

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL  
COMMISSION, AMRITSAR.

Consumer Complaint No. 495 of 2022

Date of Institution: 9.9.2022

Date of Decision:8.11.2024

1. Vijay Rani wife of Sh. Hari Chand, resident of House No. 1636, Street No.1, Sharifpura, Rani Bazar, Amritsar (M.No. 9872606051)\
2. Tarsem Lal son of Late Sh. Hari Chand ;
3. Amit Sharma son of Late Sh. Hari Chand, both ;rs/o H.No. 1636, Street No.1, Sharifpura, Rani Bazar, Amritsar

Complainants

Versus

1. SGL Super Specialty Hospital Village Mustafabad, PO Subhanpur, G.T.Road, District Kapurthala 144802 through its Director/Partner/Prop./Authorized Signatory/person over all Incharge
2. Dr. Dilbans Singh Pandher care of SGL Super Specialty Hospital Village Mustafabad, PO Subhanpur, G.T.Road, District Kapurthala 144802
3. Dr. Pardhuman Singh C/o SGL Super Specialty Hospital Village Mustafabad, PO Subhanpur, G.T.Road, District Kapurthala 144802
4. SGL Super Specialty Hospital Garha Road, Jalandhar 114022 through its Director/Partner/Prop./Authorized Signatory/person over all Incharge
5. Dr. Ankit Mahajan Care of SGL Super Specialty Hospital Garha Road, Jalandhar 114022

6. The New India Assurance Co.Ltd., Patiala D.O. II (3615001),  
Opposite Income Tax Office, Leela Bhawan, Patiala 147001  
through its Divisional Manager/Manager/authorized signatory

Opposite Parties

Complaint under section 35 of the  
Consumer Protection Act, 2019

**Result : Complaint Allowed**

**Counsel for the parties :**

For the Complainants : Sh. Munish Kohli, Advocate

For the Opposite Parties No.1 to 5 : Sh. Gaurav Kapoor, Advocate

For the Opposite Party No.6 : Sh. P.N.Khanna, Advocate

**CORAM**

**Mr.Jagdishwar Kumar Chopra, President**

**Mr.Lakhwinder Pal Gill, Member**

**Ms.Mandeep Kaur, Member**

**ORDER:-**

**Sh. Jagdishwar Kumar Chopra, President** :-Order of this commission will dispose of the present complaint filed by the complainants u/s 35 of the Consumer Protection Act, 2019.

**Brief facts and pleadings**

1. Brief facts of the case are that husband of complainant No.1 is an unfortunate person who took the gross medical negligence treatment from the opposite parties which crippled his entire life and just saved from the clutches of death on account of gross negligence, carelessness,

unfair trade practice on the part of the doctors and paramedic and other staff of the opposite parties who acted in a most callous and negligent treatment committed by the opposite parties during the stay of husband of complainant No.1 with them for the period from 16.6.2022 till 19.6.2022. It is pertinent to mention here that opposite party No.1 had refunded amount of Rs. 43800/- to the complainant against the total bill of Rs. 46000/- with the motive to wriggle out from their act of negligence . Before getting the surgery of Bilateral knees the patient (husband of complainant No.1) had been enjoying good state of health and did not have any medical history of any disease. He consulted the opposite party No.1 on 10.6.2022 for the treatment of Osteoarthritis and the concerned doctor i.e. opposite parties No.2 & 3 after examining the patient advised for B/L TKR (Both knee replacement) surgery to both knees in one operation on same day under the anaesthesia at a discounted package and subsequently surgery was postponed on 16.6.2022. It is important to mention here that at the time of admission of patient in the hospital of opposite parties, no valid consent was taken for the line of treatment at the time of getting admitted in the hospital. The husband of the complainant got admitted and immediately the medical staff of opposite parties No. 1 to 3 had taken the patient to operation theater and within few minutes after starting surgery the patient was shifted to ICU as the condition of the patient became critical due to negligence of the medical

