

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, LUDHIANA.**

Complaint No: 90 dated 11.02.2019.

Date of decision: 23.05.2024.

1. Mandeep Kaur (minor) d/o. Rajinder Singh son of Harbans Singh, R/o. H. No.312, Mohalla Guru Nanak Nagar, Kacha Malak Road, Jagraon, District Ludhiana through its Father.
2. Rajinder Singh son of Harbans Singh, R/o. H. No.312, Mohalla Guru Nanak Nagar, Kacha Malak Road, Jagraon, District Ludhiana. ....Complainant

Versus

1. Singla Hospital, St. No.16, Model Town, Opp. Lal Palace Cinema, G.T. Road, Jagraon, District Ludhiana, through its Managing Director/Authorized Signatory Dr. Hari Krishan Singla.
2. Dr. Hari Krishan Singla, Managing Director/Authorized Signatory of Singla Hospital, St. No.16, Model Town, Opp. Lal Palace Cinema, G.T. Road, Jagraon, District Ludhiana.
3. Hans Maternity Home, Tehsil Road, Jagraon, District Ludhiana, through its authorized signatory Dr. Hari Singh Hans.
4. Dr. Amit Chakraborty, Paediatrician at Hans Maternity Home, Tehsil Road, Jagraon, District Ludhiana.
5. Oriental Insurance Company Limited, 4E/14, Azad Bhawan, Jhandewalan, New Delhi-110055.

.....Opposite parties.

**Complaint Under Section 12 of the Consumer Protection Act, 1986.****QUORUM:****SH. SANJEEV BATRA, PRESIDENT****MS. MONIKA BHAGAT, MEMBER****COUNSEL FOR THE PARTIES:**

For complainants : Complainant No.2 Sh. Rajinder Singh in person for  
 himself and on behalf of complainant No.1.

For OP1 and OP2 : Sh. Nipun Gupta, Advocate

For OP3 and OP4 : Sh. Yash Paul, Advocate.

For OP5 : Sh. R.K. Chand, Advocate.

**ORDER****PER SANJEEV BATRA, PRESIDENT**

1. Briefly stated, the facts of the case are that complainant No.1 Mandeep Kaur, aged about 4 years was suffering from head pain and her father complainant No.2 took her to OP3 on 08.05.2017 where she was

checked by Dr. Amit Chakarwari, OP4 who treated complainant No.1 for three days but later on referred her to OP1 and OP2 without disclosing any reason. Complainants stated that on advice of OP3 and OP4, complainant No.1 was brought to OP1 and OP2 on 11.05.2017. OP1 and OP2 without getting any scan, x-ray etc. conducted upon her after telephone discussion with OP4 and operated her by charging Rs.60,000/- from the complainant. She was again sent back to OP2 on 11.05.2017 where the complainants spent more amount of Rs.15,000/- including medicines. In the night time, health of complainant No.1 became bad then OP3 and OP4 referred her to Deep Hospital, Ludhiana. On 12.05.2017, she was taken to Deep Hospital, Ludhiana where she was again re-operated as operation done by OP1 and OP2 in nexus with OP3 and OP4 was not conducted rightly. Daughter of complainant remained under treatment in Deep Hospital from 12.05.2017 to 24.05.2017 upon which they spent Rs.57,311/- including medicines, operation etc. and Rs.50,000/- other expenses. The complainants further stated that being a poor person, he suffered heavy loss of money, loss of job, mental tension, agony etc. due to medical negligence and nexus of the OPs as they have not performed their duty with diligence and have committed unfair trade practice and negligence. The complainants issued legal notice dated 21.06.2017 upon the OPs but no reply was given by the OPs except OP3 who in its reply dated 24.08.2017 admitted that complainant No.1 was examined by him who was suffering from ailment requiring surgical intervention and said doctor did not commit any wrong in promptly referring the patient to a surgeon for management/treatment. OP3 also replied that whatever Dr. Chakraborty, a pediatrician did was strictly as per standard medical protocol text books and journals of repute on the subject matter and denied any negligence or deficiency in services. OP3 further replied the legal notice that a qualified and experienced pediatrician examined minor daughter and referred her for surgical manager and he has not committed anything faulted. In its reply to legal notice, OP3 disclosed that Mandeep Kaur 4 year/female was brought to OPD of Dr. Amit Chakraborty on 08.05.2017 with complaint of swelling over the back of head which was progressively growing in site. The patient was advised ultrasonography cranium/swelling and surgical reference for the same and she was referred to Dr. H.S. Singla where she was operated at Singla Hospital on 11.05.2017. Dr. Chakraborty, pediatrician got a call from Dr. Singla regarding antibiotic dosage of the child and the same were advised by the former. As the child was running high fever, intravenous paracetamol was also advised. Next day, the attendant of the patient came to Dr. Chakraborty and asked the reasons for high fever upon which doctor advised to consult operating surgeon in this regard. Further he cannot comment on the result of the treatment/surgery performed outside.

