

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, CENTRAL MUMBAI
Puravatha Bhavan, 2nd Floor, General Nagesh Marg, Near Mahatma Gandhi Hospital
Parel, Mumbai-400 012 Phone No. 022-2417 1360
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Complaint Case No. CC/15/52
(Date of Filing : 26 Feb 2015)

1. Mr Prabhakar Mahadu Jangam
Room No 13, Baphna Chawl, Ramwadi,
Dahanu Road East, DahanuComplainant(s)

Versus

1. Dr Mr Satish Shah
Urmil Hospital Eye And Skin Cosmetic Laser
Centre, Panchamrut Near Jayashree Theatre,
Chala Vapi West, Gujrath 396191
2. Dr Mr Patil
Urmil Hospital Eye And Skin Cosmetic Lase
Centre, Panchamrut ,Near Jayashree Theatre,
Chala Vapi West, Gujrath 396191
3. Urmil Hospital Eye And Akin Cosmetic Laser
Centre Through Officer In Chargew
Panchamrut ,Near Jayashree Theatre,
Chala Vapi West, Gujrath 396191Opp.Party(s)

BEFORE:

HON'BLE PRESIDENT MRS. VANDANA MISHRA
HON'BLE MEMBER MRS. SHRADDHA BAHIRAT
HON'BLE MEMBER MR. KAMLESH R. BHANDARKAR

For the Complainant : Adv. Mahesh D. Sahasrabuddhe.
For the OP. No. 1 & 3: Prof. Gopinath N. Shenoy (Authority holder)
For the OP. No. 2 : Prof. Gopinath N. Shenoy/ Adv. Kranti Tandale

Final Order / Judgement
(05th July 2024)

(Per - HON'BLE MEMBER MR. KAMLESH R. BHANDARKAR)

1. **The Complainant** is an individual from a lower-income family, employed as a teacher at Z. P. School, Chinchale, The Opposite Parties No.1 & 2 are medical practitioners associated with the Opposite Party No.3 Hospital is an

Eye and Skin Cosmetic Laser Centre specializing in laser treatments for skin and eye conditions.

2. **The Grievance:** The Complainant suffers from white spots on his skin and sought a permanent cure. In May 2012, he approached with high hopes to the Opposite Parties No 1 to 3 for treatment. Due to the negligence of the Opposite Parties during the treatment, the Complainant lost his right thumb, hence the present complaint.

A] Case of the Complainant:

I] The Brief Facts:

- a) In May 2012, on recommendation of a colleague, the Complainant visited Opposite Party No. 3.
- b) On 23rd May 2012, the Complainant was introduced to Opposite Party Nos. 1 and 2, informed of their treatment procedure, and commenced the treatment.
- c) The treatment involved injections, laser exposure, and blood reinjection, accompanied by prescribed creams and medications. That is to inject medicine into the said white spots using a syringe. Then to expose the said white spots to Laser Rays. Thereafter to extract about 10 ml. blood from the body of Complainant and to conduct some medical process on such extracted blood. Thereafter finally the said processed blood used to be re-injected in the said white spots using a syringe. Apart from the above the Opposite Party No. 1 had prescribed certain cream, oil and ointments to apply over the said white spots and also oral medication to be consumed regularly.
- d) **The OP Failure to Inform Risks to Complainant:** The Complainant submission that he narrated complete minute detailed his medical history and condition to OP No.1 especially the fact that the Complainant was a diabetic patient, the potential risks, especially due to the Complainant's diabetic condition, were not disclosed/ explained by the Opposite parties while treatment to Complainant.

Injury and Subsequent Events averred by Complainant:

- e) From the Month of May 2012 to December 2012 the opposite parties initiated treatment on Complainant.
- f) On 15th January 2013, the Complainant was injured by a syringe to the right hand pam's middle finger, on the same day OP No.2 extracted the blood from Complainant's body and re-injected the same in the said white spots including the white spots at the middle finger and the thumb of the right palm.
- g) On 16th January 2013, severe pain, swelling, and black spots were reported to Opposite Party No. 2, who advised painkillers but did not assess the injury in person.
- h) On 17th January 2013, the Complainant visited Opposite Party No.3 Hospital where Opposite Party No.1 checked and administered some medication. However, there was no relief, and the Complainant's condition worsened, leading to a referral to Shraddha Hospital under Dr. Vinay Patel, where gangrene was diagnosed in the right thumb.
- i) On 18th January 2013 on advice of OP No. 1 and Dr. Vinay Patel of Complainant got admitted to Hariya L. G. Rotary Hospital at Vapi in ICU.
- j) On 22nd January 2013 Complainant's right thumb was partially amputated and up to first phalanx was removed as the gangrene had set in deep. This was only way to save the right hand and could be fatal to the life of Complainant, was opined by Hariya L. G. Rotary Hospital doctors.
- k) On 23rd January 2013, as the gangrene was spreading and oxygen therapy was unavailable at Hariya L. G. Rotary Hospital, the doctors advised the Complainant to approach a larger hospital and subsequently discharged him without providing medical treatment papers. The Complainant submitted that despite multiple visits to the hospital to obtain his medical papers, the hospital failed to provide them.

Consequently, the Complainant issued a legal notice dated 22nd February 2014 through his advocate, after which he received certified copies of the medical papers.

