

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION

DF-I

CONSUMER COMPLAINT NO. DC/44/CC/2/2023

SUSHEELA

PRESENT ADDRESS - W/o Lakhi Ram, residing at HOUSE NO. 248 KAMBALA
CHANDIGARHCHANDIGARH,CHANDIGARH.

.....Complainant(s)

Versus

MUKAT HOSPITAL HEART INSTITUTE

PRESENT ADDRESS - SECTOR 34 A CHANDIGARH through its Medical Director Dr. Ravi Inder Singh.CHANDIGARH,CHANDIGARH.

DR.ABHISHEK MAHNA

PRESENT ADDRESS - SURGEON AT MUKAT HOSPITAL HEART INSTITUTE SECTOR 34 A
CHANDIGARHCHANDIGARH,CHANDIGARH.

MEDANTA HOSPITAL

PRESENT ADDRESS - SECTOR 38 GURUGRAM, Haryana-122001 through its Medical Director.
Pin Code-122001.CHANDIGARH,CHANDIGARH.

.....Opposite Party(s)

BEFORE:

HON'BLE MR. PAWANJIT SINGH , PRESIDENT

HON'BLE MR. S.K. SARDANA , MEMBER

FOR THE COMPLAINANT:

GAURAV BHARDWAJ & MANOJ VASHISHTA, ADV., Manoj Vashishtha (Advocate)

DATED: 02/06/2025

ORDER

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-I,

U.T. CHANDIGARH

Consumer Complaint No.	:	CC/2/2023
Date of Institution	:	3/1/2023

Date of Decision	:	2/6/2025
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Susheela W/o Lakhi Ram, aged about 35 years, resident of House No. 111, Near School Datoli (176), Bhiwani, Dudhwa, Haryana, presently residing at House No. 248, Kambala, Chandigarh.

...Complainant

Versus

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1. Mukat Hospital Heart Institute Sector-34-A, Chandigarh through its Medical Director Dr. Ravi Inder Singh.

2. Dr Abhishek Mahna, Surgeon at Mukat Hospital Heart Institute Sector-34-A, Chandigarh.

3. Medanda Hospital, Sector-38, Gurugram, Haryana-122001 through its Medical Director. Pin Code-122001. Email Id info@medanta.org (Performa Party) (**OP No.3 deleted vide order dated 22.2.2024**)

...Opposite Parties

CORAM :

PAWANJIT SINGH

PRESIDENT

SURESH KUMAR SARDANA

MEMBER

ARGUED BY : Sh. Gaurav Bhardwaj & Sh. Manoj Vashitha, Advocates for complainant.

: Sh. Durga Dutt Sharma, Advocate for OP No.1.

: Sh. Munish Kapila, Advocate for OP No.2

: OP No.3 deleted vide order dated 22.2.2024.

Per SURESH KUMAR SARDANA, Member

Briefly stated the complainant was suffering from upper abdomen pain and accordingly, in order to get the same treated, on 08.09.2021, she approached to the OP No. 1 hospital and the complainant was diagnosed with Cholelithiasis (Gall Bladder Stone). The doctors of the OP No. 1 hospital advised the complainant and her family to get the Gall Bladder removed via surgery i.e., Cholecystectomy immediately (Surgery to remove the Gall Bladder). The complainant and her family agreed for the Laparoscopic Cholecystectomy. The complainant was informed that while removing the Gall Bladder, a stent shall be inserted in the Pancreas of the body which shall be of very good quality and the complainant shall have no problem in future. The OP No. 2 Doctor alongwith the other team members, immediately conducted Laparoscopic Cholecystectomy upon the complainant while doing so, tried to put Pancreatic Duct Stent in the body. However, during the procedure of inserting, the stent broke down from outside and part of the stent was stuck in the Pancreatic Duct. This particular incident was neither informed to the complainant nor her family members and the Ops No. 1 & 2 and their team kept on trying to control the deteriorating situation of the complainant due to the broken stent in the body. The doctor tried to ERCP but could not complete the ERCP and when the situation was not controlled by the OPs No. 1 & 2, the family of the complainant was informed about the situation arisen at that time. The family was told that due to the broken stent, they are not able to do anything and they do not have the expertise to remove the broken stent or to further control the damage and accordingly, they are referring the complainant to Medanta Hospital, Gurugram as they have the specific expertise to cure such like cases. As per advice of OPs No.1&2 The complainant was taken to Medanta Hospital, OP NO. 3, who again conducted all the tests and admitted the complainant in the Hospital. The ERCP test

