

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

Date of Institution: 25.07.2014

Date of Hearing: 07.09.2022

Date of Decision: 11.09.2023

FIRST APPEAL NO. 730/2014

IN THE MATTER OF

- 1. GTB HOSPITAL, THROUGH (MEDICAL SUPERINTENDENT)
DILSHAD GARDEN, SHAHDARA, DELHI**
- 2. DR. H. C. TANEJA (ENT DEPARTMENT)
GTB HOSPITAL, DELHI**
- 3. DR. NEELIMA GUPTA (ENT DEPARTMENT)
GTB HOSPITAL, DELHI**
- 4. GOVT. OF NCT OF DELHI
THROUGH ITS PRINCIPAL SECRETARY,
MINISTRY OF HEALTH & FAMILY WELFARE, DELHI
(Through Mr. Ashish Sharma, Advocate)**

.....APPELLANTS

VERSUS

- 1. SMT. RAMO DEVI (WIFE OF DECEASED)
W/O LATE SH. JAI PAL SINGH
85A, POCKET-F. GTB ENCLAVE.
DILSHAD GARDEN, DELHI-110093
PERMANENT ADDRESS
VILL&P.O. RISTAL DISTT. GHAZIABAD (UP)**

2. **RAVI KANT (SON OF DECEASED)**
S/O LATE JAI PAL SINGH
R/O 618A/SF/6 BALRAM GALI,
VISHWAS NAGAR,
SHAHDARA, DELHI-110032

3. **SHRIKANT (SON OF DECEASED)**
S/O LATE JAI PAL SINGH
R/O VILL & P.O. RISTAL DISTT. GHAZIABAD (UP)

4. **POONAM (DAUGHTER OF DECEASED)**
D/O LATE JAI PAL SINGH
R/O VILL. & P.O. RISTAL DISTT. GHAZIABAD (UP)

(Through: Mr. Ravikant, AR for the Respodents No.1-4)

5. **LNJP HOSPITAL, DELHI**
THROUGH ITS CMO/ MS

6. **DR. K. SINGH,**
ONCOLOGY/RADIOTHERAPY DEPTT
LNJP HOSPITAL, DELHI

7. **DR. (COL.) R.RANGA RAO,**
RAJEEV GANDHI CANCER HOSPITAL,
ROHINI, DELNI

8. **RAJEEV GANDHI CANCER HOSPITAL, ROHINI, DELHI**
THROUGH ITS CMO/ MS

9. **ENGINEER-IN-CHIEF, PWD,**
GOVT. OF NCT OF DELHI

.....RESPONDENTS

CORAM:**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)****HON'BLE MS. PINKI, MEMBER (JUDICIAL)**

Present: Mr. Ashish Sharma, counsel for Appellants.
Mr. Pushp Raj Yadav, Legal Assistant for Appellant.
Mr. Ravi Kant, son of Respondent.
Respondent No. 2 in person

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

JUDGMENT

1. The present Complaint has been filed by the Complainant before this Commission alleging deficiency of service on the part of Opposite Party and has prayed for the following reliefs:

As per the averments made in the complaint Late Shree Jaipal Singh was employed as a senior Mali with OP 9 (PWD Department, Govt. of NCT of Delhi) and posted with OP 3 (G.T.B Hospital, Dilshad Garden, Shahdra, Delhi). He was a member of Delhi Govt. Employees Health Scheme (DGEHS) vide card No. 62452 under the scheme of OP No. 4 (Govt. of NCT of Delhi) and Rs. 30/- p.m was being deducted from his salary towards monthly subscription by OP 9; hence he was a consumer and after his death his heirs have become consumers. It is pleaded that in April 2005 he observed a pea shaped and sized abnormal growth in his mouth and that on 06.04.05 he visited OP 3 Hospital where he was registered for his medical treatment and was provided a Central ID No. 200502026977 and was sent to ENT Department of OP 3; that on 9th April 2005 a sample of tissue was taken from his mouth for Biopsy by OP 3; that after spending a long time of one month and after a long examination

