IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution: 14.05.2013

Date of hearing: 08.03.2022

Date of Decision: 04.04.2022

COMPLAINT CASE NO.-300/2013

IN THE MATTER OF

1. **DR. UMA BHARDWAJ,**
   D/o LATE LAXMI DWIVEDI,
   W/o DR. RAVINDRA BHARDWAJ,
   SENIOR DIRECTOR, ARNI UNIVERSITY,
   1155, RAMSHARNAM COLONY,
   LANE-3, DALHOUSIE ROAD,
   PATHANKOT,
   PUNJAB-145001.

2. **DR. AJAY DWIVEDI,**
   S/o LATE. LAXMI DWIVEDI,
   R/o ST. MICKIEWICZA,
   1/1 NIDCIZA 13-100
   POLAND.

…Complainants

(Through: MANISH SHANKER SRIVASTVA, ADVOCATE)

VERSUS

1. **FORTIS HOSPITAL,**

2. **DR. PINNAKA (ICU DIRECTOR)**

3. **DR. (PROF.) S. C. TIWARY**

   DIRECTOR,

   NEPHROLOGY AND RENAL TRANSPLANT MEDICINE

   ALL AT:
   FORTIS HOSPITAL,
   VASANT KUNJ,
   DELHI.

…Opposite Party No. 1, 2 and 3

(Through: M. MALIKA CHAUDHARI AND MUKESH KUMAR, ADVOCATE)

4. **DR. SUDAPA GHOSE (DOCTOR IN ICU-2)**

5. **DR. PRASANT (DOCTOR IN ICU-2)**

   BOTH AT:

   FORTIS HOSPITAL,

   VASANT KUNJ,

   DELHI.

…Opposite Party No. 4 & 5

(Through: NONE)

CORAM:
HON'BLE DR. JUSTICE SANGITA DHINGRA SEHGAL, (PRESIDENT)
HON'BLE SH. RAJAN SHARMA, MEMBER (JUDICIAL)

Present: None for the Parties.

PER: HON'BLE DR. JUSTICE SANGITA DHINGRA SEHGAL, (PRESIDENT)

JUDGMENT

1. The present complaint has been filed by Dr. Uma Bhardwaj & Dr. Ajay Dwivedi, legal heirs of Laxmi Dwivedi (patient/deceased), since she was expired on 24.01.2012 at Fortis Hospital, Vasant Kunj, Delhi.
2. Brief facts necessary for the adjudication of the present complaint are that the patient suffered breathlessness, cough and fever, while she was residing in Gwalior, Madhya Pradesh and on coming to know of the same, the Complainants got her admitted to Apollo Hospital, Delhi on 14.01.2012 for proper treatment.
3. The treatment that was being given to the patient was proving successful and she was recovering at a good pace. However, since a room was not available in the private ward of the Apollo Hospital, the Complainants contacted the staff of the Opposite Party No. 1, in order to avail a private room. Allegedly, the staff of the Opposite Party No. 1 assured the Complainants that a room shall be made available at the arrival of the patient.
4. Acting upon the assurance of the staff of the Opposite Party No. 1, the Complainants got shifted the patient from Apollo Hospital to the Opposite Party No. 1 Hospital. The shifting, as per the version of the Complainants was done only for the sole purpose of availing the facility of a private room.
5. However, when the Complainants, after getting the patient discharged from Apollo Hospital, reached the Opposite Party No. 1, they were made to wait in the accident/emergency ward. Even after

waiting, the patient was not shifted to the private room, but was taken to the Intensive Care Unit (ICU).

6. The doctors on duty informed the Complainants that the patient shall be kept under observation in the ICU only till the private room is made available and at that point of time, the Complainants specifically informed the doctors on duty that no 'invasive procedure' shall be performed upon the patient as she was *extremely apprehensive to the ICU setting.*

7. Despite the aforesaid specific directions, the Opposite Parties No. 2, 3, 4 and 5 chose to insert a 'Central Venous Catheter' *(Central venous catheters (CVC) which are now widely used in Indian intensive care units. These are used as vascular access for haemodynamic monitoring, parenteral nutrition, and the administration of fluids and drugs, vide Reference, Committee for the Development of Guidelines for the Prevention of Vascular Catheter Associated Infection; Indian Society of Critical Care Medicine)* through both the sides of the neck, however, since multiple attempts were made to insert it, it led to deterioration of the condition of the patient.

