

**IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL  
COMMISSION**

**Date of Institution: 06.01.2017**

**Date of hearing: 11.05.2023**

**Date of Decision: 16.04.2024**

**COMPLAINT CASE NO.- 369/2011**

**IN THE MATTER OF**

**MR. G.S. SACHDEVA  
FATHER OF ANGAD SACHDEVA (DECEASED)  
56, SHEETAL APARTMENTS,  
SECTOR 14, ROHINI,  
DELHI.**

**(Through: Ms. Kitto Bajaj, Advocate)  
...Complainant**

**VERSUS**

**1. SAROJ HOSPITAL AND HEART INSTITUTE  
MADHUBAN CHOWK, SECTOR 14 (EXTN)  
ROHINI, DELHI – 110085.**

**2. DR. P.K. BHARDWAJ, M.S.  
MEDICAL DIRECTOR  
SAROJ HOSPITAL & HEART INSTITUTE  
MADHUBAN CHOWK, SECTOR 14 (EXTN)  
ROHINI, DELHI – 110085.**

**(Through: Ms. Sandeep Vishnu, Advocate  
Counsel for the Opposite Party No.1 & 2)**

**3. DR. RAKESH GUPTA, MD, M.A.S.E.**  
**SENIOR CONSULTANT**  
SAROJ HOSPITAL & HEART INSTITUTE  
MADHUBAN CHOWK, SECTOR 14 (EXTN)  
ROHINI, DELHI – 110085.

**4. DR. DIWAKAR JHA, MD**  
**SENIOR CONSULTANT**  
SAROJ HOSPITAL & HEART INSTITUTE  
MADHUBAN CHOWK, SECTOR 14 (EXTN)  
ROHINI, DELHI – 110085.

**(Through: Mr. S.C. Rajpal, Mr. Varun Raj Pal and  
Ms. Deepika Rajpal Grover, Advocates,  
Counsel for Opposite Parties No.3 & 4)**

**5. DR. JAIDEEP BANSAL**  
**NEUROLOGIST**  
SAROJ HOSPITAL & HEART INSTITUTE  
MADHUBAN CHOWK, SECTOR 14 (EXTN)  
ROHINI, DELHI – 110085.

**(Through: Mr. Onkar Prasad alongwith Mr. Robin Bansal,  
Advocates)**

**6. M/S ORIENTAL INSURANCE COMPANY**  
**REGISTERED & HEAD OFFICE AT**  
**A-25/27, ASIF ALI ROAD**  
**NEW DELHI-110002**

**(Through: Mr. Sanjay Rawat, Advocate)**

...Opposite parties

**CORAM:****HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)****HON'BLE MS. PINKI, MEMBER (JUDICIAL)****HON'BLE MR. J.P. AGRAWAL, MEMBER (GENERAL)**

Present: Complainant in person along with Ms. Kittoo Bajaj, Counsel for the Complainant.

Mr. Anil Sharma, AR for OP-1 & 2 along with Mr. Sandeep Vishnu, Counsel for OP-1 & 2.

Mr. S.C. Rajpal along with Mr. Varun Raj Pal and Ms. Deepika Rajpal Grover Counsel for OP-3 & 4.

Mr. Onkar Prasad alongwith Mr. Robin Bansal, Counsel for OP-5.

Mr. Ashutosh Jha, Proxy Counsel for Mr. Sanjay Rawat, Counsel for OP-6

**PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL  
(PRESIDENT)**

**JUDGMENT**

1. The present complaint has been filed by the Complainant before this Commission alleging negligence and deficiency in service by the Opposite parties and has prayed the following:

*“a) Pass orders for constituting a fresh and independent panel of Doctors of AIIMS or other Competent Institute of repute to probe into the inaction and inappropriate action taken by the attending Doctors i.e. Opponent Doctors 1-4 on Angad Singh Sachdeva w.e.f. 12.7.09 to 14.7.09.*

- b) Hold the Opponents responsible for deficiency in their services and pass an Order directing the Opponent Doctors 1-4 to pay severally and jointly and the Complainant a sum of Rs. 1 crore as compensation along with interest @ 18% per annum from 14.07.09 (date of death of patient) and till date of actual payment for the wrongful death of the Complainant's child and towards loss of income and pain & suffering caused along with expenses for medical treatment of the deceased patient.*
- c) Pass an order directing the Opponents to pay the cost of the present proceedings in favour of the Complainant.*
- d) To grant such other order as this Hon'ble Commission deems fit in the facts and circumstances of the case."*