he was diagnosed on 06.05.2005 by OP 3 to be suffering from "Squamous Cell Carcinoma (Oral Cavity Cancer) in left side of his mouth; that on 06.05.05 the size of the tumor/affected area was one square cm which was later on gradually increased to 3 square cm due to the negligent and careless treatment provided by OP 3 till 22 July 2005 as told by OP 6 (L.N.J.P Hospital, Delhi); that the patient went to OP 3 on 20.04.2005, 28.04.2005, 30.04.2005, 07.05.2005 and 12.05.2005 but no medicine /treatment was given to him by OP 3; that on 13.05.2005 OP 1 (Dr. H.C. Taneja, ENT Department of OP 3) planned for the operation of the tumor for the 1st time and sent the patient for P.A.C Test (a test of Anaesthesia which is done before operation) to the Anaesthesia Department of OP 3 and the patient was asked to arrange one unit blood for operation which he arranged but he was neither properly treated nor was operated upon by OP 1; that on 16.06.2005 PAC Test of the patient was found OK and he was found fit for getting anaesthesia but he was not provided any specific treatment; that he visited OP 1 on 14.05.2005, 16.05.2005, 18.05.2005, 26.05.2005 and 01.06.2005 but medicine/treatment was given to him by OP 1 and OP 3; that on 04.06.2005 no he was carelessly and negligently asked to come after a long period/time of 6 days, that is on 10.06.2005; that when he visited OP 3 on 10.06.2005 he was asked to go to OP 2 (Dr. Neelima, ENT Department) in the absence of OP 1 and OP 2 planned for operation of the Tumor but OP 2 also did not do any operation nor give proper treatment to him; that on 11.06.2005 in the course of planning the operation, OP 2 referred the patient to Dental Department of OP 3 for dental extraction on urgent basis and explained verbally that few teeth might interfere during the operation and, therefore, the patient got extracted his teeth as was prescribed by OP 2; that on 16.06.2005 OP 3 found the patient to be fit for operation and, therefore, OP 2 ved 21.06.2008 as the date of operation and asked the patient to come to

Hogstal on 2006 2005 for admission that on 2006 2005 the patient voted on 3 but 0 2 in entered the date of operation for 25 days and asked him to come on 15 y 2008 that dee to trouble the patient voted 0 3 on 9 y 2005 and 15 July 2005 and requested the doctor to provide him proper treatment but no treatment was given to han by OP 1 to OP 3: that ultimately on 18 e 2005 the patient was referred to OP 6 Hostal by OP 1 for box further treatment and on 21 July 2005 OP 3 provided and filled in a form of referral to OP 6 Hospital for bis further treatment that the patient visited the OP 6 on 22.07.2005 where he was issued OPD NO/CR No. RT 1274/05 dated 22.07.2005, that the patient visited OP 5 (Dr. K. Singh Oncology/Radiotherapy Department of Op 6) between 22.07.2005 to 28.03.2006 but OP S and OP 6 abo followed the same negligence as was followed by OP 1 OP 2 and OP 3 and he was neither operated upon nor treated properly by OP 5 and OP & that when the patient became hopeless from OP 5 and OP 6 he visited OP 8 (Raj Gandhi Cancer Hospital Delhi) for his better treatment where he was issued CR No. 75012 and OP 7 (Dr. (Col) R. Ranga Rao] started his treatment; that the patient visited OP 7 and OP 8 so many times but they also adopted the same negligence and ultimately the patient died on 21.02.2007 due to the negligence on the part of OP 1 to OP 3 and OP 5 to OP S.

Now his LRS who are the complainants herein have filed the present mplaint for issuing directions to OPS to pay claim amount of Rs. 13 lakhs, Rs. #0,000/- as compensation for mental and physical harassment, tension, visiting penses etc. faced by the complainants and RS. 11.000/- towards litigation rges jointly and severally to them.

It is pleaded that at the time of his death the deceased was about 57 years and he was taking a monthly salary of Rs. 13,500/- approximately which was revised as per

6th Central Pay Commission and he had a bright future and not suffering from any kind of illness before the said disease. It is stated that the employer of OP 1 and OP 2 and OP 4 is the employer of OP 1 to OP3 and hence OP 3 is responsible for negligent act of OP 1 and OP 2 and OP 4 for negligence of OP 1, OP 2 and OP 3; OP 9 was responsible to collect the monthly subscription of Rs. 30/- under DGEHS/

2. The District Commission after taking into consideration the material on record, passed the following order dated 26.04.2014:

We have heard the counsel for parties and have perused the evidence of the parties, medical record, medical expert reports and the other material placed in the file.