staff of the opposite parties No.1 to 3 and complication arose due to overdose of drug (Anaesthesia) and carelessness and fail to evaluating the patient before surgery result of which patient went to Coma/unconscious state of mind within four wall of the operation theatre where family members of patient had no access to explain the events happened in OT. The condition of the patient started deteriorating hr by hr even under the care and treatment of opposite parties No.1 to 3 . So the opposite parties No.1 to 3 showed their inability and helplessness and referred the patient from their hospital in a hurried manner on 17.,6.2022 and without conducting any further treatment to save the life of husband of the complainant . Then the patient was brought to the hospital of opposite party No.4 where opposite party No.5 examined the patient on 18.6.2022 after conducting various medical test i.e. CT scan head etc and assessed the critical condition of the patient and evaluate poor progress in general health condition of the patient and further referred the patient to higher centre on 18.6.2022 for neuro treatment . The opposite parties were not having facility of neuro surgery as claimed/advertised in hospital file which also amounts to deficiency in service. It is important to mention here that surgery conducted by the opposite party was an elective surgery and not an emergency one, as there was no imminent threat to the life of the patient. An elective surgery could always postpone till the patient would have recovered fully and has been rehabilitated. Opposite parties

No.1 to 3 have not taken any resuscitative measure to decrease the intensity of risk at the time of surgery in Operation Theatre. It is pointed out that complainant had spent an amount of Rs. 70000/- approximately towards medical treatment obtained from opposite party No.4, copies of bill is Ex.C-2 (colly). The condition of the husband of the complainant was becoming bad to worse and the complainant took him to Uppal Neuro Hospital, Rani Ka Bagh, Amritsar where he got admitted on 19.6.2022 where the patient get medical treatment for Neuro to save his life and to remain hospitalized till 17.7.2022. After the long medical treatment the life of the patient was saved to certain extent but he become intubated bed ridden and crippled and on death bed =. It is pertinent to mention here that complainant and his family members had spent Rs. 7.50,000/- approximately on the medical treatment of the husband of the complainant, copies of medical records is Ex.C-3. Due to the negligence medical treatment given by the opposite parties, patient is unable to move, unable to do his day to day activities and is in Coma state of mind due to unfair trade practice run by the opposite parties . The complainant had moved an application to the opposite parties on 11.7.20922 to provide complete treatment record within 72 hrs but opposite parties failed to provide any record to the complainant .The aforesaid act of the opposite parties in providing gross medical negligence treatment to the husband of the complainant and doing the

surgery in unprofessional and in a haste manner and further not giving proper treatment is an act of deficiency in service, unfair trade practice, negligence and malpractice. Vide instant complaint, complainant has sought for the following reliefs:-

- (a) Opposite parties be directed to refund the amount spent by the complainant on the treatment of patient in different hospital amounting to Rs. 8,00,000/- approx to the complainant for negligence as well as deficiency in service committed by the opposite parties ;
- (b) Compensation of Rs. 40 lacs be also awarded to the complainants for wrong treatment given to the patient;
- (c) Opposite parties be also directed to pay litigation expenses of Rs. 1 lac to the complainant
- (d) Any other relief to which the complainants are entitled be also awarded to the complainants .

Hence, this complaint.

2. Upon notice, opposite parties No.1 & 4 appeared and filed joint written version taking certain preliminary objections therein inter alia that complaint is bad for misjoinder and non joinder of necessary parties since Baba Kashmira Singh Jan Sewa Trust (Regd.) is not joined as party to the present complaint as the hospitals are being managed by the aforesaid Trust ; that complainant has no locus standi to file the present complaint ; that this Hon'ble Commission has got no jurisdiction to try and entertain the present complaint ; that there is no medical negligence

in light of the true facts and circumstances of the case as the complainant has alleged that husband of complainant has been surgically operated whereas no such surgical procedure has been conducted upon the patient Hari Chand ; that no medical board of doctors constituted by any competent authority and in the absence of such expert medical opinion, it cannot be held that the answering opposite parties are guilty of medical negligence. Even no complaint of medical negligence has ever been raised by the complainant to the competent authorities . The true facts of the present case are that the answering opposite parties are two hospitals which are being managed by Baba Kashmira Singh Jan Sewa Trust (Regd.). The hospitals and the Managing Trust have gained immense reputation because of low cost and best in the class medical facilities given to the patient. Patient Hari Chand presented in OPD on 10.6.2022 as suffering from severe pain in both knee joints secondary to advance osteoarthritis of the knee joints. Patient was examined by Dr. Dilbans Singh Pandher MBBS MS Orthopaedic. X-ray knee joint was performed and after thorough investigation of the patient, patient was advised bilateral total knee replacement. A surgical procedure that is standard treatment recommended for patients suffering from advanced osteoarthritis with severe pain. Patient was explained all the risk, consequences and benefits of the surgery and the patient consented for the surgery. The patient was advised to get preoperative investigation

