

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,  
PUNJAB, CHANDIGARH**

**Consumer Complaint No. 23 of 2019**

**Date of Institution : 14.01.2019**

**Reserved on : 13.05.2021**

**Date of decision : 24.05.2021**

Kamalpreet Grewal, aged 60 years, wife of Sh. Gurbir Singh Grewal, resident of H.No.4278 Ward No.5, Thandi Sadak, Opposite Govt. Poultry Farm, Malerkotla, District Sangrur.

.... Complainant

**Versus**

1. Chandigarh Heart Centre, Haripura-Kishanpura Road, Sangrur through its Proprietor, Dr. Sandeep Goel.  
Email:chc24hr@gmail.com
2. ....
3. Fortis Hospital, Chandigarh Road, Ludhiana, through its M. D.  
Email ID: contactus.ludhiana@fortishealthcare.com

... Opposite Parties

**Consumer complaint under Section 17 of the  
Consumer Protection Act, 1986 as amended up  
to date.**

**Quorum:-**

**Hon'ble Mr. Justice Paramjeet Singh Dhaliwal, President**

**Mr. Rajinder Kumar Goyal, Member**

**Mrs. Kiran Sibal, Member.**

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| 1) Whether Reporters of the Newspapers may be allowed to see the Judgment? | <b>Yes/No</b> |
| 2) To be referred to the Reporters or not?                                 | <b>Yes/No</b> |
| 3) Whether judgment should be reported in the Digest?                      | <b>Yes/No</b> |

**Argued by:**

**For the Complainant : Sh. Sanjeev Goyal, Advocate**  
**For O.P. No.1 : Sh. Ishan Gupta, Advocate**  
**For O.P. No. 2 : No Party**  
**For O.P. No. 3 : Sh. S. K. Dhir, Advocate**

**JUSTICE PARAMJEET SINGH DHALIWAL, PRESIDENT**

The instant complaint has been filed by Smt. Kamalpreet Grewal, (hereinafter to be referred as “the Patient”), alleging deficiency in service and medical negligence on the part of opposite party No.1 (in short, ‘O.P. No.1’) in rendering treatment to her.

**Averments in the Complaint:**

2. The brief facts, as mentioned in the complaint, are to the effect that O.P. No.1-Hospital is a sole proprietorship firm of Dr. Sandeep Goel, who is engaged in providing medical, surgical and allied services etc. to the general public for consideration at Sangrur. O.P. No. 3 is also providing similar services.

3. The patient is a consumer of services of the O.Ps. for consideration. The patient availed services of said hospitals from time to time on payment for health treatment etc. The patient reserves her right to implead the respective insurance companies, if the particulars are disclosed by the O.Ps. The patient is a housewife and was enjoying healthy lifestyle. On 11/04/2018, the patient felt uneasiness and pain in her chest. She was taken to local Dr. Charanjit Singh, M.D. (Medicine), who prescribed certain medicines, but she did not get any relief. Dr. Charanjit Singh after further check-up advised the patient to consult heart specialist and recommended O.P. No.1, vide OPD slip Ex.C-1.

4. On 14/04/2018, the patient visited O.P. No.1, who after examination and conducting various tests such as ECG, Echo and

Angiography and other lab. tests declared that patient is suffering from acute heart blockage and requires immediate heart surgery. O.P. No.1 prevailed upon the patient and her husband for immediate treatment, failing which the patient can die any moment. The patient and her husband felt shocked, shaken and traumatised after hearing the diagnose of O.P. No.1. O.P. No.1 terrorised the husband of the patient to such an extent that if immediately, surgery was not performed anything can happen. O.P. No.1 obtained the signature of the husband of the patient on blank printed forms, stating that before surgery it is just a formality. Under the said prevailing circumstances and in the state of shock, he signed the printed forms in good faith without knowing their contents. O.P. No.1 never informed about the procedure, which was to be undertaken by him. O.P. No.1 took the patient in operation theatre, and thereafter informed the husband of the patient that stent will be implanted. Thereafter, the patient shall be relieved of the possible high risk to life. After the surgery, O.P. No.1 informed the husband of the patient that with the implant of stent in the blocked arteries, now there is no blockage in the heart. On the next day, the patient was discharged by the O.P. No.1 after charging an amount of ₹1,14,500/-.

5. At the time of discharge, O.P. No.1 supplied Discharge Summary, prescription slips, coronary angiography report, angioplasty report, echocardiography report and medical test reports. In the coronary angiography report, it has been mentioned 'good flow in all coronaries'. The patient was advised complete bed rest for a few days.

Except above referred record, no other medical record was supplied to the patient and her husband.

6. The patient with extreme care and caution took the medicine as advised. After few days of surgery, the patient again experienced chest pain in and around the heart area. The husband of the patient telephonically talked with O.P. No.1 about the pain of the patient, who advised to take the prescribed medicine regularly. However on 04.05.2018, the patient again felt severe pain in chest and uneasiness. O.P. No.1 told the husband of the patient that pain is due to surgery. O.P. No.1 advised to visit him after three months and this fact was also recorded on the prescription slip. On 30.05.2018, at night the patient again experienced severe chest pain and uneasiness, she was taken to Dr. Charanjit Singh at Malerkotla. He conducted ECG of the patient and found irregularities in the heart rhythm (Arrhythmias) and advised to contact O.P. No.1 immediately. On 31.05.2018, the patient was brought to O.P. No.1, who also conducted ECG and other tests. O.P. No.1 told the patient and her husband that everything is alright and advised to take medicine for five days and called the patient for check-up on 05/06/2018 for follow-up treatment.

7. The patient was not feeling well and also not satisfied with the advice of O.P. No.1. The family members of the patient decided to consult specialist for second opinion. On 02/06/2018, the patient was taken to O.P. No.3-Hospital and consulted Dr. Paramdeep Singh Sandhu, who after examination of the patient and seeing previous reports regarding the treatment at O.P. No.1-Hospital prescribed

certain medicines and told to come on 05/06/2018 for further tests. On 05/06/2018, patient again visited O.P. No.3-Hospital for tests advised by Dr. Sandhu. After examining the test reports of the tests conducted at O.P. No.3-hospital, he told the patient and her husband that there is 95% blockage in the same artery, which was operated at O.P. No.1-Hospital. Dr. Sandhu further told the patient and her husband that earlier stent is displaced, may be due to poor quality of stent, insertion of expired stent, insertion of stent negligently and carelessly. There may be life time complications to the health of the patient. Dr. Sandhu told the husband of the patient to show the brand and make of the stent and provide CD of the angiography. The husband of the patient informed Dr. Sandhu that barcode sticker and CD has not been supplied to them by O.P. No.1. Dr. Sandhu informed the patient and her husband that they have timely come to O.P. No.3-Hospital, otherwise precious life of the patient may have lost. The patient and her husband were shocked to know about the blockage in the same artery, which O.P. No.1 was stating that surgery is successful, the patient would enjoy normal life. The observations of Dr. Sandhu were to the effect that stenting done at O.P. No.1-Hospital was not proper and there is negligence on the part of doctor of the said hospital.

8. O.P. No.3 suggested that procedure is to be done again to remove the blockage in the artery. O.P. No.3 gave an estimate of ₹2,42,000/- for the surgery/procedure, which was to be done. The family of the patient decided for the same and the surgery was carried out by doctors of O.P. No.3-Hospital. The patient was discharged on

07/06/2018. The family of the patient paid ₹2,52,077/- as total expenses, which included expenses of operation and medicines etc. In addition to this, the patient also spent an amount of ₹1 lakh on follow-up treatment, special diet, care, medicines, other tests and travelling expenses. O.P. No.3 was requested by the husband of the patient to give in writing about the wrong treatment given by O.P. No.1, but he flatly refused to do so.

9. After discharge from O.P. No.3-Hospital, the husband of the patient approached Dr. Sandeep Goel of O.P. No.1-Hospital and demanded barcode, make/brand and expiry date of the stent and asked to supply CD of angiography. O.P. No. 1 did not accept the fault and also refused to provide the same. Alleging malafide intention, concealing the facts of still existence of blockage in the same artery despite check-up and treatment, the present complaint has been filed alleging deficiency in service, negligence and unfair trade practice on the part of O.P. No.1. The patient and her family had suffered a lot of mental tension, harassment, inconvenience and financial loss.