The first question which arises for consideration is, whether the deceased was a consumer as defined in section 2 (1) (d) of the Act.

Admittedly, the deceased was a govt. employee. He was a member of OGEHS. Monthly subscription of Rs. 30/- toward medical fee was being deducted from his monthly salary regularly. By virtue of being a member of DGEHS he was entitled to get treatment from the govt. Hospitals and empaneled hospitals free of cost. In Jagdish Singh Chauhan Vs C.G.H.S 2013 CPJ 725(NC), whole life insuror and C.G.H.S card holder has been held to be a consumer as defined in

section 2 (1) (d) of the Act. DGEHS is a medical health scheme being run by the Govt of N.C.T. of Delhi on the same lines for its employees. Therefore, we do not feel any hesitation in holding that the deceased was a consumer as defined in Section 2 (1) (d) of the Act and after his death his legal representatives have entered into his shoes and have become consumers

The next question which arises for consideration is, whether the death of deceased took place due to the negligence of doctors and, if so, which of the OPS can be held responsible for medical negligence. Negligence is a negligence where there is some failure to do some act which a reasonable man in the circumstances would do, or not to do; and if the failure or the doing of that act results in injur or death, then there is a cause of action. The test to determine whether the act o failure of a doctor in question is negligent is, whether the doctor is negligent an he has failed of measures up in any respect, whether in clinical judgment otherwise, to the standard of ordinary skilled surgeon excersing and professing have the special skill of a surgeon. Negligence is the breach of a duty caused b the omission to do something which a reasonable man, guided by tho considerations which ordinarily regulate the conduct of human affairs would d or doing something which a prudent and reasonable man would not Actionable negligence consists in the neglect of the use of ordinary care or s towards a person to whom the OPS owe the duty of observing ordinary care a skill, by which neglect the complainant has suffered injury to his person. T definition involves three constituents of negligence: (1) a legal duty to exer due care on the part of the party complained of towards the party complain the former's conduct within the scope of the duty; (2) breach of the said d and (3) consequential damage. The same principles equally apply to a case medical negligence.

From the reading of medical literature on the subject it has come to knowledge that the aim of cancer treatment is to cure the patient and sav life. The cases where complete cure is not possible, treatment aims to contro disease and to keep the patient normal and comfortable as long as possible treatment of each patient designed to suit an individual and depends o age of the patient stage and the of disease. There may be only one treatment or combination of treatments.

There are four main modalities of treatment, namely, surgery, radiationtherapy, chemotherapy, hormonotherapy and immunotherapy. Surgery and radiotherapy aim at eradicating the disease at the primary site (site of origin) of cancer whereas chemotherapy, hormonotherapy and immunotherapy deal with disease which may have spread outside the site of origin of cancer. Surgery is the most important part of the cancer treatment. Surgery attempts to remove cancer cells from the body by cutting away the tumor and any tissues surrounding it which may contain cancer cells. The size of cancer tumor increases or grows speedily. Unless and until the patient is given urgent, quick and immediate treatment, the size of the tumor will increase with the passing of each day. Therefore, it is the medical duty of the treating doctor to start immediate treatment of the patient as soon as the disease is diagnosed as cancer.

