

IN THE STATE COMMISSION: DELHI

(Constituted under section 9 of the Consumer Protection Act, 1986)

Date of Hearing:09.02.2021

Date of Decision:26.02.2021

Complaint No.243/2013

IN THE MATTER OF

SH. SAJJAN SINGH
Ex-Petty Officer (UW-1) No.-160790-H
R/o H.No. RZ-360, Durga Vihar,
Phase-I, Gali No. 16, Najafgarh
New Delhi-110043

....Complainant

VERSUS

MINISTRY OF DEFENCE
Through Defence Secretary,
101, South Block,
New Delhi-110011

BASE HOSPITAL
Delhi Cantonment
New Delhi-110010
Through: The Commandant

MATA CHANAN DEVI HOSPITAL,
C-1, JanakPuri,
New Delhi-110058
Through: Medical Superintendent

THE MANAGING DIRECTOR
(for Dir & L)
Central Organisation, ECHS
Adjutant General's Branch
Intergrated HQ of MOD (Army)
Maude Lines, Delhi Cantt-110010

THE CHIEF OF NAVAL STAFF
Room No. 190, Integrated Naval Head Quarter,
South Block, Ministry of Defence (Navy)
New Delhi-110011

UNITED INDIA INSURANCE COMPANY LIMITED
At-30,31-A, Jeevan Vikas Building,
4th Floor, Asaf Ali Road, New Delhi

Also at:-
At-Capital Cinema Building, BS Marg,
Lucknow, U.P.

....Opposite Party

HON'BLE SMT. JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)
HON'BLE SH. ANIL SRIVASTAVA, MEMBER

1. Whether reporters of local newspaper be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes

Present: Sh. Satish Sharma, Counsel for the complainant
None for the OPs

ANIL SRIVASTAVA, MEMBER

JUDGEMENT

1. This complaint under Section 17 of the Consumer Protection Act 1986, the Act, has been filed by Sh. Sajjan Singh, resident of New Delhi, for short complainant against the Govt. of India, Ministry of Defence, Base Hospital, Mata Chanan Devi Hospital and ors, hereinafter referred to as OPs alleging negligence of the part of OPs, they having dealt with and treated the complainant in a casual, indifferent and insensitive manner resulting in damage to his body and permanent disability and praying for the relief as under:-

In the facts and circumstances aforementioned, it is most respectfully prayed that this Hon'ble Commission may kindly be pleased to:-

- a. *Direct the OPs jointly and severally to pay to the complainants and their family a sum of Rs. 90,00,000/- towards permanent disability due to illegal acts, deficiency in service and unfair practice committed by the OPs, mental harassment and agony and/or;*
- b. *Pass such other or further order as this Hon'ble Commission may deem fit and proper in the interest of justice.*

2. Facts of the case necessary for the adjudication of the complaint are these.

3. The complainant met with an accident at around 0435hrs on 16.01.2011. The complainant was taken to OP No. 2 Base Hospital, Delhi Cantonment, New Delhi in emergency ward by PCR staff. At 0530hrs after few checks and queries, the medical officer on duty informed the complainant's wife and relatives that the complainant being an ex service man cannot be treated in Base Hospital since specialist doctors are not available there. Even the first-aid was provided to the complainant by medical officer on duty only on the repeated requests. The complainant was thereafter referred to OP-3 at around 0725hrs, but Base Hospital refused to provide even Ambulance services for taking the complainant to the empanelled hospital saying that this cannot be provided to Ex-Service Man, the fact contrary to the guidelines of the ex-service man contributory health scheme which clearly provides that Ambulance of ECHS has to be provided within municipal limits of the city, if medical condition of the patient as is the case requires so. The OP-3 on the admission of the complainant confirmed that amputation is required for both legs, (maximum by one or one and half inches for artificial limbs) but