10. On the basis of above said facts, the patient has claimed following relief against O.P. No.1:

- a) to refund an amount of ₹1,14,500/- charged by O.P. No.1 for the treatment, along with interest at the rate of 12% per annum from the date of expenditure till payment.
- b) To pay an amount of ₹2,52,000 spent by the patient at O.P. No.3-Hospital and also pay ₹1 lakh for follow-up treatment, special diet, care, medicine, tests and travelling

expenses, along with interest at the rate of 12% per annum from the date of expenditure till payment.

- c) To pay ₹25 lakhs on account of compensation for causing mental tension, harassment and mental agony to the patient and for spoiling marital life of the patient and further causing mental agony for not conceiving child on account of wrong and negligent treatment.
- d) To pay ₹ 55,000 as cost of litigation.

### **Defence of the Opposite Parties**

11. Upon notice, O.Ps. No.1 & 3 appeared and filed separate replies to the complaint.

12. O.P. No.1, in its reply, raised preliminary objections that no cause of action has arisen to the patient to file this complaint. She has not approached this Commission with clean hands. This Commission has no jurisdiction to entertain and decide the present complaint. Reference to various judgments has been made in the reply. It is further pleaded that Dr. Sandeep Goel, who is M.D. (Medicine), D.M. (Cardiology) and well qualified and experienced doctor, is the Proprietor of Chandigarh Heart Centre, O.P. No.1. He is running the said hospital for the last three years and did all kinds of cardiac interventions therein. O.P. No.1-Centre is fully equipped with ventilator and other emergency monitoring and therapeutic instruments. Copies of his certificates are Ex.R-1/1 to Ex.R-1/3.

13. On 14/04/2018, the patient along with her husband approached the Centre, with complaint of uneasiness and pain in chest. After conducting various tests, Coronary Angiography and Coronary Angioplasty were carried out. The report, Ex.C-4, reads as under:

“Left Anterior Descending Artery: Proximal 95% Stenosis-mid  
Diagonal : Normal  
Diagnose : SVD  
Advice : PTCA+Stent to LAD”

14. It means there was blockage to the tune of 95% in proximal to mid region of left Anterior Descending Artery. The patient was advised the procedure of stent i.e. Percutaneous Transluminal Coronary Angiography (PTCA)+stent to LAD. Procedure and risks of Angioplasty (stent) were thoroughly explained to the patient and her husband and thereafter, they consented for the same. Her husband signed the consent form, Ex.R-1/4, on 14/04/2018 after carefully reading and understanding the same. Thereafter, O.P. No.1 conducted PTCA + Stent to LAD on the same day. The procedure (Coronary Angioplasty) was conducted and a medicated stent type “Endeavour Sprint 2.75 mm x 30 mm” make Medtronic was successfully inserted at the target vessel i.e. at the blockage. The procedure was successful and after the procedure, the flow of blood was good in all coronaries. The good working condition of heart is apparent from images of PTCA (Angioplasty) conducted as well as CD of said procedure. After carrying out routine check-up/process on 15/04/2018, some medicines were prescribed to the patient and she was discharged. At that time, all the reports, including CD and the box and wrapper of stent, were



handed over to her. Copy of the Coronary Angioplasty report dated 14/04/2018 is Ex.R-1/5. Copy of the CD, containing details of procedure along with certificate under Section 65-B of Indian Evidence Act, is Ex. R-1/6(colly.) The record maintained by O.P. No.1, detailing the particulars of the stent provided to the patient, is Ex.R-1/7. Thereafter, the patient visited O.P. No.1 on 21/04/2018 and 04/05/2018 for routine check-up and she was found asymptomatic and in good condition and medicines were prescribed accordingly. The patient has concealed this visit in the complaint, but the same is evident from medical record, Ex.C-2, in which date of visit (21/04/2018) has been mentioned. However, on 31/05/2018, the patient visited O.P. No.1 with the complaint of uneasiness and pain in chest. O.P. No.1 subsequently conducted certain tests and again carried out Coronary Angiography and Coronary Angiography report dated 31/05/2018, which reads as under:

<i>LEFT</i>	<i>ANTERIOR</i>	<i>Ostial 95% stenosis</i>
<i>DESCENDING</i>	<i>ARTERY</i>	<i>(Patent stent)</i>
<i>DIAGONAL</i>		<i>D1 Ostial 95% stenosis</i>
		<i>(small vessel)</i>
<i>DIAGNOSE</i>		<i>DVD</i>
<i>ADVICE</i>		<i>PTCA+STENT To</i>
		<i>LAD/CABG</i>

15. It means that another blockage had occurred to the tune of 95% in *Ostial* region of Left Anterior Descending Artery. Accordingly, the patient was advised the procedure of stenting (PTCA + Stent to LAD) or bypass surgery i.e. CABG (Coronary Artery Bypass Grafting). However, the patient and her husband left the hospital on 31.05.2018,

saying that they want to take a second opinion and never visited O.P. No.1 thereafter. The patient has also concealed about the subsequent angiography being conducted by O.P. No.1 on 31/05/2018, Ex.R-1/8. It is further pleaded that handmade diagram, Ex.R-1/9, shows blockage on 14/04/2018 and the procedure done on the same day against the said blockage as well as subsequent blockage at different point on 31/05/2018. From perusal of the diagram, it is clear that the blockage at Point 'B1' is the first-time blockage, which was diagnosed on 14/04/2018. Accordingly, the stent was successfully inserted from Point 'A1' to Point 'A2'. The second blockage as determined by the reports dated 31/05/2018 was at Point 'B2', which is though in the same artery, but at totally different place. Hence, no question of wrong stenting arises, as the two blockages are at two different positions. As per Angiography Reports, Ex.C-14, the stent inserted by O.P. No.3 is proximately shown to be at Point 'C1 to Point C2'. There is no evidence to show that the procedure carried out by O.P. No.1 was faulty or there was no need to do the same. It was a successful procedure and blockage, qua which O.P. No.3 performed the procedure, is subsequent blockage. No expert evidence has been brought on record to prove any negligence on the part of O.P. No.1. Even O.P. No.3 refused to give in writing about any negligent act of O.P. No.1, despite asking of the patient. O.P. No.3 never stated/demonstrated that the stent was displaced because of poor quality or inserting of expired stent or it was inserted negligently. The opinion of O.P. No.1, vide report dated 31/05/2018, was confirmed by

O.P. No.3, vide its report dated 05/06/2018. On merits, similar pleas, as raised in preliminary objections, were reiterated and denying all other allegations levelled in the complaint, dismissal thereof was prayed with exemplary costs.

16. O.P. No.3, in its reply, raised preliminary objections that there is no negligence or deficiency in service on its part, while treating the patient. In para-16 of the complaint, the patient has clearly averred that she is not claiming any relief against O.P. No.3. O.P. No.3 has been impleaded only due to the fact that the patient took treatment from it. From the medical history of the patient, after undergoing various investigation including ECG, Echocardiography, Angiography and Angioplasty at O.P. No.1-Centre, in Coronary Angiography report dated 14/04/2018, it is mentioned that the procedure performed under local anaesthesia left catheterization was done via right radial artery. Left heart study was not done. Selective coronary angiography was done via right radial artery using 5F OPTITORQUE catheter. The procedure was done under aseptic precaution. Procedure was uneventful. It is further mentioned in that report as under:

“Left Anterior Descending Artery(LAD)-Proximal 95% stenosis”

The advice given in the said report by O.P. No.1 was PTCA+STENT to LAD. Subsequently, as per Coronary Angioplasty report dated 14/04/2018, the procedure performed under anaesthesia at O.P. No.1-Centre, right heart catheterization was done via right femoral artery. Left coronary angioplasty was done via right femoral artery using 6F