- l) After discharge from Hariya L. G. Rotary Hospital at Vapi on next day 24th January 2013, the Complainant himself got admitted to S. L. Raheja Hospital, at Mahim, Mumbai.
- m) On 25th January 2013 the rest of the right thumb (first Metacarpal) and first web space of right hand of Complainant was removed and treating doctors declare him out of danger.
- n) Then after the Complainant had undergone another connected surgery at Karuna Hospital at Jeevan Bima Nagar, Borivali (W), Mumbai where holes were drilled at the phalanges of the other four fingers in the right hand of Complainant in order to facilitate proper blood circulation.
- o) The Complainant submits that, even today, he is required to undergo further treatment following the amputation of the first metacarpal and first web space. The Complainant experiences absolute stiffness of the wrist, rendering the other fingers of his hand immovable and useless. This incapacity prevents him from performing basic activities. As a teacher and a right-handed person, the Complainant relies on his right hand for skillful tasks such as maintaining books and records of the school. Additionally, the Complainant faces embarrassment on various occasions due to his condition.

II] Financial and Emotional Impact on Complainant:

- p) The Complainant incurred **Rs.78,883/-** at Urmil Hospital, at Vapi (OP. No.3), **Rs.72,128/-** at Hariya L. G. Rotary Hospital, at Vapi, **Rs.2,99,407** at S. L. Raheja Hospital, at Mahim, Mumbai and **Rs.14,369/-** at Karuna Hospital at Borivali, Mumbai it totalling **Rs.4,64,787** towards treatment, surgery and medical expenses and enclosed the relevant bills.

q) The gangrene and amputations caused significant physical, mental, and financial strain.

III] Negligence attributed as per Complainant's pleading:

The Opposite Parties has not taken the necessary precautions like noting the sugar level of the Complainant and most importantly the Opposite Party have never informed the possible complications due the diabetes suffered by the Complainant.

The Opposite Parties did not take the necessary precautions to disinfect the syringe and other medical tools used for the said treatment and / or to disinfect and / or to sterilize the skin of the Complainant where the said medicine was to be injected.

That on 17th January 2013 when Complainant had severe pain, swelling and the black spots on his hand, where Complainant described entire conditions of right hand to the OP. No.2 Doctor, when it was clear indication of gangrene, which was ignored by OP. No.2, without attending the Complainant personally only advised to take medicine.

Thus it is a negligent act that -

- r) The Opposite Parties failed to take necessary precautions (Duty of care) and adequately inform the Complainant of the risks.
- s) The initial treatment exacerbated the white spots and caused additional harm.

In such circumstances all the Opposite Parties are jointly and severally responsible to compensate the Complainant for deficiency in service due to medical negligence.

- IV] Complainant's prayers:** Complainant is seeking relief for a) Declaration of deficiency in service and unfair trade practice by the Opposite Parties under the Consumer Protection Act, 1986. b) Compensation of Rs.4,64,787/- for medical expenses, with 18% p.a. interest from the date of filing till realization. c) Compensation for ongoing and future follow-up treatment expenses, with 18% p.a. interest

from the relevant dates till realization. d) Rs.5,00,000/-for mental and physical harassment. e) Rs.35,000 for legal and incidental expenses.

V] Evidence adduced by Complainant – Along with the Complaint, the Complainant has adduced an evidence affidavit, written arguments, and documents, including copies of all medical papers from Urmil Hospital, Shraddha Hospital, Haria I G Rotary Hospital, and S. L. Raheja Hospital. Additionally, copies of all expenditure bills from Urmil Hospital, Haria I G Rotary Hospital, S. L. Raheja Hospital, and Karuna Hospital have been provided. The Complainant has also included a copy of the discharge summary from Karuna Hospital, the legal notice dated 19/08/2013, and the reply from the Opposite Party dated 10/09/2013.

On 15/11/2019, the Complainant filed an application for the production of documents, stating that he had inadvertently filed his concerned friend Mr. Dattatraya Lokare's medical case papers from Urmil Hospital, enclosed in the list of documents at Exhibit No. A (Colly), Page No. 20 to 24, during the filing of the present Complaint. The Complainant sought permission to produce his own medical papers from Urmil Hospital for the treatment period from 23/05/2012 to 15/01/2013. The Opposite Party raised no objection, and the documents were taken on record on 07/02/2020 by the Commission at the stage of arguments. The Complainant's Counsel made oral submissions and filed case citations.

B] Case of Opposite Parties :-

I] Opposite Party No. 1's Version

a) **The OP. No. 1** on 05/06/2015 filed his written statement through post which is taken on 18/06/2015. The OP.No.1 denying the averments of Complainant. The OP. No.1 submits that he is working as consultant in dermatology and venereology since 1988 and practicing at OP No.3 Hospital. OP. No.2 is associate/ assistance in practice.

- b) The OP No. 1 claims the complaint was not filed due to deficiencies in service or unfair practices, but to tarnish his reputation and extort money.
- c) The OP. No.1 never acted in a casual and routine manner, and never negligent in rendering services or adopted unfair trade practice. The OP whatever did was with bona-fide intention and in the best interest of the patient.

