

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL  
COMMISSION, AMRITSAR.

Consumer Complaint No. 394 of 2022

Date of Institution: 3.8.2022

Date of Decision: 10.9.2024

Baldev Raj son of Sh. Darshan Lal, resident of Near Harbans Lal Depot,  
Gumtala Amritsar

Complainant

Versus

1. Dr. Naresh Grover Hospital, Majitha Road, Adjoining Government Eye & ENT Hospital, Sehaj Avenue, Amritsar through its Proprietor/Partner/Incharge/Principal Officer/Doctor/Authorized Signatory
2. Dr. Naresh Grover C/o Dr. Naresh Grover Hospital, resident of 1, Sandhya Enclave, Majitha Road, Amritsar
3. ICICI Lombard General Insurance Company Ltd., ICICI Lombard House , 414, Veer Sawarkar Marg, Near Siddhivinayak Temple, Prabhadevi Mumbai 400025

Opposite Party

Complaint under section 34 & 35 of the  
Consumer Protection Act, 2019

**Result : Complaint Allowed**

**Counsel for the parties :**

For the Complainant : Sh. Abhishek Soni, Advocate

For the Opposite Parties No.1 & 2 : Sh. Puneet Krishan Joshi, Adv.

For the Opposite Party No.3 : Amit Bhatia, Advocate

**CORAM**

**Mr.Jagdishwar Kumar Chopra, President**  
**Ms. Mandeep Kaur, Member**

**ORDER:-**

**Ms. Mandeep Kaur, Member** :-Order of this commission will dispose of the present complaint filed by the complainant u/s 34 & 35 of the Consumer Protection Act, 2019.

**Brief facts and pleadings**

1. Brief facts of the case are that complainant is a very poor person and is running a small grocery shop in his village and is having responsibility towards his family. The complainant is unfortunate person who took the medical treatment of his minor son and due to gross medical negligent treatment provided by opposite parties No.1 & 2 which spoiled the entire life of minor son of the complainant . On 22.8.2020 a son was born from the loins of complainant in M P Arora Hospital Amritsar and at the time of birth of minor son namely Vinayak , his oxygen level was very low , as such they referred the said minor son to Dr. Naresh Grover Hospital i.e. opposite party No.1 & 2 where the minor son was admitted on 22.8.2020 and during the medical treatment of minor child in the hospital of opposite parties No.1 & 2, they put wrong drip on the right hand of minor child due to which his right hand suffered badly and became blue and right arm of the child became totally damaged due to impending gangrene and wrongful treatment provided by opposite

parties NO.1 & 2 who treatment the son of the complainant in the baste manner and the vascular insufficiency was also there in providing medical treatment by opposite parties No.1 & 2 . The child remained admitted in the hospital of opposite parties No.1 & 2 till 11.9.2020 and on 11.9.2020 the opposite parties No.1 & 2 unethically and arbitrarily discharged the minor son of the complainant in order to escape from their negligence and they further advised complainant to take the minor son so some other good hospital. But however, due to poverty the complainant got admitted his son in Guru Nanak Dev Hospital, Amritsar where he remained admitted from 11.9.2020 to 15.9.2020 and due to non availability of the pediatrics and vascular surgeons in the said hospital, they have referred the minor child to PGI Chandigarh where he got admitted on 15.9.2020 and after proper diagnose the right hand of the minor son of the complainant got amputated by the concerned treating doctors of PGI Hospital, Chandigarh in order to save the life of the minor son of the complainant due to clear cut medical negligence on the part of opposite parties No.1 & 2 during the course of medical treatment of the son of the complainant in their hospital. The aforesaid act of opposite parties No.1 & 2 in giving gross medical negligent treatment to the minor son of the complainant which resulted in the loss of all future prospects of minor son of the complainant including education, sports, marriage etc besides financial and earning capability of the son of the complainant in

future. The complainant and his son have also spent sleepless nights due to the negligent treatment of the opposite parties No.1 & 2 for which the opposite parties are liable to pay compensation of Rs. 45 lacs. The aforesaid act of the opposite parties amounts to negligence in providing medical treatment to the minor son of the complainant due to which the complainant and his entire family has suffered harassment, monetary besides financial loss . Vide instant complaint, complainant has sought for the following reliefs:-