2. Brief facts necessary for the adjudication of the present complaint are that Mr. Angad Sachdeva (*hereinafter referred to as the "patient"*) was admitted in Saroj Hospital and Heart Institute on 11.07.2009 with complaint of vomiting and diarrhoea and was attended by Opposite Party No.3-Dr. Rakesh Gupta and Opposite Party No.4-Dr. Diwakar Jha, Senior Consultants. The patient was treated for dehydration and put through various tests. On 12.07.2009, the Opposite Party No.3 & 4 visited the patient and found him in a forward bent position with slurred speech and drowsiness and unable to open his eyes and recommended CT Scan & ECG. The reports indicated "Obstructive Hydrocephalus" and "Pressure effect over the left side, hydro density seen in the left cerebellum and the 4<sup>th</sup> ventricle". However, no specific treatment for

- the said condition was given by the Opposite Parties. Subsequently, the patient succumbed to his ailments within 03 days of admission in the Opposite Party No.1-hospital.
3. The Complainant has submitted that the Opposite Party No.3 & 4 did not even bother to refer to the CT Scan Report which clearly mentioned that the patient had “Obstructive Hydrocephalus”. It is further submitted that the CT Scan and ECG reports were readily available to Opposite Party No.3 & 4 at 1.00 PM on 12.7.2009 itself. However, none of the Opposite Parties explained the seriousness of this observation in the CT Scan report to the relatives of the patient nor did they take any appropriate immediate action for treatment/surgery of the patient. Secondly, it is submitted that the CT Scan report called for an immediate reference to Neurosurgeon so that excess fluid could be removed to reduce the pressure on the brain. It is further submitted that around 4.30 p.m. on 12.7.2009, the patient became restless and at 5.30 p.m. became unconscious with frothy secretions from the mouth with fully dilated and was put on ventilator. The Complainant has submitted that even at this critical time, the Opposite Party No.3 & 4 failed to refer to CT Scan report and proceeded in a negligent manner without referring the matter to a Neurosurgeon. Thirdly, it is submitted that at 6.00 p.m., Opposite Party No.3 & 4 prepared a 2 page report specifying the patient’s condition and there is no mention of the term “Obstructive Hydrocephalus” in the said note. It is further submitted that at their own comfortable time, the Opposite Party-Doctors referred the patient to Dr. Jaideep Bansal, Neurologist, (Opposite Party No.5) who was not even

available in the hospital even though the medical condition of the patient warranted immediate intervention by a Neurosurgeon only. By then the patient slipped into Coma. Lastly, it is submitted that after a further delay of 04 hours at 10 p.m., Opposite Party No.5-Dr. Jaideep Bansal, attended the patient and referred him to Dr. Anil Kumar Kansal, Neurosurgeon recommending surgery to ease out the pressure in the patient's head. Meanwhile the condition of the patient deteriorated even further and he suffered a cardiac arrest at 12 midnight and a second cardiac arrest at 8.30 am on 14.07.2009 and eventually passed away on 14.07.2009.

4. The Complainant has submitted that there has been a total negligence in the acts of omission of all the Opponent Doctors virtually resulting into no treatment at all to the patient leading to unfortunate demise of the patient. The Complainant has contended that all Opposite Party-Doctors were duty bound to provide immediate necessary treatment to the patient. The CT Scan report ought to have been examined by the Opposite Party-Doctors in the light of gravity of the situation and urgency involved but they did not even peruse the report and failed to take immediate necessary steps for proper treatment of the patient. Aggrieved by the aforesaid conduct of the Opposite Parties, the Complainant has preferred the present Complaint.
5. The Opposite Party No.1 & 2 have filed their joint Written Statement and have stated therein that the patient was diagnosed and treated correctly at Opposite Party No.1-Hospital and the record of treatment, conditions and tests, etc very well speaks of the same and do not reflect