The complainants further stated that the OPs are negligent/deficiency in rendering their medical services properly and carefully and they have committed breach of certain duties as they failed to diagnose the case of complainant carefully by ignoring the earlier reports/tests. The OPs are responsible for rendering medical deficiency/negligent services which has caused mental tension, harassment and financial loss to the complainants. In the end, the complainants prayed for issuing directions to the OPs to pay an amount of Rs.1,27,311/- along with interest as well as compensation of Rs.3,00,000/- and litigation expenses.

3. Upon notice, OP1 and OP2 appeared and filed joint written statement and took preliminary objections by assailing the complaint on the grounds maintainability; the complainants are not consumers as per provisions of Consumer Protection Act; concealment of material facts etc. OP1 and OP2 stated that complainant No.1 was got admitted in their hospital on 11.05.2017 at the reference of Dr. Amit Chakraworty. At the time of admission, she was having her ultrasound scan and blood test reports and OPD receipts of OP4 Dr. Amit Chakraworty. Complainant No.1 Mandeep Kaur was medically examined and it was found that there was swelling at the back of head which was non-reduceable, non-trans-illuminant and no cough impulse was present and ultrasound report was "Epidermal" inclusion Cyst-No intracranial extension was found. So, a probable diagnose of sebaceous cyst or Demoid Cyst was made. Complainant No.1 was advised C.T. scan of the head but she as well as complainant No.2 refused to get the C.T. Scan done and showed their inability to do the same for their poor financial conditions and they have requested OP1 and OP2 to remove the swelling as also advised by Dr. Amit Chakraborty. OP1 and OP2 further stated that on 11.05.2017, in operation theatre, the cyst was removed taking due care and precautions as required. During operation, a small narrow, intracranial communication was found through which, CSF came out with pressure. The defect was stitched and pressure dressing was applied. Post operatively fluid and antibiotic etc. were given to complainant No.1 in consultation with Dr. Amit Chakraborty, Pediatrician OP4 and a prescription slip regarding fluid and antibiotics dosages was sent to OP2 by Dr. Amit Chakraborty through complainant No.2 but on 12.05.2017, complainant No.1 Mandeep Kaur developed fever and signs of raised intracranial pressure. Then in consultation with Dr. Amit Chakraborty, complainant No.1 was referred to Ludhiana for further management. OP1 and OP2 further stated that no act of omission or commission has been made by

them. OP2 is a post graduate in a general surgery with more than 35 years of experience after post graduation and also about three years of experience in pediatric surgery as Registrar, Medical College, Amritsar.

On merits, OP1 and OP2 reiterated the crux of averments made in the preliminary objections and facts of the case. OP1 and OP2 have denied that there is any deficiency of service and have also prayed for dismissal of the complaint.

3. Initially, OP3 was proceeded against *ex parte* vide order dated 02.07.2021 but later on OP3 filed application for setting aside *ex parte* order which was allowed vide order dated 02.06.2022 with permission to join the proceedings from the stage the case is pending at.

OP3 and OP4 filed separate written statement jointly and took preliminary objections by assailing the complaint on the grounds maintainability; lack of cause of action etc. OP3 and OP4 stated that the complainants without any rational basis or justification have claimed an amount of Rs.1,27,311/- spent by the complainant on treatment of his daughter along with interest @18% per annum and compensation of Rs.3,00,000/- besides litigation expenses. Even there is nothing on record to prove that there is any medical negligence on their part in treating the complainant. OP3 and OP4 further stated that the complaint is misconceived, groundless and has been filed to harass, defame and extort illegal sum from them. The complainants failed to disclose the negligence of OP3 and OP4. Although they have provided services to the patient diligently with due care and skill. Further the complaint is not supported by any expert medical opinion by the complainants.