- (a) Opposite parties be directed to pay compensation of Rs. 45 lacs to the complainant
- (b) Opposite parties be also directed to pay Rs. 2 lacs as litigation expenses to the complainant.
- (c) Any other relief to which the complainant is entitled be also awarded to the complainant.

Hence, this complaint.

2. Upon notice, opposite parties No.1 & 2 appeared and filed written version taking certain preliminary objections such as opposite party No.1 is a well equipped committed to provide its patients with quality healthcare services at competitive prices by a team of qualified and experienced consultants and super specialists; that complainant without any rational basis has claimed an exorbitant amount of Rs. 45 lacs alongwith Rs. 2 lacs as litigation expenses ; present complaint is wholly misconceived, groundless, frivolous, vexatious and without any cause of action . It is also not explained how the opposite parties No.1 & 2 were

negligent in providing treatment to the son of the complainant ; that law does not require professionals to give guarantee or warranty with respect to the end results of the services rendered by them and in support of this plea Hon'ble Supreme Court held in Jacob Mathew Vs. State of Punjab (2005) 6 SSC I. Further more no medical expert has been examined by the complainant to prove this fact that opposite parties No.1 & 2 were negligent in providing treatment to the minor son of the complainant. On merits it was admitted that newborn baby was admitted in serious condition on 22.8.2020 as referred by MP Arora Hospital and the serious condition was explained to the attendants in writing at the time of admission. The child was put on ventilator support and oxygen for a total of 15 days and the child showed improvement and started digesting feeds. Since the child was preterm with very low immunity, he developed sepsis for which he was being given the required antibiotics. On 20<sup>th</sup> day of admission (11.9.2021) suddenly the condition deteriorated and the attendants were informed and advised to take the baby to a centre where further investigations & treatment of hand could be done. Opposite party No.2 had talked to Pediatric Intensivist at Fortis Hospital for immediate care of the child but the attendants acted negligently and refused to take the child to Fortis Hospital and insisted on continuing the treatment from opposite parties only. The attendants were again suggested to take the baby to fortis hospital or PGI Chandgiarh or any other higher

institute of their choice and the parents finally decided to take the child to some higher centre. But instead of going to Fortis Hospital where all arrangements were made, the attendants took the baby to Guru Nanak Dev Hospital where the baby stayed for 4-5 days. Since there were no facilities to handle such cases, the child was ultimately referred to PGI Chandigarh. Delay in getting the appropriate treatment to prevent the loss of hand was due to sheer negligence of parents and other family members who did not take their baby directly to Fortis Hospital or PGI as per medical advice by the respondents. The medical literature related to the case shows that Limb Gangrene in Neonates is very rare event. Etiology is not identified in most cases and management is usually conservative with debridement and amputation of gangrenous part involving toes. It is also highlighted that there are varied and multiple risk factors which may occur in a newborn and lead to gangrene without any negligence or deficiency by the treating doctor. On merits the opposite parties No.1 & 2 have taken the similar pleas as were taken in the preliminary objections, as such there is no need to reproduce the same. However, in para 4 of the written version on merits it was submitted that complainant has tried to mislead the Hon'ble Commission by making wrong, false and malicious allegation that the medical board held the Ops responsible for the professional negligence. The fact is that "The medical board had submitted that there was complication without occurred inadvertently and

nowhere in the medical board opinion it has been stated that there was medical negligence on the part of the Ops and relied upon the law laid down by the Hon'ble Supreme Court in Jacob Mathew Vs. State of Punjab (2005) 6 SCC 1 that *“A physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be understood to have given by implication is that he is possessed of the requisite skill in that branch of profession which he is practicing and while undertaking the performance of the task entrusted to him, he would be exercising his skill with reasonable competence. This is all what the person approaching the professional can expect, judged by this standard, the professional may be held liable for negligence on one of 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 did possess. The standard to be applied for judging, whether the person charged has been negligent or not would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be*

*made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.”* While submitting that there is no negligence or deficiency in service on the part of the replying opposite parties and while denying and controverting other allegations, dismissal of complaint was prayed.