EBU 3.5 catheter. The procedure was done under aseptic precautions. The procedure was uneventful. However, on 04/05/2018, the patient again felt severe pain in chest and uneasiness and she was taken to O.P. No.1. The concerned doctor at O.P. No.1 advised certain medicines for next three months and told that it was due to operation and would take time to subside. In the night of 30/05/2018, the patient again felt severe pain in her chest and was immediately taken to the hospital of Dr. Charanjit Singh at Malerkotla. As per the ECG, irregularities were found in the heart rhythm (Arrhythmias). On 02/06/2018, the patient was brought to O.P. No.3-Hospital and consulted Dr. Paramdeep Singh Sandhu, who after check-up and perusing previous reports regarding treatment of the patient advised to visit again on 05/06/2018 for further tests. After conducting tests, the concerned doctor of O.P. No.3 asked the relative of the patient that there is 95% blockage in the same artery of the patient, which was operated by O.P. No.1 and also told that immediate PTCA is required to save her life. Thereafter, the consent from the relatives of the patient was sought by O.P. No.3 at the time of admission and counselling of the patient and her husband was also done. The informed consent for PTCA was also obtained after conducting initial investigations, including ECG and Coronary Angiography. Thereafter, single vessel single stent was inserted through right femoral artery under Heparin and Tirofiban and the final result was 'successful PTCA+STENT to LM to LAD'. This procedure was performed by Dr. Paramdeep Singh Sandhu, who is a specialist in Cardiology. Perusal

of the reports of O.P. No.3 clearly shows that the CD of Angiography reflected blockage to the tune of 95% in Ostial LAD stenosis and accordingly PTCA + Stent to LM to LAD was performed. Thus, no act of negligence can be attributed to the O.P. No.3. The patient has not alleged any deficiency of service on the part of the O.P. No.3. Similar other facts qua treatment of patient at O.P. No.1 have been reiterated again and again. Reference to various case laws has been made. On merits, similar pleas, as raised in preliminary objections, have been reiterated. It is admitted that a bill of ₹2,52,077/- was raised for treatment of the patient at O.P. No.3, which has been duly paid by her. It has been prayed that the complaint against O.P. No.3 be dismissed.

17. Rejoinder has been filed, in which averments made in the complaint have been reiterated and that of reply filed by O.P. No.1 have been controverted.

**Evidence of the Parties:**

18. The patient, in support of her claim, filed her own self attested affidavit Ex.C-A, self attested affidavit of Sh. Gurbir Singh Grewal, Ex.C-B, along with copies of documents i.e. OPD slip dated 11/04/2018 of Dr. Charanjit Singh Ex.C-1, OPD slip of O.P. No.1-Centre dated 14/04/2018 Ex.C-2, tests report Ex.C-3, Coronary Angiography Report dated 14/04/2018 Ex.C-4, Coronary Angioplasty Report dated 14.04.2018 Ex.C-5, Echocardiography Report dated 14/04/2018 Ex.C-6, Discharge Summary dated 15.04.2018 Ex.C-7, Cash/Credit Memo dated 15.04.2018 Ex.C-8, OPD slip dated 04/05/2018 of O.P. No.1 Ex.C-9, OPD slip dated 30/05/2018 of Dr.

Charanjit Singh Ex.C-10, OPD slip dated 31/05/2018 of O.P. No.1 Ex.C-11, tests report dated 31/05/2018 Ex.C-12, ECG report Ex.C-13, medical record of O.P. No.3-Hospital Ex.C-14 (colly.) and inpatient bill Ex.C-15. The patient also filed copy of Coronary Angiography Report dated 31.05.2018 as Ex.C-16, along with rejoinder. O.P. No.1 also filed his additional affidavit to rebut/clarify newly pleaded facts and evidence by the complainant in rejoinder.

19. O.P. No.1, in support of its defence, filed affidavit of Dr. Sandeep Goel, along with copies of documents i.e. certificates Ex.R-1/1 to Ex.R-1/3, informed consent for Angioplasty Ex.R-1/4, Coronary Angioplasty Report dated 14/04/2018 Ex.R-1/5, original CD detailing the procedure Ex.R-1/6, record of O.P. No.1 qua particular of stent Ex.R-1/7, Coronary Angioplasty Report dated 31/05/2018 Ex.R-1/8, handmade diagram Ex.R-1/9 and medical literatures Ex.R-1/10 (colly.).

20. O.P. No.3, in support of its defence, filed affidavit of Dr. Paramdeep Singh Sandhu, along with copies of documents i.e. medical record of O.P. No.1 and original CD Ex.RW-3/A to Ex.RW-3/I and other medical record of O.P. No.1 Ex.RW-3/J (colly.). O.P. No.3 also filed certificate u/s 65 of Indian Evidence Act regarding original CD Ex.RW-3/B, by way of additional evidence.

21. The patient filed applications for serving interrogatories to Dr. Sandeep Goel, Proprietor of O.P. No.1-Centre and Dr. Paramdeep Singh Sandhu, of Fortis Hospital, O.P. No.2, by way of M.A. No.1005 and 1006 of 2019, which were allowed. Dr. Sandeep Goel and Dr.

Paramdeep Singh Sandhu filed their respective replies to the interrogatories submitted by the patient. Dr. Sandeep Goel also filed additional medical literature Ex.R-1/11, along with his reply to interrogatories.

**Contentions of the Parties**

22. We have heard learned counsel for the parties and have also perused the written arguments submitted on their behalf as well as record.

23. The written arguments submitted on behalf of the complainant/patient are on the lines of averments made in the complaint. The sum and substance of oral and written arguments is that O.P. No.1 inserted the stent at the wrong place in the artery and issued Coronary Angiography Report dated 14.04.2018, Ex.C-5, wrongly declaring that there was good flow in all coronaries. After the surgery, the patient again suffered same problem and when she consulted O.P. No.1, it issued false report dated 31.05.2018, Ex.C-16, showing diagnosis as Single Vessel Disease (SVD) and advised medical management. However, the patient approached Fortis Hospital, where after examination, blockage in same artery, which was operated by O.P. No.1, was found. On the advice of doctors of Fortis Hospital, immediate surgery of the patient was performed and stent was inserted by Dr. Paramdeep Singh Sandhu, in order to save her life. On the other hand, O.P. No.1, in order to save his fault, concealed the said fact and prepared the false report. The alleged report dated 31.05.2018, Ex.R-1/8, showing diagnosis of Double Vessel Disease

(DVD) and advising PTCA+Stent to LAD/CABG, was never supplied to the patient. The Coronary Angiography Report dated 31.05.2018, Ex.C-16, which was supplied to her, shows normal condition of artery, whereas the alleged report Ex.R-1/8 shows critical condition. Two different reports of similar test are not possible. When the report, Ex.C-16, came on record, O.P. took u-turn, saying that the said report only relates to reanalysis of the procedure being conducted on 14/04/2018. The report Ex.C-16 pertains to the check-up done on 31/05/2018. Even the skiagram Ex.R-1/8 and Ex.C-16 are of same date i.e. 31.05.2018 and skiagram pertains to No.1086/2018. Cleverly, O.P. No.1 has created new patient ID as 1086B in the said report. Thus, O.P. No.1 has committed wilful and intentional forgery and fabrication in the medical record, in order to save his skin. It has been further contended that in answer to interrogatories, O.P. No.1 specifically stated that there was 95% blockage in the same artery, specifically at OSTIL LAD, which was operated by O.P. No.1 and also told that immediate PTCA was required. O.P. No.1 also failed to supply the details regarding dates of manufacturing and expiry of the stent etc., allegedly inserted by him. Although, one sticker, Ex.R-1/7, has been produced, but there are no details on it. Even in reply to Questions No.33, 38 and 39 of interrogatories, O.P. No.1 gave vague replies in this regard. It has been further contended that O.P. No.1 was not competent to perform the surgery and was not having requisite enrolment as per Medical Association of India. Even there is no evidence to show that O.P. No.1 is enrolled under Punjab Medical



Council. As per medical literature produced by O.P. No.1, a physician undergoes a three years comprehensive cardiac training programme with 12 months of training in diagnostic catheterization, in which a trainee performs 300 diagnostic catheterizations including 200 as primary operators. Interventional training requires a 4<sup>th</sup> year of training, including more than 250 interventional procedures. However, O.P. No.1 failed to produce any evidence to show such expertise of performing surgery. O.P. No.1 cooked up the false story with regard to the new blockage at ostial region of LAD and produced false report in that regard. The medical negligence and deficiency in service on the part of O.P. No.1 has been clearly proved on record and, hence, the patient is entitled to all the reliefs, as claimed in the complaint.