Ex DW 1/1 is reproduced as hereunder:-

In the present case from the document exhibit DW/1 relied on by OPs 1 to 4 themselves it stands proved that OP 1 and OP 2 did not take proper care and precaution while giving medical treatment to the deceased. After detection of the cancer the patient was made to undergo PAC (pre anaesthetic checkup). He underwent the said test. During this test it came to be known that the deceased had once beef sting from T.B. in the past i.e. in the year 1993 and he had got

the treatment in a hospital at Ghaziabad, Ultimately the deceased was not found to be suffering from the I.B. When OP 1 and 2 had come to know that the deceased had in fact been suffering from cancer, instead of giving treatment for the said disease he was made to undergo various medical tests for ascertaining

whether he was suffering from T.B. He was prescribed medicines for TB. Ultimately it came to be known on 26.05.2005 that he did not have any active signs of pulmonary T.B. Thereafter he was made to wait till 10.06.2005 on which date he was advised to arrange two units of blood and for urgent dental extraction which he did. Thereafter his surgery was not performed by OP 1 and 2 for some unknown reason best known to them till 18.07.2005 on which date the patient was found having infection in the body (purulent discharge from oral cavity) and hence he was referred to LN.JP hospital. Undisputedly, during this period of more than about two months the size of tumor grew from 1 square c.m to 3 square c.m. for which he was provided treatment by the other OPS but they could not save the patient and ultimately he died.

Who was responsible for his ultimate death? From whose negligence did he die? The facts of the case speak loudly that it were OP 1 and 2 who did not give proper care and treatment to the deceased. From the facts the circumstances of this particular case there is every reason to believe that there was utter lack of care and diligence on the part of OP 1 and OP 2 in giving the proper medical care and treatment to the deceased. The complainants have discharged the initial onus by making a case of medical negligence on the part of OP 1 to 3 but OP 1 to 3 have failed to discharge burden of providing that there was no lack of care and diligence and that they had provided the best treatment to the deceased by exercising by their prudence and reasonableness. Therefore, in our considered opinion, OP 1 and 2 who are the employees of OP 3 and 4 are medically negligent in providing proper medical treatment to the deceased.

Medical expert report dated 17.12.2009 given by the medical specialists/medical board of R.M.L hospital, New Delhi fortifies our opinion. After examining the available record in respect of treatment of the

deceased the medical experts of RM Hospital opined and concluded as follows:- "However, N he was not operated upon aneferred to L.N.J.P Hospital for Radiotherapy on 18.07.05. there was definite delay in referring from and coical time was lost in his repeated visits to Oncology Clinic GTB. Hospital. We discard the experts report dated 28.11.11 given by the doctors of Safdarjung Hospital on the ground that the said report is against the record inasmuch as per the said record the patient did not report to Dector from 20.06.05 to 15.07.05 (25 days) when cancer is a progressive disease. Record e DW/1 does not narrate any such story. As per the said record the patient had visited the ENT OPD of or 3 on 20.06.05 and the Junior Doctor after discussing the case with OP 2 "advised" to give date for surgery and come for review on 15.07.05 at 2 PM in Oncology Clinic. Therefore, as per the said record filed by On 1 to 4 the patient himself was advhed to come for review on 15.07.05. We fail to understand as to why the Medical Experts Committee constituted under the chairmanship of Dr. J.S. Bhatia and consisting of Dr. Amar Bhatnagar, Dr. A.K. Rai, Dr. R. Chakra-Borty and Dr. S.P. Katariya preferred to give the report against the facts existed on the record.

The said committee has further observed as follows

"From 06.04.05 to 18.07.05 disease progressed and decision was changed for treatment from surgery to Radiotherapy, in view of stage as on 18.07.05. Pretreatment work up and treatment at G.T.B., L.N.J.P and Rajeev Gandhi Hospital is as per standard routine protocols.

There is no negligence at any stage in the management of the case" The second medical opinion has been obtained on the request of OP 7 to 8. in the facts and circumstances of the case we are inclined to take a view that the medical expert committee constituted

under the Chairmanship of Dr. J.S. Bhatia, Safdarjung Hospital, Delhi, preferred to give a false report in order to give benefit to their brother-colleagues.

We hold that OP No. 5, 6, 7, and 8 were not negligent in providing medical treatment to the patient and they provided the best medical treatment to him which was required of them in the facts and circumstances of the case.

Therefore, we dismiss the complaint against OP No. 5, 6, 7, and 8 and allow the complaint against OP No. 1 to 4.