reports. Thereafter the fitness assessment to undergo a major surgical procedure of patient Hari Chand was conducted. On examination it was found that patient had multiple co-morbidities including diabetes, cardiac issues, morbid obesity and some nephrology related concerns. However, during the investigations for the surgery, the patient or their attendants have never disclosed to the staff and doctors of the answering opposite parties that the patient Hari Chand was having any kind of brain ailments/neurological issues. The staff and doctors of hospital have explained the patient and his attendants about the status of his blood investigations and his preoperative reports including ECG and patient was advised to get a cardiac assessment by a cardiologist and a nephrology consultation by Nephrologist before his fitness for surgery could be decided or whether the patient is fit enough to undergo a major surgical procedure like total knee replacement is decided. After reviewing the assessment done by Cardiologist and Nephrologist, patient was admitted on 16.10.2022 one day before surgery on 17.10.2022 for optimization of patient for major surgery. All the standard operating procedure of the surgery was adopted, the consent of the patient and his family members of the surgery was obtained and the son of patient namely Amit Sharma was explained all the possible outcomes of the procedures. With due diligence and after adopting proper medical procedure with due care the patient was taken to Operation theater where



during the pre-operative procedures, the patient complained of uneasiness due to which further procedure was aborted and the same was explained to the attendants of the patient in the hospital. The doctors and hospital staff were on knees to manage the complications developed during the pre-operative procedure. During the investigations of the patient for management of the complications, it got transpired that the patient was having heart problems and his ECG was showing changes due to which case was consulted with Dr. Ankit Mahajan, MBBS MD DM Cardiology (OP NO.5) and the patient was shifted to opposite party No.4 for best care and management of the newly developed cardiac event. The management, doctors and staff of the hospital have provided the best possible treatment to the patient at both the centers. Later on during the management of the patient at the Garha Road, Jalandhar Centre i.e. OP No.4 under Dr. Ankit Mahajan who examined the patient and carried out various investigations and during this period on 18.6.2022 it got revealed from the MRI of the patient that the patient was having old infarcts in his brain and he was having neurological problems. It was found that patient has old infarcts (old clots which hampered proper blood flow) in the brain which might have been asymptomatic that patient never suffered from any symptoms relating to these infarcts he had sustained earlier in his life. There is no doubt as there were old infarcts as MRI is the best investigation to differentiate between old and fresh changes. At this point

of management of the patient , it was realized tht it is in the best interest of the patient that he should be shifted under care of Neuro Department , who could further evaluate the patient and provide appropriate treatment to the patient. It was also realized that they were dealing with a complex situation and patient's recovery might take longer than what they expected and then after discussion with the attendants of the patient on 19.6.2022 and they suggested that they wanted to shift the patient to Amritsar as it was their home home. So as per the will and choice of the patient's attendants the patient was referred to Neuro care centre for his better care and management . Best medical care was provided and it was found that patient was suffering from multiple comorbidities. There was no negligence or deficiency in service provided by doctors or other staff . No surgery has been conducted upon the patient and it is well known to the complainant that the patient developed complications during pre-operative procedures and the complainants are well aware about these facts. On merits the opposite parties No.1 & 4 have taken the similar pleas, as such there is no need to reproduce the same. While submitting that there is no medical negligence or deficiency in service and while denying and controverting other allegations , dismissal of complaint was prayed.

3. Whereas opposite parties No.2 & 5 also appeared and filed separate written version in which it was submitted that patient Hari

Chand aged about 79 years was presented in OPD on 10.6.2022 as a patient suffering from severe pain in both knee joints secondary to advance osteoarthritis of the knee joints . Patient was examined by Dr. Dilbans Singh Pandher MBBS MS Orthopaedic. X-ray knee joint was performed and after thorough investigation of the patient, patient was advised bilateral total knee replacement. A surgical procedure that is standard treatment recommended for patients suffering from advanced osteoarthritis with severe pain. Patient was explained all the risk, consequences and benefits of the surgery and the patient consented for the surgery. The patient was advised to get preoperative investigation reports. The patient was then examined by opposite party No.3 namely Dr. Pardumanjit Singh Dhaliwal, MBBS MD Anesthesiology on 10.6.2022 for fitness assessment to undergo a major surgical procedure. On examination and from the information given by the patient and their attendants it got revealed that the patient had multiple co-morbidities including diabetes, cardiac issues, morbid obesity and some nephrology related concerns. However the patient did not disclose that he suffered from any kind of neuro problems . The patient was calm, attentive and responsive and he was actively moving his body parts. Hence, there was nothing that suggested any kind of neurological disorder in the patient. According to the information disclosed by the patient, the patient was explained the status of blood investigations and his preoperative reports