- any negligence, omission, commission etc. Secondly, it is submitted that the patient was given appropriate and speedy treatment but in spite of best efforts, tests and medicines etc, he could not recover. Thirdly , it is submitted that the Opposite Party-doctors performed their duties diligently and fairly and to the best of their abilities but the patient could not survive. Pressing the aforesaid submissions, the Opposite Parties have prayed that the present complaint be dismissed.
6. The Opposite Party No.3 & 4 have filed their joint written statement and have stated therein that there no negligence or deficiency can be made out on part of both the Opposite Parties as utmost caution and care had been exercised for the treatment of the patient in accordance with the standard medical practice. It is further submitted that the attendants of the patient are guilty of suppressing/not disclosing the most crucial facts despite being asked repeatedly by both Opposite Parties No.3 & 4 about the past history of the illness of the patient at the time of admission. It is therefore submitted that had the fact about occipital headache suffered by the patient been disclosed timely, the treatment approach would have been entirely different on the first day itself. Hence, the present complaint alleging medical negligence against Opposite Parties No.3 & 4 is not sustainable in law. Lastly, it is submitted that the Complainant, prior to filing this complaint before this Hon'ble Commission, had filed a Complaint on the same grounds before the statutory body Delhi Medical Council, New Delhi and the same was dismissed vide Order dated 07.12.2010 with the observation that no case of medical negligence is made out against in treatment

- administered and there is no professional misconduct of the Opposite Parties. Hence, the Complaint filed before this Commission be dismissed with cost.
7. The Opposite Party No.5 in its Written Statement has stated that the present complaint is not maintainable and deserves outright dismissal as no cause of action ever arose against Opposite Party No.5 as the patient was never under the treatment of Opposite Party No.5. It is further submitted that the Opposite Party No.5 has been unnecessarily implicated in this case even though he had no role to play in the treatment of the patient. Secondly, it is submitted that the only role Opposite Party No.5 played was that when he was requested by the treating physicians to give his opinion as a Specialist-Neurologist, he gave his opinion that a Neurosurgeon should be consulted. It is therefore submitted that merely examining a patient or merely giving an expert opinion can never be called as negligence. Lastly, it is submitted that the patient was beyond the scope of treatment by Opposite Party No.5 since he was already nearly brain dead. Opposite Party No.5 was a consultant Neurologist and was not the treating doctor of the Complainant's son and was not on duty on that particular day in the hospital.
  8. No deficiency has been alleged nor any relief has been sought against the Opposite Party No.6.
  9. The Complainant has filed the Rejoinder rebutting the written statement filed by the Opposite Parties.



10. We have perused the material available on record and heard the counsels for the parties at length.
11. On a perusal of the record, we find that the present Complaint boils down to the following two limbs of contentions i.e. causing deliberate delay in extending treatment to the patient and non-availability of domain experts allegedly rendering the patient slip into eternal slumber.
12. Therefore, ***the first question*** that falls for our consideration is ***whether the patient was left undiagnosed and untreated owing to the absence of treating doctors with domain knowledge.***
13. In order to put rest to the aforesaid controversy, it is crucial to analyze the conduct of the Opposite Parties in the backdrop of the chronology of events that transpired. A perusal of the record divulges that the patient was admitted in Opposite Party No.1-Hospital on 11.07.2009 with complaint of vomiting and diarrhea and was attended by Opposite Party No.3-Dr. Rakesh Gupta and Opposite Party No.4-Dr.Diwakar Jha, Senior Consultants. The patient was treated for dehydration and put through various tests including Haemogram, Bio-Chemistry, Haematology, Hepatitis-C, HIV I/III, Australian Antigen, X-ray chest, ECG etc. A perusal of the Investigation Reports (*“Indoor patient Continuation Sheets”*) reveals that on 12.07.2009, the Opposite Parties No.3 & 4 visited the patient and found him in a forward bent position with slurred speech, drowsiness, unable to open his eyes and recommended Echo, CT Scan & EEG. Here, we deem it appropriate to refer to the the Case Summary (*pg-770 of the Convenience Compilation*) reproduced hereunder as follows:

*“The Echo test revealed raised IV fluids, Restricted CT revealed hypodensity with poorly defined margin seen in the left cerebellum reaching upto the --. Pressure effect over the left sided basal cistern and 4<sup>th</sup> ventricle. Dilated 3<sup>rd</sup> and both lateral ventricles suggestive of Obstructive Hydrocephalus. EEG was done which revealed generalized cerebral—”.*

14. The “Indoor Patient Continuous Sheet” record divulges that the patient’s condition was deteriorating and he was shifted to the ICU. The patient was on ventilator and was not reacting to deep painful stimuli. The CT Scan report further makes a mention that the patient was advised “Urgent Neurosurgery ref for possibility of EVD” (extra ventricular drain) as is evident from the record reproduced below:

INDOOR PATIENT 680  
CONTINUATION SHEET

Cr No.125344

Name: Angad Age:20 Sex M  
Ref: Dr. Rakesh Gupta/Dr. Diwakar Jha Ward :Deluxe Bed No.:208

12.7.9 Thanks for ref.

Patient was admitted with recurrent vomiting and vertigo on 11.7.09.Had restlessness and irritability in morning and sudden gasping condition and shifted to ICU .No h/o fever/seizure.

