



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

SPECIAL LEAVE PETITION (CIVIL) NOS. 32406-32407 OF 2017

**D.C. MALVIYA (SINCE
DECEASED) THR. LRS. ... Petitioner(s)**

VERSUS

**DR. A.H. MEMON (SINCE
DECEASED) THR. LRS. AND OTHERS ... Respondent(s)**

With

SPECIAL LEAVE PETITION (CIVIL) NOS. 19478-19479 OF 2019

**DR. RAJENDRA BANTHIA AND
OTHERS ... Petitioner(s)**

VERSUS

**D.C. MALVIYA (DEAD) THROUGH
LRS. AND OTHERS ... Respondent(s)**

J U D G M E N T

Rajesh Bindal, J.

1. This order will dispose of a bunch of petitions as noted

2. Special Leave Petition (Civil) Nos.32406-07 of 2017 have been filed by Legal Representatives (for short “LRs”) of the deceased patient seeking enhancement of compensation awarded on account of alleged medical negligence, whereas Special Leave Petition (Civil) Nos.19478-79 of 2019 have been filed by the doctors who have been held liable and were directed to pay damages for deficiency in service along with refund of treatment costs. For the sake of convenience, the parties shall be referred to by their positions before the National Commission¹.

3. Briefly, the facts available on record are that a complaint² was filed before the District Forum³ on 01.08.2003, by the predecessor in interest of the petitioners before this Court in Special Leave Petition (Civil) Nos.32406-07 of 2017, seeking compensation of ₹14,00,000/- on account of death of his wife (late Sheela Malviya). The allegations were of medical negligence. She was admitted in the nursing home managed by the deceased respondent No.1 Dr. A.H. Memon, who is now represented by his LR, for the treatment of Nasal Polyps. On 17.08.2001 (pg. no. 17) Endoscopic Polypectomy was performed, however, she suffered from cardiac arrest soon after completion of the

¹ The National Consumer Disputes Redressal Commission at New Delhi.

² Complaint Number 310 of 2003

³ District Consumer Disputes Redressal Forum, Raipur (Chhattisgarh).

procedure. Since Dr. A.H. Memon's hospital did not have ventilator facility, she was shifted to the opposite party No. 5, Dr. Rajendra Banthia's nursing home on the same day. The patient was given treatment for around 19 days at Dr. Rajendra Banthia's nursing home, however her condition remained critical. On 06.09.2001 (page no. G), she was shifted to opposite party No.6, Dr. Gautam Darda's hospital where the patient expired on 07.09.2001.

4. The District Forum *vide* order dated 26.07.2006 dismissed the complaint *qua* opposite party Nos.1 to 4 and 6 to 8 before it, namely; Dr. A.H. Memon, Dr. M. Arif Memon, Dr. S. Rathi, Dr. Anil Jain, Dr. Aarti Gautam Darda, Dr. Chandrika Sahu and Dr. Atul Tiwari.

5. The complaint was accepted only *qua* opposite party No.5 namely Dr. Rajendra Banthia. He was directed to refund the entire treatment charges received by him to the tune of ₹1,20,000/-. Additionally, ₹50,000/- was directed to be paid on account of deficiency of service and ₹2,000/- were awarded as legal expenses. The amount was to be paid with interest @ 9% p.a. from 17.08.2001 till realization.

6. Aggrieved against the aforesaid order, the complainant namely late Shri D.C. Malviya, husband of the deceased and also the

opposite party No.5 Dr. Rajendra Banthia against whom compensation was awarded, filed appeals⁴ before the State Commission⁵. Both the appeals were dismissed by the State Commission *vide* order dated 12.10.2009.

7. Still aggrieved, both the aforesaid parties filed Revision Petitions⁶ before the National Commission. The revision petition filed by late Shri D.C. Malviya represented through his LRs, was allowed to the extent that in addition to the relief already granted by the District Forum, opposite party No.1 through LRs and opposite parties No. 2 to 4 were directed to pay compensation of ₹3,00,000/- jointly and severally to the LRs of the complainant. Opposite party 7 and 8 were directed to pay ₹50,000/- each for giving contradictory CT Scan reports. Cost of ₹20,000/- was also directed to be paid by all opposite parties except opposite party No.6. Opposite party No.5, Dr. Rajendra Banthia was directed to pay compensation as awarded by District Forum. The amount was directed to be paid within four weeks from the date of receipt of copy of the order failing which interest @ 9% p.a. was payable from the date of filing of complaint till the realization.

⁴ Appeal Number 457 of 2006 and Appeal Number 472 of 2006

⁵ Chhattisgarh State Consumer Disputes Redressal Commission, Pandri, Raipur.

⁶ Revision Number 24 of 2010 and Revision Number 382 of 2010

8. Aggrieved against the common order passed by the National Commission the LRs of the complainant preferred Special Leave Petition Nos. 32406-07 of 2017 seeking further enhancement of compensation. Opposite party Nos. 5, 7 and 8 also preferred Special Leave Petition (Civil) Nos.19478-79 of 2019 challenging the National Commission's order.