including ECG and patient was advised to ECG and patient was advised to get a cardiac assessment by a cardiologist and a nephrology consultation by Nephrologist before his fitness for surgery could be decided or whether the patient is fit enough to undergo a major surgical procedure like total knee replacement as advised. After reviewing the assessment done by Cardiologist and Nephrologist and all the risks and benefits of surgery were disclosed to the patient and their attendant Amit Sharma and patient was admitted on 16.6.2022 one day before surgery on 17.6.2022 for optimization of patient for major surgery. Considering co-morbidities and health issues involved in the patient combined spinal epidural type of anesthesia was chosen for patient. Patient was taken up for surgery on 17.6.2022 . Spinal anesthesia was planned for intra operative procedure and Epidural was planned for post operative analgesia. Patient was shifted to OT under all anti septic and aseptic precautions, patient was painted and draped, epidural space located using loss of resistance technique, epidural catheter was threaded and negative for any aspiration confirmed test done of inj 2% Lignocaine with adrenaline 3ml was given through epidural catheter to confirm the space and epidural catheter was fixed. The purpose of this test is to prove that the catheter is not in an unintended place and to prove that the catheter is indeed in the epidural space. The team of doctors started preparing the patient for the spinal anesthesia. Meanwhile the patient complaints of

uneasiness. Due to this the further procedure was abandoned and the patient was made to lie supine. Patient stopped responding, carotid pulses were absent patient developed sudden cardiac arrest for which the patient was intubated and cardiopulmonary resuscitation was started according to ACLKS protocol. After one cycle of CPR, there was return of spontaneous circulation (ROSC) achieved and vital parameters of the patient returned to normal and patient was shifted to PACU and kept under continuous observation. Patient gradually started responding to verbal command by opening eyes and lifting the upper limbs. An ECG was repeated again which suggested some fresh changes. At this time, the matter was discussed by opposite parties No.2 & 3 with opposite party No.5 namely Dr. Ankit Mahajan, MBBS MD DM Cardiology and requested him to shift the patient under his care so that the patient can be provided with best care . Hence, the patient was shifted to SGL Super Specialty Hospital, Garha, Jalandhar where Dr. Ankit Mahajan, MBBS MD DM Cardiology examined the patient and carried out various investigations to be sure that no serious cardiac issues were involved. During this time the opposite parties No.2 & 3 physically visited Jalandhar branch and discussed the case with opposite party No.5. Meantime the patient was kept under observation then started looking for other reasons in the delay in patients recovery from unforeseen complication as patient was still not fully awake. Infact the patient's

condition felt like a rare complication which is a well known complication that is mentioned in the text books but with the passage of time since the patient was not recovering the other unforeseen complications were looked to find out the cause of delay in recovery. In process of further investigation, the CT scan of brain was carried out to rule out any CVA as the cause of present state of the patient and the reports diffuse mild cerebral and cerebellar atrophy. Periventricular Demyelination with Lacunar infarcts as described and minimal pneumocephalous in bilateral lateral ventricles. Then the patient was kept under observation with hope that he would gradually recover as earlier he was showing some signs of recovery which did not progress as expected to reach full recovery. So, by the next day it was decided after thorough discussion that the MRI scan of the brain was indicated in the present situation. MRI findings Minimal Pneumocephalous in bilateral frontal horns of lateral ventricles. Chronic white-matter ischaemia foci (Fazekas grade 2) old Lacunar infarcts bilateral MCA territories and diffuse cerebral and cerebellar atrophy. It was on MRI of the brain that found that the patient was old infarcts (old clots which hampered proper blood flow) in the brain which might have been asymptomatic that the patient never suffered from any symptoms relating to these infarcts he had sustained earlier in his life. There is no doubt as these were older infarcts as MRI is the best investigation to differentiate between old and

fresh changes. At this point of management of patient it was in the best interest of the patient that he should be shifted under care of Neuro department and then the patient was shifted to Amritsar . Proper care was taken to make sure that the patient was shifted in stable condition to the neurologist services. Had the patient made them aware of old infarcts in his brain, they would have certainly asked the patient to obtain the neurology assessment alongwith the cardiac and nephrology assessment. The answering opposite parties have followed all the protocols and standard operating procedures in the present case. Best medical care was provided in the event of unforeseen complications. While submitting that there is no negligence or deficiency in service on the part of the opposite parties and while denying and controverting other allegations, dismissal of complaint was prayed.