8. The aforesaid act led to swelling around the neck of the patient and also caused breathing difficulty. It is pertinent to note here that as per the Complainants, the patient was already having femoral venous access as the same were inserted by the Apollo Hospital.

9. Thereafter, the Blood Pressure of the patient started falling and she was also started suffering from difficulty in breathing, however, no attempts were made by the Opposite Party No. 2 to 5 in order to investigate whether the patient had developed intrathoracic bleedings secondary to multiple attempts for cannulation through her neck.

10. The patient was put on dialysis, where she complained of extreme pain in chest. It was also evident to the Complainants that the condition of the patient had deteriorated since her admission with the Opposite Party No. 1. However, the Opposite Parties did not give her proper attention and instead treated her rudely.
11. The Opposite Party No. 5 then informed the Complainants that the patient will be needing Ryles Tube also known as Nasogastric Tube *(A nasogastric tube is a narrow-bore tube passed into the stomach via the nose. It is used for short- or medium-term nutritional support, and also for aspiration of stomach contents - eg, for decompression of intestinal obstruction, vide https://patient.info/doctor/nasogastric-ryles-tubes)*, however, the Complainants clearly denied, that the same shall not be inserted.
12. On 20.01.2013, at around 8:30 PM, the Complainants were informed that the Blood Pressure of the patient had fallen, and she will be needing inotropic support to maintain her blood pressure and has to be put on ventilator. In the ICU, the Complainants saw that their mother was gasping for breath and the doctors were trying to put an endotracheal tube *(Endotracheal intubation is a medical procedure in which a tube is placed into the windpipe (trachea) through the mouth or nose. In most emergency situations, it is placed through the mouth vide https://medlineplus.gov/ency/article/003449.html)*.
13. Thereafter, allegedly, the doctors under whose supervision the patient was placed, verbally informed the Complainants that their mother had expired. However, when the complainants went to have a last look of their mother, the Complainants felt their mothers' heart was still beating. At that very moment, they screamed in order to call the doctor, who then tried to resuscitate the patient and she was

actually revived. However, the patient could only survive for 3 more days and expired on 24.01.2012.

14. The Complainants in their complaint have alleged that:
    a. at the time when the patient was admitted with Opposite Party No. 1, she was given around 23 units of blood, which is evident of the fact that it was not a case of bleeding secondary to medical condition and was one of surgical bleed. However, no efforts were made by the Opposite Parties to investigate the source of her intrathoracic bleeding and also that
    b. the death of the patient has been caused by inappropriate and wrong treatment administered by the Opposite Party No. 2 to 5.
15. On the aforesaid grounds, alleging utter Medical Negligence on the part of the Opposite Parties, the Complainant approached this Commission.
16. Notice was issued to all the Opposite Parties. Opposite Party No. 1, 2 & 3 have appeared and filed their Written Statement/Reply. At the outset, it is pertinent to mention that in their reply, whole of the medical record, as recorded by the doctors treating the patient, has been reproduced.
17. On merits, it has been contended by the Opposite Party No. 1, 2 & 3
    a. that the deceased was a patient of hypertension, chronic kidney disease stage-V, advanced azotemia, bacterial pneumonia, sepsis and was already undergoing treatment at Indraprastha Apollo Hospital from 14.01.2012 till the time she was admitted with Opposite Party No. 1;
    b. that the discharge from the Indraprastha Apollo Hospital was against the advice of the doctors and was done at the will of the Complainants;

c. that when the patient was admitted with the Opposite Party No. 1, she was already suffering with multiple organ failure and extensive infection in her body;

d. that the relatives of the patient wanted to admit her in private room but her condition did not allow the same, hence, she was admitted directly in the ICU as the patient required hemodynamic and respiratory monitoring;

e. that during the entire time when the patient was admitted with the Opposite Party, the Complainants were informed about each and every step that was being taken but they showed resistance and even abused the operating doctors;

f. that the contention that the condition of the patient deteriorated after attempting central line caused due to heamothorax is factually incorrect since the patient underwent CT scan of Chest at 12 PM on 20.01.2012, which did not show any sign of haemo/pneumothorax.