24. The written arguments submitted on behalf of O.P. No.1 are on the lines of pleadings of its reply. The sum and substance of the oral and written arguments is that as per Coronary Angiography report dated 14/04/2018, there was 95% blockage in proximal to mid region of Left Anterior Descending Artery (LAD). Accordingly, after obtaining proper consent of the patient and her husband, Coronary Angioplasty was performed on 14/04/2018 and a stent was inserted successfully. After surgery, the flow of blood in all the arteries was satisfactory. Even on the visit of the patient on 31.05.2018, the status of previous stent inserted on 14.04.2018 was found to be normal, as per report, Ex.C-16, filed along with rejoinder, which was earlier concealed by the patient. However, on further investigation, another blockage was found to the tune of 95%, for which surgery was advised, but the patient and

her husband left the hospital for taking a second opinion and never visited O.P. No.1 thereafter. The handmade diagram, Ex.R-1/9, proves that during surgery of the patient, the stent was properly inserted at right place. The second blockage has no relation with the previous surgery carried out by O.P. No.1. Onus to prove any negligence of O.P. No.1 is upon the patient. However, no expert evidence has been led by the patient to prove her case. O.P. No.1 cannot be held liable for subsequent blockage, which never existed at the time of first surgery conducted on 14.04.2018. There is no merit in the complaint and the same deserves to be dismissed. In support of his contentions learned counsel for O.P. No.1 has relied upon following cases:

- i) ***S.P. Changalvaraya Naidu (dead) by LRs. v. Jagannath (dead) by LRs.*** 1994 (1) SCC-1(SC);
- ii) ***Lazarus Estates Ltd. v. Beasley*** 1956(2) WLR 502 (Court of Appeal);
- iii) ***C.P. Sreekumar, M.S. (Ortho) v. S. Ramanujam*** 2009 (2) CPC 596(SC);
- iv) ***Jacob Mathew v. State of Punjab*** 2005 (2) CPC 515 (SC);
- v) ***Sujata Nath v. Popular Nursing Home &Ors.*** 2011 (4) CLT 414 (NC);
- vi) ***Ramesh Kumar Sihan Hans @ Ramesh Kumar v. Goyal Eye Institute &Ors.*** 2012 (2) CPJ 676 (NC);
- vii) ***Kusum Sharma & Ors. v. Batra Hospital & Medical Research Centre & Ors.*** 2010 (1) CPC 460 (SC);
- viii) ***Indira Kartha & Ors. v. Dr. Mathew Samuel Kalarickal & Anr.*** 2006 (1) CPJ 62 (NC);
- ix) ***Chief Medical Officer & Anr. v. Ramesh Chand Sharma*** 2015 (2) CPJ 295 (NC);

- x) ***Bharat Ahuja v. M/s Metro Heart Institute &Ors.*** 2016 (1) CPR 9 (NC);
- xi) ***Sarla Arora & Ors. v. Fortis Health Care Limited &Anr.*** 2011(2) CLT 394 (This Commission); and
- xii) ***Jagdish Chander v. Fortis Heart Institute & Ors.*** 2008 (1) CPJ 246 (Chandigarh State Consumer Commission).

25. Similarly, the written arguments submitted on behalf of O.P. No.3 are on the lines of pleadings of its reply. The sum and substance of the oral and written arguments is that the patient has not claimed any relief against O.P. No.3, nor there is any medical negligence or deficiency in service on its part while treating the patient. After the surgery carried out by O.P. No.1, the patient again felt severe chest pain and report of ECG showed irregularities in the heart rhythms (Arrhythmias). The patient came to O.P. No.3 for the first time on 02.06.2018, where Dr. Paramdeep Singh Sandhu, after checking her and perusing previous medical reports and conducting fresh investigations, opined that immediate surgery was required. After taking proper consent of the relatives and husband of the patient, single vessel single stent was inserted through right femoral artery under Heparin and Tirofiban and final result was successful PTCA+Stent to LM to LAD. The PTCA report, along with quality of stent, reflecting its manufacturing and expiry date, is evident from Ex.RW-3/G to Ex.RW-3/H. The procedure was successfully performed by Dr. Paramdeep Singh Sandhu, who is specialist in Cardiology. The complaint against O.P. No.3 is liable to be dismissed. In support of his

contentions, learned counsel for O.P. No.3 has relied upon following cases:

- i) ***S.P. Chengalvaraya Naidu (dead) by LRs. v. Jagannath (dead) by LRs.*** 1994 (1) SCC-1(SC);
- ii) ***C.V.S.R. Prasad v. Vasudha Nursing Home and Anr.*** IV (2007) CPJ 58 (NC);
- iii) ***Dr. C.P. Sreekumar, M.S. (Ortho) v. S. Ramanujam*** 2009 (2) CPC 596(SC);
- iv) ***Kusum Sharma & Ors. v. Batra Hospital & Medical Research Centre & Ors.*** 2010 (1) CPC 460 (SC); and
- v) ***Baburao Satappa Irrannanavar v. Kle Society's Hospital*** 4 (2006) CPJ 71 (NC).

**Consideration of Contentions:**

26. We have given our thoughtful consideration to the respective contentions raised by the learned counsel for the parties.

27. Before, we go into the merits of the case, it would be appropriate to understand about the Coronary Artery Disease (in short called as 'CAD'). CAD is a serious condition caused by a build-up of plaque in the coronary arteries, the blood vessels that bring oxygen-rich blood to heart. Initially, arteries are smooth and elastic. But when plaque builds up on their inner walls, it can make them stiff and narrow. It slows blood flow to heart muscles, so it does not get the oxygen it needs. The plaque may also break off, leading to a heart attack or sudden cardiac death. The most common symptom of CAD is typical chest pain. Coronary arteries supply blood to the heart muscle. The heart muscle needs oxygen rich blood to function. The coronary arteries wrap around the outside of the

heart and small branches dive into the heart muscle to bring it blood. The left ventricle pumps blood into main artery known as the aorta. Near to the heart aorta branch off into two main coronary arteries. The two main coronary arteries are left main coronary Artery and right coronary Artery. Left main coronary artery (LMCA or LM) supplies blood to the left side of the heart muscle (the left ventricle and left atrium). The left main coronary divides into branches:

Left anterior descending artery (LAD) branches off into:

- i) The left coronary artery and supplies blood to the front of the left side of the heart.
- ii) The circumflex artery branches off the left coronary artery and encircles the heart muscle. This artery supplies blood to the outer side and back of the heart.

Right coronary artery (RCA): The right coronary artery supplies blood to the right ventricle, the right atrium, and the SA (sinoatrial) and AV (atrioventricular) nodes, which regulate the heart rhythm. The right coronary artery divides into smaller branches, including the right posterior descending artery and the acute marginal artery. Together with the left anterior descending artery, the right coronary artery helps supply the middle or septum of the heart.

“There are also smaller branches of the coronary arteries that include: obtuse marginal (OM), septal perforator (SP) and diagonals.”

28. The present case is of left main coronary artery stenosis, in which left main coronary artery is normal and left anterior descending artery is affected: proximal 95% stenosis SVD (single vessel disease) was diagnosed by O.P. No. 1, vide Coronary Angiography report Ex.C-4 dated 14.04.2018 and Coronary Angioplasty report dated 14.04.2018, Ex.C-5, which read as under:

“Ex C-4:

“Coronary Angiography Report”

Name: Kamalpreet Grewal Age: 60/Female

Cath No. 1086/2018 Date: 14/04/2018

Procedure: Coronary Angiography

**Procedure Performed:** Under local anaesthesia left catheterisation was done via right radial artery. Left heart study was not done. Selected coronary angiography was done via right radial artery under 5F OPTITORQUE catheter. The procedure was done under aseptic precaution. The procedure was uneventful.