- **OP No.1's Preliminary Objections :**

1. **Jurisdiction:** That the Commission lacks territorial jurisdiction as the cause of action occurred in Vapi, where none of the OPs reside or practice. The District Commission's permission was not obtained, and the OPs did not acquiesce to the Commission's jurisdiction.
2. **Complexity:** The case involves complex relationships and numerous parties, not suitable for a summary trial as envisaged by the Consumer Protection Act.
3. **Non-Disclosure:** The Complainant deliberately withheld relevant information, such as the patient's admission details, treatment satisfaction, and prior medical history of any major illness including diabetes. The complaint includes false statements regarding the treatment, specifically the use of lasers and communication about the disease. The complaint is allegedly motivated by the desire for monetary compensation, using pressure tactics against OPs.

- **OP's submission about Medical Treatment Details:**

1. That the patient/ Complainant was treated for vitiligo (Kode/Pandurog) with phototherapy and Inj. PRP from May 2012 to January 2013. The OP. No.1 provided the detailed dates and photographs of the same.

2. On January 16, 2013, Complainant talked to OP.No.2 and reported pain and swelling in right thumb and plam, then the Complainant was advised to consult and take some analgesics, Complainant consulted Dr. Daiv (MD Physician) at Dahanu and got medicated. Then subsequent treatments and hospital transfers due to the development of gangrene.
3. The patient underwent multiple medical procedures, including amputation and hyperbaric oxygen therapy.

- **OP No.1's Response to Complaint.**

Opposite Party No. 1 asserted that he had never been negligent in treating the patient's vitiligo. He contended that the loss of the patient's thumb was due to long-standing diabetes mellitus and not due to any action by the Opposite Parties. He emphasized that gangrene is a known risk in diabetic patients. The patient's history and complaints were properly recorded. Diagnosed with vitiligo, the patient was informed about the disease and the treatment, which included oral medication, local applications, phototherapy, and autologous PRP injections, starting from 23/05/2012. The patient showed a good response and continued the treatment with satisfaction until January 2013. The Complainant must be put to strict proof. The Complainant never reported any major illness, including diabetes. Routine tests like platelet count and random blood sugar (RBS) were conducted, and the reports are with the patient. No medicines were injected, only autologous PRP was administered intradermally. The disease management and potential risks, especially for diabetic patients, were fully explained. The injection given on 15/01/2013 was the same as previous injections and did not cause injury or pain; the RBS was under 200. On 16/01/2013, the Complainant was advised to consult a local physician and take painkillers for swelling and pain in the right hand.

The Complainant was admitted to Opposite Party No. 3 Hospital on 17/01/2013 with high RBS levels and was later transferred to Shraddha Hospital, and then to Haria Hospital on 18/01/2013 for further management. A false bill of Rs. 78,883/- from Urmil Hospital was submitted on Opposite Party No. 1's letterhead, and Opposite Party No. 1 demands strict proof for other bills. The Complainant falsely claims an increase in vitiligo, whereas photographs show marked improvement. The thumb amputation was due to diabetes mellitus and not because of the injections given. Gangrene is a documented risk for diabetics. Joint stiffness is unrelated to PRP injections and can be due to various other reasons. The cause of gangrene is diabetes-related complications, atherosclerosis, peripheral arterial disease, smoking, trauma, obesity, Raynaud's phenomenon, and other conditions, not the injections administered by Opposite Party No. 1. Opposite Party No. 1 submitted that all injections were administered using sterile, single-use disposable syringes and needles, and there is no question of disinfecting the syringe, nor was the gangrene caused by it. Gangrene is rarely caused by injections, according to NCBI. Opposite Party No.1 confirms that the patient's sugar levels were regularly monitored, and the reports are with the Complainant. The Opposite Parties had also informed the Complainant about the risks associated with long-standing diabetes and assert that all necessary precautions were taken before administering the PRP injection, including regular RBS checks. The Opposite Parties were aware of the patient's diabetes and regularly monitored his blood sugar levels. The patient was consistently advised to control his blood sugar to avoid complications. Therefore, there is no negligence, and hence no compensation is due.

- **OP's Grounds raised for Dismissal of Complaint -**

- a. **Mere Averments and Vague Insinuations:** OP No. 1 asserts that the Complaint consists of broad and unspecific allegations that do not suffice under the Act. It is opportunistic, without merit, and should be dismissed with costs, as the Complainant has failed to prove negligence.
- b. **Lack of Specific Allegations:** The Complainant has not demonstrated any specific negligence or deficiency in the services provided by OP No. 1, rendering the Complaint legally unsustainable.
- c. **No Negligence or Rashness:** OP No. 1 has acted in accordance with the standards of a reasonable, prudent medical practitioner, with no act or omission constituting negligence.
- d. **Appropriate Medical Practice:** OP No. 1 is a qualified dermatologist who managed the treatment at a well-equipped hospital. The treatment adhered to established dermatological practices and protocols. All necessary care and precautions were taken during the treatment process.
- e. **Treatment Protocols Followed:** The treatment provided was consistent with universally accepted medical protocols, negating any claim of deficiency in service.
- f. **No Deviation from Standard Treatment:** Detailed patient history was taken and investigations conducted. Informed consent was obtained. Treatment followed standard procedures, and the patient was continuously monitored.
- g. **Professional Standards Adhered To:** OP No. 1 followed dermatology practices as prescribed by standard medical texts, which cannot be deemed negligent.
- h. **Accident:** The incident was a pure accident, not actionable under the Consumer Protection Act, and falls under Section 80 of the

IPC, which exempts lawful acts performed with proper care from being considered offenses.