Pulse-132/  
BP-70/40 mm/Hg

On ventilator IPPV mode .Pupil B/L dilated.Not reading not reacting to deep painful stimuli.

FOM Absent.No spontaneous respiration .

CECT Head-large hypodensity seen in left cerebellum and obstructive hydrocephalus.Dilated 3<sup>rd</sup> ventricle and temporal horns-o/o acute large cerebellum with obsto hydrocephalus

???mass

Adv: Urgent neurosurgery ref for possibility of EVD(TALK TO Dr. Anil)

Dcphata Tb.Delett(150mg) OD.

Hyperventilator to keep Rx.Co2 25-30

Rest condition same.

Grave prognosis explained in detail to father, mother and uncle.

15. The aforementioned facts clearly establish that time was the essence in the present case. The patient was already in a critical condition and required urgent surgical intervention in order to release the pressure due to fluid build-up in the brain. However, this urgency is not reflected in the manner the case of the patient is handled by the Opposite Parties. A perusal of the record clearly reflects that CT Scan was conducted at around 11:18 a.m. on 12.07.2009 and the final report mentions a need for urgent surgery, which could only be performed by a neurosurgeon. However, it is abysmally surprising to note that the patient was only attended by a neurologist-Opposite Party no.5 at 10 p.m. in the night i.e. after a delay of more than 8 hours. (*Records of Doctors Visit & Investigations annexed at pg 735 of the Convenience Compilation*). It is implausible as to why the Opposite Parties no.3 & 4, not being experts in the domain of neurosurgery, slept over the CT Scan report which clearly mentioned that the patient was in need of urgent surgery, when the CT Scan was conducted at around 11:18 a.m on the same day.
16. Subsequently, as is evident from the document '*Records of Doctors Visit & Investigations*' (*annexed at pg 735 of the Convenience Compilation*) Dr. Anil Kansal-neurosurgeon arrived at 12 p.m. midnight. It is pertinent to mention here that Dr. Anil Kansal-neurosurgeon decided not to operate upon the patient citing reasons "*the patient is in coma and surgery cannot be performed*". The record divulges that the patient was in coma since 5:30 and such conduct on part of the Opposite Parties No.3 & 4 clearly indicates that either the neurosurgeon was never apprised about the critical condition of the

- patient, or to the contrary, even if it is assumed that the neurosurgeon was informed, the same was done after valuable time was lost and the patient had slipped into coma.
17. As per the record, the patient was attended by Opposite Parties no.3 & 4, Senior Consultants at the Opposite Party No.1-Hospital who played a pivotal role in the treatment of the patient. Admittedly, the Opposite Parties No.3 & 4 are not experts in the field of neurosurgery and neurology and hence, it is crucial to ascertain the role of the Opposite Parties no. 3 & 4 to carve out any negligence.
  18. Therefore, *the next question* that falls for our consideration is *whether the Opposite Parties No.3 & 4 caused undue delay in seeking the opinion of a neurosurgeon/neurologist and whether such conduct amounts to medical negligence.*
  19. Here, it is pertinent to note that as per the record, incidentally, 12.07.2009 was an off day for Opposite Party No.5 and one neuro-physician-Dr. Jyoti Sehgal was on call duty. As already discussed above, the patient was facing a 'life and death' situation and was in immediate need for a surgical intervention by a neurosurgeon to drain out the obstructive fluids in his brain. However, it is evident from the record that the Opposite Party No.3 & 4 did not call the neurologist on duty but called only Opposite Party No.5 who was not available in the Opposite Party no.1-Hospital. Here, we deem it appropriate to refer to the reply filed by the Opposite Party No.3 & 4, the relevant extract reproduced hereunder as:

*“That the O.P. No.3 had called Dr. Jaideep Bansal/O.P. No.5 at 18:00 hours and apprised him of the situation as is evident from page no.907(treatment record). He agreed with the ongoing management and we also requested him to see the patient.”*