18. Pressing upon the aforesaid submissions, the Opposite party No. 1, 2 & 3 have pleaded that the facts are clear that there exists no negligence on the part of the Opposite Parties and the present complaint should be dismissed with exemplary cost.

19. Notice was also issued to Opposite Party No. 4 & 5 on several occasions, however, the same could not be served due to one or the other reason. Left with no other option, on the application of the Complainants, the Opposite Party No. 4 & 5 were served via Substituted Service, despite which, both of them failed to appear. Hence, they were proceeded ex-part vide order dated 25.01.2017.

20. The Complainant has filed rejoinder to the Written Statements filed on behalf of Opposite Party No. 1, 2, and 3 and has even filed his

Evidence by Way of Affidavit. Opposite Parties No. 1, 2, and 3 have also filed their Evidence by way of Affidavit.

21. All the contesting parties have also filed their Written Arguments and the case was taken up on 02.02.2022, wherein, a clear direction was given to the contesting parties that in case they fail to appear on the date of final hearing, the case will be decided on the basis of the material available on record. The case was then finally heard on 08.03.2022, when the judgment was reserved. Counsel for the Complainants appeared on 08.03.2022, however, none chose to appear on behalf of the Opposite Parties.

22. We have heard the Counsel for the Complainants and perused through the material on record including the Written Arguments filed on behalf of the parties.

23. Before delving into the merits of the case, we deem it appropriate to refer to the law on the cause. This Commission, has, in detail discussed the scope and extent of Negligence with respect to Medical Professionals in **CC- 324/2013**, titled **Seema Garg & Anr. vs. Superintendent, Ram Manohar Lohia Hospital & Anr.** decided on 31.01.2022, wherein one of us (Justice Sangita Dhingra Sehgal, President) was a member. The relevant portion has been reproduced as below:

> *"9……The Hon'ble Apex Court, after taking into consideration its previous decisions on Medical Negligence, has consolidated the law in* ***Kusum Sharma and Ors. vs. Batra Hospital and Medical Research Centre and Ors.*** *reported at* ***(2010) 3 SCC 480****, wherein, it has been held as under:*
>
> > *"94. On scrutiny of the leading cases of medical negligence both in our country and other countries specially United Kingdom, some basic principles emerge in dealing with the cases of medical negligence. While deciding whether the*

medical professional is guilty of medical negligence following well known principles must be kept in view:

I. Negligence is the breach of a duty exercised 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.

II. Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

III. The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.

IV. A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.

V. In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of other professional doctor.

VI. The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her

suffering which did not yield the desired result may not amount to negligence.

VII. Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.

VIII. It would not be conducive to the efficiency of the medical profession if no Doctor could administer medicine without a halter round his neck.

IX. It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessary harassed or humiliated so that they can perform their professional duties without fear and apprehension.

X. The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurizing the medical professionals/hospitals particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.

XI. The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals.

95. In our considered view, the aforementioned principles must be kept in view while deciding the cases of medical negligence. We should not be understood to have held that doctors can never be prosecuted for medical negligence. As

> *long as the doctors have performed their duties and exercised an ordinary degree of professional skill and competence, they cannot be held guilty of medical negligence. It is imperative that the doctors must be able to perform their professional duties with free mind."*
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> *10. In cases wherein the allegations are levelled against the Medical Professionals, negligence is an essential ingredient for the offence, which is basically the breach of a duty exercised by omission to do something which a reasonable man would do or would abstain from doing. However, negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence and they are entitled to protection so long as they follow the same."*
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> *(emphasis supplied)*

24. In the present case also, it will have to be ascertained whether there was any lack of skill and competence on the part of the operating doctor and/or any omission to do what was actually required in the present facts and circumstances.

