# IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

**Date of Institution: 26.05.2016**
**Date of Hearing: 10.01.2024**
**Date of Decision: 01.07.2024**

## FIRST APPEAL NO. 291/2016

**IN THE MATTER OF**

1. **SOHIL SHAH**
   **C-104 GROUND FLOOR, PUSHPANJALI COLONY**
   **KARKARDOOMA, DELHI -92**

**(Through Mr. Adil Alvi, Advocate )**
…..Appellant

**VERSUS**

1. **MAX BALAJI HOSPITAL**
   **REGISTERED OFFICE:**
   **108-A, INDRAPRASTHA EXTENSION, OPP. SANCHAR APARTMENTS, PATPARGANJ, DELHI-110092**

**…..(Through: Mr. Vijay Sharma, Advocate,**
**Counsel for Respondent No.1 & 3)**

2. **PROF. MOHAN NAIR,**
   **DIRECTOR, ELECTROPHYSIOLOGY & ARRHYTHMIA SERVICES HEAD OF DEPARTMENT, CARDIOLOGY.**

**…..(Through: Ms. Navdeep Kaur, Advocate**
**Counsel for Respondent No.2 & 4)**

3. **DR. MANOJ KUMAR,**
   **SENIOR INTERVENTIONAL CARDIOLOGIST & CHIEF OF CARDIAC CATHLAB**

4. **DR. VIKAS KATARIA**
   **CONSULTANT CARDIOLOGIST**
   **…ALL AT MAX BALAJI HOSPITAL, PATPARGANJ, DELHI-92**

…….Respondents

**CORAM:**

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

Present: Mr. Adil Alvi, counsel for Appellant.
Ms.Shakti Chaturvedi, Counsel for Respondent No.1 & 3
None for Respondent No. 2

**PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, PRESIDENT**

**JUDGMENT**

1. The facts of the case as per the District Commission record are:

*"Mr. Sohil Shah had chest pain on 26 April 2010 in evening and consulted Dr K B Bhatia who advised him to get admitted at Delhi Heart Hospital on the same date. He had such episodes in past but did not consult any doctor. After taking discharge from Delhi Heart Hospital, he got admitted at Max Balaji Hospital herein Called Respondent 1. He was put under constant cardiac monitoring and medicare. The respondent 2 on examining complainant advised ECHO test on day one of admission. The report of ECHO was 35% Ejection Fraction from Left Ventricle. His ECGs were abnormal. Final ECHO done on 01 May 2010 showed 65% EVF with early diastolic dysfunctions. The diagnosis was given as Idiopathic Ventricular Tachycardia. After stabilizing, he was discharged under stable condition on 03rd May 2010 with medicines and proper follow up. He was advised for Holter monitoring after 2 months.*

*Complainant had episodes of tachycardia even after discharge, so he visited Dr Suman Bhandari at Gupta Multispecialty Hospital who also could not diagnose the cause of repeated palpitations. Hence, he went to Dr Ajay Saxena, an Electro- Physiologist at Escorts hospital, Delhi. Dr Ajay Saxena advised for Trans Telephonic ECG. But complainant did not consented*

*and chose to visit Dr Balbir Singh at Medanta hospital There ha underwent Cardiac MRI and Pulmonologist Dr Himanshu Garg's opinion was taken. Dr Garg advised CECT chest which reported as "Multiple enlarged homogenously enhancing nodes in mediastinum in left hilar region of lung". Possibility of Sarcoidosis was diagnosed. Detail investigations were done. Treatment was advised with regular follow up.*

*Thereafter, complainant again had palpitations and was re-admitted at Medanta hospital on 06/06/2010. As his heart beats were not coming to normal, follo E Electrophysiological study was done to find out the cause of repeated ventricular tachycardia. Based on EP study, RF Ablation was done. Complainant was discharged on 10/06 2010 after observation.*

*The discharge summary shows that complainant was admitted stabilizing and management. He again developed palpitations and got re-admitted on 23/06/2010 and was discharged on 30/06/2010. On 24/06/2010, after cardiac MRI, AICD implantation was done on 28/06/2010. Due to repeated tachycardia, AICD machine was implanted to control palpitations. He was discharged on 07/07/2010 under stable condition. From July 2010, complainant doing his work normally.*

*Complainant alleged negligence of OP hospital for not diagnosing the cause of Palpitations. He has claimed treatment cost of 18.50 Lac with 24% interest along with Rs 55000 for litigation charges.*