20. We further deem it appropriate to refer to the reply filed by the Opposite Party No.5, the relevant extract reproduced hereunder as:

*“Even otherwise, the OP no. 5 could not have had any role in the treatment of the patient because, as explained to the treating Consultant Physician at 7:30 p.m. on 12.07.2009 itself when he informed the OP no. 5 about the condition of the patient, he had told him that there was almost no role for a neurologist and that opinion should be obtained from a neuro-surgeon.*

*It is clear from the above facts that the only role that tire OP no. 5 played was that when he was requested by the treating physician to give his opinion as a specialist/neurologist, he gave his opinion to all the three persons (the treating physician; the complainant and the neuro-surgeon in Hissar who was known to the complainant). The OP no. 5 told all of them that he had no treatment to offer and in the circumstances, the opinion of a neuro-surgeon should be obtained.”*

21. Here, it is to be noted that the Opposite Parties No.3 & 4 have given mutually contradictory statements in so much so that the Opposite

- Parties No.3 has stated that he called the Opposite Party No.5 at 18:00 hours whereas the Opposite Party No.5, in its reply has stated that the call was made around 19:30 hours. It is to be noted further that the Opposite Party No. 3 & 4 have stated that the Opposite Party No.5 agreed with the ongoing treatment whereas the Opposite Party No.5 has stated that he apprised the Opposite Parties No.3 & 4 that he had no treatment to offer and advice from a neurosurgeon should be sought. However, the Opposite Party No.5, admittedly, made a call to the neurosurgeon himself at 10 p.m. In our thoughtful opinion, it is implausible as to why the Opposite Parties No.3 & 4 wasted crucial time and kept on waiting for the Opposite Party No.5-neurologist who was not on duty and instead, did not consult the Neurophysician readily available, being on duty in the hospital.
22. Having dealt with the conduct of the Opposite Parties No.3 & 4, we now proceed to deal with the conduct of the Opposite Party No.5. Thus, the aforesaid discussion leads us to another question, *whether any negligence can be made out on part of the Opposite Party No.5.*
23. It is the contention of the Complainant that the Opposite Party No.5 only attended the patient at 10 p.m. and did not give any treatment nor did he change the course of treatment, thereafter only advised to call a neurosurgeon, and as such is liable for negligent conduct.
24. In order to carve out negligence on part of the Opposite Party No.5, it is crucial to analyse the conduct of the Opposite Party No.5 in the backdrop of the facts of the present case.

25. The record divulges that the Opposite Party No.5 was not on duty on the particular day in the Opposite Party No.1-Hospital. Therefore, it is clear that the Opposite Party No.5 did not owe a duty to care towards the patient in the first place, not being on duty in the hospital. Furthermore, it is clear from the record that the Opposite Party No.5 had no role to play in the treatment of the deceased and the only role the Opposite Party No.5 played was that when he was requested by the treating physicians to give his opinion as a Specialist/Neurologist. The Opposite Party No.5 only gave his opinion that a Neurosurgeon should be consulted. In our thoughtful opinion, merely examining a patient or merely giving an expert opinion can never be called as negligence. Moreso, it can be inferred from the submissions of the Opposite Party No.3, 4 & 5 itself that the Opposite Party No.5 was only contacted through phone call in order to seek opinion at around 5:30p.m.-7:00 p.m. in the evening. It is clear from the record that the patient was beyond the scope of treatment by Opposite Party No.5 since the patient was already nearly brain dead around 5:30 p.m. Therefore, keeping view the findings that the Opposite Party No.5 was a consultant Neurologist and was not the treating doctor of the patient and was not on duty on that particular day in the hospital, we opine that no negligence can be attributed to Opposite Party No.5.
26. The *main question* that now falls for our consideration is *whether the conduct of the Opposite Parties amounts to medical negligence.*
27. At the outset, it is pertinent to remark that the term “negligence” has no defined boundaries and if any medical negligence is alleged, whether it

pertains to pre or post-operative medical care or to the follow-up care at any point in time at the hands of the treating doctors, it is always apposite to take note of the constituents of negligence and the exposition of law as laid down by the Hon'ble Apex Court in ***Jacob Mathew v. State of Punjab and Anr (2005) 6 SCC 1*** as:

*“The test for determining medical negligence as laid down in Bolam case [(1957) 2 All ER 118 (QBD), WLR at p. 586] holds good in its applicability in India.*

xxx xxx xxx

*24. The term “negligence” has been defined in Halsbury Laws of England (Fourth Edition) para 34 and as settled in Kusum Sharma and Others v. Batra Hospital and Medical Research Centre and Others as under:*

*“45. According to Halsbury's Laws of England, 4th Edn., Vol. 26 pp. 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 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. A breach of any of these duties will support an action for negligence by the patient.”*

28. What is to be gleaned from the aforesaid decision is that to establish a claim for medical negligence, it is imperative to meet the following criterion i.e. **firstly**, the patient was owed a duty of care. **Secondly**, that duty was breached by a deviation from accepted standards of care. **Thirdly**, the patient suffered damages and **fourthly**, the damages suffered were a direct result of the medical provider’s breach of duty.
29. It is worthwhile to mention here that a person who holds himself out as ready to give medical advice or treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Adverting to the facts of the present case, it is crystal clear from the face of the record that Opposite Parties No.3 & 4 did not have domain knowledge of the treatment specific to the disease of the patient i.e. Obstructive Hydrocephalus. The CT Scan and ECG reports were readily available to Opposite Parties No.3 & 4 at 1.00 PM on 12.7.2009 itself but the Opposite Parties did not take any appropriate immediate action for treatment/surgery of the patient. The CT Scan report called for an immediate reference to Neurosurgeon so that excess fluid could be removed to reduce the pressure on the brain. At 4.30 PM on 12.7.2009, the patient became restless and at 5.30 PM became unconscious with frothy secretions from the mouth with fully dilated pupils and was put on ventilator. Even at this critical time, the Opposite Parties No.3 & 4 failed to refer to CT Scan report and proceeded in a negligent manner

without referring the matter to a Neurosurgeon. At 6.00 PM, Opposite Parties No.3 & 4 prepared two pager notes in which there was no mention of the condition of Hydrocephalus. No specific treatment for the said condition was given by the Opposite Parties No.3 & 4 doctors, as a result of which the patient remained untreated and ended up losing his life within 03 days of admission in the hospital.

30. Here, it is pertinent to remark that the aforesaid findings /discrepancies in the line of treatment, highly reek of an unprofessional and heedless attitude of the Opposite Parties No.3 & 4 towards the patient, thus rendering the present case absolutely fit to fall in the domain of the doctrine of *res ipsa loquitor*. Here, the principle of *res ipsa loquitor* very well comes into play, as prima facie, the conduct of the Opposite Parties tantamounts to negligent conduct. A negative inference can be drawn against the Opposite Parties solely on the basis of the doctrine of *res ipsa loquitor* which shall be applicable herein keeping in view the treatment record produced by the Complainant. For the application of the maxim *res ipsa loquitor* no less important a requirement is that the *res* must not only bespeak negligence, but pin it on the Opposite Party. The aforesaid findings independently make way for raising an adverse presumption against the Opposite Parties that valuable time was lost on account of inaction and lackadaisical attitude of the Opposite Parties, when every second was crucial to save the life of the patient, keeping in view that time was the essence in the present case. It is to be noted further that the Opposite Parties No.3 & 4 were not experts in the domain of neurology and neurosurgery and could not

provide treatment specific to the condition of Hydrocephalus to the patient. The Opposite Parties failed to take prompt action and significant time was wasted by the Opposite Parties No.3 & 4 keeping the patient dangling in the air for no reason whatsoever. The Opposite Parties ought to have referred the patient to some other doctor/hospital if they were not able to manage the patient. Had the Opposite Parties acted in a prompt manner and had not made deliberate delays, a life could have been saved. Therefore, either way, the Opposite Parties cannot shrug off their liability in so much so that time was the essence in the present case and the Opposite Parties caused deliberate delays and failed to take timely decisions in the course of treatment, causing the death of the patient.