was conducted in which it was observed that, "Previously placed proximally migrated and fragmented pancreatic duct stent visualized under fluoroscopy. This was caught using rat-tooth forcep and multiple fragments of stent removed. One distal small pancreatic duct fragment could not be retrieved which was deep in the distal pancreatic duct. Over guide wire 5Fr X 12cm GPSO plastic stent placed in pancreatic duct. Common bile duct cannulated. Contrast injection revealed leak from cystic stump. Wire negotiated across bile duct injury in left and right hepatic ducts. The complainant has to admit thrice in Medanta Hospital only because of the negligent treatment of Mukat Hospital and Op No 2 Dr Abhishek Mahna. The copy of discharge summaries of Medanta Hospital when the complainant was admitted in hospital dated 15.09.2021, 23.11.2021 and 07.12.2021 are exhibited herewith as Exhibit C-2, C-3 and C-4 respectively. The complainant had to incur a sum of approx.

Rs.6,37,000/- extra at Medanta Hospital in addition to the pain & harassment and has to visit regularly to PGI, Sector 32 GMCH Chandigarh and other hospitals because of the blatant negligent act of the Ops No. 1 & 2. It is alleged that the OP No.2 who has conducted the LAP Cholecystectomy, was not expert due to which bile leakage started after LAP Cholecystectomy which happens only due to the improper clipping and cystic duct stump leak (CDSL) and same could have been avoided if endoloop or suture technique is used. However, the doctor/ surgeon who was negligent firstly for CDSL, tried to insert stent of low quality negligently which broken from outside and then even tried to do ERCP but failed to cure and then, in order to save their lives from the investigation, referred the complainant to higher center i.e., at Medanta, Gurugram via private Ambulance. The complainant issued a legal notice to the Ops No.1&2 but to no avail. Alleging the aforesaid act of Opposite Parties deficiency in service and unfair trade practice on their part, this complaint has been filed.

2. The Opposite Parties NO.1 in its reply while admitting the factual matrix of the case stated that the Patient Susheela was suffering from symptomatic Cholelithiasis and was admitted on 19 Sep 2021 for Laparoscopic Cholecystectomy. Patient was planned for Laparoscopic Cholecystectomy. After taking all written and informed consent from the patient & her attendant, Patient underwent Laparoscopic Cholecystectomy on 08.09.2021. Bilious discharge from drain was observed and vitals of the patient were stable with no fever. MRCP was done on 11.09.2021 s/o Small amount of fluid with Heterogenosity stranding in Perihepatic and Subhepatic space, smooth continuity of the intrahepatic ducts CHD and CBD maintained, Cystic duct stump was noted possibility leak from stump. Patient was managed with L.V. antibiotics Antispasmodics and monitored for subhepatic drain output. As drain output persisted, decision of ERCP was taken. ERCP was done on 14.09.2021; on CBD cannulation, wire went thrice to Pancreatic Duct, as per guidelines prophylactic plastic PD stent was placed to prevent severe acute Pancreatitis. CBD canulation tried over PD stent, though wire went into the CBD but sphincterotome could not be passed into CBD possibly due to lower CBD narrowing stricture. Unfortunately during the procedure, the plastic PD stent was broken which requires special techniques and equipment such as Endoscopic Ultrasound and Cholangioscope for removal. Keeping this scenario in mind possible requirement of Endoscopic Ultrasound and Cholangioscope was comprehended. This being a very specialized instrument and is available mostly at research institutions. Also seeing the acute condition further attempts to remove PD stent were abandoned which might have worsened the patient's condition. As patient was haemodynamically stable and was fit to be shifted. Patient's home town being near Gurugram, decision to shift the patient to Medanta, Gurugram was taken mutually as per convenience of the patient's family. The Attendant of the patient was explained in detail about the possible outcomes of the procedure. All outcomes which occurred during this procedure are well known and documented in the medical literature and followed all

standard guidelines and treatment for management of these. The informed consent was obtained from the patient after explaining the need of the procedure, risks involved in the procedure and the expected outcome. Denying any negligence on its part all other allegations made in the complaint has been denied being wrong.

3. OP No.2 in his reply while admitting the factual matrix of the case stated that after post operative day i.e. on 11.9.2021 Opposite Party No. 2 examined complainant in the morning and found her to be afebrile. Her vitals were stable and she had no complaints. However, there was bile in the sub-hepatic drain placed at the time of surgery. In view of bile in sub-hepatic drain, it was important to investigate and find out the cause of the bile leak for which MRCP was advised. MRCP (Magnetic Resonance Cholangio Pancreatography) is a non-invasive diagnostic test where liver, gall bladder and bile ducts and pancreas are visualised and the