On merits, OP3 and OP4 reiterated the crux of averments made in the preliminary objections and facts of the case. OP3 and OP4 averred that OP4 is a pediatrician and the patient required surgery for which she was referred to OP1 and OP2 where she was operated on 11.05.2017 but she was not sent back to them after surgery. The patient remained admitted at OP1 hospital and on 12.05.2017, OP1 and OP2 referred the patient to Deep Hospital as such, they have been wrongly made a party to the present complaint. OP3 and OP4 further stated that they have promptly referred the patient to OP1 and OP2 and she was never sent back to them after surgery and as such, they are not responsible for any alleged act of negligence or deficiency. OP3 and OP4 have denied that there is any deficiency of service and have also prayed for dismissal of the complaint.

4. During the course of proceedings, OP4 filed an application to implead insurance company i.e. The Oriental India Insurance Company Limited, 4E/14, Azad Bhawan, Jhandewalan, New Delhi-110055 as party. The said application was allowed vide order dated 08.09.2022 by impleading insurance company as OP5 in this complaint.

Upon notice, OP5 appeared and filed separate written statement and assailed the complaint by taking preliminary objections on the ground of maintainability; lack of jurisdiction; the complainant being not a consumer due to non availing any services from OP5; having no privity of contract between complainants and OP5; the complainants being estopped by their own act and conduct; concealment of material facts; bad for mis-joinder and non-joinder of necessary parties etc. OP5 stated that it is not liable to pay any claim of compensation.

On merits, OP5 reiterated the crux of averments made in the preliminary objections and facts of the case. OP5 has denied that there is any deficiency of service and has also prayed for dismissal of the complaint.

5. Before admission of the case, predecessor of this Commission vide order dated 12.04.2019 called the medical opinion of Civil Surgeon, Ludhiana by constituting a Board of Doctors. The Civil Surgeon, Ludhiana submitted its report dated 25.09.2020 before this Commission and after considering the report of Civil Surgeon, the case was admitted vide order dated 06.04.2021.

6. In evidence, the complainants tendered the affidavit of complainant No.2 Rajinder Singh as Ex. CA and reiterated their averments of the complaint. The complainants also placed on Ex. C1 to Ex.C27 are the copies of medical bills/receipts etc., Ex. C28 to Ex. C31 are the copies of CT scan reports, Ex. C32 is the copy of biopsy report, Ex. C33 and Ex. C34 are the copies of prescription slips, Ex. C35 is the copy of Discharge Card of Deep Hospital, Ex. C35/A and Ex. C36 are the copies of test reports, Ex. C37 is the copy of legal notice dated 21.06.2017, Ex. C38 are the postal receipts, Ex. C39 is the copy of Aadhar Card of

Rajinder Singh, Ex. C40 is the copy of birth certificate of complainant No.1, Ex. C41 is the copy of reply dated 24.08.2017 to legal notice dated 21.06.2017 and closed the evidence.

7. On the other hand, the learned counsel for OP1 and OP2 tendered affidavit Ex. RA of Dr. Hari Krishan Singla, Managing Director/Authorized Signatory of Singla Hospital, Ludhiana along with documents i.e. Ex. R1 is the copy of OPD slip of Hans Maternity Home, Ex. R2 is the copy of ultrasound report, Ex. R3 is the copy of reference slip dated 08.05.2017, Ex. R1/B is the copy of registration certificate of Dr. Hari Singh Hans, Ex. R1/AB is the copy of certificate of Dr. Amit Chakraborty issued by Rajiv Gandhi University of Health Sciences, Karnataka, Ex. R4 and Ex. R5 are the copies of laboratory reports, Ex. R6 is the copy of indoor treatment record, Ex. R7 and Ex. R7a is the copy of general case sheet, Ex. R8 is the copy of operation notes, Ex. R9 is the copy of prescription slip, Ex. R10 is the copy of Master of Surgery certificate of Hari Krishan Singla issued by Punjabi University, Ex. R11 is the copy of Experience Certificate of Dr. Hari Krishan Singla dated 02.05.2012 issued by Director, Health & Family Welfare Punjab, Chandigarh and closed the evidence.

The counsel for OP3 and OP4 tendered affidavit of Dr. Amit Chakraborty as Ex. RB along with documents Ex. R3/B is the copy of reference slip dated 08.05.2017, Ex. R3/AB, Ex. R3/BB is the copy of note issued by OP3 and OP4 as well as medical bills/receipts etc. and closed the evidence,

The counsel for OP5 tendered document Ex. R2/B is the copy of insurance certificate and closed the evidence.