- i. **Discretion in Treatment Choice:** The treating doctor has the discretion to choose the appropriate treatment, and the chosen method was standard, not negligent.
 - j. **Burden of Proof:** The Complainant has not met the burden of proving negligence. Mere allegations without evidence are insufficient.
 - k. **Standard of Care:** The care provided met the reasonable standard expected of a medical practitioner.
 - l. **Contributory Negligence:** The Complainant's failure to follow medical advice contributed to the outcome, potentially saving the thumb if followed.
 - m. **Unjustified Compensation Claims:** The claim for compensation is exaggerated, lacking justification and quantification. The required elements for compensation are not present.
 - n. **Humane Approach:** The OPs provided sympathetic and continuous care, which the Complainant has overlooked in the allegations.
 - o. **No Guarantee or Warranty:** Medical professionals are not required to guarantee outcomes, only to provide competent services, which OP No. 1 has done.
 - The OP.No.1 adopts and endorses the Written Statement, Exhibits, Expert Opinion, and Affidavits of OP No. 3.
 - OP. No.1's PRAYER: - OP prayed that the Complaint be dismissed with costs as frivolous under Section 26 of the Consumer Protection Act 1986.
3. **Opposite Party No. 3.**
The OP No. 3 submitted that -

- a) OP No. 3 is a hospital owned by its proprietor, OP No. 1, Dr. Satish Shah, who oversees its operations. OP No. 2 acts as an associate or assistant under the control of OP No. 1 at OP No. 3 hospital. The written statement for OP No. 3, submitted by post, was recorded on 18/06/2015. OP No. 3 denies the averments made by the Complainant, reiterating the objections raised by OP No. 1 in their written statement. Additionally, OP No. 3 has raised the following grounds-
- b) **Non-Joinder of necessary party** – where services of S. L. Raheja Hospital was availed by Complainant, but fail to add as party hence complaint deserves to be dismissed.
- c) **No Cause of Action** against the OP.No.3 – there is no specific allegation and unnecessary hospital was dragged.
- d) **Non-disclosure:** The Complainant deliberate non-disclosure of relevant information regarding fact that autologous platelets rich plasma (PRP) was given him intradermally. 30ml. patient's own blood was collected for injection PRP which was then given intradermally. Complainant also not disclose the fact of medicine were given periodically along with local application's was prescribed.
- e) **Limitation:** The PRP treatment procedure took place on 15/01/2013, while the lodging date of the complaint is not mentioned and it was filed in 2015, which is beyond the two-year limitation period.
- f) **OP. No.3's Hospitals having excellent infrastructure:** OP No. 3 provided a comprehensive list of the infrastructure present within the hospital in their written statement.
- g) **OP. No.3's Medical Consideration:** The OP. No.3 submitted that they will refer and rely on text book extract as and when required, on topics of VITILIGO - KODE – PANDUROG, ATHEROSCLEROSIS, PERIPHERAL

ARTERIAL DISEASE, SMOKING, TRAUMA OR SERIOUS INJURY, OBESITY, RAYNAUD'S PHENOMENON.

- h) For the remainder of the Complaint's contentions, OP No. 3 provided the same response as filed by OP No. 1.
- i) Along with OP No. 1's grounds, additional grounds of dismissal submitted by OP No. 3, they assert that proper care, as recommended by doctors, was consistently provided to the patient without any complaints of negligence by the Hospital staff. The medical personnel and nursing staff diligently performed their duties, ensuring the patient received all necessary medical attention. The Hospital maintained high standards of care with state-of-the-art equipment and qualified medical practitioners. No negligence or rashness occurred in their services, and standard health-care protocols were meticulously followed. The patient, suffering from long-standing diabetes, developed gangrene as an inherent risk of the condition, not due to any deficiency in the Hospital's services. The Hospital ensured timely transfer of the patient to a specialized facility when necessary. The complaint against the Hospital is considered an afterthought and lacks merit. Hence, OP No. 3 prays for dismissal of the complaint.

4. **Opposite Party No. 2.**

- a) OP No.2 filed his written statement on 13/04/2016 and submitted that he was associate and assistant doctor of OP No.1. The OP. No.2 only followed order and directions issued by OP.No.1, which OP No. 2 did meticulously and with care and caution. The OP No. 2 adopted OP No.1's written version and objections as his reply to the Complaint.

5. **Evidence of Opposite Parties :** Along with their written statements, OP No. 1 and OP No. 3 raised a preliminary objection by way of an application regarding the issue of territorial jurisdiction. They also adduced an evidence affidavit, written arguments, and documents, including two

photograph sheets showing date-wise progress of the Complainant's face, hands, fingers, and legs. They submitted textbook extracts on PRP treatment for Vitiligo and its relation to diabetes, as well as documents related to gangrene treatment. Additionally, OP No. 1 and OP No. 3 filed the entire Journal of Tissue Science & Engineering as evidence.

In their written arguments, the Opposite parties provided a list of case laws they relied upon as judgments, without submitting entire copies of these judgments or making any references to precedents. The authority holder or counsel representing the opposite parties did not avail themselves of the opportunity to make oral arguments on 21/03/2024, 27/06/2024, and 04/07/2024, including re-arguments and addressing queries raised by the present Commission.