3. Opposite party No.3 also appeared and filed written version in which it was submitted that complainant with malafide intention did not disclose the true and correct facts before this Hon’ble Commission and filed a false complaint only to get undue benefit at the cost of the opposite party. That the contract of insurance between the opposite parties and complainant is governed by its policy terms and conditions . While denying other allegations, opposite party has prayed for the dismissal of the complaint .

### **Evidence of the parties and Arguments**

4. Alongwith the complaint, complainant has filed his affidavit Ex.CW1/A, copy of medical record and tests in MP Arora Hospital Ex.C-1, copy of relevant medical record of Dr. Naresh Grover Hospital Ex.C-2, copy of disability certificate Ex.C-3, copy of relevant medical record of PGI Chandigarh Ex.C-4, copy of complaint Ex.C-5, copy of report given by medical board Ex.C-6.

5. On the other hand opposite parties No.1 & 2 alongwith written version have filed affidavit of Dr. Naresh Grover Ex.OP1/A, copy of



professional qualifications and registration certificate Annexure R-1, copies of Insu. policy Annexure R-2 & Annexure R-3, copy of medical record of the patient Annexure R-4, copy of referral slip Annexure R-5/Ex.OP3 (colly), copy of complaint marked to opposite parties by Asstt. Civil Surgeon, Amritsar Ex.OP2.

6. Whereas opposite party No.3 alongwith written version has filed affidavit of Sh. Sonu Rathi, Legal Manager Ex.OP3/1.

7. We have heard the Ld.counsel for the parties and have carefully gone through the record on the file .

### **Findings**

8. From the appreciation of the facts and circumstances of the case , this Commission has made points to be decided are (i) whether the doctors i.e. opposite parties No.1 & 2 are guilty of negligence in discharge of their duty towards the newborn child and if point No.(i) is proved (ii) whether it amounts to deficiency in service on the part of opposite parties No.1 & 2 and if points No.(i) & (ii) are proved what should be the amount of compensation is to be paid by the opposite parties No.1 & 2 to the complainant.

9. This Commission has given thoughtful consideration to the facts of the present case as well as the evidence produced on record , both the parties have admitted that son of the complainant was given treatment by opposite parties No.1 & 2 in their hospital. It is also admitted by both the

parties that gangrene developed during the treatment and when the situation become more deteriorated the patient was taken to Guru Nanak Dev Hospital and then further referred to PGI Chandigarh where the right hand of the minor son of the complainant got amputated . The complainant has vehemently relied upon the findings of the medical board which was constituted on the application moved by the complainant copy of which is Ex.C-5 to the Civil Surgeon, Amritsar , wherein he has prayed that justice be done to him as there was complete negligence on the part of opposite parties No.1 & 2. Ex.C-6 is the report of the Asstt. Civil Surgeon, Amritsar dated 9.7.2021. This Commission relied upon the findings of this report and admittedly both the parties submitted the report with their case and this report is to be conceded and construed for the appreciation of the facts whether the doctor was negligence in this case or not. Though report of the medical board is in Punjabi script but the true translation of the report is as under:-

