2 & 3 were deleted from the array of the parties.
10. The Complainant and the Opposite Party no. 1 have also filed their Written Arguments. We have heard the Counsel for the Complainant and perused the material available on record including the Written Arguments filed on behalf of the Complainant and the Opposite Party no. 1.
11. Before delving into the merits of the case, we deem it appropriate to refer to the law on the cause. This Commission, has, in detail discussed the scope and extent of Negligence with respect to Medical Professionals in CC- 324/2013, titled **Seema Garg & Anr. vs.**

Superintendent, Ram Manohar Lohia Hospital & Anr. decided on **31.01.2022**, wherein one of us (Justice Sangita Dhingra Sehgal, President) was a member. The relevant portion has been reproduced as below:

*“9....The Hon’ble Apex Court, after taking into consideration its previous decisions on Medical Negligence, has consolidated the law in **Kusum Sharma and Ors. vs. Batra Hospital and Medical Research Centre and Ors.** reported at (2010) 3 SCC 480, wherein, it has been held as under:*

“94. On scrutiny of the leading cases of medical negligence both in our country and other countries specially United Kingdom, some basic principles emerge in dealing with the cases of medical negligence. While deciding whether the medical professional is guilty of medical negligence following well known principles must be kept in view:

I. Negligence is the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

II. Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

III. The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.

IV. A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.

V. In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely

because his conclusion differs from that of other professional doctor.

VI. The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence.

VII. Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.

VIII. It would not be conducive to the efficiency of the medical profession if no Doctor could administer medicine without a halter round his neck.

IX. It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessary harassed or humiliated so that they can perform their professional duties without fear and apprehension.

X. The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurizing the medical professionals/hospitals particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.

XI. The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals.

95. *In our considered view, the aforementioned principles must be kept in view while deciding the cases of medical negligence. We should not be understood to have held that doctors can never be prosecuted for medical negligence. As long as the doctors have performed their duties and exercised an ordinary degree of professional skill and competence, they cannot be held guilty of medical negligence. It is imperative that the doctors must be able to perform their professional duties with free mind.”*

10. In cases wherein the allegations are levelled against the Medical Professionals, negligence is an essential ingredient for the offence, which is basically the breach of a duty exercised by omission to do something which a reasonable man would do or would abstain from doing. However, negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence and they are entitled to protection so long as they follow the same.”

(emphasis supplied)

12. In the present case also, it will have to be ascertained whether there was any lack of skill and competence on the part of the operating doctor and/or any omission to do what was actually required in the present facts and circumstances.
13. It is not the case of the Complainant that the doctors operating upon the patient were not having the requisite skill or competence or were not qualified to operate upon the Complainant (patient). What has actually transpired from the perusal of the Complaint is that the Complainant had apprised about her condition to the treating doctors of Opposite Party no. 1 Hospital, however, the treating doctors have failed to do the thyroid test before doing the process of IVF.
14. Therefore, in order to check whether there was an deficiency on the part of treating doctor, we have carefully perused the medical records filed by the Complainant and found that the treating doctor have prescribed certain tests before doing the first process of IVF and they were done

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before doing IVF, however, no Thyroid-test was done and prescribed by the treating doctors which can be clearly seen from the discharge summary available before us and the same has been reproduced below for the ready reference herein:

FOLLOW UP CLINIC		
Date	NOTES	Signature
	Post operative course	
	Recurrent in fluids injections / 4 hrs.	22/12/07 USG - mildly enlarged (R) ov & follicular cyst. Ut NS 2713.4m.
	Paracetamol.	22/12/07 - Ut NS shape ET - 13mm (R) ov - 3.2 x 2.7 (L) adnexal mass adjacent
	Dy OmRH. 30 5m Remet.	(R) ov - tubular mass & thickened 4mm ~ Dilated (L) F7
	Famh.	2006 HSG ut cavity (R) (L) + (R) tube of seen (L) coin ut block (R) fibrotic block
	BCG - B + Ue 7/10/07 10.1 Hb - 4.5 → 10.0	10/11/07 Hb 10.5 / NR.
	BSP - 70 11-95	22/12/07 BSP - 2.5 Ut - 18.6
	TLC - 6100	ML - M1
	DLC 50/45/15	Prosp - 2.90
	ESR - 40	TF7 - (R)
	IC - 2.100	E2 - 20.0
	Na/K - 142/4.2	11/10/07 CA - 10.2 2.5
	Urea - 27/0.7	USG 21/9/08 large cystic mass in (R) ov & mixed echoes ovaryst & hyp ? Decided cyst
	UA - 3.5	
	TIA - 7.0/4.0	11/10/07 60ml cell/ml 177 admissible 2-3 cells.
	2.5il - 0.2	
	ACT - 8	
	Urea 14.4 - NAD.	
NOTE: It is suggested that notes on follow up of hospitalized patients be recorded on this form in addition to main place of notes etc on the out-patient record. If further treatment is indicated as in ambulatory patients then out-patient record should be used.		