At the time of his death the deceased was about 56 years of age. He was working as a govt. employee. He was getting about Rs. 13,500/- p.m. as salary, His date of retirement is not made known to us. We do not have any information whether after his death his wife or any of his other LRs have been offered a job on compensatory ground. We do not know about the ages of complainant No. 2, 3, and 4. We do not know whether they were minors at the time of the death of deceased. One thing is certain that after his death his family and especially his wife must have been getting family pension. It is admitted fact that the deceased was provided free of cost medical treatment.

In the facts and the circumstances of the case discussed above, we award lumpsum compensation of Rs. 5 lakhs, (Rs. 3 lakhs to the complainant No. 1, Rs. 1 lakh to complainant No. 4 and Rs. 50,000/- each to complainant No. 2 and 3), Rs. 15000/- towards mental pain and agony, Rs. 11000/- as the litigation cost to the complainants to be paid by OP 1 to 4 jointly and severally within one month from the date of receipt of copy of this order failing which the amount of Rs. 5,00,000/- shall carry interest @ Rs. 6% p.a. from the date of filing of complaint till realisation.

Let a copy of this order be sent to each party free of cost as per regulation 21 of the Consumer Protection Regulations, 2005. File be consigned to record room.

3. Aggrieved by the aforesaid decision of the District Commission, the Appellants have preferred the present Appeal contending that District Commission failed to appreciate that the patient/deceased had a casual approach towards his ailment and was not interested in undergoing surgery. It is further submitted that there was no wastage of time nor any act of negligence or deficiency on part of the Appellants. Secondly, it is submitted that the patient was advised to take date for surgery, however the patient failed to do so and as such no negligence can be attributed to the Appellants. Lastly, it is submitted that the District Commission has erred in discarding the report of medical expert committee of Safdarjung Hospital and in solely relying on the medical expert committee report of RML Hospital since the latter is not based on the entire case history of the deceased. Pressing the aforesaid contentions, the Appellants have prayed that the present Appeal be dismissed.
4. The Respondents No.1-4 have filed their joint reply and have stated therein that the deceased/patient was eager for his surgery and diligently followed each and every instruction/prescription/suggestions of the doctors of the Appellant-hospital. It is further submitted that the doctors of the Appellant-hospital never advised the patient to 'take' the date of surgery, instead the Appellants were the treating doctors of the GTB hospital who had to 'give' the date of surgery to the deceased. Secondly, it is submitted that the Appellants wasted precious time and extending the date of surgery without any reason

which led the disease to progress into an incurable stage. It is further submitted that during the whole period of 106 days which the deceased spent at the Appellant-Hospital, the Appellant did not provide any cancer-specific treatment and the patient only developed the purulent discharge problem in his mouth after the Appellant/ treating doctors of the Appellant Hospital took sample of biopsy (piece of muscle) from the patient's mouth causing a wound.

5. Respondent No.5 to 9 are perform parties and no relief is sought against them.
6. We have perused the material available on record and heard the counsels for the parties.
7. The *first question* that falls for our consideration is *whether the deceased had a casual approach towards his treatment.*
8. The facts reveal that the deceased visited the Appellant Hospital on 06.04.2005 for the very first time. On the same day, he was provided a central ID no.200502026977 and was sent to the ENT department.
9. A perusal of the Annexure No.3 of original documents related to the Appellant hospital (indexed as Page No.307 of the District Commission record) suggest that the patient was asked to get the FNAC (Fine Needle Aspiration Cytology) test done in room no.130. The patient was also asked to get the blood examination done. A perusal of the aforesaid annexure clearly shows that the patient had given the blood samples on the same day and visited the room no.130 for his FNAC test where the treating doctors wrote "FNAC is not indication for oral pathology". The patient was then directed to be present on 09.04.2005 get the biopsy test

done for proper diagnosis of the disease. Thereafter on 09.04.2005, the patient had given a piece of muscle from his mouth for biopsy and on 06.05.2005, the biopsy report revealed that the patient was suffering from “Squamous Cell Carcinoma floor of the mouth left side” and the size of the tumour/affected area was measured at 1 sq.cm.