“The allegation made by the parents of the minor child is that opposite parties No.1 & 2 were negligent in providing the treatment to their child as the child was in good health condition in 19 days of treatment and on the 20<sup>th</sup> day of treatment doctor has told the attendants of the child that the hand of the child become white and the pulse if also low. When in this regard the attendants asked from Dr. Naresh Grover then he told that as the child was

pre-mature, as such his immunity was low which resulted severe septicemia with Coagulopathy which could be the cause of this problem. It is further in this report that when it was asked from Dr. Ashwani Kumar, Head of Pediatric department , Unit No.2, Guru Nanak Dev Hospital the cause of bluish hand, they told that due to septicemia it affects the thickness of blood and also due to use of vascular catheter can cause complication. In conclusion the medical board has given its opinion that the aforesaid complication was caused due to inadvertently and Dr. Naresh Grover has promised that when the child grown up he will get arrangement of artificial limb/hand.

10. So a bare reading of the report given by Medical board, it stands proved that the opposite parties No.1 & 2 have admitted their fault and only given explanation that the whole episode done due to inadvertently. So all amounts to negligence which has been analysed *in Halsbury's Laws of England (4<sup>th</sup> Edition) Volume 34* which is as follows:-

*“Negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. Where there is no duty to*

*exercise care, negligence in the popular sense has no legal consequence where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the surrounding circumstances and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury. The duty of care is owed only to those persons who are in the area of foreseeable danger, the fact that the act of the defendant violated his duty of care to a third person does not enable the plaintiff who is also injured by the same act to claim unless he is also within the area of foreseeable danger. The same act or omission may accordingly in some circumstances involve liability as being negligent although in other circumstances it will not do so. The material considerations are the absence of care which is on the part of the defendant owed to the plaintiff in the circumstances of the case and damage suffered by the plaintiff, together with a demonstrable relation of cause and effect between the two.”*

Similarly in para 11 of the said order it is stated :

*‘Negligence’ says the Restatement of the law of Torts published by the American Law Institute (1934) Vol. I Section 28 is conduct*

*which falls below the standard established for the protection of others against unreasonable risk of harm. It is stated in Law of Torts by Fleming at page 124 that this standard of conduct is ordinarily measured by what the reasonable man of ordinary prudence would do under the circumstances. As the law of negligence emerged in the first half of the 19<sup>th</sup> century it became the anthropomorphic embodiment of the standard of care required by law. In order to objectify the law's abstractions like 'care' reasonableness' or 'foreseeability' the man of ordinary prudence was invented as a model of the standard of conduct to which all men are required to conform."*

11. So far as medical negligence is concerned it was the duty of the medical professionalists to take due care while treating the patient much less the patient is of a tender age. It is admitted that patient was referred to them as it was a premature delivery of the child and this child was required utmost care which as per allegations of the complainant the opposite parties have failed to provide to the minor son of the complainant. Heavy onus is upon the hospital when it alleges that they are not negligent to give treatment to the son of the complainant and to prove that they have discharged their duty with due care . Reliance in this connection has been placed upon *Smt.Savita Garg Vs. The Director, National Heart Institute in civil Appeal No. 4024 of 2003 of the*

*Hon'ble Supreme Court of India* wherein it has been held *that Medical service-Treatment in Hospital- Once it is alleged that the patient suffered/died on account of negligence or fault of the treating/attending staff of the hospital, it is the responsibility of the hospital to prove that there was no negligence on the part of its staff and the patient suffered /died despite all possible due diligence care and cautions. That can be done by producing the treating doctor as a witness –complainant is required only to give the name, description and address of the opposite party or parties so far as they can be ascertained- It is the duty of the hospital to disclose the particulars of its treating staff-patient cannot be expected to make enquires of each and every particulars and search the records of the hospital.*

12. Further reliance has been placed upon *Akhilesh Kumar Sinha & Ors Vs. Max Hospital India Ltd. & Ors III(2024) CPJ 85 of the Hon'ble State Commission, UT Chandigarh* wherein it has been held that *“Medical Negligence- Lack of care- Doctors have a responsibility to leverage their knowledge and expertise to accurately diagnose a condition and recommend most appropriate treatment options based on current medical practices and standards- Once a treatment plan is chosen, the doctor must ensure it's administered with due care and attention, which involves proper procedures and protocols to minimize risks and maximize the chance of a successful outcome- Failure of a*