Left main coronary artery	:	Normal
Left anterior descending artery	:	Proximal 95% stenosis
Diagonal	:	Normal
Left circumflex artery	:	Normal
O M	:	Normal
Right coronary artery	:	Normal
Diagnose	:	SVD
Advise	:	PTCA + Stent to LAD”

Ex C-5:

“Coronary Angioplasty Report”

Name: Kamalpreet Grewal Age: 60/Female

Cath No. 1086/2018 Date: 14/04/2018

Procedure: Coronary Angioplasty

**Procedure Performed:** Under local anaesthesia right heart catheterisation was done via right femoral artery. Left coronary angioplasty was done via right Femoral artery using 6F EBU 3.5 catheter. The procedure was done under aseptic precaution. The procedure was uneventful.

Diagnose : PTCA + Stent to LAD

Guiding Catheter	6F EBU 3.5	
PTCA Wire	0.014*190cm Wishper ES	01
Balloon	2.0x10mm	14atm
Stent	2.75x30mm(endeavor sprint)	12atm

**Result: Good Flow all Coronaries.”**

29. The reading of above two reports refers to medical terms Angiography and Angioplasty. Angiography and Angioplasty are two different medical procedures that are related to the blood vessels. While angiography is used to investigate or examine blood vessels for a potential heart condition, Angioplasty involves widening the narrowed arteries to treat the condition. Both are defined as under:

**Angiography:** The process of examining arterial blood vessels to check for blockages in blood circulation is called Angiography. The images or readings resulting from this process are called an angiogram. During Angiography, a special dye called a ‘contrast medium’ is injected through a fine tube or catheter into the artery of the groin or arm. This highlights any potential problems in the blood vessels, and X-rays are immediately taken to determine a further course of action by the cardiologist.

**Angioplasty:** In the event of a blockage in the artery(ies), the cardiologist may suggest an Angioplasty procedure in order to avoid major surgery. The catheter or tiny tube is inserted through the arterial blockage. A special balloon on the catheter is inflated at the site using water pressure that

is higher than the blood pressure, thus relieving the blockage and allowing more blood to flow through. The balloon is then deflated and withdrawn. This is commonly known as balloon angioplasty.

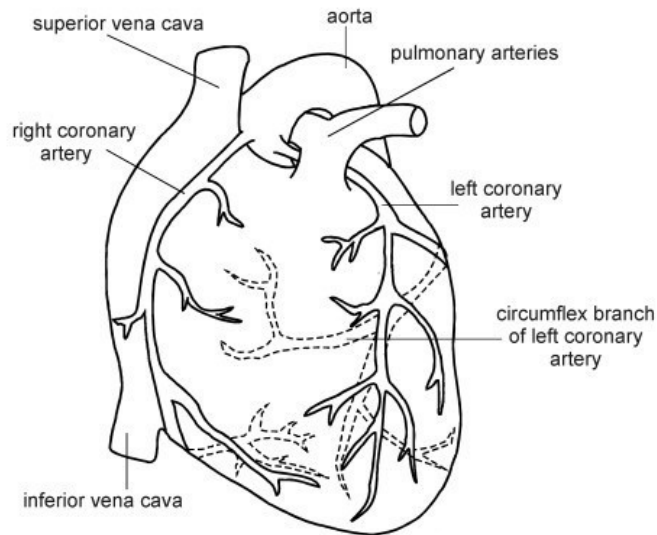
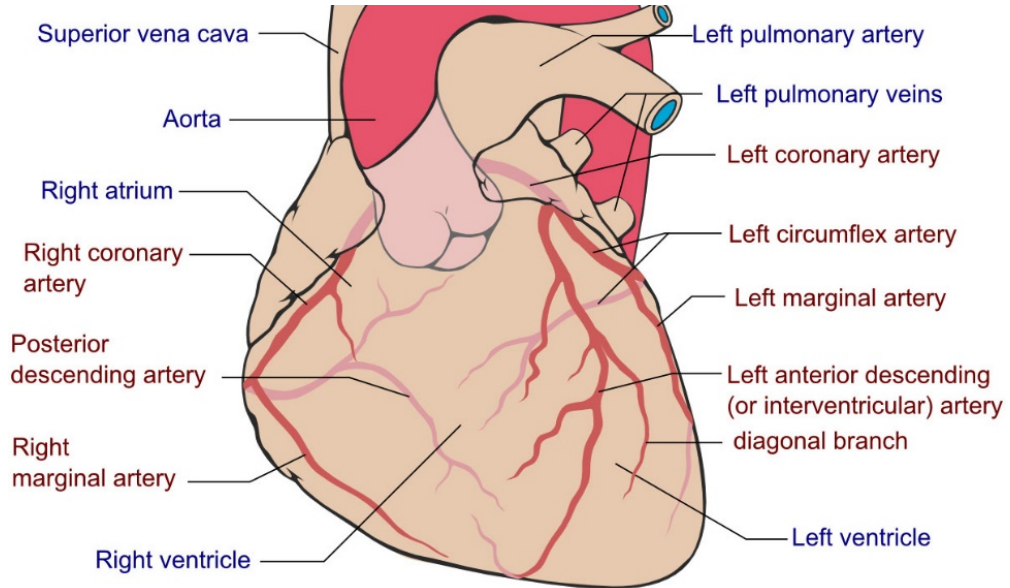
If patient suffers from multiple arterial blockages or have other health conditions such as diabetes, he may be advised to go for a coronary artery bypass surgery (CAGB), where a blood vessel from another part of body is used to bypass the blocked site of the patient artery. There is a wide variety of vascular conduits available for CABG. The most commonly used are: The Left internal thoracic artery (LITA) also known as The Left Internal Mammary Artery (LIMA), saphenous vein (SV), radial artery (RA), right gastroepiploic artery (RGEA), and occasionally ulnar artery (UA), splenic artery, and inferior epigastric artery. Such diversity of options has caused controversy and a consensus regarding which one is superior has not been fully established. The Left Internal Mammary Artery (**LIMA**), also known as the Left Internal Thoracic Artery (LITA), has been the gold standard conduit of choice for coronary artery bypass grafting (CABG) for several decades.

30. In prescription slip Ex. C-2 dated 14/04/2018 at 5.25 P.M., O. P. No. 1 advised PTCA + stent to LAD. It is apposite to mention that CABG was also written, but, thereafter, scored out. As per Ex. C-4 and

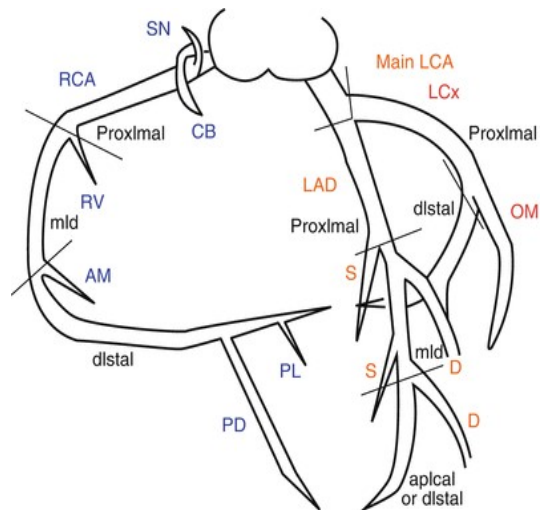
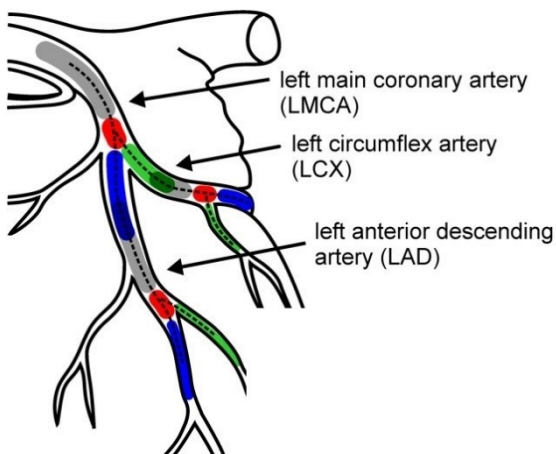


C-5, coronary angiography and angioplasty were done respectively. Ex.C-5 revealed good flow in all coronaries. Even Echocardiography Report Ex.C-6 of the even date showed everything normal. It is mentioned patient needs stenting to LAD. It would be appropriate to mention that for several decades, coronary artery bypass grafting (CABG) has been considered as the gold standard treatment of unprotected left main coronary artery (LMCA) disease. There is a marked improvement in technique and technology, which has made in percutaneous coronary intervention (PCI) feasible for patients with unprotected LMCA stenosis. Recently drug-eluting stents (DESs) together with advances in periprocedural and post-procedural adjunctive pharmacotherapies, has improved outcome of PCI of these lesions. Patient selection for both the techniques directly impacts the clinical outcome. Despite improvement in stent technology and operator experience, management can be challenging especially in LMCA bifurcation lesions and, therefore, an integrated approach combining advanced devices, tailored techniques, adjunctive support of physiological evaluation and adjunctive pharmacological agents should be reinforced to improve the clinical outcome.