doctors proved negligent by not giving treatment in time despite two units of blood as required was arranged soon thereafter. Infact the treatment could start only on the next day i.e. 17.01.2011 at around 1600hrs though required to be done urgently, preferably on the same day. On 17.01.2011 at 1500hrs, doctors of the OP-3 hospital shifted the complainant to operation theatre for operation/surgery. After the operation the complainant's relatives came to know that doctor had actually amputated the complainant's left leg with around 8 inches and right leg by 11 inches below the knee joint, which was totally contrary to what was informed earlier and the same could have been avoided by providing timely treatment to the complainant, but the negligent approach of the doctors of OP-2 Base Hospital and OP-3 Mata Chanan Devi Hospital towards the complainant resulted into amputation of the legs of the complainant by more length than it was assured by the doctors earlier. On 18.01.2011 at around 1800hrs doctor at OP-3 Hospital shifted the complainant from post operated to general ward although he was recuperating then. However, on 19.01.2011 onwards the complainant suffered from high fever. The complainant was discharged by the OP-3 on 20.01.2011 despite the complainant having fever and that too without any investigation. The allegation of the complainant, is that the doctors of OP-3 hospital could have extended the complainant's stay and treatment in the hospital since the complainant was suffering from high fever even at the time of discharge. This led to inconvenience and unnecessary expenditure due to the negligence on the part of the doctors of OP-3. This deteriorated the condition of the patient. The complainant visited

OP-3 on 22.01.2011 when the doctors told the complainant to first get fresh approval from ECHS Polyclinic, for any further treatment. This caused further suffering to the complainant and all due to the negligent act of OPs. OP-2 Base Hospital's negligent approach towards the complainant resulted into the amputation of his both legs and permanent disability since even after undergoing the operation and amputation of both legs, the complainant did not get any relief from the pain nor he was able to walk and OP-3 did not take proper care after the operation. The complainant approached Dr. B.P. Yadav when he came to know that the OP-3 Mata Chanan Devi Hospital Doctors had not performed the operation following the required protocol. As per x-ray report the fibula was found longer than Tibia of left leg. To confirm the opinion expressed by Dr. B.P. Yadav the complainant approached Rockland Hospital Delhi, and he confirmed the negligence of Op-3 Mata Chanan Devi Hospital. In these circumstances the complainant had to again undergo revision of surgery on 19.07.2012 under Dr. (Prof) PK Dave for which he had to spend further Rs. 5,59,000/- causing financial hardship apart from mental agony. Worse was that the complainant remained under treatment even thereafter and thus the OPs are liable to compensate the complainant for causing permanent disability by amputation of both his legs.

4. In these circumstances the complainant has filed this complaint primarily against Op-2 and Op-3 for the redressal of his grievances OPs were noticed and in response thereto they have filed reply both on technical ground and on merit stating that the complaint filed by the complainant is hopelessly time barred as the patient was discharged

from the hospital of the respondent no. 3 on 20.01.2011 in the satisfactory condition, whereafter he had remained perfect and in order, till the time he had gone to Rockland Hospital, documents of which, were not produced on record. The complaint has been filed on 25.04.2013 without giving any explanation for the delay and without quoting any specific reason for not contacting the doctors of the respondent no. 3 hospital. Secondly the complainant at the time when he was brought to the hospital of Op-3 one operation had already been conducted at Base Military Hospital soonafter the accident, wherein his both the feets were diagnosed as traumatic amputation and thereafter he was advised for his further treatment from any empanelled hospital as no proper further treatment was available with Base Military Hospital. In this way, he was brought to the hospital of the OP-3 after amputation of his both legs. However at the time when he was admitted in hospital of the OP-3on 16.01.2011, his blood sugar was very high and the same was required to be controlled before operation could be done. It was accordingly done on 17.01.2011. On 17.01.2011 a successful operation of both of his legs was conducted and at that time Bilateral Gullitone amputation, which had already been done at Base Hospital was required for further operation as the patient had avulsion of muscle and tendon for both lower legs and when operation had taken place on 17.01.2011, the amputation was performed at Musculocutaneous junction of Gastrosoleus to provide good stump for the fitting of artificial limb. The allegations levelled against the doctors of the OP-3 hospital that they had told about length of amputation is not only false, but is afterthought story just to

create pressure. All the documents show that the patient was informed from time to time and the amputation further had taken place only after taking his consent as per advice and opinion of the expert team of the doctors. Finally the complainant, after his discharge from the OP-3 hospital, remained comfortable but as per allegations of the complainant, he was shown at Rockland Hospital but no document to that effect was produced nor any certificate was produced on record to show any negligence at the hospital of the Op-3 or any of the doctor was negligent in performing his duties or that the operation was conducted at the hospital of OP no. 3 in careless manner or that no proper careful service was provided.