10. A perusal of the record shows that the very next day i.e. on 07.05.2005, the patient gave a sample for FNAC test in room no.242. A perusal of the record further suggests that on 13.05.2005, the Appellant No.1&2 planned for operating the patient for the first time and the patient was advised for PAC test and to arrange two units of blood. It is clear from Ex DW1/1 that the patient got done his PAC test on 27.05.2005 and arranged one unit of blood. The patient was also advised for urgent dental extraction on 10.06.2005 by Appellant No.3 and got his teeth extracted on 11.06.2005. (Annexure No.4, 4-A & 10 of original documents related to the Appellant hospital (indexed as Page No.306 of the District Commission record).
11. The aforesaid discussion and the material on record clearly suggests that the patient diligently followed the directions of the Appellant No. 2 & 3. The patient took all the steps and got everything done from PAC to dental extraction to arranging blood, which was required to prepare him for surgery, showing his willingness to undergo operation. By no stretch of imagination it can be said that the patient was reluctant to undergo surgery. In our opinion, it is highly improbable that any patient suffering from a life-usurping disease like cancer shall assume a casual attitude towards his own treatment. Therefore, the contention of the

Appellants that the patient was reluctant to undergo surgery and didn't take his treatment seriously holds no water in light of the material on record.

12. The *next question* that falls for our consideration is *whether the Appellants wasted precious time in providing treatment to the deceased.*
13. From the extensive reading of medical literature and the published medical writings placed on record, it has come to our knowledge that time is the most crucial factor when it comes to life-usurping diseases like cancer. Cancer is curable if detected and treated early and therefore there shall be no benefit of early detection of cancer if the treatment is not provided in time, In the opinion of experts and researchers, 'Minimising delays to treatment could improve cancer survival rates'. As has been observed in the research titled "*Mortality due to cancer treatment delay: systematic review and meta-analysis*" published in the renowned medical journal BMJ 2020;371:m4087: <https://doi.org/10.1136/bmj.m4087> (Published 04 November 2020) that there was a significant impact on a patient's mortality if their treatment was delayed, whether that be surgical, systemic therapy (such as chemotherapy), or radiotherapy and that such risk keeps rising the longer their treatment does not begin.
14. Returning to the facts of the present case, it is evident that the patient visited the Appellant-hospital for the first time on 06.04.2005. Thereafter, the cancer was diagnosed on 06.05.2005, surgery was planned on 13.05.2005 for the first time and the patient was advised for PAC test. During the PAC test, it was found out that the patient once suffered from T.B. back in the year

1993. On 26.05.2005, the medicine department opined that there are no active signs of pulmonary T.B. Here it is to be noted that thereafter the patient was made to wait till 10.06.2005 and was then advised dental extraction and to arrange two units of blood which the patient did. However, the patient was not operated till 18.07.2005. It is to be noted further that even on 16.06.2005, even after the dental extraction and patient being PAC fit, the Junior Doctor discussed the case with Appellant No.3-Dr. Neelima Gupta and only “advised” to give date for surgery and the date for review was kept as 20.06.2005 i.e. again after a gap of 3 days. However, the Junior doctor again discussed the case with Appellant No.3-Dr. Neelima Gupta and again “advised” to give the date for surgery. The patient was again kept on hold for review on 15.07.2005 i.e. after a gap of 25 days. It is implausible as to why the Appellant No.3 kept on unreasonably extending the date for surgery again and again without any reason whatsoever. It is pertinent to mention here that during this course of more than 2 months, the size of the tumour grew from 1 sq.cm to 3 sq.cm. It is also crucial to note that the patient was never given any cancer specific treatment by the Appellants despite being fully aware that cancer is a progressive disease. A perusal of the prescription slips reveal that the patient was prescribed Cap. Amoxy-500mg (antibiotic), Tab. Voveron (painkiller) & Cap. B-Complex-10 (vitamin B capsules), Betadine mouthwash and Tab Zinase D (pain killer) by the Junior Doctor.

15. Ultimately, when the patient visited the Appellants on 18.07.2005 with a problem of purulent discharge from oral cavity, he was referred to LNJP hospital for radiotherapy. We fail to understand

as to why the patient was made to wait for an extended period of time for performing surgery in the first place when ultimately the patient was to be referred to another hospital for a completely different modality of treatment i.e. radiotherapy. Such conduct clearly indicates the Appellant's' apathetic approach towards the gravity of the ailment and raises a presumption as regards to the failure of treating doctors in clinical judgment and choosing the right course of action in time. We fail to understand that if the Appellant-hospital didn't have the required facilities or specialized doctors to treat the patient, then why was the patient not referred to LNJP in the first instance.