*Notices were served to all respondents. Written Statements submitted by all the treating doctors at OP hospital. Opponent denied all allegations raised by complainant. OP submitted that complainant was admitted for palpitations and fatigue which were existing for over two weeks and had not consulted any doctor. He came of his own from another hospital. In OP hospital, he was monitored by panel of cardiac*

*specialists. The VT had different morphology and low ejection fraction. All other parameters were normal.*

*Due to repeated occurrence of VT under roper cardiac medications, heart rhythm was not stable. All required tests were done but final diagnosis was not certain for repeated palpitations even after tandard line of treatment for VT. hence diagnosis of Idiopathic Ventricular Tachycardia was given. Later his EVF was 65% checked by 2D ECHO tests, heart concit on was stable, so was discharged with proper medicines and follow up. Further OP hospital stated that tests like CAG, EPS were advised but neither complainant consented nor reported for follow up.*

*ECHO is an important investigation in cardiology to find out the physiopathology of Heart and its functions, which was done wice at OP hospital. Complainant went to Medanta hospital where MRI and CT were done. Here, provisional diagnosis was made as Secondary Myocar lial Sarcoidosis with normal left ventricular Systolic function.*

*Tachycardia/palpitations were not coming under control by even after RFA and AICD. All parameters were stable, hence after proper medicines, he was discharged from Medanta hospital with folle up at regular period. Complainant got admitted number of times at Medanta hospital but the cause of tachycardia could not be ascertained.*

*Complainant filed rejoinder with affidavit and OPs also filed their evidences on affidavit along with Honble Supreme Court rotation as Martin F D'souza vs Mohd Ishfaq (2009)3SCC and related medical text on Tachycardia. Parties submitted their written submission."*

2. The District Commission after taking into consideration the material on record, passed the following order dated 24.02.2016:

"*Arguments heard.*

*Being a complex medical negligence case, complainant have not asked for expert medical opinion nor submitted any relevant medical text to prove that the treatment given by OP hospital is contrary to diagnosis and was not required.*

*In ref to the diagnosis made by OP hospital and by Medanta hospital, Sarcoidosis was considered as a main cause of repeated ventricular tachycardia. The line of investigations and treatment adopted by OP in cardiac ailments has not been denied by complainant.*

*Going through the medical literature, it is clear that Echocardiography is used to detect myocardial involvement in many cardiac ailments. Cardiac pathology in Sarcoidosis can be detected but it may not detect mild myocardial abnormalities. Sarcoidosis can be asymptomatic for many years and resolves itself also. Sarcoidosis may involve other vital organs in later stage of life.*

*By taking the reference of Martin F D'Souza case under para C (a to d) which says about Medical Practice and Practitioners in ref to medical negligence as -*

*(a)-Treatment in extremely serious situation successfully saving life although resulting in side effects, held, did not amount to negligence.*

*(b)- Bolam test as approved in Jacob Mathew case, (2005)6SCC1, held, medical practitioners would be liable only where his conduct fell below that of standard of - a reasonably competent doctor.*

*Harm resulting from mischance or misadventure or through an error of judgment would not necessarily attract such liability.*

*Mere existence of a body of competent professional opinion considering the decision of the medical*

*practitioner to professional opinion supporting his decision as reasonable in the circumstances of the case.*

*(c)- Standard of care has to be judged in the light of knowledge and equipment available at the relevant point of time. In performing a novel operation or prescribing a novel treatment to save the patient's life when no other method of treatment is available, even if resulting in death or causing some serious harm, they should not be held liable.*

*(d)-Simply because a patient has not favorably responded to a treatment given by a doctor or a surgery has failed, the doctor cannot be held straightway liable for medical negligence by applying the doctrine of res ipsa loquitor.*

*In this case, the line of treatment adopted by OP treating doctors has not been proved wrong by complainant. Tachycardia having heart rate over 200/minute is a life threatening condition. As per Indoor case papers records, it was rightly managed and patient's condition was brought under control. The complainant is performing his routine work normally.*

*Hence, complainant has failed to prove his allegations against the respondents either by medical opinion or by any concrete evidence of deficiency and negligence in the diagnosis and treatment in managing Tachycardia/palpitations.*

*Thus complaint is dismissed. The copy of this order be sent to the parties as per rules"*

3. Aggrieved by the aforesaid decision of the District Commission, the Appellant has preferred the present Appeal contending that District Commission failed to appreciate that the Appellant/patient was suffering from Sarcoidosis and Tuberculosis. It is further submitted that the Respondents failed to diagnose the aforesaid two diseases

which cannot be contracted overnight. Secondly, it is submitted that nowhere in the discharge summary or the hospital records it has been mentioned that the cause of Ventricular Tachycardia is Sarcoidosis, or to treat Ventricular Tachycardia, an AICD needs to be implanted. Thirdly, it is submitted that the Appellant was not suffering from Idiopathic Ventricular Tachycardia as stated by the Respondents but Ventricular Tachycardia as triggered due to Cardiac Sarcoidosis. Lastly, it is submitted that the Respondents being super specialists miserably failed to even say a word about the cause of Ventricular Tachycardia and also failed to diagnose Tuberculosis and Sarcoidosis disease, hence were not able to give proper treatment. Pressing the aforesaid contentions, the Appellant has prayed that the present appeal be allowed.