6. **Issues for Determination:**

1. Whether the Opposite Parties failed to inform the Complainant of the potential risks involved in the treatment, and whether the treatment administered by the Opposite Parties was negligent and deficient, resulting in harm to the Complainant's right-hand thumb?

- **Affirmative**

2. Whether the Opposite Parties are liable for the injuries and subsequent financial, physical, and emotional damages suffered by the Complainant?

- **Partly allowed – OP No. 1 & 3 are held liable.**

3. What Order?

- **As per final order.**

OBSERVATION AND FINDINGS –

7. The Opposite Party has raised objections regarding territorial jurisdiction, non-joinder of a necessary party, and limitation. The Complainant filed an application under Section 11(2)(b) of the Consumer Protection Act, 1986, which the Opposite Party vehemently opposed by submitting a preliminary objection application. However, the Commission overruled the objection

and allowed the application on 25/10/2016. Since the order dated 25/10/2016 remains unchallenged in an appellate court, the objection related to territorial jurisdiction has not been considered at belated stage.

8. The allegation related to the Complexity of relationship of parties and non-joinder of a necessary party is also not sustainable because the Complainant's grievance pertains solely to the treatment provided by the Opposite Parties, from which the cause of action has arisen. The subsequent services provided by parties other than the Opposite Parties are not deficient in nature, and the Complainant has no allegations against their services. There is also no complexity of relationship between the numerous parties. Hence, this objection are not considerable.
9. The record shows that the complaint was lodged with the Commission on 12/12/2014, following the PRP injection on 15/01/2013 in the right-hand thumb, where the cause of action arose. Thus filing of complaint is well within the two-year limitation period as per the provisions of the Consumer Protection Act. Hence, this objection also does not sustain.
10. **Undisputed Facts and Circumstances:** In the present case, it is admitted that the Complainant was treated by Opposite Party No. 1 for Vitiligo at OP No. 3's Hospital, which is owned by Opposite Party No. 1. The Opposite party No.2 an associate and assistant acting under the instructions of Opposite No.1 & 3 and OP. No.2 administered the injection on 15/01/2013. Due to gangrene, the Complainant's right hand thumb was amputated at Haria L.G. Rotary Hospital, Vapi, and subsequently, the remaining portion of the thumb and the first web were amputated at S. L. Raheja Hospital. The opposite parties administered Injection PRP to the Complainant on 23/05/2012, 12/07/2012, 20/08/2012, 03/10/2012, and 15/01/2013. Medical prescription/ papers only recorded Random Blood Sugar (RBS) on 03/10/2012. The medical records do not show any history

of diabetes, monitoring of diabetes, or explanation of its potential risks to Complainant.

11. On 15/01/2013, Opposite Party No. 2 at OP. No.3's hospital administered the injection to the Complainant's right hand middle finger and thumb. The next day, the Complainant reported severe pain, swelling, and black spots to OP No. 2, and on 17/01/2013, the Complainant visited OP No. 1 and 3, who referred the Complainant to Shraddha Hospital where gangrene was diagnosed, leading to the amputation of the thumb. The possibility of injury due to the injection administered by the opposite parties cannot be ignored.
12. There are prima facie documents from Haria L.G. Rotary Hospital and S. L. Raheja Hospital confirming the existence of gangrene. It is acknowledged that diabetes increased the likelihood of gangrene, with the most probable causes being diabetes, trauma, or injury during the administration of the PRP injection in the present case.
13. **Expert Reports and Opinions in Medical Negligence Cases:** In medical negligence cases, the determination can be made by calling for an expert report from a medical board or obtaining an expert opinion, which is generally expected to be on record. The Commission raised this query and conducted re-hearings on 27/06/2024 and 04/07/2024 to consider calling an expert report in the said matter. However, all Opposite Parties and their counsel were absent, while the Complainant's counsel re-argued, produced case laws, and submitted that the matter is 10 years old, rendering an expert opinion less useful. The Complainant's counsel contended that there is a prima facie case, with documents speaking for themselves.
14. Through pleadings and documents, the Complainant has established a prima facie case. Alternatively, the 'Bolam Test' and the 'Principle of Res Ipsa Loquitur' (the thing speaks for itself) can be applied to decide the case instead of calling for an expert report. In support of his contention, the Complainant's counsel relied on the case law **Ashish Kumar Chauhan vs.**

Commanding Officer and Ors., Civil Appeal No. 7175 of 2021, decided on 26/09/2023 by the Hon'ble Supreme Court of India, wherein at para 71, the principle of res ipsa loquitur is described and invoked in several cases involving medical negligence. Additionally, in **V. Kishan Rao vs. Nikhil Super Speciality Hospital and Ors.**, Civil Appeal No. 7175 of 2021, decided on 26/09/2023 by the Hon'ble Supreme Court of India, the apex court clarified that "no mechanical approach can be followed in these matters. Each case has to be judged on its own facts. If it is decided that medical negligence must always be proven based on expert evidence, the efficacy of the remedy provided under the Act will be unnecessarily burdened, and in many cases, such a remedy would be illusory."

15. Accordingly, in our opinion, the rule laid down by the apex court applies to the present case. Hence, we conclude that calling for an expert opinion would be an unnecessary burden and is not warranted.
16. **On the Issue of Points 1 & 2 Regarding Medical Negligence and Deficiency in Services:** In legal contexts, attributing negligence often requires establishing that:
 1. Duty of Care: The party had a legal obligation to act with a certain level of care toward another party.
 2. Breach of Duty: The party failed to meet this obligation through action or inaction.
 3. Causation: The breach of duty directly caused harm or damage.
 4. Damages: The harmed party suffered actual losses or damages as a result.