25. It is not the case of the Complainants that the doctors operating upon the patient were not having the requisite skill or competence or were not qualified to operate upon the patient. What has actually transpired from the perusal of the Complaint is that the Complainants had apprised about the condition of the patient to the Opposite Parties, including her sensitivity to certain procedures such as insertion of 'Central Venous Catheter' *(A central venous catheter is a thin, flexible tube that is inserted into a vein, usually below the right collarbone, and guided (threaded) into a large vein above the right side of the heart called the superior vena cava. It is used to give intravenous fluids, blood transfusions, chemotherapy, and other*

drugs), however, despite the said directions, the doctors operated upon the patient.

26. The Complainants have further alleged that once the patient was already having 'Femoral Venous' access from the Apollo Hospital, there was no need to replace it with a fresh one; that despite repeated requests, the doctors did not investigate whether the patient had developed intrathoracic bleeding i.e. *Hemothorax (Hemothorax is a collection of blood in the space between the chest wall and the lung)* secondary to multiple cannulation through her neck. It is pertinent to note one more contention of the Complainant that the doctors have suggested that the patient needs support of Reyels Tube, which was denied by the Complainants, despite which, the doctors inserted the same in the patient.

27. The contesting Opposite Parties (i.e. Opposite Party No. 1, 2 and 3) in their Written Statement/Reply have submitted that the Complainants were reluctant of any measure that was being taken for the benefit of the patient, which is clearly evident from the progress notes appended to with the Written Statement/Reply. The Opposite Parties, for the specific averment that the operating doctors did not investigate the source of intrathoracic bleeding, have stated that the patient underwent CT scan of Chest at 12 PM on 20.01.2012, which did not show any haemo/pneumothorax as well as Ultrasound Sonography (USG) of the abdomen in the same evening, which also did not show any trace of bleeding from the procedure site.

28. It is a well laid down principle that the doctor diagnosing upon a patient is the best judge of the treatment which is to be undertaken for that specific patient. There may be multiple approaches with which the patient may be treated upon, however, the doctor is expected to choose the most appropriate one in the given facts and circumstances.

Hence, a higher degree of reliance is placed upon the concerned doctor, that whatever option he/she exercises will be for the benefit and interest of the patient. It is also a settled law that simply for the reason that one option or a specific mode of treatment was chosen over the other will not itself be a ground for holding the doctors liable for negligence. (Reference: **Kusum Sharma and Ors. vs. Batra Hospital and Medical Research Centre and Ors.** reported at **(2010) 3 SCC 480**).

29. In the present case, what has actually transpired is that there was unwillingness on the part of the Complainants on every step of the treatment, whether, it may be of admission in the ICU instead of the private room or the insertion of Reyles Tube and so on. The progress note sheets, filed with the Written Statement/Reply, proved through Evidence by way of Affidavit, which has not been rebutted by the Complainants, clearly establish that whenever certain suggestions were made by the operating doctors, the Complainants would deny the permission and even get into argument sometimes.

30. At this stage, we deem it necessary to refer to the dicta of the Hon'ble National Commission in **Indu Sharma vs. Indraprastha Apollo Hospital and Ors.** reported at **2015 (3) CPR 119**, wherein, after taking into consideration the judgment of the Hon'ble Supreme Court in **Malay Kumar Ganguly vs. Dr. Sukumar Mukherjee & Ors.** reported at **(2009) 9 SCC 221,** the Hon'ble National Commission held that *it was the bounden duty of the doctor to decide, the correct line of treatment; doctor wouldn't just blindly obey the wishes of the patient.*

31. From the aforesaid dicta, it is further clear that the wishes of the patient and in the present case, of the relatives, alone are not to be blindly obeyed, and the law puts the duty upon the operating doctor to

choose the best method, which, is acceptable generally at the given period.

32. In its entirety, the facts reflect that the approach of the Complainants in their complaint is that *"they (doctors) should not have done this or that they should have chosen this specific method or treatment"* whereas, to the contrary, as per the well laid down law by the Hon'ble Supreme Court in series of judgment including **Jacob Mathew v. State of Punjab and Anr** reported at **(2005) 6 SCC 1**, **Martin F. D'Souza v. Mohd. Ishfaq** reported at **(2009) 3 SCC 1** and ***Kusum Sharma and Ors. (supra),*** the approach in the medical negligence cases should be *"what was actually done by the doctor was not acceptable or generally used in the medical practices at the given point of time"*.