5. The complainant has also filed rejoinder thereafter rebutting the contentions averments contained in the complaint. Both sides have filed their evidence by way of affidavit in support of their pleadings. Their written arguments are also on record.

6. This matter was listed before this Commission for final hearing on 09.02.2021 when the counsel for both sides appeared and advanced their arguments, the complainant, alleging negligence on the part of the OPs, for awarding of the compensation as per prayer clause and the OPs, stating that the treatment done being as per prescribed protocol, keeping in view the circumstances, there exists no negligence and thus the complainant is not entitled to relief claimed and argued for dismissal of the complaint. We have perused the records of the case and given a careful consideration to the subject matter.

7. Short question for adjudication in this complaint is whether the OPs and the treating doctors were negligent in the matter of treatment to the patient and if so, whether the complainants are entitled to the compensation as prayed for OR in the alternate the proper procedure, stated to have been followed, whether any case for negligence made out.
8. Coming to the facts of the case, issue in the given case breathed into life by the accident of the complainant and the allegation is that the OPs were negligent treating him after he was admitted in the OP hospitals, first in the Base Hospital and then in the Op-3 Hospital. The allegation against OP-2 is their indifferent and insensitive attitude while the allegation against OP-3 is their slow response in commencing the process of treatment.
9. Having perused the pleadings and other facts of case, we may deliberate whether the OPs were negligent in the whole process as alleged. For this purpose we may examine as to what constitutes or accounts for negligence. Negligence per se is defined in Black's Law Dictionary as under:

Negligence per-se: conduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as to the particular surrounding circumstances, either because it is in violation of a statute or valid municipal ordinance, or because it is so palpably opposed to the dictates of common prudence that it can be said without hesitation or doubt that no careful person would have been guilty of it. As a general rule, the violation of a public duty, enjoined by law for the protection of person or property, so constitutes.

According to Hulsbury's Law of England Ed. 4 Vol. 26 pages 17-18, the definition of Negligence is as under:-

"22. Negligence : Duties owed to patient. A person who holds himself out as ready to give medical (a) advice or treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person, whether he is a registered medical practitioner or not, who is consulted by a patient, owes him certain duties, namely, a duty of care in deciding whether to undertake the case : a duty of care in deciding what treatment to give; and a duty of care in his administration of that treatment (b) A breach of any of these duties will support an action for negligence by the patient.

10. In Jacob Mathew's case as reported in [2008] 6 SCC 1, the Hon'ble Supreme Court observed as under:

"78. A doctor faced with an emergency ordinarily tries his best to redeem the patient out of his suffering. He does not gain anything by acting with negligence or by omitting to do an act. Obviously, therefore, it will be for the complainant to clearly make out a case of negligence before a medical practitioner is charged with or proceeded against criminally. This court in Jacob Mathew's case very aptly observed that a surgeon with shaky hands under fear of legal action cannot perform a successful operation and a quivering physician cannot administer the end-dose of medicine to his patient."

11. In Jacob Mathew's case (supra), conclusions summed up by the Hon'ble Supreme Court are very apt and some portions of which necessary for the adjudication of the case under consideration, are reproduced hereunder-

*Negligence is the breach of duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do.
The definition of negligence as given in Law of Torts, Ratanlal and Dhirajlal (edited by Justice G.P. Singh),*

referred to hereinabove holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: Duty, Breach and Resulting Damage.

Negligence in the context of medical profession necessarily call for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. The standard to be applied for judging, whether the person charges has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.”

12. Hon'ble Supreme Court is pleased to approve the test as laid down in Bolam versus Friern Hospital Management Committee. The relevant principles culled out from the case of Jacob Mathew versus State of Punjab and Anr as reported in (2008) 6 SCC 1 read as under:

a. Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which prudent and reasonable man would not do, the definition of negligence as given in Law of Torts, Ratanlal and Dhirajlal (edited by justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: 'duty', 'breach', and resulting damage.