In some cases, multiple parties can be attributed with negligence, leading to shared or comparative liability.

17. It is well established that medical practitioners owe a duty of care to their patients. In present case, the Opposite Parties had a duty to provide adequate care and inform the Complainant of potential risks, especially

given his diabetic condition. There is no any evidence to show that the history was taken, diabetic was monitor and risk was explained by the OP.No.1 while Complainant visited the OP.No.3 hospital for treatment.

18. The Complainant's submission is that he narrated his complete medical history, including his diabetic condition, to opposite parties at Opposite Party No. 3 Hospital. However, there is insufficient evidence to prove that the Opposite Parties failed to inform the Complainant of the risks associated with the treatment due to his diabetes, but it can be derived from the pleadings and documents. Nonetheless, where in Notice Reply dated 10/09/2013 by Advocate of Opposite Party, annexed by Complainant at Exhibit No. L (@Page No.321-322) at Para 3 of Notice OP states that

“3) It is denied that my client before starting the medical treatment had gathered all the relevant medical information from your client and more particularly that he was diabetic patient. It is not admitted that my client tested your client 2 to 4 times and got confirmed that your client was diabetic. Your client was always coming to my client after taking meal round about 2 to 3 p.m. Hence it is natural that sugar will be slightly higher than normal. Your client was responding well.”

And on other hand the submission made in written statement that the fact that Opposite Parties were aware of the Complainant's diabetic condition is clearly admitted by Opposite Parties

In OP.No.1's Written Statement

@ Para- *“91. OPs further submit that OPs were well aware that the Complainant was a diabetic and OPs regularly did his blood sugar levels. The Complainant was constantly, during every visit told to keep his blood sugars under control and also informed that if the diabetes was not under control all complication of diabetes could be encountered and the only way the same could be avoided was to keep the sugars under control.”*

(Same para is has been adopted by OP.No.3 at Para 76 in WS and OP.No.2 has adopted entire W.S).

19. At the preliminary stage, the Opposite Parties initially asserted in their legal Reply Notice dated 10/09/2013 that the Complainant had never disclosed any history of diabetes, which they subsequently denied in their written

version. However, it is noteworthy that only on the date of 03/10/2013, when the PRP injection was administered to the Complainant, records show that Regular Blood Sugar (RBS) was monitored. Throughout the treatment and rest of the PRP injections given to the Complainant (on 23/05/2012, 12/07/2012, 20/08/2012, and 15/01/2013), the Opposite Party failed to conduct any blood sugar examinations. This inconsistency contradicts the Opposite Parties' claim. Since the Complainant sought treatment from the Opposite Parties, it is improbable that he would have concealed such crucial information about his diabetes for an extended period from the treating doctor. This reliance on the averments of both the Complainant and Opposite Parties highlights the gross negligence in monitoring the blood sugar throughout the treatment, which is considered a vital and basic requirement of care, especially when doctors are aware of its significance before initiating treatment, where diabetes is one of the vital cause for the gangrene.

20. The Opposite Parties' assertion that the history of diabetes was not disclosed by the Complainant, and that potential risks were disclosed to Complainant and regular blood sugar was monitored, are merely oral statements without any corroborative evidence. The Complainant relies on the case law of *Poona Verma vs. Ashwin Patel* AIR 1996 SC 2111, where the apex court held that oral statements by a doctor claiming to have given advice cannot be accepted without written evidence, as it goes against the standard code of conduct for medical practitioners. In the present case, in the absence of written documentation about the advice on blood sugar or disclosure of potential risks, and in light of the inconsistent monitoring of blood sugar, such claims cannot be credibly accepted.
21. The primary duty of doctors at the hospital, when the Complainant visited the Opposite Parties, was to inquire, record, and inform about potential risks related to any pre-existing conditions and ongoing medications before

initiating further treatment, which the Opposite Parties failed to fulfill. This omission constitutes a breach of their cardinal liability and duty of care.

22. It is not disputed that Opposite Party no.2 under the instructions of OP No. 1 in OP No.3 hospital administered the PRP Injection on 15/01/2013 and Complainant suffered gangrene to the right hand thumb on which PRP injection was given on 15/01/2013 by opposite parties. The Opposite parties has not denied that gangrene has not taken place and thumb imputation has carried out in subsequent Hospital. The objection raised by opposite parties that –

“The thumb amputation was due to diabetes mellitus and not because of the injections given. Gangrene is a documented risk for diabetics. Joint stiffness is unrelated to PRP injections and can be due to various other reasons and gangrene is diabetes-related complications, atherosclerosis, peripheral arterial disease, smoking, trauma or injury, obesity, Raynaud's phenomenon, and other conditions, not the injections administered by Opposite Party No.2 in OP No. 3”.