4. Opposite party No.3 also appeared and filed a separate written version in which similar pleas were taken as taken by the opposite parties No.1,4 , 2 & 5 as such there is no need to reproduce the same. While submitting that there is no negligence or deficiency in service on the part of the opposite parties and while denying and controverting other allegations, dismissal of complaint was prayed.

5. Opposite party No.6 appeared and filed written version in which it was submitted that replying opposite party has been impleaded in the present complaint at the instance of opposite party No.2 on the ground

that he has obtained some professional indemnity policy from replying opposite party. It is submitted that this Hon'ble Commission cannot fix any direct liability qua the opposite party because jurisdiction of this Hon'ble Commission is only to determine liability against opposite party No.2 on the ground of medical negligence if any and thereafter opposite party No.2 can approach the replying opposite party for reimbursement of the said liability and the same has to be considered by the competent authority of replying opposite party as per terms and conditions of the said policy. While denying and controverting other allegations, dismissal of complaint against the replying opposite party was prayed.

6. The complainant also filed rejoinder to the written version filed by the opposite parties and denying the submissions made by the opposite parties in their written version and has prayed for the relief as sought vide instant complaint.

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

7. Alongwith the complaint, complainant has filed his affidavit Ex.CW/1, copies of medical certificate, discharge card and other medical record , medical bills Ex.C-1 to Ex.C-3, copy of applications & postal receipts Ex.C-4 to Ex.C-7.

8. Whereas opposite parties No.1 & 4 alongwith written version have filed affidavit of Baldev Singh, Authorized signatory of SGL Ex.OP1/A, copy of resolution Ex.OP1, indoor patient record Ex.OP2, information



and identification form Ex.OP3, declaration form Ex.OP4, consent form Ex.OP5, OPD slip for 10.6.2022 Ex.OP6, anesthesia form Ex.OP7, checklist for operative patients in OT Ex.OP8, pre-anesthesia checkup Ex.OP9, consent form for surgery Ex.OP10 to Ex.OP12, discharge card Ex.OP13, treatment chart Ex.OP14, indoor patient record Ex.OP15, final bill dated 19.6.2022 Ex.OP16, declaration Ex.OP16A, general consent form Ex.OP17, information and identification form Ex.OP18, Nursing admission assessment form Ex.OP19, pain assessment chart Ex.OP20, nutritional assessment form Ex.OP21, nutritional reassessment form Ex.OP21/A, consent for handing over the ornament Ex.OP22, consent for vulnerable group patient Ex.OP23, consent and counseling for HIV test Ex.OP24, consent for ventilator Ex.OP25, consent proforma Ex.OP26, corona consent self declaration form Ex.OP27, report of CTR scan Ex.OP28, report of MRI Ex.OP29, discharge card Ex.OP30, daily counseling Ex.OP31, request to take reports of patient Ex.OP32, satisfaction form Ex.OP33, information regarding high risk case Ex.OP34.

9. Whereas opposite parties No.2 to 5 alongwith written version have filed affidavit of Dr. Dilbans Singh Pandher Ex.OP2/A.

10. Opposite party No.3 alongwith written version has filed affidavit of Dr. Pardumanjit Singh Dhaliwal, SGL Multi Speciality Hospital Ex.OP3/A.

11. Opposite party No.6 alongwith written version has filed affidavit of Mr.Gopal Krishan , Suit Hub Incharge Ex.OP6/1, cop of policy schedule Ex.OP6/2.

12. We have heard the Ld.counsel for the complainant and have carefully gone through the record on the file. Ld.counsel for the complainant as well as Ld.counsel for opposite parties No.1 to 5 suffered their statements that they do not want to file written arguments and the contents of the complaint as well as written version alongwith exhibited documents respectively be read as part of written arguments.