8. Vide order dated 05.04.2024, this Commission directed OP1 to produce originals of indoor treatment record, general case sheet and operation notes as Ex. R6 to Ex. R8. On 03.05.2024, OP1 produced the above said record and each page of the same were marked/exhibited as Ex. D1 to Ex. D10

9. We have heard the arguments of the counsel for the parties and also gone through the complaint, affidavit and annexed documents and written statements along with affidavits and documents produced on record by the parties.

10. Complainant No.1 Mandeep Kaur is the minor daughter of complainant No.2 Rajinder Singh. OP2 Dr. Hari Krishna Singla is the Managing Director/Authorized Signatory of OP1 hospital. OP3 hospital was represented through Dr. Hari Singh Hans while OP4 Dr. Amit Chakraborty is a Pediatrician who was on rolls of OP3 hospital. OP5 is the insurance company with which OP4 Dr. Amit Chakraborty was insured vide Professional Indemnity-Doctors Policy Schedule Ex. R2/3 having coverage of Rs.10,00,000/- having policy period 26.03.2017 to 25.03.2018.

11. Complainant No.1, a child of 4 years, experienced persistent pain due to swelling on the back of her scalp for which she was brought to hospital of OP3 on 08.05.2017. Complainant No.1 was medically examined by OP4 on 08.05.2017 who prescribed medicines and advised ultra sonography. She was referred to OP1 hospital with recommendation to “**look for any intracranial extension**” vide reference slip Ex. R3. Ultrasound was conducted and the report of the same Ex. 32 = Ex. R2 showed the following impression:-

*“Impression: Soft tissue lesion scalp – Suggestive of Benign nerve sheath tumor.”*

The patient was admitted at OP1 hospital by OP2 with provisional diagnosis of sebaceous cyst. According to OP1 and OP2, CT scan was advised but owing to financial constraints of complainant No.2, the same could not be done. Finally on the basis of observations as contained in ultrasound report, the surgery for removal of cyst was performed. During the excision, CSF (Cerebrospinal Fluid) leaked and meningocele was diagnosed. The surgical procedure adopted by OP1 and OP2 as deciphered from in operational notes Ex. D2, reproduced as under:-

*“After cleansing & draping the part, excision of the cyst due But a heat of meninges c CSF fluid came out of small defect in small bone. Meningeal sac ruptured during the operation. The defect was closed with adjoining fascis & wound sutured after haemostans Pressure dressing applied specimen sent for HP exam.”*

On the asking of OP2 Dr. Hari Krishan Singla, Dr. Amit Chakraborty OP4 prescribed dosages of antibiotics. Complainant No.1 developed high fever and raised intracranial pressure. Medical condition of complainant No.1 Mandeep Kaur deteriorated. She was referred to Ludhiana for CT Scan and opinion of neurosurgeon. She was admitted in Deep Hospital on 12.05.2017 where she remained hospitalized till 24.05.2017. During her hospitalization, the patient underwent a series of investigations. CT scan was also conducted, firstly on 12.05.2017 and then on 16.05.2017. Ex. C28 to Ex. C31 are the CT scan reports. She was diagnosed as Dandy Walker Malformation with partial agenesis of Corpus Callosum with defect in Occipital Cranium (Congenital Malformation). The following impression was recorded by the consultant Radiologist in the CT scan reports:-

***“Impression:***

*Findings suggestive of Dandy-Walker malformation with partial agenesis of the corpus callosum.*

*Defect in the occipital calvarium in the midline overlying the cystic structure in the posterior fossa.*

*Small pneumocephalus as described, which may be related to a recent intervention or cutaneous fistulous communication of the posterior fossa cyst.*

*Recommend further evaluation with MRI.”*

12. At Deep Hospital, complainant No.1 was operated on 17.05.2017 and the repair of Dura was done. Complainant No.2 while appearing in person stated before this Commission that he was kept in dark by the OPs. Further they did not perform their duty with due diligence and they were negligent in treating his daughter. Had they properly diagnosed and operated complainant No.1, she could be saved from sufferings like physical and mental pain till today. While on the other hand, the counsel for the OPs refuted the allegations of the complainants and contended that they have adopted the standard operating procedure while treating Mandeep Kaur.