*doctor and hospital to discharge this obligation is essentially a tortuous liability – Patient’s right to receive medical attention from doctors and hospitals is essentially a civil right.”*

**13. Hon’ble Supreme Court in such like medical negligence cases also held in Arun Kumar Manglik Vs. Chirayu Health & Medicare Private Ltd. (SC) 2019(7) SCC 401** that hospital authorities were unable to meet standard of reasonable care expected of medical services as laid down in *Bolam Test* [ (1957) 1 WLR 582 ], then the respondents are very much liable to pay compensation .

14. Since the aforesaid law cited supra is squarely applicable to the facts of the present case. Hence, this Commission hold that opposite parties No.1 & 2 are guilty of negligence in providing treatment to the son of the complainant which amounts to deficiency in service. So far as compensation is concerned due to the negligent act of the opposite parties No.1 & 2 the minor son of the complainant who is only 2 years of age and in the very beginning of his life and due to the negligent treatment of the opposite parties No.1 & 2 his right hand was amputated and the complainant has claimed compensation to the tune of Rs. 45 lacs on this account, but after assessing all the facts and circumstances of the case , since no fix parameter has been given to grant compensation and in this context this Commission has relied upon the judgement of the **Hon’ble Supreme Court in case Amitabha Dasgupta Vs. United Bank of India**

*and others AIR 2021 SC (Civil) 1457* wherein it has been held that “*Deficiency in service- Duty of care should be exercised by bank irrespective of application of laws of bailment to contents of locker- Bank inadvertently broke customer’s locker, without giving prior notice, inspite of clearing pending dues by him- Bank acted in blatant disregard to responsibilities owned to customer as service provider- Case of gross deficiency in service- Imposition of costs of Rs. 5,00,000/- on bank, would be appropriate compensation to customer.*” Further reliance has been placed upon *Hon’ble Superme Court of India in the case tiled as Ghaziabad Development Authority Versus Balbir Singh (2004) 5 SCC 65* wherein it is held that *the word compensation is of a very wide connotation. It may constitute actual loss or expected loss and may extend to compensation for physical, mental or even emotional suffering, insult or injury or loss. ... The provisions of the Consumer Protection Act enables a consumer to claim and empower the Commission to redress any injustice done. It is further held that the consumer must not be made to run from pillar to post. Furthermore, it is further held that the Commission/Forum has a statutory obligation to award compensation.* Hence there is no hesitation to hold that compensation which is demanded by the complainant i.e. Rs. 45 lacs is very very less than the mental agony whatsoever the complainant and his family suffered at the hands of the opposite parties and the minor son of the complainant



become handicapped due to the negligence of the opposite parties and his present as well as future life is also affected due to the act of the opposite parties. Hence, the opposite parties No.1 & 2 are directed to pay compensation of Rs. 45 lacs and Rs. 1,00,000/- as litigation expenses to the complainant. It is also ordered that since the welfare of the child is involved in the present case and keeping in view the peculiar circumstances of the case, the entire amount of Rs. 45 lacs as compensation and Rs. 1,00,000/- as litigation expenses which is to be given to the complainant being the guardian of the minor child and he will convert the same into the FDR in the name of the minor son of the complainant till he attains age of 21 years. No case is made out against opposite party No.3, as such complaint against opposite party No.3 stands dismissed. Compliance of this order be made within 45 days from the date of receipt of copy of this order; failing which complainant shall be entitled to get the order executed through the indulgence of this Commission. Copies of the orders be furnished to the parties free of costs. File is ordered to be consigned to the record room.

Announced in Open Commission

(Jagdishwar Kumar Chopra)  
President

Dated:  
10.9.2024

(Mandeep Kaur)  
Member