31. It would be appropriate to mention that the diagrams of heart and arteries and location of blockage are referred as proximal means nearer to the point of attachment, ostial means a mouth like opening in blood vessel or that point projected on to the main vessel centreline path and distal means away from the point of attachment. To understand, the diagrams of heart and coronary arteries are as under:



**THE HEART AND CORONARY ARTERIES**



- = Proximal Vessel (PV)
- = Distal Vessel (DV)
- = Side Branch (SB)
- = Ostium (OS)
- - - = centerlines and bifurcation angles

The left main coronary artery (LMCA) also called Left Main Artery (LM) is a short vessel that branches into the left anterior descending artery, which supplies blood to the front (anterior wall) and part of the side (anterolateral wall) of the left ventricle, to the top of the left ventricle, and to most of the wall between the ventricles (interventricular septum). The LCA supplies 75% of the left ventricle (LV) cardiac mass in patient with the right dominant type and 100% in the case of left dominant type. Resultantly, severe LCA disease would reduce flow to large portion of myocardium, placing the patient at high risk for life threatening LV dysfunction and arrhythmias. It is anatomically divided into three regions: the ostium, the mid shaft and distal portion.

32. Now coming to the merits of the case, it is admitted that complainant/patient was referred by Dr. Charanjit Singh to O.P. No. 1, who visited on 14/04/2018 with a complaint of typical chest pain. O.P. No. 1, after conducting various tests, such as coronary angiography and other lab. Investigations, diagnosed the disease as SVD of left anterior descending artery: Proximal 95% stenosis, vide Ex.C-4. Thereafter, he performed coronary angioplasty and thereafter concluded that there is a good flow in all coronaries (Ex.C-5). Even Echocardiography, Ex.C-6, was done to examine the status of the heart and valves and found “no RWMA, normal LV systolic function, grade 2 diastolic dysfunction, mild AR, Aortic wall thickened. Remarks: Medical management.” The patient was discharged, vide Ex.C-7 on 15/04/2018 and O.P. No.1 charged ₹1,14,500/-, vide Cash/Credit

Memo of same date Ex. C-8. The prescription slip Ex.C-2 reveals that patient visited again on 21/04/2018 and was found asymptomatic and she also visited on 04/05/2018 as per Ex.C-2 and was prescribed medicine for 20 days. The prescription slip Ex. C-9 dated 04/05/2018 further reveals that patient visited on 18/05/2018 and the patient was feeling pain and other issues and visited Dr. Charanjit Singh of Malerkotla on 30/05/2018 (Ex.C-10), who gave some medicines and advised review by cardiologist. On 31/05/2018, patient visited O. P. No. 1 and was prescribed three-months' medicine, vide Ex.C-9. There are two entries of 31/05/2018 one on Ex.C-9 and another on Ex.C-11. On Ex.C-11, nothing was diagnosed, at the beginning of the prescription slip, it is written: PT is.....". It means nothing was diagnosed on 31/05/2018 by O.P. No.1 and some lab. tests and medicines were suggested.

33. Feeling dissatisfied with the treatment of O.P. No. 1, the patient along with her family members visited Fortis Hospital O.P. No.3 on 02/06/2018 and consulted Dr. Paramdeep Singh Sandhu, who diagnosed angina class-II and suggested stenting of the same artery. The patient was admitted on 05/06/2018, consent was taken and surgery was performed on 05/06/2018 and the doctor found chronic stable angina class-III, Ostial LAD 95% stenosis at page 44 of paper-book, as detailed in prescription slip Ex.C-14 (colly.) and the patient was discharged on 07/06/2018, vide Discharge Summary, which states "Procedure: PTCA and stenting to LM to LAD. Course in the Hospital: Patient presented with above-mentioned complaints, CAG

done revealed LAD ostial 95% stenosis. PTCA & Stenting to LM to LAD was done. Post-procedure her stay in the hospital remained uneventful. She is being discharged in a stable condition.” The patient paid ₹2,52,077/- vide Inpatient Bill, Ex.C-15 to OP No.3-Fortis hospital.

34. It is an admitted case of the parties that Dr. Charanjit Singh of Malerkotla on 30/05/2018, vide Ex.C-10, had referred the patient to the cardiologist O.P. No.1 for review as he had performed the angioplasty of the proximal portion of LAD and had deployed stent at the lesion site fully covering the lesion i.e. proximal location. The patient after the angiography and angioplasty did not get any relief and experienced same pain. The patient consulted the O.P. No.1 telephonically and also visited personally on 21/04/2018 and 04/05/2018, as is evident from Ex.C-9, when the medicines for three months were prescribed. The patient again visited on 18/05/2018 and 31/05/2018. The patient had undergone procedure on 14/04/2018 and was discharged on 15/04/2018. In spite of complaints of having the same problem, no proper treatment was given, rather medicine was prescribed for three months. On 31/05/2018 also, O.P. No.1 did not satisfy the patient about the complaint of chest pain and other symptoms. The family of the patient after feeling dissatisfied opted for a second opinion and visited O.P. No.3, who found ostial LAD 95% blocked and suggested for surgery. PTCA report dated 05/06/2018 conducted at the instance of O.P. No.3 at page 44 of the paper book, specifically mentions recent ACS (acute coronary syndrome), post-PCI to LAD, chronic stable angina class-III, ostial LAD 95% stenosis. The surgery known

as PTCA + Stent to LM to LAD was performed on 05/06/2018 and the patient was discharged on 07/06/2018 from O.P. No.3-Hospital, vide Discharge Summary at Pages 45-46. ACS event occurs, when one or more of the arteries, supplying the heart with oxygen rich blood to coronary arteries, become blocked. The perusal of the medical record of O.P. No.1 and O.P. No.3 reveals that O.P. No.1 discharged the patient with blockage of LAD ostial 95% undiagnosed or intentionally. In the report, Ex C-4, word "mid" has been handwritten. It means that the blockage was at ostial point at that point of time. The case of O.P. No.1 is that on 31/05/2018, subsequently check angiography report revealed stenting at point A-1 to A-2 and second blockage at point C-1 to C-2 was noticed. But this fact is not mentioned by O.P. No.1 in the prescription slip on 31/05/2018. In the second report Ex.R-1/8, diagnosis of disease is DVD (double vessel disease) has been mentioned. In fact, no fresh angiography appears to have been performed, rather it was manipulated and in the report Cath No. 1086B/2018 has been mentioned. The angiogram attached with it has the Cath No. 1086/2018. The same number was mentioned in the earlier report. It is the categorical case of the complainant that said report was never supplied to her, nor any angiography was performed. This fact is further strengthened from Para No.4 (iii) of preliminary objection of reply of O.P. No.3 dated 01/04/2019 that "The O.P No.1 supplied the Coronary Angiography and Angioplasty Report, Echocardiography Report and medical tests reports only". Otherwise also, once the procedure for LAD proximal has been performed, then

the disease cannot be stated as DVD, because after stenting of the proximal LAD, blockage at ostial location shall be called as SVD (single vessel disease). Even Dr. Sandhu has not written in PTCA Report at Page-44 as DVD. He in his notes has written as CAG LAD ostial 95%. Thus, report Ex.R-1/8 has been subsequently prepared and is a fabricated document, as no reference of the same is made in the prescription slip of 31/05/2018. So, it cannot be accepted as check angiography. If check angiography would have been performed on the earlier occasions, when the patient visited the O.P. No.1 on 21/04/2018, 04/05/2018 and 18/05/2018, when medicine for three months was prescribed, it would have been mentioned there. On 31/05/2018, when the patient visited O.P. No.1, they felt dissatisfied with the treatment and opted for second opinion and visited O.P. No.3 on 02/06/2018. Even the prescription slip Ex.C-11 dated 31/05/2018 at 1.35 P.M. reveals that no diagnosis was made. In earlier prescription slips, the patient has been described asymptomatic. Even the complain of pain or other symptoms narrated by the patient were not recorded on the prescription slips. Dr. Sandhu found 95% ostial blockage in LAD. Coronary Artery Disease progresses over the years. It cannot occur within few days. No patient will conceal her reports from the other doctor, when she goes for second opinion and is aware that her life is at risk. It is common that the doctor many a time does not supply complete records to conceal his deficiency. This has happened in this case.