31. Lastly, we deal with the plea taken by the Opposite Parties *that in view of the orders dated 02.12.2010 passed by the Delhi Medical Council and order dated 18.05.2011 by the Medical Council of India, no negligence can be attributed to the conduct of the Opposite Parties.*
32. In order to further appreciate the opinion of the Delhi Medical Council, it will be apposite to take note of the legal principles which would apply in any case of medical negligence. The Hon'ble Supreme Court in ***Jacob Mathew v. State of Punjab (supra)*** dealt with the law of medical negligence in respect of professionals professing some special skills. Thus, any individual approaching a skilled person would have a reasonable expectation under the duty of care that while undertaking the performance of his task, he/she would exercise his skills to the best of his ability and with reasonable competence. Thus, the liability would

only come if (a) either the doctor did not possess the requisite skills which he professed to have possessed; or (b) he did not exercise with reasonable competence in given case the skill which he did possess.

The Hon'ble Supreme Court held as under:

*“48. We sum up our conclusions as under: (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”.*

33. The Court further observed:

*“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.*

34. Moreover, the Hon'ble Apex Court has left no room for confusion as to the binding value of medical expert opinion on courts. The Hon'ble Apex Court in ***Madan Gopal v. Naval Dubey reported as (1992) 3 SCC 204*** held that the medical opinion is just an opinion and is not binding onto the court. Opinion on technical aspects and material data given by the medical experts is only considered by court as advice and the court has to form its own opinion, relevant extract reproduced hereunder as :

*“A medical witness called in as an expert to assist the Court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination. The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the Court on the technical aspect of the case by explaining the terms of science so*

*that the Court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is accepted, it is not the opinion of the medical officer but of the Court."*

35. At this juncture, it could not be the case of anybody that time was not of the essence. But, the urgency is not reflected in the manner the case of the patient was handled by the Opposite Parties. There is no explanation why the patient was not immediately referred to a neurosurgeon. The patient had altered sensorium, yet the Opposite Parties chose to cause undue delays. There is no explanation why. Thereafter, till the time of the patient slipping into coma, the patient was being managed by doctors who lacked the domain knowledge. Therefore, the conduct of the Opposite Parties clearly falls below the standard of "*an ordinary competent person exercising ordinary skill in that profession*". In our view, the three ingredients of '*negligence*' as detailed in para 32 above, are established. Therefore, considered in the light of the law as discussed above, it becomes a clear case of medical negligence as well as deficiency of service.
36. What is more unfortunate in this case is that this delay in diagnosis and resultant delay in treatment have happened at Opposite Party No.1-Hospital, a premier institution of great repute. The written statement itself claims that the Opposite Party No.1-Hospital is a premier super specialty hospital with a highly qualified and well

resourced team of pathologists, neurologists and surgeons, amongst others, immediately available for consultation, as and when required.

37. It is not unreasonable to expect that such an institution shall subject itself to appropriately higher standards of professional competence and care. It goes without saying that when a person decides to be treated in such an institution, it is with the expectation of higher quality of treatment and care. In fact, the status of a hospital carries an implied assurance that the quality of diagnostic, clinical, surgical, para-medical and all other services offered by it, would be commensurate with its status and reputation. It is crucial to remark here that had the treating doctors not adopted a lackadaisical and laid-back approach, a young life could have been saved.
38. In view of the aforesaid discussion, we hold that the Opposite Parties No.1, 3 & 4 being a healthcare unit and doctors working conjointly, were negligent and deficient in providing their services pertaining to accurate diagnosis and operative care of the patient and therefore, the ***Consumer Complaint No.369/2011 stands allowed.*** Consequently, we direct;
- a) *the Opposite Parties No.1, 3 & 4 to pay a sum of Rs. 1,00,000/- each to the Complainant as damages towards the physical agony suffered by the patient*
  - b) *the Opposite Parties No.1, 3 & 4 to pay a sum of Rs.50,000/- each to the Complainant as mental agony.*

*c) the Opposite Parties No.1, 3 & 4 to pay a sum of Rs. 25,000/- each to the Complainant as litigation charges.*

39. The Opposite Parties are directed to comply with the directions as contained in para 38, within two months from the date of the present judgment i.e. on or before 16.06.2024, failing which the Opposite Parties shall be liable to pay the entire sum along with simple interest at the rate 9% p.a. till the actual realization of the amount.
40. Applications pending, if any, stands disposed of in terms of the aforesaid judgment.
41. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
42. File be consigned to record room along with a copy of this Judgment.

**(JUSTICE SANGITA DHINGRA SEHGAL)  
PRESIDENT**

**(PINKI)  
MEMBER (JUDICIAL)**

**(J.P. AGRAWAL)  
MEMBER (GENERAL)**

**Pronounced On:  
16.04.2024**

*L.R. - GPK*