13. Now the point of consideration arises whether OP1 to OP4 were negligent in diagnosing, treating or performing surgery of the complainant No.1 Mandeep Kaur during her hospitalization from 08.05.2017 to 12.05.2017.

14. Legally speaking, Medical negligence is a breach of a duty of care by an act of omission or commission by a medical professional of ordinary prudence. Actionable medical negligence is the neglect in exercising a reasonable degree of skill resulting an injury to such person. The standard to be applied for adjudging whether the medical professional charged has been negligent or not, in the performance of his duty, would be that of an ordinary competent person exercising ordinary skill in the profession. The law requires neither the very highest nor a very low degree of care and competence to adjudge whether the medical professional has been negligent in the treatment of the patient.

15. A reference can be made to case titled as **Jacob Mathew Vs State Of Punjab & Anr. 2005(2) Apex Court Judgments 136 (SC)** whereby the Hon’ble Supreme Court of India summed up the law on medical negligence in the following words:-

*“48. (1) 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 a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal & 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'.*

*(2) Negligence in the context of medical profession necessarily calls 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 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 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. 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. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.*

*(3) 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 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.*

16. Adverting to the merits of the case, it is noticed that Indian Medical Council has notified (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (Ethics Regulations) which governs duties and responsibilities of Registered Medical Practitioners (RMP) and lays down the requirement to obtain an informed consent from the patients. Therefore, before performing excision, OP1 and OP2 were required to obtain, consent in writing from complainant No.2, being father and guardian of complainant No.1. The complete indoor patient treatment record in original as produced by OP1 and OP2 shows that there is no such written consent on record of OP2 for performing excision of Cyst. The performa for obtaining consent printed on the last leaf, is lying blank. The counsel for OP1 and OP2 has drawn the attention of this Commission on the treatment notes wherein it is recorded:-

*“11.05.2017. The patient did not get C.T. scan done as patient’s father said that USG does not show any intracranial extension and I am willing for my daughter’s operation at my own risk as I am poor and cannot go for CT scan.”*

The contentions of counsel for OP1 and OP2 does not hold good as this endorsement of doctor does not bear signature of the complainant nor a layman like complainant No.2 is expected to be conversant with the medical terminology. It is most unlikely that we will make statement to the effect that *“.....USG does not show any Intracranial extension and I am willing for my daughter’s operation at my own risk.....”*. It is not forthcoming that what were the nature and extent of probable risks which were explained to complainant No.2 Perusal of all the notes dated 11.05.2017 appears to have been appended by author in one go only. Even assuming the contents of the aforesaid endorsement to be true, it is evident that at that time, complainant No.2 was under duress and such oral assent recorded by doctor without explaining probable risk cannot be treated as a voluntary and informed consent.

17. In this regard, reference can be made to **2008(3) Apex Court Judgments 253 (SC) in Samira Kohli Vs Dr. Prabha Manchanda & Anr.** whereby in para No.32 of the said case, the Hon’ble Supreme Court of India has summarized the principles relating to consent as follows:

*(i) A doctor has to seek and secure the consent of the patient before commencing a 'treatment' (the term 'treatment' includes surgery also). The consent so obtained should be real and valid, which means that : the patient should have the capacity and competence to consent; his*

*consent should be voluntary; and his consent should be on the basis of adequate information concerning the nature of the treatment procedure, so that he knows what is consenting to.*

*(ii) The 'adequate information' to be furnished by the doctor (or a member of his team) who treats the patient, should enable the patient to make a balanced judgment as to whether he should submit himself to the particular treatment as to whether he should submit himself to the particular treatment or not. This means that the Doctor should disclose (a) nature and procedure of the treatment and its purpose, benefits and effect; (b) alternatives if any available; (c) an outline of the substantial risks; and (d) adverse consequences of refusing treatment. But there is no need to explain remote or theoretical risks involved, which may frighten or confuse a patient and result in refusal of consent for the necessary treatment. Similarly, there is no need to explain the remote or theoretical risks of refusal to take treatment which may persuade a patient to undergo a fanciful or unnecessary treatment. A balance should be achieved between the need for disclosing necessary and adequate information and at the same time avoid the possibility of the patient being deterred from agreeing to a necessary treatment or offering to undergo an unnecessary treatment.*