33. Following the aforesaid principle, it is to be noted that it is not the case of the Complainants that the insertion of the Arterial Line, Nasogastric Tube were not the acceptable modes when the patient was being operated. However, what has been contended is that the moment the steps were taken by the doctors to cannulate through the neck, the condition of the patient deteriorated, and the doctors did not feel the need to check for intrathoracic bleeding.

34. On perusal of the record and as has been rightly contended by the Opposite Parties, we find that on 20.01.2012, the patient underwent two examinations, one being CT scan and the other being USG of the abdomen, and none of them revealed any bleeding from the procedure site as has been alleged by the Complainants.

35. Furthermore, even though the Complainants have not spared a word against the operating doctors in their complaint and have challenged each and every step which was being taken for the treatment of the patient, they have failed to bring on record any substantial evidence,

oral or documentary, in support of their contentions. The Complainants have even failed to examine any Expert Witness in support of their case. This Commission cannot presume that the allegations in the complaint are inviolable truth even though they remained unsupported by any evidence. Our findings to this effect are substantiated by the dicta of the Hon'ble Apex Court in **C.P. Sreekumar (Dr.), MS (Ortho) v. S. Ramanujam** reported at **(2009) 7 SCC 130**, wherein, it has been held as under:

> *"37. We find from a reading of the order of the Commission that it proceeded on the basis that whatever had been alleged in the complaint by the respondent was in fact the inviolable truth even though it remained unsupported by any evidence. As already observed in Jacob Mathew case [(2005) 6 SCC 1: 2005 SCC (Cri) 1369] the onus to prove medical negligence lies largely on the claimant and that this onus can be discharged by leading cogent evidence. A mere averment in a complaint which is denied by the other side can, by no stretch of imagination, be said to be evidence by which the case of the complainant can be said to be proved. It is the obligation of the complainant to provide the facta probanda as well as the facta probantia."*

36. We also deem it appropriate to refer to the dicta of the Hon'ble Apex Court, in **Harish Kumar Khurana vs. Joginder Singh and Ors.** reported at **AIR 2021 SC 4690**, being the latest pronouncement on the cause, wherein, the Hon'ble Supreme Court, while taking into consideration its previous pronouncements in **Jacob Mathew v. State of Punjab and Anr.** reported at **(2005) 6 SCC 1**, and **Martin F. D'Souza v. Mohd. Ishfaq** reported at **(2009) 3 SCC 1,** has held as under:

> *"14. Having noted the decisions relied upon by the learned Counsel for the parties, it is clear that in every*

> *case where the treatment is not successful or the patient dies during surgery, it cannot be automatically assumed that the medical professional was negligent. To indicate negligence there should be material available on record or else appropriate medical evidence should be tendered. The negligence alleged should be so glaring, in which event the principle of res ipsa loquitur could be made applicable and not based on perception."*

37. From the aforesaid dicta of the Hon'ble Apex Court, it is clear that only the failure of the treatment is not prima facie a ground for Medical Negligence and in order to attract the *principle of res ipsa loquitur,* Negligence i.e. *the breach of a duty exercised 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,* should be clearly evident from the record.

38. It is clear from the record that there exists no evidence which would substantiate the claim of the Complainants that the treatment given to the patient by the Opposite Parties was not acceptable or was not used generally at the time when the patient was operated upon. The Complainants have even failed to establish that there was a lack of due care and caution on the part of the Opposite Parties either by oral or by documentary evidence, which are basically the essential requirements/ingredients for constituting a case of Medical Negligence covered under the Consumer Protection Act, 1986. Per contra, the Opposite Party has been diligent enough to prove their bonafide and also the fact that there was no negligence on the part of either of the Opposite Party.

39. Consequently, we are of the view that there exists no Negligence on the part of the Opposite Parties, hence, the Complaint stands dismissed, with no order as to costs.
40. Applications pending, if any, stands disposed of in terms of the aforesaid judgment.
41. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Rules. 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.

(DR. JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(RAJAN SHARMA)
MEMBER (JUDICIAL)

Pronounced On:
04.04.2022