15. Additionally, we find that the treating doctors while mentioning the history of patient have mentioned about the Thyroid-Test which was

undertaken by the Complainant in the year 2004 and got mentioned the readings as: T3-119.0, T4 - 6.54 and TSH - 4.38 which was normal.

16. Further, we find that the Thyroid function may indeed affect the process and success of in vitro fertilization (IVF) as the thyroid gland plays a crucial role in regulating metabolism and hormone production, and thyroid disorders can impact fertility in the patient. Additionally, Thyroid hormones, specifically thyroxine (T4) and triiodothyronine (T3), plays a role in regulating the menstrual cycle and ovulation. An underactive thyroid (hypothyroidism) or an overactive thyroid (hyperthyroidism) can disrupt the normal hormonal balance required for ovulation and the preparation of the uterine lining for embryo implantation and due to these reasons, it is important for individuals undergoing IVF to have their thyroid function evaluated and, if necessary, treated or managed before and during the IVF process. Further, if a thyroid disorder is diagnosed, appropriate treatment or medication may be recommended to bring thyroid function into the normal range.
17. Since, optimizing thyroid tests before and during the IVF procedure can improve the chances of a successful pregnancy. However, in the present case, the treating doctors have failed to diagnose the Thyroid function at the primary stage and it came to the knowledge of the treating doctor in the year 2011, when the Complainant opted to get herself checked for the Thyroid test. Additionally, considering the age of the Complainant in the present case, it was clear to the treating doctor that the chances of getting the IVF successful in the present case is very low.
18. Moreover, it is a well laid down principle that the doctor diagnosing upon a patient is the best judge of the treatment which is to be undertaken for that specific patient. There may be multiple approaches with which the patient may be treated upon, however, the doctor is

expected to choose the most appropriate one in the given facts and circumstances. Hence, a higher degree of reliance is placed upon the concerned doctor, that whatever option he/she exercises will be for the benefit and interest of the patient. However, failure on the part of doctor in diagnosing the Thyroid function at the primitive stage has mentally and physically harassed the Complainant and her family.

19. Lastly, we deem it appropriate to refer to the well settled law laid down by the Hon'ble Supreme Court in series of judgment including **Jacob Mathew v. State of Punjab and Anr** reported at (2005) 6 SCC 1, **Martin F. D'Souza v. Mohd. Ishfaq** reported at (2009) 3 SCC 1 and **Kusum Sharma and Ors. (supra)**, the approach in the medical negligence cases should be "*what was actually done by the doctor was not acceptable or generally used in the medical practices at the given point of time*".
20. Keeping in view of the above situation, we find sheer negligence on part of the Opposite Party no. 1 as the patient (Complainant) was not treated with due care and caution by the Opposite Party no. 1 and the treatment was not done in accordance with the medical practice followed by the doctors while treating the patient of similar condition and age.
21. Therefore, from the above discussion, we hold that the Opposite Party no. 1 is negligent in providing its services to the Complainant and keeping in view the principles detailed above and the facts and circumstances of the case, the age of the patient, and other necessary and essential factors, *we are of the considered view that it would be just and reasonable to award compensation of Rs. 2,50,000/- (including the cost of treatment spent by the Complainant for IVF) to the Complainant for the suffering, mental pain and agony caused.*
22. The amount so awarded in the para no. 21 be paid by the Opposite Party no. 1 being liable, within a period of *three months* from the date of

present judgment i.e. on or before **29.02.2024**, failing which, the Opposite Party no. 1 would be liable to pay the said amount alongwith the interest at the rate of **9% p.a.** from **01.12.2008** (when the Complainant has undergone for the first IVF process) till the actual realization of said amount.

23. Applications pending, if any, stands disposed of in terms of the aforesaid judgment.
24. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
25. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

(J.P. AGRAWAL)
MEMBER (GENERAL)

Pronounced On:
29.11.2023