16. The expert medical report of RML Hospital further strengthens our opinion, which concludes as follows:

“The Committee Members have concluded that the patient was advised surgery and was fit from anaesthesia department on 27/05/05. However, he was not operated upon and referred to LNJP Hospital for Radiotherapy on 18/07/2005. There was definite delay in referring him and crucial time was lost in his repeated visits to oncology clinic GTB Hospital.”

17. Here we remark that negligence connotes a failure to do an act which a reasonable man with ordinary prudence guided by those considerations which ordinarily regulate the conduct of human affairs would do, or not do; and if the failure or the doing of that act results in injury or death, then there lies a cause of action. The test to determine whether the act or failure of a doctor in question is negligent is, whether the doctor has failed to take up measures in any respect, whether in clinical judgment or otherwise, to the

standard of ordinary skilled surgeon/doctor exercising and professing to have the special skill of a surgeon/doctor. In the present case, the expert medical board constituted at RML hospital clearly opines that the patient was not operated upon in time and there was definite delay in referring, thereby crucial time was wasted in his repeated visits to the Oncology Clinic at the Appellant No.1-hospital. The patient was PAC fit and surgery was planned on 13.05.2005 which means he was fit for surgery, yet inexplicable delays were caused and he was not operated upon. Therefore, it is established beyond doubt that the Appellants have clearly failed to act in a case where time was the essence and made delays which rendered the disease incurable, ultimately resulting in the patient's death.

18. The *third question* that falls for our consideration is *whether the District Commission erred in establishing negligence and carelessness on the part of Appellants in their conduct while providing treatment to the patient.*
19. To resolve this issue, we deem it appropriate to analyse the conduct of the Appellants through the record available in the case file. On bare perusal of the record, it is evident that the patient was suffering from 'Squamous Cell Carcinoma'. As per the medical literature on record, it is clearly evident that cancer progresses from stage-I i.e the curable/nascent stage to stage-IV i.e the incurable/final stage. The patient required extensive care and proper diagnosis as his case was a complicated one and required consultation with specialists beforehand. It is to be noted that the medical record nowhere suggests any consultation with an Oncologist/Cancer Specialist. This finding is further strengthened

from the perusal of the Directory of officers and employees of the Appellant-Hospital which reflects that there was no Oncologist/Cancer Specialist posted in the Appellant Hospital. (*Annexure No. 1 5(A to L)*).

20. Furthermore, a perusal of *Ex.DWI/1* discloses that the patient was seen 13 times by the Junior Doctor and the Junior Doctor discussed the case of the patient with the Appellant No.2- Dr. H.C.Taneja & . Appellant No.3-Dr. Neelima Gupta. Instead, it is a significant finding that the patient was seen by the Junior Doctor most of time and was never seen by the Appellant No.2- Dr. H.C.Taneja & 3- Dr. Neelima Gupta. Furthermore, the Appellants have failed to disclose the name, educational qualification of the said Junior Doctor which raises an adverse presumption against the Appellants as to the standard of treatment.
21. It is to be further noted that in view of the standard medical practice in cases of cancer, it was the duty of the Appellants to properly diagnose the patient and to classify the stage of the disease through TNM (Tumour, node and metastasis) staging. As per the medical literature on record - "*Text book of the Ear, Nose & Throat*" by Souza(C.) and published by Orient Longwan. & "*Principles & Practice of Medicine*" by Davidson, 14th edition, the methods of staging of cancer are enumerated on *page no.110 & 111*). As per the medical literature on record, the patient was in the stage of Tis (*Carcinoma/Cancer in situ, which is a very early stage*) or T, (*the letter 'T' stands for tumour*). This fact is clear from Annexure No. 4 of original documents of treatment of deceased at G.T.B. Hospital. (Page No. 306 of Distt. Forum case file).