35. Careful imaging is required to be performed to ensure adequate visualization of arteries and possible blockages at various locations like proximal, ostial and distal. Usually, antero-posterior cranial or slightly left antero/cranial projection gives best view. The guide catheter in the present case may be occlusive with severe stenosis. Dr. Sandhu has pointed out in his report that patient was suffering from chronic stable angina class-III of ostial LAD 95% stenosis. Such a blockage cannot occur within few days. Dr. Sandeep was negligent and failed to recognise that patient was suffering from chronic stable angina even after deploy of stent in the proximal part of LAD on 14/04/2018. It was a life risk situation and leads to cardiac arrhythmia due to insufficient blood supply to heart as a result of coronary artery blockage. In view of the chest pain and other symptoms of the patient coupled with advice of Dr. Charanjit Singh for review by cardiologist, specific precaution and investigation should have been carried out by Dr. Sandeep Goel, O.P. No.1. Thus, he breached the standard of care in failing to diagnose the chronic stable angina class-III in the LAD ostial 95% blockage. Thus, negligence at issue in this case is failure to diagnose and treat severe coronary artery disease and thus breached the standard of care prescribed for cardiologist in diagnosis and treatment of the patient, who presents with symptoms of chest pain even after deploy of stent. Otherwise, it is a life threatening issue.

36. It would be appropriate to discuss about the interrogatories served by the complainant on O.Ps. No.1 & 3 and their reply to the interrogatories. The complainant has served 75 interrogatories on O.P.



No.1 and 11 interrogatories to O.P. No.3. However, we deem it appropriate to refer only the relevant interrogatories and the replies of O.Ps. No.1 & 3 to the interrogatories. In reply by O.P. No.1 to the interrogatory No.22 of the complainant, O.P. No.1 denies the same and states that re-stenosis is possible and the same was explained to the patient and her husband before angioplasty and the same is also mentioned in the consent form, which the complainant's husband had duly signed and to support the same, has relied upon various medical literature which have been annexed with the written arguments. We have examined the medical literature referred during the course of arguments. The medical literature referred by O.P. No.1 referred to the stent thrombosis and re-stenosis of the stent. Stent thrombosis is defined as thrombotic occlusion of coronary stent. It means where stent is placed, that place can also re-stenosis, but here is a case where O.P. No.1 has failed to explain about the occlusion at ostial 95% blockage in LAD i.e. the same artery, where O.P. No.1 had deployed stent at proximal position on 14/04/2018. Hence, the medical literature referred is of no help, as it only refers to the early re-stenosis after deployment of DES drug eluting stent implantation. Furthermore, O.P. No.1 in his arguments has referred to the reply to the interrogatory No.3 of the complainant by O.P. No.3, wherein he has stated that the said conclusion was on the basis of CD brought by her on 05/06/2018 and the angiography conducted on the patient on 05/06/2018. This appears to be an afterthought on behalf of O.P. No.3 just to support O.P. No.1, because in his reply dated 01/04/2019 to the

complaint, it is nowhere mentioned that CD prepared by O.P. No.1 was ever supplied to O.P. No.3. Otherwise also, the reply is vague. It does not specifically mention that the CD of angiography prepared by O.P. No.1 indicated 95% blockage at ostial location of the same artery. Thus, O.P. No.1 cannot get any benefit from this reply. Rather, O.P. No.3 has strengthened the case of the complainant, when he specifically states in his reply that 95% ostial blockage was in the same artery, which was operated by O.P. No.1. Instead of admitting his fault and informing the complainant/patient and her husband about the blockage at ostial location to conceal his deficiency, O.P. No.1 started creating forged and fabricated documents, such as alleged check angiography, which has been held to be a manipulated medical record in the foregoing paragraph. So, O.P. No.1 has not come with clean hands to this Commission, while narrating his case. There are no clear OT notes on the prescription slip or the procedure performed.

37. Ld. counsel for the complainant has argued that O.P. No.3 had told the patient and her husband that the stents, which O.P. No.1 has used, were also of sub-standard quality and may have been of expired date. O.P. No.1 has placed on record register Ex.R-1/7 maintained by the hospital, wherein a stent sticker has been annexed. The barcode of the stent has not been pasted there, whereas in the case of one Kaushalya Devi, the barcode of the stent has been affixed. On the sticker pasted against the patient, no date of manufacturing, no date of expiry of the stent has been mentioned. Even O.P. No.1 has failed to place on record purchase bill of the said stent as evidence to

substantiate his claim. The O.P. No.1 was specifically pointed out that O.P. No.3 has placed on record the stent sticker as Ex.R-3/H at Pages 167-168 of the paperbook, which has manufacturing and expiry date etc. but the same are missing in the case of O.P. No.1 and he failed to explain the same.

38. Even the consent form, Ex.R-1/4, at Page-103 of the paperbook is unsigned and blank. Rather, it is a typed proforma, on which the signatures of husband of the patient were obtained. It is the categorical case of the complainant that O.P. No.1 never explained the consequences of the procedure. Hence, inference cannot be drawn that patient and her attendants were explained about the consequences and risks of the surgery.

39. We are of the view that O.P. No.1 failed to treat and diagnose of severe disease, which often has severe consequences for the patient. The failure to detect and diagnose such a cardiac condition lead to massive damage to patient in terms of medical expenses, pain, suffering and risk to life. If the typical chest pain is not evaluated carefully and misdiagnosed, it can even kill a patient. Thus, Dr. Sandeep Goel fell below the standard of care to diagnose the chronic stable angina of higher grade and even did not disclose when patient visited him on 31/05/2018. Thus, he violated the applicable standard of care prescribed for the cardiologist, which was very necessary and, therefore, negligent.

40. Thus, keeping in view the above discussion and the evidence on record, preponderance of probability and inferences, we hold that

the complainant has been able to prove her case of deficiency in service and medical negligence against O.P. No.1. It is true that medical negligence cases do sometimes involve questions of factual complexity and difficulty and may require the evaluation of technical and conflicting evidence. However, in the present case, the complainant has been able to discharge the onus of proving on a balance of probabilities, the medical negligence and deficiency in service averred against O.P. No.1. Thus, it stands clearly proved that O.P. No.1 was grossly negligent while performing surgery of the complainant; as a result of which the complainant has to undergo second surgery and resultantly suffered more hospitalization and medical expenses. The authorities relied upon by the learned counsel for O.P. No.1 are distinguishable and are not applicable to the facts and circumstances of the present case.

41. So far as the complaint against O.P. No.3-Fortis Hospital is concerned, no specific allegation has been levelled nor any relief has been sought by the complainant against it. O.P. No.3 has been impleaded just for the sake of proving that the same artery of the complainant was operated second time, which was earlier mis-operated by O.P. No.1. Therefore, the complaint against O.P. No.3 is liable to be dismissed.

**Quantum of Compensation**

42. Now, coming to the quantum of compensation to be awarded in favour of the complainant, on account of deficiency in service and medical negligence on the part of O.P. No.1.