*(iii) Consent given only for a diagnostic procedure, cannot be considered as consent for therapeutic treatment. Consent given for a specific treatment procedure will not be valid for conducting some other treatment procedure. The fact that the unauthorized additional surgery is beneficial to the patient, or that it would save considerable time and expense to the patient, or would relieve the patient from pain and suffering in future, are not grounds of defence in an action in tort for negligence or assault and battery.*

*The only exception to this rule is where the additional procedure though unauthorized, is necessary in order to save the life or preserve the health of the patient and it would be unreasonable to delay such unauthorized procedure until patient regains consciousness and takes a decision.*

*(iv) There can be a common consent for diagnostic and operative procedures where they are contemplated. There can also be a common consent for a particular surgical procedure and an additional or further procedure that may become necessary during the course of surgery.*

*(v) The nature and extent of information to be furnished by the doctor to the patient to secure the consent need not be of the stringent and high degree mentioned in Canterbury but should be of the extent which is accepted as normal and proper by a body of medical men skilled and experienced in the particular field. It will depend upon the physical and mental condition of the patient, the nature of treatment, and the risk and consequences attached to the treatment."*

18. As per orders dated 16.07.2020 of this Commission, the Civil Surgeon, Ludhiana constituted a board of doctors consisting of Dr. Varun Saggar, Surgeon, Civil Hospital, Ludhiana, Dr. Davinder Kumar, Orthopedics, Civil Hospital, Ludhiana and Dr. Baldeep Singh, Medicine Specialist, Civil Hospital, Ludhiana. Dr. Hari Krishna Singla OP2 appeared before the board of doctors and provided the relevant record. The Medical Board prepared the report and same was transmitted to this Commission. The operative part of the report is reproduced as under:-

*"After going through the record available, the board is of the opinion that USG showed no intracranial extension, but during surgery at Karan Singla Hospital there was CSF leak. After Surgery at Karan Singla Hospital patient developed fever and patient was referred to and managed at Deep Hospital, Ludhiana. It is pertinent to mention that preoperative C.T. Scan/MRI is the ideal investigation to check for any intracranial extension. However, the patient did not get this investigation done due to financial reasons as per record file."*

19. The expert report reproduced hereinbefore lay emphasis that preoperative CT scan/MRI was the ideal investigation to check for any intracranial extension. Admittedly, no such CT scan/MRI was got conducted by the operating surgeon i.e. OP2. The concerned doctor tried to shrug off its responsibility by coining a story that due to poverty, complainant No.2 had volunteered for excision of his daughter's cyst

without the conduct of such CT scan/MRI. OP2 Doctor could have referred her to Civil Hospital or any charitable hospital where such facility was available free or on subsidized rates. Further the excuse of poverty of complainant No.2 seems to be an afterthought as while at Deep Hospital, he got conducted CT Scan twice on 12.05.2017 (Ex. C28, Ex. C29) as well as on 16.05.2017 (Ex. C30, Ex. C31). Even after the operation, OP1 and OP2 have referred complainant No.1 on 12.05.2017 at 11.00 AM to OP4 at Ludhiana for CT Scan head and for the opinion of Neurosurgeon. So it is crystal clear that OP2 was fully aware of the standard procedure that excision of such like cyst should be performed only after obtaining CT scan/MRI reports but he experimented excision casually and negligently which resulted the rupturing of Occipital Cranium and fluid started oozing out through duct. The OP surgeon could not repair such leakage at then and there. It seems that either the OP surgeon was not skilled to deal with such situation or his infrastructure was not well equipped to deal with such emergencies that may occur during the course of surgery. Still the patient was referred on the following day at about 11.00 AM for opinion of Neurosurgeon. The record of Deep Hospital shows that it took about 5 days to control high fever of complainant No.1 and then only on 17.05.2017, the repair could be done. The peculiar facts and circumstances of the case warrant invocation of principle of *res ipsa loquitur*.