### **Findings**

13. From the appreciation of the facts and circumstances of the case the case of the complainant is that opposite parties No. 1 to 5 were negligent while treating the husband of the complainant alleging that her husband died due to negligent act of the opposite parties for which he went into coma due to the over dose of Anaesthesia on 16.6.2022. Further it is the case of the complainant that there is no medical history of her deceased husband . Ex.C-1 is OPD slip. As per the case of the complainant opposite parties itself alleged that they are Super Speciality Hospital having all types of facilities and assured/allured to the complainant that at the time of treatment all facilities will be provided. Even so much so brochure of the hospital Ex.C-1 suggests that SGL Super Speciality Hospital has its own Cardiac OT, Neuro OT, Cath. Lab,

Cardiac ICU, Cardiac Recovery, Neuro ICU, GI Surgery, Emergency, ICU, ICCU, Critical Care Ambulance meaning thereby that in the event of any emergency they are in a position to treat the patient . It is the case of the complainant that husband of the complainant visited the hospital on 10.6.2022 first time for the treatment of osteoarthritis. There was no history of any hypertension or diabetes. Fitness certificate was given and the patient was taken to operation theatre on 16.6.2022 and the patient immediately within seconds went into coma. Further more, main point of arguments of the complainant is that complainant has moved an application to the opposite parties Ex.C-6 on 11.7.2022 giving details of the quantity of Anesthesia which was administered to the patient in the Operation Theatre. No such record has been produced by the opposite party that the patient was treated for Neuro complications when over dose anesthesia administered to the patient was involved in the brain of the deceased. Even so much so no record to that extent has been produced by the opposite parties. Ironically patient was referred to Jalandhar where he was kept for 2 days and ultimately when there was no improvement in the condition of the patient, he was taken back to Uppal Hospital, Amritsar. This fact has not been denied by the opposite parties. Further it is the case of the complainant that it was not an emergency surgery but it was elective surgery. Record of Uppal Hospital i.e. Ex.C-3 suggests that it is specifically mentioned on page 4 of Ex.C-3 that patient came to the

hospital with above mentioned complaints. History was taken and relevant examination was performed by team of doctors including Neurologist & Neurosurgeon & Cardiologist & Pulmonologist & Gastroenterologist. MRI brain was done which showed subtle diffusion restriction in b/l thalami & amygdale-suggestive of hypoxic brain injury, chronic micro hemorrhagic in right thalamusage related neuroparenchymal atrophy, chronic ischemic changes. It was also observed by the doctors that patient general condition was critical and poor prognosis of the patient was explained to the attendants. Patient remained in Uppal Hospital for treatment for one month and approximately Rs. 7 lacs was spent . As per arguments advanced by the counsel for the complainant, the complainant was not in a position to carry on this treatment further and get the patient discharged from the hospital . As per the version of the complainant there was a clear cut lapse at the time of administering anesthesia to the deceased particularly opposite parties have not come with clean hands and have not placed on record any document qua the fact that what quantity of anesthesia was required and what quantity of anesthesia was administered to the deceased. Even so much so there is nothing on record as placed by the opposite parties certainly they have purchased some medicines of anesthesia to some extent meaning thereby that they have intentionally and deliberately withhold the said record.

14. On the other hand the opposite parties have stated in their arguments firstly patient was 78 years old having height of 5'7", patient was over weight and relied upon Ex.OP7. Further patient has history of Diabetes. As per the case of the opposite parties surgery was not conducted. Even so much so attendants and the complainant were apprised of the fact about the surgery. Consent was taken on different dates copies of which are Ex.OP11 and OP12. Opposite parties relied upon the fact that there is no medical expert evidence examined by the complainant to prove their case and relied upon law laid down in *Shrimati Kulwinder Kaur Vs. Dr. Kiranpreet Kaur Makkar & Ors 1997(2) CPJ 354* wherein it has been held that “*mere statement of complainant on affidavit without evidence of expert doctor is not sufficient . No negligence on the part of respondent proved.*”. Same view has been held in *Bimla Devi Vs. Doctor Davinder Kaur & Anr. 1999(2) CPJ 246, Dr. Biswanath Das Vs. Bijoy Sinha Roy and others 2007(3) CLT 708, Jacob Mathew Vs. State of Punjab & Anr. 2005(6) SCC 1 of the Hon'ble Supreme Court of India, Kannaya Chettiar & Anr. Vs. Nair Service Society & Ors. 2018(3) CPJ 287 of the Hon'ble National Commission .*