4. Respondent No.1 & 3 have filed their joint reply and have refuted the allegations made by the Appellant. It is submitted that the Appellant was admitted with a history of Ventricular Tachycardia and was initially diagnosed with Idiopathic Ventricular Tachycardia and upon further examination, the Appellant/patient was advised to undergo Coronary Angiography and Cardiac MRI to which the Appellant/patient refused to undergo. Thereafter, it is submitted that Appellant was discharged on 03.05.2010 from the Respondent No.1 Hospital with normal heart rhythm in a stable state. Thereafter, it is submitted that Appellant visited Respondent No.2 in his OPD at Respondent No.1 Hospital on 11.05.2010, at which time Appellant was having normal heart rhythm/condition and was advised to undergo Holter Test i.e. a 24 Hours ECG monitoring. Lastly, it is submitted that Appellant was further asked to visit again with the HOLTER Report and was also advised to immediately report in the event of having any discomfort at all. However, Appellant did not

follow any advice as aforementioned and also did not visit/consult anyone at Respondent No.1 Hospital. Therefore, no negligence can be attributed to the Respondent No.1 & 3.

5. Respondent No.2 & 4 have filed their joint reply and have stated therein that due to repeated occurrence of VT proper cardiac medications, heart rhythm was not stable. All required tests were done, but final diagnosis was not certain for repeated palpitations even after standard line of treatment for VT, hence diagnosis of idiopathic Ventricular Tachycardia was given. It is further submitted that later the Appellant/Patient's EVF was 65% checked by 2D ECHO tests, heart condition was stable, so the Appellant/patient was discharged with proper medicines and follow up and Respondent No.1-Hospital advised to Appellant that tests like CAG, EPS were advised but neither Appellant contacted to Respondent No.1 nor reported for further follow up. Lastly, it is submitted that ECHO is important investigation in cardiology to find out the physiopathology of heart and its functions, which was done twice at Respondent No.1-Hospital but unfortunately, Appellant went to Medanta Hospital without contacting the Respondent No.1 and Appellant got admitted number of time at Medanta Hospital but the cause of tachycardia could not be ascertained. Pressing the aforesaid contentions the Respondents have submitted that no negligence can be attributed to the Respondents and have prayed that the present appeal be dismissed.

6. We have perused the material available on record and heard the counsels for the parties.

7. The ***only question*** that falls for our consideration is ***whether the conduct of the Respondents amounts to medical negligence.***

8. 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"*

9. 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.

10. Adverting to the facts of the instant case, it is clear that the Appellant was put under constant cardiac monitoring and medical care. The Respondent No.2 on examining the Appellant advised ECHO test on day one of admission. The report of ECHO was 35% Ejection Fraction from Left Ventricle. The Appellant's ECGs were abnormal and Final ECHO was done on 01.05.2010 that showed 65% EVF with early diastolic dysfunctions. The diagnosis was given as Idiopathic-ventricular Tachycardia. After stabilizing, the Appellant/patient was discharged under stable condition on 03.05.2010 with medicines and proper follow up and was advised for Holter monitoring after 2 months. Therefore, there is no cloud of doubt that the Appellant was provided with the standard line of treatment.

11. Here, it is noteworthy that the entire case of the Appellant boils down to the contention that the Respondents failed to diagnose the root cause of Tachycardia and the infection in the lungs of the Appellant. It is pertinent to mention here that a claim for negligence calls for a treatment with a difference. However, in the present case the record divulges that the treatment advanced to the patient was according to standard medical protocol. It is to be noted that a doctor can only be expected to provide a reasonable and standard level of care and a mere failure to diagnose the root cause of a disease cannot be termed as medical negligence. It is enough for the Respondent to show that the standard of care and the skill attained was that of the

ordinary competent medical practitioner exercising an ordinary degree of professional skill and the treatment never fell below the generally accepted level/standard of care. The fact that the Respondent charged with negligence acted in accordance with the general and approved practice is enough to clear him of the charge.