22. The patient was not having cancer in his regional lymph node, so he was not having regional lymph node metastasis. Therefore, his disease was in the stage of 'No' (*the letter 'N' stands for 'Node'/'Lymph Node' and 'o' stands for 'zero'*). This fact is clear from FNAC report of the patient. This fact is also supported by all original documents of treatment of deceased at G.T.B. Hospital in which the doctors have nowhere mentioned about the lymph node metastasis. The patient was also not having regional or distant metastasis overall, hence he was in the stage of 'Mo' (*the letter 'M' stands for 'Metastasis' and 'o' stands for 'zero'*) according to TNM classification. This fact is supported by all original documents of treatment of deceased at G.T.B. Hospital in which the doctors have nowhere mentioned about the regional or distant metastasis (spreading of disease to other parts of body). The fact has already been admitted by Respondent no. 5 & 6 in their written statements submitted before Distt. Forum. Therefore, when the patient visited G.T.B. Hospital first time. i.e, on 06.04.2005 the classification formula for disease was '**T1NoMo**' which correspond to the stage-I of the disease according to TNM classification used for classification of cancer. However, the Appellants never classified the Cancer of the patient which is clear from the medical record. Hence, it is established that the Appellants were negligent in their conduct and failed to provide the standard medical treatment to the patient.
23. The *last issue* that falls for our consideration is *whether the District Commission erred in discarding the opinion of the Medical Board at Safdarjung Hospital.*

24. Here, we deem it appropriate to refer to the opinion of the medical board at Safdarjung Hospital:

“Medical Board was held under the chairmanship of Dr. J.S. Bhatia, Addl. M.S. on 17.11.2011 at 2.30 PM regarding medical opinion in respect of Mr. Jai Pal Singh (Deceased) case no 50/09 in the matter of Smt. Ramo Devi vs. Dr. H.C. Taneja and other.

From 6.4.2005 to 16.6.2005 patient was diagnosed, staged, and got

PA clearance after ruling out co-morbid condition. From 20.6.2005 to 15.7.2005 (25 days), patient did not report to doctors. Cancer is a progressive disease. From 6.4.2005 to 18.7.2005 disease progressed and decision was changed for treatment from surgery to Radiotherapy, in view of stage as on 18.7.2005. Pre treatment work up and treatment at GTB, LNJP and Rajeev Gandhi is as per standard routine protocols.

There is no negligence at any stage in the management of the case”

25. On a combined analysis of the abovementioned shortcomings during the treatment and the negligence culled out by the District Commission through the impugned judgment, we are of the opinion that such recurrent negligent conduct is against medical ethics and is intolerable in light of the casual attitude of the treating doctors towards the patient. Also, the members of the Expert Panel of Safdarjung Hospital have ostensibly turned a blind eye towards such conduct of the Appellants and have remarked “no medical

negligence” in their report, which is not tenable in the eyes of law. Such opinion prima facie appears to be baseless and biased in as much as no details pertaining to the aforementioned misconduct have been taken into consideration nor any thoughtful deliberations have been recorded in this regard. As such, we find no reason as to why would the District Commission not be perturbed by such glaring irregularity that reeks of connivance on part of the expert panel and treating doctors, at the time when the District Commission required medical expertise in the form of valuable inputs for deciding the present case. It is pertinent to remark that Courts are not experts in the field of medical science and are required to be assisted by experts to form opinion, in order to decide as to whether negligence was committed or not. Therefore, expert opinion is crucial for the adjudicating court to decide the matter, but in the present case, the opinion of the experts was an attempt to mislead the court and therefore, reliance upon the same could have resulted into gross injustice towards the Respondents.

26. In view of the aforesaid discussion, we find no infirmity in the Impugned Order passed by the District Commission. Consequently, we find no reason to reverse the finding of the District Commission and ***uphold the judgment dated 26.04.2014, passed by the District Consumer Disputes Redressal Commission (North-East), D.C. Office, Nand Nagri, Delhi-110058. Resultantly, the present Appeal stands dismissed with no order as to costs.***
27. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.

28. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
29. File be consigned to record room along with a copy of this Judgment.

**(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT**

**(PINKI)
MEMBER (JUDICIAL)**

Pronounced On:
11.09.2023