Evidence source of leak can be determined. She was also advised to undergo Liver Function Tests (LFT) and Complete Blood Count (CBC). Her blood tests were reportedly normal. A copy of the doctor's progress notes documenting these facts is annexed as Annexure OP-2/4. On 11.9.2021 itself MRCP test was conducted at Opolis Medical Diagnostic Centre Pvt. Ltd., Sector 32, Chandigarh and on MRCP no stent in the common bile duct was seen. In view of MRCP findings and patient's vital being stable with normal CBC and LFT reports, the first approach to be followed in her case was to wait and watch while at the same time higher antibiotics were stepped up. In this approach the drain volume is monitored 24 hourly because in some cases bile leak is known to decrease and resolve on its own in the backdrop of no obvious injury to CBD having been detected on MRCP. As bile leak did not resolve on its own, a Gastroenterology consult was sought on 12.9.2021. As per Strasberg classification of biliary injury there are multiple causes of bile leak after laparoscopic surgery. Type A injury (as in the case of index patient) is

characterised by bile leak from the cystic duct or small ducts in liver bed and ERCP is the treatment of choice for Type A injury. The benefit of this procedure includes the ability to seal the leak. Therefore when the complainant was examined by Dr. Sandeep Pal DM (Gastroenterology) on 13.09.2021 he planned complainant for ERCP + stenting. ERCP + stenting was conducted by the Dr. Sandeep Pal on 14.9.2021. During ERCP CBD was cannulated. Sphinctertome could not be passed into CBD and? possibility of lower CBD stricture was kept. However, Opposite Party No. 2 cannot comment about the finding of "? possibility of lower CBD stricture" recorded in the ERCP report because the complainant had normal values of bilirubin and alkaline phosphate in her pre-operative Liver Function Test report. During the ERCP procedure stent deployed by the gastroenterologist broke and fragment of it was lodged in the pancreatic duct. In view of this development the Gastroenterologist Dr. Sandeep Pal referred the patient to a higher centre and the patient's attendants wanted to take her to Medanta Hospital at Gurugram. Since the patient was admitted under Opposite Party No.2, therefore the discharge summary was prepared by him wherein he had incorporated the factum of complainant being referred to Medanta Hospital, Gurugram. From the perusal of the discharge summary of Medanta Hospital (Ex. C-2) which the complainant has attached alongwith her complaint shows that she was admitted to Medanta Hospital on 15.09.2021 where she was diagnosed with cystic stump duct leak for which they also performed an ERCP + stenting of CBD along with partial retrieval of broken stent fragments from pancreatic duct was done and then a pancreatic duct stent was also placed. The CBD stent was removed and remaining fragment of broken stent which was lodged in the pancreatic duct was also removed. The cystic stump leak which is noted in the discharge summary of Medanta Hospital can be attributed to multiple reasons like slipping of endo clips, necrosis of cyst duct stump proximal to the clip etc. Thus cystic duct stump leak is a known complication of gall bladder surgery in multiple text books of surgery. The treatment of choice is ERCP + stenting which was performed in

the case of the index patient by Dr. Sandeep Pal. However during the course of ERCP procedure another known complication of the ERCP procedure occurred for which Dr. Sandeep Pal referred the patient to higher centre. The reason why a particular complication arose during the ERCP procedure is not for Opposite Party No. 2 to explain. Denying any negligence on his part a prayer for dismissal of complaint against OP No.2 has been made.

4. Rejoinder was filed and averments made in the consumer complaint were reiterated.

5. Contesting parties led evidence by way of affidavits and documents.

6. We have heard the learned counsel for the contesting parties and gone through the record of the case.

7. The main grievance of the complainant is that after the surgery of gall bladder done by the doctors of OPs No.1&2, the bile leakage was noticed and could not be managed properly by OP hospital and the stent inserted for control of bile leakage was broken while inserting it by the doctors of OP hospital. Moreover, it is also alleged that OPs No.1 hospital advised further treatment from Medanta Hospital, Gurgaon instead of sending the patient to PGI Chandigarh owing to all above the complainant suffered not only mental agony and physical harassment but financial burden also.

8. It is an admitted fact on the part of OP No.1 that the stent was broken during the procedure by its doctors. On perusal of para 8 of the written statement of OP No.1 it is fairly admitted that the plastic PD stent was broken which requires special techniques and equipment which were not available in their hospital rather they intimated that the same are available at research institutions and accordingly the patient was shifted to Medanta

Hospital Gurgaon.

9. In view of the foregoing, we are very surprised that when the hospital OP No.1 was not equipped with all the facilities to carry out the operation and attend the side effects, still they decided to undergo the procedure, which put the life of the patient in danger and the OP No.1 and its doctors could not handle the complications caused due to not being equipped with necessary equipments with the hospital as a result of which the complainant was shifted to Medanta Hospital Gurgaon, which not only caused mental agony and physical harassment to the complainant but also put unnecessary financial burden on the complainant. Hence the aforesaid act of OPs No.1 performed through the surgical procedure without having proper equipments to handle the situation of any complication, amounts to deficiency in service.