- b. *A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course method of treatment was also available or simple because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence.*
- c. *A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practises. A highly skill professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.*

13. The Hon'ble Supreme Court in *Arun Kumar Manglik Vs. Chirayu Health And Medicare Private Limited &Anr.*, 2019 (3) SCALE 333, has laid emphasis on 'Patient Centric Approach' and observed that the 'Standard of Care' as enunciated in the Bolam Case must evolve in consonance with its subsequent interpretation by English and Indian Courts.
14. In Halsbury's Laws of England the degree of skill and care required by a medical practitioner is detailed as follows:-

“The practitioner must bring to his task a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence, judged in the light of the particular circumstances of each cases, is what the law requires, and a person is not liable in negligence because someone else of greater skill and knowledge would have prescribed different treatment or operated in a different way; nor is he guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art, even though a body of adverse opinion also existed among medical men.

Deviation from normal practices is not necessarily evidence of negligence. To establish liability on that basis it must be shown (1) that there is a usual and normal practice; (2) that the defendant has not adopted it; and (3) that the course in fact adopted is one no professional man of ordinary skill would have taken had he been acting with ordinary care.” A doctor has a legal duty to take care of his patient. Whenever a patient visits a doctor for treatment there is a contract by implication that the doctor will take reasonable care to treat him. If there is a breach of that duty and if it results in injury or damage, the doctor will be held liable. The doctor must exercise a reasonable degree of care and skill in his treatment; but at the same time he does not and cannot guarantee cure.

15. In the light of the principles laid down by the Hon'ble Supreme Court what has to be seen whether the doctor has acted as per the standard principles of normal medical parlance.
16. What is expected from the medical practitioner is to take due care and caution while giving treatment as per the established medical jurisprudence avoiding delay. In other words, if he has acted in accordance with the practice accepted as proper by a responsible body of medical men skilled in that particular art, no question of deficiency would arise.
17. Coming back to the facts of the case, the complainant as a consequence of he having met with the accident was admitted in the

Base Hospital. This can be a possibility that the hospital is not well equipped with the instruments and other required facilities but instead of keeping the complainant with them and doing the treatment they asked him to go to OP-3 and worse was that no Ambulance was provided presumably on some flimsy administrative ground, something clearly goes to establish the negligence. Further OP-3 had taken a lot of time to commence the treatment resulting in the disability of his body, making him totally incapable to keep his body and soul together and, secondly, incapable to sustain his family since disability led him to be totally handicapped and helpless doing or attending anything vocationally. The factum about the Op-2 and Op-3 being negligent particularly OP-3, being insensitive to the complainant is certified by the observation of Rockland Hospital where the complainant visited, having been frustrated with the deteriorating condition.

18. The Hon'ble Supreme Court of India in the matter of Dr. S.K. Jhunjhunwala versus Smt. Dhanwanti Kumari and Anr as reported in (2019) 2 SCC 282 is pleased to observe that the negligence has to be decided on the touchstone whether the treating doctor has adhered to the normal practice of medical parlance.
19. Before deliberating the matter I may advert to the grounds taken by the OPs resisting the complaint. Their first objection that the complaint having been time barred is not entertainable, is overruled owing to the fact that there exists continuous cause of action.
20. Their next objection that there exists no cause of action as against them is devoid of merit as they have failed to properly evaluate

the ailment despite undertaking many tests and doing investigations. The Id. Counsel for the OP could not establish even remotely either from the pleadings or from the evidence that OPs had done the spade work as was expected of them in due discharge of their duty as treating doctors. Their submission that due and proper care was exercised cannot be accepted for their inability to detect the ailment. Timely detection and the treatment could have helped the patient and to the family.

21. The Hon'ble NCDRC in the matter of ILS Hospital & Anr vs. Bimal Kumar Ghosh - II (2013) CPJ 594 (NC) - held as under:

"Non-exercise of reasonable caution in treatment amounts to negligence."

- The Hon'ble NCDRC in the matter of V. Srinath (Dr.) & Anr vs. Gaurav Lamba - III(2011) CPJ 481 (NC) - held as under

"Wrongful surgery causing permanent disability amounts to negligence."