9. Brief arguments raised by the learned counsel for the LRs of the complainant seeking enhancement of compensation are that once the deficiency in service is proved, the compensation had to be assessed by applying the multiplier method. It was argued that deceased patient being a housewife, her notional income should have been taken for calculation of just and fair compensation.

9.1 It was also submitted that the National Commission did not provide any break-up for arriving at the enhanced compensation amount. Further, no compensation was awarded on account of future prospects, cost of litigation and under other heads. It was also argued that the National Commission ought to have awarded interest from the date of filing of the complaint. It was not justified in awarding interest only upon the opposite parties failing to pay the compensation amount within four weeks of the date of the passing of the order.

10. On the other hand, the learned counsel appearing for the contesting doctors against whom damages have been awarded submitted that it was not a case of deficiency in service as they had provided best medical aid, advice and treatment as per the standard medical protocols but still the patient could not survive. The amount of compensation awarded to the LRs of the complainant should be set aside as it will remain a scar on their professional career.

11. Heard the learned counsel for the parties and perused the relevant record.

12. Firstly, coming to the petitions filed by the contesting doctors. A perusal of the paper book and various orders passed by this Court shows that notice has not been issued in the same.

13. As far as petitions filed by the LRs of the deceased complainant are concerned, it is an admitted position that the Endoscopic Polypectomy procedure performed on the deceased patient was successful. It was after the procedure that the patient suffered cardiac arrest, which led her shifting to opposite party No.5, Dr. Rajendra Banthia's nursing home, and subsequently to opposite party No.6, Dr. Gautam Darda's hospital, where she eventually died. It

was submitted on behalf of the LRs of the deceased patient that the opposite parties No. 1 to 4 were negligent in not conducting proper pre-anesthetic checkup before performing the procedure. Furthermore, it was submitted that the opposite party No. 5, Dr. Rajendra Banthia, who is a general physician, treated the patient without referring her to better medical facility in a timely manner. The submissions put forth by the LRs of the deceased complainant were duly considered by the National Commission, which after considering the material available on record provided for additional compensation to be paid by the opposite parties.

14. The position as it stands today after considering the reliefs awarded by the National Commission against different parties is:

Amount awarded (in ₹)	Towards	Payable By
3,00,000/ (jointly and severally)	Medical Expenses, Loss of Love and Mental Agony.	Opposite Party No.1 (Dr. A. H. Memon through LRs)
		Opposite Party No. 2 (Dr. M.Arif Memon)
		Opposite Party No. 3 (Dr. S. Rathi)
		Opposite Party No. 4 (Dr. Anil Jain)
50,000/-	For giving contradictory CT Scan Report.	Opposite Party No.7 (Dr. Chandrika Sahu)
50,000/-	For giving contradictory CT Scan Report.	Opposite Party No.8 (Dr. Atul Tiwari)

20,000/-	Costs.	All opposite parties except Opposite Party No.6 (Dr. Aarti Gautam Darda)
1,20,000/- (with interest at 9% p.a. from 17.08.2001)	Refund of treatment cost.	Opposite Party No.5 (Dr. Rajendra Banthia)
50,000/- (with interest at 9% p.a. from 17.08.2001)	Compensation for deficiency in service.	
2000/-	Legal Costs.	

15. Out of the aforesaid parties, the opposite party No.1 through LRs and opposite party Nos. 2 to 4 have not challenged the order. Whereas in the S.L.P. (C) Nos.19478-19479 of 2019 filed by the opposite party No. 5 and opposite party Nos. 7 and 8, notice has not been issued.

16. From the facts as noticed and on a perusal of the orders passed by the different forums, better care of the patient could have been taken but the fact remains that she did not survive. She was 51 years of age at the time of her death. The National Commission has awarded additional compensation of ₹3,00,000/- in lumpsum to be paid by opposite party No. 1 through LRs and opposite party Nos. 2 to 4, along with ₹50,000/- each to be paid by opposite party No. 7 and 8, which in our opinion seems to be reasonable and justified, hence, deserves no further enhancement. The value of human life cannot be

assessed in monetary terms whatsoever is awarded is a matter of solace.

17. We find the reliefs given above are sufficient in S.L.P.(C) Nos.32406-32407 of 2017 and hence no case is made out for grant of leave in the instant petitions. The same are accordingly dismissed.

18. Since the amount involved in the S.L.P. (C) Nos.19478-19479 of 2019 filed by the contesting doctors is minimal, no notice was issued by this Court. We do not find any merit in the present Special Leave Petitions as well, which are hereby dismissed.

.....J.
(MANOJ MISRA)

.....J.
(RAJESH BINDAL)

New Delhi
October 15, 2024.