10. The Hon'ble Apex Court in the case related to medical negligence in

Chanda Rani Akhouri [Dr. (Mrs.)] & Ors. Vs. M.A. Methusethupathi [Dr.] & Ors., II (2022) CPJ 51 (SC) has held as under :-

27. It clearly emerges from the exposition of law that a medical practitioner is not to be held liable simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference to another. In the practice of medicine, there could be varying approaches of treatment. There could be a genuine difference of opinion. However, while adopting a course of treatment, the duty cast upon the medical practitioner is that he must ensure that the medical protocol being followed by him is to the best of his skill and with competence at his command. At the given time, medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.

28. The term "negligence" has no defined boundaries and if any medical negligence is there, whether it is pre or post-operative medical care or in the follow-up care, at any point of time by the treating doctors or anyone else, it is always open to be considered by the Courts/Commission taking note of the exposition of law laid down by this Court of which a detailed reference has been made and each case has to be examined on its own

merits in accordance with law.”

11. In the instant case it is admitted fact on the part of the OP No.1 hospital that they were lack of specialized instruments to handle the complication caused during and after the procedure and moreover, it is also admitted that the PD stent was broken which itself proves that the OP No.1 hospital has used a low quality stent to be inserted in human body which put the life of the complainant in danger. Hence, there is deficiency in service on the part of OP No.1 hospital.

12. So far as the quantum of relief is concerned, the Hon'ble Apex Court in the catena of judgments has laid down different methods to determine '*just and adequate compensation*' . In **Sarla Verma v. Delhi Transport**

Corporation, (2009) 6 SCC 121 the Hon'ble Apex Court held as under :-

“The lack of uniformity and consistency in awarding compensation has been a matter of grave concern... If different Tribunals calculate compensation differently on the same facts, the claimant, the litigant, the common man will be confused, perplexed, and bewildered. If there is significant divergence among Tribunals in determining the quantum of compensation on similar facts, it will lead to dissatisfaction and distrust in the system.”

xxx xxx xxx

“While it may not be possible to have mathematical precision or identical awards, in assessing compensation, same or similar facts should lead to awards in the same range. When the factors/inputs are the same, and the formula/legal principles are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just compensation.”

13. Further, the Hon'ble Apex Court in **Malay Kumar Ganguly v. Sukumar Mukherjee and Ors., III (2009) CPJ 17 (SC)** , clearly mentioned that there were problems with using a strait-jacket formula for determining the quantum of compensation. It clarified about the basis of

computing compensation under common law lies in the principle of '*restitutio in integrum*' which refers to ensuring that the person seeking damages due to a wrong committed to him/her is in the position that he/she would have been had the wrong not been committed. Thus the victim needs to be compensated for financial loss, future medical expenses and any suffering endured by the victim. By no stretch of imagination, the award shall not a paltry sum for gross negligence. It was held that there is no restriction that Courts can award compensation only up to what is demanded by the complainant.

14. In view of the foregoing discussion, we determine "medical negligence" and "deficiency" on the part of OPs 1 and in view of the peculiarity of the case and in order to meet the ends of justice, we are of the opinion that the OP No.1 hospital is liable to refund Rs.6,37,000/- the amount paid by the complainant at Medanta hospital due to negligent act of OP NO.1 alongwith compensation.

15. In view of the above discussion, the present consumer complaint succeeds and the same is accordingly allowed. OP No.1 is directed as under:-

- i) to pay 6,37,000/- to the complainant alongwith interest @ 9% per annum (simple) from the date of institution of the present consumer complaint onwards
- ii) to pay 25,00,000/- to the complainant as compensation for causing mental agony and harassment;
- iii) to pay 10,000/- to the complainant as costs of litigation.

16. This order be complied with by the OP No.1 within a period of 45 days from the date of receipt of certified copy thereof, failing which the amount(s) mentioned at Sr.No.(i) & (ii) above shall carry penal interest @ 12% per annum (simple) from the date of expiry of said period of 45 days, instead of 9% [mentioned at Sr.No.(i)], till realisation, over and above payment of ligation expenses.
17. Complaint qua OP No.2&3 stands dismissed.
18. Pending miscellaneous application(s), if any, also stands disposed off.
19. Certified copies of this order be sent to the parties free of charge. The file be consigned.

[PAWANJIT SINGH]

PRESIDENT

2/6/2025

[SURESH KUMAR SARDANA]

mp

MEMBER

.....J
PAWANJIT SINGH
PRESIDENT

.....J
S.K. SARDANA
MEMBER