- The Hon'ble NCDRC in the matter of dr. Anil Jain and Anr. Vs. Devender Kumar - IV(2012) CPJ 497 (NC) held as under:-

"If the surgery is not done on time, negligence stands established."

- Finally the Hon'ble NCDRC in the matter of Jaswinder Singh & Anr vs. Neeraj Sud & Anr. IV(2011) CPJ 236 (NC)

"If during post operative complication have arisen due to lack of expertise, negligence stands established."

22. The complaint in the facts and circumstances of the case is therefore allowed. Having reached to this conclusion the point for

determination is the relief the complainants are entitled to. Keeping in view the facts of the case the complainants are to be compensated. It would be equitable to refer to the law laid down by the Hon'ble Supreme Court of India for awarding of compensation in the matters of kind.

23. In *Lata Wadhwa versus State of Bihar*, (2001) 8 SCC 197, the Hon'ble Apex Court computed damages to be paid to dependants of deceased persons as well as burn victims in the aftermath of a fire at the factory premises. The Court took into consideration the multifarious services rendered to the home by a home-maker and held the estimate arrived at Rs 12,000 per annum to be grossly low. It was enhanced to Rs 36,000 per annum for the age group of 34 to 59 years.
24. In *Malay Kumar Ganguly versus Sukumar Mukherjee, III* (2009) CPJ 17 (SC) Hon'ble Justice S B Sinha held thus:

"172. Loss of wife to a husband may always be truly compensated by way of mandatory compensation. How one would do it has been baffling the court for a long time. For compensating a husband for loss of his wife, therefore, the courts consider the loss of income to the family. It may not be difficult to do when she had been earning. Even otherwise a wife's contribution to the family in terms of money can always be worked out. Every housewife makes a contribution to his family. It is capable of being measured on monetary terms although emotional aspect of it cannot be. It depends upon her educational qualification, her own upbringing, status, husband's income, etc."

Thus, in computing compensation payable on the death of a home-maker spouse who is not employed, the Court must bear in mind that the contribution is significant and capable of being measured in monetary terms.

25. In assessing the amount of compensation, principle laid down by the Hon'ble Apex Court in the case of Lata Wadhwa (Supra) and in National Insurance Company Ltd. versus Pranay Sethi as reported in (2017) 13 SCALE 12 are necessary.
26. We also find it a fit case to rely on the judgement of the Hon'ble Supreme Court in Shilaben Ashwin kumar Rana versus Bhavin K. Shah and Anr. II (2014) CPJ (NC), Civil Appeal No. 1442 of 2019, decided on 4.2.2019, in which the Hon'ble Apex Court has opined that while awarding compensation, the distress caused should be taken into consideration. In Nizam's Institute of Medical Sciences versus Prasanth S. Dhnanka, II (2019) CPJ 61 (SC)=III (2010) SLT 734=(2009) 6 SCC 1, a three-Judge Bench of the Hon'ble Supreme Court emphasized that cases involving disability are in many respects even more tragic than cases of death, particularly where the disability is of a nature involving a lifelong condition of despair and helplessness.
27. Keeping in view the principles detailed above and the facts and circumstances of the case, the age of the patient, and other necessary and essential factors, we are of the considered view that it would be just and reasonable to award compensation of Rs. 10 Lakhs (Rupees Ten Lakhs) with interest at the rate of 3.5% from the date when the cause of action arose and negligence was admittedly done till the realisation of the amount, to the complainants for the suffering, mental pain and agony caused. The amount so awarded be paid equally by the OP hospitals being liable, within a period of two months from the date of receipt of the certified copy of this order. The two hospitals against whom the compensation has been ordered may, if

the insurance has been done to that extent, the amount be claimed from there. Awarding of cost may serve the purpose of bringing about a qualitative change in the attitude of the hospitals for providing service to the human beings as human beings. Human touch is necessary; that is their code of conduct; that is their duty and that is what is required to be implemented more so when personal liberty is guaranteed under Article 21 of the Constitution.

28. Ordered accordingly, leaving the parties to bear the cost.
29. A copy of this order be forwarded to the parties to the case free of cost as is statutorily required.
30. File be consigned to records.

(Dr. JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(ANIL SRIVASTAVA)
MEMBER

PRONOUNCED ON
26.02.2021

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