15. Ld.counsel for the complainant vehemently argued that these judgements are not applicable to the facts of the present case . It is further argued that since anesthesia bill has not been produced and there is

specific allegations on behalf of the complainant that opposite parties after getting fitness certificate have taken the deceased to the operation theatre for surgery and within fraction of seconds the patient was taken out after administering of anesthesia. The plea of the opposite parties that patient is having hypertension and Diabetes, whereas record of Uppal Hospital Ex.C-3 suggests no history of hypertension and diabetes. As per the own case of the opposite parties the patient was given clearance of all accounts vide test report and it was only after giving fitness certificate patient was asked for surgery on 16.6.2022. Heavy onus is on the hospital authorities when there is specific allegations against the hospital . 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. 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.”*

16. Before giving findings in the present case , it will not out of place to mention the law settled by the **Hon'ble Supreme Court in such like medical negligence cases. The Commission relied upon Arun Kumar Manglik Vs. Chirayu Health & Medicare Private Ltd. (SC) 2019(7) SCC 401** wherein it is held 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 . Not only this the Hon'ble Supreme Court*

*set-aside the order of the Hon'ble National Commission whereby the respondents were held not guilty of medical negligence. Similarly there is another judgement of the **Hon'ble National Commission, New Delhi titled as Bhajan Lal Gupta & Anr. Vs. Mool Chand Kharati Ram Hospital & Ors. in Original Petition No. 182 of 1993 decided on 10.11.2000.** Relevant para of the judgement is reproduced hereunder:-*

*“ In Halsburys Laws of England, Ed. 3. Vol. 26, pp 17-18, the question of negligence and duties owed to the patient has been dealt with on the basis of various precedents extracts wherefrom are reproduced hereunder:-*

*“22. Negligence: Duties owed to patient. A person who holds himself out as ready to give medical (a) advice or treatment impliedly undertaken that he is proposed of skill and knowledge for the purpose. Such a person, whether he is a registered medical practitioner or not, who is consulted by a patient, owes him 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 his administration of that treatment (b) A breach of any of these duties will support an action for negligence by the patient ( c).*

*23. Degree of skill and care required. The practitioner must bring to his task 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 (d), a person is not liable in negligence because someone else of greater skill and knowledge would be prescribed different treatment or operated in a different way (e) nor is he guilty of negligence if he has acted in accordance with practice accepted as proper by a responsible body of medical men skilled in that particular art, although a body of adverse opinion also existed among medical men (f).*

*In Bolan Vs. Friern Hospital Management Committee (1957) 1 WLR 582, Lord Justice Mc Nair, while briefing the jury had directed : (1) a doctor is not negligent, if he is acting in accordance with a practice accepted as proper by a reasonable body of medical men skilled in that particular act, merely because there is a body of such opinion that takes a contrary view.*

*Where there are two different schools of medical practice, both having recognition among practitioners, it is not negligent for a practitioner to follow one in preference to the other. American Law, see 70- Corpus Juris Secundum (1951) 952, 953, pr.44, Moreover, it seems that by American Law a failure to warn the patient of*

*dangers of treatment is not, by itself , negligence libid 971. Prs 48m).*

17. The above law squarely covers the case of the complainant as the opposite parties while administering anesthesia did not take proper precaution due to which the patient went on coma and the complainant has to take the treatment of her husband from Uppal Neuro Hospital for the period from 19.6.2022 to 17.7.2022 and spent Rs. 7,50,000/- and in this regard the complainant has placed on record medical record/medical bills of Uppal Hospital Ex.C-3 which the opposite parties are liable to pay to the complainant alongwith compensation for giving negligent treatment to the husband of the complainant , who lastly died due to the negligence of the opposite parties No.1 to 5.

18. In view of the above discussion, we allow the complaint and the opposite parties No.1 & 5 are directed to refund Rs. 7,50,000/- alongwith interest @ 7% p.a. from the date of filing of the complaint till its realization. So far as compensation is concerned husband of the complainant died due to the negligent act of the opposite parties No.1 to 5 and the complainant has claimed compensation to the tune of Rs. 40 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.* This Commission deem it fit to award compensation of Rs. 1,00,000/- and Rs. 10000/- as litigation expenses to the complainants being legal heirs of deceased Hari Chand in equal shares by taking their affidavits and Adhar Cards . However, no case is made out against opposite party

No.6, as such complaint against opposite party No.6 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. Case could not be disposed of within the stipulated period due to heavy pendency of the cases in this commission.

Announced in Open Commission

(Jagdishwar Kumar Chopra)  
President

Dated: 8.11.2024

( Lakhwinder Pal Gill) ( Mandeep Kaur )  
Member Member