23. Thus, the question before us is what caused the gangrene and which causes are most probable as suggested by the Opposite Parties in their written version at paragraphs 71 to 79. However, the Opposite Parties have not produced sufficient material evidence to substantiate these reasons. In fact, a detailed patient history and comprehensive blood tests are required, which have not been conducted by the Opposite Parties. The most probable cause of gangrene in the present case appears to be reason number vii) trauma or serious injury, which occurred immediately during the administration of the PRP injection. This conclusion is supported by the medical records dated 18/01/2013 from Shraddha Hospital and the discharge summary dated 24/01/2013 from Haria L G Rotary Hospital. Other potential causes of gangrene remain unproved, untraceable or irrelevant due to the insufficient medical history of the Complainant and

Opposite parties failure to discharge their burden to prove their case. The Cause - **Trauma**, in this context, refers to physical injury or wound caused by an external force or event. Medically, trauma can range from minor injuries like cuts, bruises, or sprains. In the present case, the Complainant was injured during the treatment to right hand middle finger and pain in right thumb while OP No. 2 was administering the injection on 15/01/2013, which we consider the most probable cause of the gangrene in the Complainant's right thumb, ultimately leading to its amputation.

24. It is submitted that all injections were administered using sterile, single-use disposable syringes and needles, and there is no question of disinfecting the syringe, nor was the gangrene caused by it. However, the Opposite Parties have not provided evidence to prove this through any medical documentation or any expert report. Despite the claim that gangrene is rarely caused by injections, as per NCBI, and admitted by the Opposite Parties, it is also contended that accidents can happen. However, this was not an accident but rather a case of negligence, as the Opposite Parties failed to carry out thorough blood tests despite knowing that the Complainant was a diabetic patient before administering the PRP injection. More precaution was expected under these circumstances, thus there remains the possibility of gangrene due to the injections. If the Opposite Parties had taken due care, including disinfecting the syringe, avoiding injury, and conducting a proper medical history and diabetes assessment before injecting PRP, the Complainant might not have suffered the physical loss of the right thumb. This negligence on the part of the Opposite Parties directly resulted in the Complainant's injury and amounts to deficiency in services on part of the opposite parties.
25. **Negligence and Reliance on Established Legal Principles:** However, where the facts and circumstances clearly indicate the negligent act of the Opposite Party's doctor, reliance can be placed on established legal

principles and precedents. Relevant judgments from the Hon'ble Supreme Court of India includes -

- a) ***Kusum Sharma & Ors vs. Batra Hospital & Medical Research Centre & Ors (2010) 3 SCC 480***: The Supreme Court held that a doctor cannot be held liable for negligence as long as he performs his duties with reasonable skill and competence. However, if a doctor is found to be grossly negligent, this can be proven based on the facts and circumstances without the necessity of expert testimony.
 - b) ***V. Kishan Rao vs. Nikhil Super Speciality Hospital & Anr (2010) 5 SCC 513***: The Court emphasized that in clear cases of medical negligence where the facts speak for themselves, the principle of res ipsa loquitur (the thing speaks for itself) can be applied. This means that the very occurrence of an injury in the course of medical treatment can establish a prima facie case of negligence.
 - c) ***Jacob Mathew vs. State of Punjab & Anr (2005) 6 SCC1***: The Supreme Court observed that in cases of alleged medical negligence, the standard of care expected from a medical professional is that of an ordinary competent person exercising ordinary skill in that profession. If the conduct of the professional falls below this standard, and it results in injury or harm, then it constitutes negligence.
26. These judgments illustrate that while expert testimony is important in medical negligence cases, the facts and circumstances of the case can independently demonstrate negligence when they are sufficiently clear and compelling. In the present case the facts itself speaks about it. The conditions were Opposite parties referred Complainant from one hospital to another for treatment of gangrene that is after administering of PRP injunction to Complainant is a direct consequences of Opposite parties

treatment and their breach of standard care, resulting amputation of right hand thumb which was vital cause factor.

27. It is submission of OP No.1 & 3 that gangrene in instant case does not caused due to syringe injury or because of the use of Platelet Rich Plasma (PRP), but cause due to long standing diabetes, which cause peripheral arterial disease end-arteries and blockage of blood vessels. Gangrene is thus seen in the periphery of the limb in chronic diabetes patient, such gangrene require amputation. But in such stage OP. No.1 & 3 failed to take the comprehensive assessment of the complaint overall health, especially focusing on the status of their diabetes and any complications such as peripheral arterial disease, detail medical history on his advice slip / prescription/ OPD papers. There is no pre procedure counselling and post procedure care written/shown on prescription by the Opposite Parties, neither noting of informed consent about potential risks associated with their diabetes condition on the medical papers. There is no referral advise to specialist about the same in the medical papers appears. Hence the submission, literature, Wikipedia notes and text extract, and case laws filed by the OP. No.1 & 3 are not considered.
28. **Duty to care and inform:** The Opposite Parties had a duty to fully inform that the Complainant of the potential risks associated with the treatment, especially given the Complainant's diabetic condition. The Complainant's undisputed testimony that he disclosed his diabetic condition and was not informed of the risks associated with the treatment is concerning. Before starting the medical treatment it is essential to take the history of the patient and write down on OPD papers and medical paper, also to subscribe that what test has been conducted by the concerned Doctor, those advice and their details of report should be written on the medical papers. But in the present case Opposite Parties only conducted the RBS on 03/10/2012, neither embodied the fact related to history available or non-available. The

prescription provided do not disclose such information which is mandatory at the time of examination and treatment. In absence of hospital papers of OP No. 3 written down during the period of treatment we cannot believe, the theory that Complainant has never disclose the history of diabetes and as per the case relied by Complainant