12. In this regard we further deem it appropriate to refer to decision of The Hon'ble Apex Court in ***C.P. Sreekumar (Dr.), MS (Ortho) v. S. Ramanujam (2009) 7 SCC 130*** , wherein it was held that the Commission ought not to presume that the allegations in the complaint are inviolable truth even though they remained unsupported by any evidence 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."*

13. In another judgment reported as ***Kusum Sharma and Others v. Batra Hospital and Medical Research Centre and Others (2010) 3 SCC 480*** , a complaint was filed attributing medical negligence to a doctor who performed the surgery but while performing surgery, the tumour was found to be malignant. The patient died later on after prolonged treatment in different hospitals. The Hon'ble Apex Court held as under:

*"47. The ratio of Bolam case [(1957) 1 WLR 582 : (1957) 2 All ER 118] is that it is enough for the defendant to show that the standard of care and the skill attained was that of the ordinary competent medical practitioner exercising an ordinary degree of professional skill. The fact that the respondent charged with negligence acted in accordance with the general and approved practice is enough to clear him of the charge. Two things are pertinent to be noted. Firstly, the standard of care, when 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. Secondly, 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 point of time on which it is suggested as should have been used.*

*78. It is a matter of common knowledge that after happening of some unfortunate event, there is a marked tendency to look for a human factor to blame for an untoward event, a tendency which is closely linked with the desire to punish. Things have gone wrong and, therefore, somebody must be found to answer for it. A professional deserves total protection. The Penal Code, 1860 has taken care to ensure that people who act in good faith should not be punished. Sections 88, 92 and 370 of the Penal Code give adequate protection to the professionals and particularly medical professionals."*

14. Recently, the Hon'ble Apex Court in a judgment reported as ***Dr. Harish Kumar Khurana v. Joginder Singh & Others (2021) SCC Online SC 673*** held as under:

> *"11……Ordinarily an accident means an unintended and unforeseen injurious occurrence, something that does not occur in the usual course of events or that could not be reasonably anticipated. The learned counsel has also referred to the decision in Martin F.D'Souza v. Mohd. Ishfaq, (2009) 3 SCC 1 wherein it is stated that simply because the patient has not favourably responded to a treatment given by doctor or a surgery has failed, the doctor cannot be held straight away liable for medical negligence by applying the doctrine of Res Ipsa Loquitor. It is further observed therein that sometimes despite best efforts the treatment of a doctor fails and the same does not mean that the doctor or the surgeon must be held guilty of medical negligence unless there is some strong evidence to suggest that the doctor is negligent.*
>
> *Having noted the aforesaid decisions , it is clear that in every case where a mishap or accident takes place, 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*

15. In the instant case, it may be mentioned here that the Appellant has led no evidence of experts to prove the alleged medical negligence except his own affidavits. The experts could have proved if any of the Respondent-doctors/hospital providing treatment to the patient were deficient or negligent in service. Furthermore, the Appellant has not placed on record any relevant medical documents to prove

that the treatment given by Respondent-doctors/hospital was contrary to diagnosis and was not required. A perusal of the medical record produced does not show any omission in the manner of treatment.

16. As discussed above, the sole basis of finding the Respondents negligent is by way of *res ipsa loquito*r which would not be applicable herein keeping in view the treatment record produced by the Respondents. For the application of the maxim res ipsa loquitur no less important a requirement is that the *res* must not only bespeak negligence, but pin it on the Respondent. The experts of different specialities and super-specialities of medicine were available to treat and guide the course of treatment of the patient. The doctors are expected to take reasonable care but none of the professionals can assure that the patient would overcome the ailments in all probability.

17. Therefore, we opine that the Respondents provided standard level of services and medical care. The Respondent-hospital and the doctor exercised sufficient care in treating the patient in all circumstances. However, in an unfortunate case, diagnosis may or may not precisely identify the root cause of the disease. Here, It is necessary to remark that sufficient material or medical evidence should be made available before an adjudicating authority to arrive at the conclusion that the disease exacerbated due to medical negligence. Every failure in diagnosis of a patient cannot on the face of it be considered to be medical negligence.

18. In light of the above discussion, we conclude that the Appellant failed to establish medical negligence on part of the Respondents. Therefore, ***we find no reason to interfere with the order dated 24.02.2016 passed by the District Consumer Disputes Redressal***

***Commission-East, Convenient Shopping Centre, Saini Enclave. Delhi-1100092. Consequently, the present appeal stands dismissed with no order as to costs.***

19. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.
20. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
21. 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:
**01.07.2024**

***LR.-G.P.K***