43. Human life is most precious. It is extremely difficult to decide on the quantum of compensation in the medical negligence cases, as the quantum is highly subjective in nature. Different methods are applied to determine compensation.

44. Hon'ble National Commission in **Dr. (Mrs.) Indu Sharma (supra)**, observed in Paras No.53, 59 & 60 as follows:

*"53. A decision in the case of **Spring Meadows Hospital & Anr. v. Harjol Ahluwalia through K.S. Ahluwalia & Anr** reported in (1998) 4 SCC 39. Their Lordships observed as follows:*

*" Very often in a claim for compensation arising out of medical negligence a plea is taken that it is a case of bona fide mistake which under certain circumstances may be excusable, but a mistake which would tantamount to negligence cannot be pardoned. In the former case a court can accept that ordinary human fallibility precludes the liability while in the latter the conduct of the defendant is considered to have gone beyond the bounds of what is expected of the skill of a reasonably competent doctor."*

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*59. Nizam Institute Case- 2009 Indlaw SC 1047:*

*In the Nizam Institute case 13, the Supreme Court did not apply the multiplier method. In 1990, twenty-year old Prasant S. Dhananka, a student of engineering, was operated upon at the Nizam Institute of Medical Sciences, Hyderabad. Due to medical negligence of the hospital, Prasant was completely paralysed. Compensation was claimed, and the matter finally reached the Supreme Court. The court did not apply the multiplier method and awarded a compensation of Rs. 1 crore plus interest. The court observed:*

*"Mr. Tandale, the learned counsel for the respondent has, further, submitted that the proper method for determining compensation would be the multiplier method. We find absolutely no merit in this plea. The kind of damage that the complainant has suffered, the expenditure that he has incurred and is likely to incur in the future and the possibility that his rise in his chosen field would now be restricted, are matters which cannot be taken care of under the multiplier method."*

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60. *Kunal Saha's Case (2014) 1 SCC 384 :*

*The Supreme Court rejected the multiplier method in this case and provided an illustration to show how useless the method can be for medical negligence cases. Hon'ble Justice Mr.V.Gopala Gowda opined that;:*

*"The multiplier method was provided for convenience and speedy disposal of no fault motor accident cases. Therefore, obviously, a "no fault" motor vehicle accident should not be compared with the case of death from medical negligence under any condition. The aforesaid approach in adopting the multiplier method to determine the just compensation would be damaging for society for the reason that the rules for using the multiplier method to the notional income of only Rs.15,000/- per year would be taken as a multiplicand. In case, the victim has no income then a multiplier of 18 is the highest multiplier used under the provision of Ss. 163 A of the Motor Vehicles Act read with the Second Schedule.... Therefore, if a child, housewife or other non-working person fall victim to reckless medical treatment by wayward doctors, the maximum pecuniary damages that the unfortunate victim may collect would be only Rs.1.8 lakh. It is stated in view of the aforesaid reasons that in today's India, Hospitals, Nursing Homes and doctors make lakhs and crores of rupees on a regular basis. Under such scenario, allowing the multiplier method to be used to determine compensation in medical negligence cases would not have any deterrent effect on them for their medical negligence but in contrast, this would encourage more incidents of medical negligence in India bringing even greater danger for the society at large."*

45. Further, on the question of determination for the loss or injury suffered by a consumer on account of deficiency in service, the following observations by a three Judge Bench of the Hon'ble Supreme Court in ***Charan Singh v. Healing Touch Hospital & Ors.*** (2000) 7 SCC 668 are also apposite:

*"While quantifying damages, Consumer Forums are required to make an attempt to serve ends of justice so that compensation is awarded, in an established case, which not only serves the purpose of recompensing the individual, but which also at the same time, aims to bring about a qualitative change in the attitude of the service provider. Indeed, calculation of damages depends on the facts and*

*circumstances of each case. No hard and fast rule can be laid down for universal application. While awarding compensation, a Consumer Forum has to take into account all relevant factors and assess compensation on the basis of accepted legal principles, on moderation. It is for the Consumer Forum to grant compensation to the extent it finds it reasonable, fair and proper in the facts and circumstances of a given case according to established judicial standards where the claimant is able to establish his charge.”*

46. Furthermore, Hon'ble Supreme Court in case **R.D. Hattangadi v. Pest Control (India) (P) Ltd.** (1995) 1 SCC 551 held in Para No.9 as under:

*“9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profits up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.”*

47. The complainant has claimed refund of medical expenses of ₹1,14,500/- spent on her treatment in O.P. No.1-Hospital, vide Cash/Credit Memo dated 15.04.2018, Ex.C-8, and ₹2,52,000/- spent in O.P. No.3-Hospital, vide Inpatient Bill dated 07.06.2018 Ex.C-15, along with ₹1,00,000/- for following up treatment with interest at the rate of 12% per annum from the dates of expenditure till payment.

Besides this, she has also claimed compensation of ₹25,00,000/- for causing mental tension, agony and harassment to the patient and for spoiling marital life of the patient, along with litigation expenses of ₹55,000/-.

48. The age of the complainant was about 60 years at time of surgeries in OP No.1-Hospital. The Hon'ble Supreme Court of India in **"V. Krishnakumar Vs. State of Tamil Nadu & others"** Civil Appeal No.8065 of 2009, decided on 01.07.2015 has taken the expectancy of human life to be of 70 years and further held in para No.23 as under:-

*"23. Inflation over time certainly erodes the value of money. The rate of inflation (Wholesale Price Index-Annual Variation) in India presently is 2 percent as per the Reserve Bank of India. The average inflationary rate between 1990-91 and 2014-15 is 6.76 percent as per data from the RBI. In the present case we are of the view that this inflationary principle must be adopted at a conservative rate of 1 percent per annum to keep in mind fluctuations over the next 51 years.*

*The formula to compute the required future amount is calculated using the standard future value formula:-*

$$FV = PV \times (1+r)^n$$

*PV = Present Value*

*r = rate of return*

*n = time period*

*Accordingly, the amount arrived at with an annual inflation rate of 1 percent over 51 years is Rs.1,37,78,722.90 rounded to Rs.1,38,00,000/-."*

49. Although, the loss suffered by the complainant due to deficiency in service and medical negligence of O.P. No.1 cannot be compensated in terms of money, yet in view of law laid down by the Hon'ble Supreme Court in above referred authority, age of the patient,



and the totality of facts and circumstances of the case, we award lump sum compensation of ₹10,00,000/- (Rupees Ten Lac only) to the complainant, along with interest at the rate of 8% per annum from the date of filing of the complaint till realization, due to deficiency in service and medical negligence on the part of O.P. No.1 and resultant mental agony, harassment, avoidable pain, sufferings caused to the complainant, including aforesaid medical expenses.

50. In view of our above discussion, the complaint is partly allowed against O.P. No.1 and the same is dismissed against O.P. No.3. Following directions are issued to the O.P. No.1.

- i) to pay lump sum compensation of ₹10,00,000/- (Rupees Ten Lac only), along with interest at the rate of 8% per annum from the date of filing of the complaint till realization to the complainant, on account of deficiency in service and medical negligence on the part of the O.P. No.1 and resultant loss, mental agony, harassment, unavoidable pain, sufferings caused to patient, including aforesaid medical expenses; and
- ii) to pay ₹22,000/- (Rupees Twenty Two Thousand only) as litigation costs.

51. No insurance policy issued in favour of O.P. No.1 has been produced on record. However, it is made clear that O.P. No.1 will be at liberty to get reimbursement of the insurance claim from the insurance company, if any insurance policy had been obtained by it for the relevant period.

52. The compliance of this order shall be made by O.P. No.1 within a period of 45 days of the receipt of certified copy of the order.

53. The complaint could not be decided within the stipulated timeframe, due to heavy pendency of Court cases and the pandemic of COVID-19.

**(JUSTICE PARAMJEET SINGH DHALIWAL)  
PRESIDENT**

**(RAJINDER KUMAR GOYAL)  
MEMBER**

**(MRS. KIRAN SIBAL)  
MEMBER**

**May 24, 2021.**  
*(Gurmeet S)*