20. In this regard reference can be made to **CPL Ashish Kumar Chauhan (Retd.) Vs Commanding Officer and others in 2023 INSC 857** whereby in para No.71 and 72 of the said judgment, the Hon'ble Supreme Court of India has made the following observations:-

*"71. The principle of res ipsa loquitur has been described in Charlesworth & Percy on Negligence in the following terms:*

*"6-25. It has been said that "a prima facie case" should be the preferred terminology. It means essentially a case which calls for some answer from the defendant and will arise upon proof of: (1) the happening of some unexplained occurrence; (2) which would not have happened in the ordinary course of things without negligence on the part of somebody other than the claimant; and (3) the circumstances point to the negligence in question being that of the defendant, rather than that of any other person"*

*6-26. The third requirement is usually fulfilled by showing that the instrument causing the damage was in the management and control of the defendant at the time of the occurrence, but this is not essential. Where an object which causes an accident has, at all material times, been under the control of the defendants and there is no evidence to show how the accident happened, the presumption of negligence cannot be displaced by evidence of the general care that has been taken."*

*This court has, on several occasions in the past, particularly in cases involving allegations of medical negligence, invoked the principle of res ipsa loquitur ("the thing speaks for itself"). In V. Kishan Rao v Nikhil Super Speciality Hospital & Anr, it was observed:*

*"In a case where negligence is evident, the principle of res ipsa loquitur operates and the complainant does not have to prove anything as the thing (res) proves itself". In such a case it is for the respondent to prove that he has taken care and done his duty to repel the charge of negligence."*

72. *All these facts and circumstances, in the opinion of this court, prove and establish that by reasonable standards of evidence, the appellant has justified the invocation of the principle of res ipsa loquitur. The principle was applied in the Nizam Institute of Medical Sciences (supra) wherein this court held that:*

*"77. [...] in a case involving medical negligence, once the initial burden has been discharged by the complainant by making out a case of negligence on the part of the hospital or the doctor concerned, the onus then shifts on to the hospital or to the attending doctors and it is for the hospital to satisfy the Court that there was no lack of care or diligence."*

*Earlier, in Savita Garg (supra), the court had ruled that once the complainant or aggrieved party had adduced some evidence that the patient suffered (or died, as in that case) due to lack of care (or as in this case, suffered irremediable injury due to want of diligence) "then the burden lies on the hospital to*



*justify that there was no negligence on the part of the treating doctor or hospital. Therefore, in any case, the hospital is in a better position to disclose what care was taken [..].”*

It is further noticed that OP4 Dr. Amit Chakraborty a referring Pediatrician at very outset made a provisional diagnosis and at the time of reference, he specifically mentioned in the referral slip **“look for any intracranial extension”**. The said referring Pediatrician also gave specific inputs with regard to the dosage of medicines and antibiotics to be administered to complainant No.1, a child patient. As such, OP3 and OP4 are not in any way negligent in treating complainant NO.1 and as such, the complaint against them as well as their insurer i.e. OP5 deserved to be dismissed.

21. Consequently, OP1 and OP2 have shown negligence in diagnosing, treating and operating complainant No.1 Mandeep Kaur due to which she had to suffer a lot in such a tender age. As such, in our opinion, it would be just and appropriate if OP1 and OP2 are directed to pay a composite compensation of Rs.3,00,000/- to the complainants within 30 days from the date of receipt of copy of order, failing which OP1 and OP2 shall be held liable to pay interest @8% per annum from the date of complaint till date of actual payment. Out of said compensation Rs.1,00,000/- shall be given to complainant No.2 and remaining Rs.2,00,000/- shall be deposited in the name of minor complainant No.1 Mandeep Kaur in some nationalized bank in the shape of FDR and interest on quarterly rests of the same be given to her father complainant No.2 for providing basic necessities of life to her.

22. As a result of above discussion, the complaint is partly allowed with direction to OP1 and OP2 to pay a composite compensation of Rs.3,00,000/- to the complainants within 30 days from the date of receipt of copy of order, failing which OP1 and OP2 shall be held liable to pay interest @8% per annum from the date of complaint till date of actual payment. Out of said compensation Rs.1,00,000/- shall be given to complainant No.2 and remaining Rs.2,00,000/- shall be deposited in the name of minor complainant No.1 Mandeep Kaur in some nationalized bank in the shape of FDR and interest on quarterly rests of the same be given to her father complainant No.2 for providing basic necessities of life to her. However, the complaint as against OP3 to OP5 is hereby dismissed. Copies of order be supplied to parties free of costs as per rules. File be indexed and consigned to record room.

23. Due to huge pendency of cases, the complaint could not be decided within statutory period.

**(Monika Bhagat)**  
**President**

**(Sanjeev Batra)**

**Member**

Announced in Open Commission.

Dated:23.05.2024.

Gobind Ram.