29. **Negligence in Treatment:** The fundamental reason behind medical negligence is that the carelessness of the doctors or medical professionals where reasonable care is not taken during the diagnosis, during treatments and operations. Not giving proper medical advice to Complainant is one form of medical negligence. Due to deviation from normal standard care which was required the negligence is occurred on the part of Opposite Parties.
- a) The evidence reveals that the Opposite Parties continued treatment without adequate precautions to mitigate the risks due to the Complainant's diabetes.
 - b) The lack of sterilization protocols claimed by the Complainant and the initial response to the severe symptoms exhibited by the Complainant on January 16, 2013, indicate a failure to adhere to standard medical practices.
 - c) The gangrene and subsequent amputation were directly linked to the complications arising from the treatment, establishing a causal connection between the treatment provided by the Opposite Parties and the injuries sustained by the Complainant.
30. **Financial, Physical, and Emotional Damages:** In Recent Supreme Court rulings in 2023 have reinforced the legal principles applicable to medical negligence cases. Notably, the principle of **res ipsa loquitur** has been emphasized, which means "*the thing speaks for itself.*" This principle was applied in a case where the Supreme Court held that when negligence is apparent, the burden of proof shifts to the hospital or medical practitioners to demonstrate that they exercised due care Based on these principles, if

the Complainant can demonstrate that the injuries and damages were a direct result of the negligent acts or omissions of the Opposite Parties, the burden shifts to the Opposite Parties to prove they exercised appropriate care and diligence. Failure to do so would render Opposite Parties liable for the damages claimed. The evidence on record, including medical bills and expert testimony, will be crucial in establishing the extent of the financial, physical, and emotional damages suffered by the Complainant and the liability of the Opposite Parties K. **Shantini vs. Vijaya (2006) 6 SCC 263**: This case dealt with the negligent act of a doctor, causing permanent disability to the patient. The Court awarded compensation for the financial losses incurred due to medical expenses and loss of earning capacity, as well as for physical and emotional pain The Complainant incurred significant medical expenses, evidenced by the bills enclosed on record. The Opposite Party failed to rebut this evidence, hence the objection regarding the authenticity and genuineness of the bills is not considered. The Complainant has suffered physical and emotional distress due to the partial amputation and ongoing medical issues affecting his professional and personal life. The evidence provided by the Complainant supports the claims for compensation. The Opposite Party No. 2, being an assistant and associate working under the authority and direction of Opposite Party No. 1 and Opposite Party No. 3 Hospital. Therefore, all Opposite Parties are jointly and severally are liable. The treating doctor OP. No. 1 & 2, and Opposite Party No. 3, the hospital, having failed in their duty of care and displaying a lack of necessary precautions in treating a diabetic patient, are found jointly and severally liable for medical negligence and deficiency in service. The Opposite parties individual liability cannot be assigned, the Opposite Party are held vicariously liable, jointly and severally and declared to have engaged in deficiency in service and unfair trade practice under the Consumer Protection Act, 1986. The

Opposite Parties are directed to pay the Complainant a sum of Rs. 4,64,787/- towards medical expenses relating to treatment, hospitalization, medicines etc. which he has incurred with an interest of 9% per annum from the date of filing the complaint until realization. Opposite Parties are further directed to pay Rs. 3,00,000/- (Three lakhs only) as compensation for future loss of earning, medical expenses, mental and physical harassment. Opposite Parties are directed to bear the litigation costs of Rs. 15,000/- for legal and incidental expenses. Opposite Parties are directed to comply with this order within 45 days from the date of this judgment. Failure to comply with the order shall attract further interest of 18% per annum from the date of filing the complaint until realization. Thus the findings of issues No.1 are **Affirmative** and issue no 2 is **Partly Allowed**.

31. Based on the above observations, it is held that the services provided to the Complainant and the negligent acts of Opposite Parties amounts to deficiency in service and unfair trade practice. Hence, the following order is passed.

ORDER

- i) The complaint No.CC/15/52 is partly allowed.
- ii) The Opposite Parties are declared to have engaged in deficiency in service and unfair trade practice under the Consumer Protection Act, 1986.
- iii) The Opposite Parties are directed to pay the Complainant a sum of Rs.4,64,787/- (Rupees Four lakhs sixty four thousand seven hundred and eighty seven only) towards medical expenses, with an interest of 9% per annum from the date of filing the complaint till realization.
- iv) The Opposite Parties are further directed to pay Rs.3,00,000/- (Rupees Three lakhs fifty thousand only) as compensation for mental and physical harassment.

- v) The Opposite Parties are directed to bear the litigation costs of Rs.15,000/- (Rupees Fifteen thousand only) for legal and incidental expenses.
- vi) The Opposite Parties are are directed to comply with this order within 45 days from the date of this judgment. Failure to comply with the order shall attract further interest of 18 % per annum from the date of filing the complaint till realization.
- vii) Copy of this Order be sent/provided forthwith to the parties free of cost as per rules for necessary compliance.
- viii) The extra sets of the complaint to be returned to the Complainant.

Place – Parel.

Dated – 5th July 2024.

Sd/-

**[HON'BLE MRS. VANDANA MISHRA]
PRESIDENT**

Sd/-

**[HON'BLE MRS. SHRADDHA BAHIRAT]
MEMBER**

Sd/-

**[HON'BLE MR. KAMLESH R. BHANDARKAR]
MEMBER**