

IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION**Date of Institution: 28.02.2013****Date of hearing: 10.03.2022****Date of Decision: 24.03.2022****COMPLAINT CASE NO.-96/2013****IN THE MATTER OF****J. L. AGGARWAL,**

S/o SHRI O. P. AGGARWAL

R/o- A-4/10,

SECTOR-16, ROHINI,

NEW DELHI

(Through: SAROJ BIDAWAT BANSAL,**ADVOCATE)**

...Complainant

VERSUS**1. SIR GANGA RAM HOSPITAL**

THROUGH IT'S MEDICAL SUPERINTENDENT

RAJINDER NAGAR,

NEW DELHI-110060

2. DR. SUDHIR CHADHA

SENIOR UROLOGIST & KIDNEY TRANSPLANT

SURGEON,

SIR GANGA RAM HOSPITAL,

RAJINDER NAGAR,

NEW DELHI-110060.

(Through: SUBHASH KUMAR, ADVOCATE)

...Opposite Parties

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. Brief facts of the case as per the pleadings of the parties are that the Complainant herein was employed with the erstwhile Municipal Corporation of Delhi and was posted in the Rohini Zone, Delhi. The Complainant went for screening to Saral Diagnostics, Shakti Vihar, Pitampura, whereby, on examination, it transpired that he was suffering with Kidney Stone.
2. In order to get proper treatment, the Complainant immediately visited Sir Ganga Ram Hospital. The Complainant was examined by Dr. Sudhir Chadha, Senior Urologist, who recommended/prescribed certain other tests to be fully sure about the condition of the Complainant.
3. As prescribed by the Opposite Party No. 2, the Complainant underwent the necessary tests on 31.08.2010. As per the reports, the Complainant was having Stone in Kidney measuring 9 mm in prominent renal pelvis. Complainant was admitted with the Opposite Party No. 1 on 06.09.2010, for treatment.
4. On the first visit, the Complainant was treated by using the "Double-J stenting followed by Extracorporeal Shock Wave Lithotripsy (ESWL)", where, a total of 3500 shocks were given at variable intensity level. The Complainant was discharged on the

same day and a bill amounting to Rs. 35, 938/- was raised for the treatment.

5. On the intervening night of 06-07.09.2010, the Complainant suffered with severe pain, vomiting, fever etc. and on the first available opportunity, he visited the Opposite Party No. 2 for consultation and remedy. The Opposite Party No. 2, after examining the Complainant directed certain tests and admitted the patient for Bladder Waste Removal, for which, the Complainant was charged Rs. 4000/- in addition to Rs. 700/- for the visitation/consultation charges of the Opposite Party No.2. Another sitting of ESWL, took place on 21.09.2010.
6. On 01.10.2010, the 'Double J' stent was removed and the patient was discharged on the same day. The patient over the period underwent a total of Five ESWL sessions, the last one being on 08.06.2011, whereby, every time 3500 shocks used to be given at variable intensity level. However, despite the aforesaid treatment, the stones were not removed from the Kidney of the Complainant. To the contrary, the condition of the Complainant deteriorated, which led to immense pain.
7. Allegedly, due to the deteriorating condition, the Complainant took Voluntary Retirement from the Municipal Corporation of Delhi on 07.10.2012, whereas, in fact, he was actually to retire on 31.12.2013, which led to a loss of total salary of 39 months amounting to Rs.20,573,22/-.
8. Since the Complainant was not relieved of the pain, he got certain tests conducted from Dr. Lal Path Labs. The test reports reflected that the stones were still present in the Kidney of the Complainant and that too in the same number as were before he got the treatment done from the Opposite Parties. It further transpired that the

Complainant was having high risk of bone disease due to the deficiency in the body caused by the treatment given by the Opposite Parties.

9. Thereafter, the Complainant got diagnosed from many other Diagnostic Centres including Saral Diagnostics, Krystal MRI etc. in order to ascertain and also to confirm whether the report of the Dr. Lal Path Lab was in fact purely true or not, and all the reports revealed the result analogous to the report of Dr. Lal Path Lab, that the Stones were still there in the Kidney.
10. Left with no other option, the Complainant got the treatment done from RG Stone Urology & Laparoscopy Hospital in May, 2012.
11. The Complainant has alleged that there was utter negligence on the part of the Opposite Parties, who failed to give proper treatment to the Complainant and only exaggerated the suffering of the Complainant and also made him suffer, in order to make some monetary gain. With this, the Complainant has filed the present complaint stating that the Opposite Parties are liable for Negligence, for which the Complainant needs to be compensated, wherein, the following reliefs have been prayed:
 - a) Direct the Opposite Parties/Respondents to pay an amount of Rs. 22,32,354/- spent on the treatment and the loss of salary for taking VRS due to the negligence of the respondents;
 - b) Award an amount of Rs. 2,00,000/- towards mental agony & harassment of the Complainant by the Opposite Party;
 - c) Award an amount of Rs. 50,000/- as litigation expenses;
 - d) Pass any other or further Order(s) in favour of the Complainant and against the respondents as this Hon'ble Commission may deem fit & proper in the facts and circumstances of the present case.

12. A common Written Statement/Reply has been filed on behalf of both the Opposite Parties. The Opposite Parties have averred that the Complainant had consulted the Opposite Party No. 2 in OPD on 31.08.2010, and was diagnosed as a case of “Horse Shoe Kidney” with Left Renal Pelvic Stone with Hydronephrosis. The Opposite Parties have explained the said condition as follows:

“It is a situation where the Kidneys, which are normally apart in upper flank, are joined together in midline lowerdown and are malrotated). Due to this anomaly, urinary drainage from the Kidneys is hampered and results in various problems including increased incidence of stone formation and infections.”

13. The Complainant was informed about his condition in detail and was also suggested the treatment i.e. to undergo ‘Double J’ stenting followed by ESWL. It was also explained to the Complainant that depending upon the nature of stone, the probability of breakage of the stone was 70-90% and it may even take up to 3 months for the passage of the stone. The Complainant was also informed that in order to achieve clearance, other procedures including Percutaneous Nephrolithotomy (PCNL) or Uretroscopy (URS), may also have to be performed.
14. The Complainant after fully understanding the pros and cons of the treatment and signing the “Consent Form”, underwent the First Session on 06.09.2010, which was uneventful and Complainant was discharged in stable condition with advice to follow up in OPD and to contact the concerned doctor in case of any emergency.
15. Thereafter, the ‘Double J’ Stent was removed on 01.10.2010. The Complainant had undergone a total of Five Sessions and at all times, the Complainant had submitted the ‘Consent Form’ and was

discharged in a stable condition with the direction to contact in case of emergency.

16. Before the Fifth Session took place, the Complainant was informed in the OPD that if the session is not successful, he may have to go for alternate procedures/treatments. However, the patient did not follow up after the Fifth Session despite a specific advice.
17. It has been submitted in the Reply that the Complainant was charged only once for the entire procedure, which included 'Double J' stenting and the Five Sessions of ESWL. The Complainant was charged extra only on one account and that too for 'Extra Material Charges' for the 'Double J' stent removal. So far as the 'Bone Disease' allegation is concerned, it has been contended by the Opposite Parties that it is not related or caused by the ESWL treatment.
18. Relying on the aforesaid factual matrix, the Opposite Parties have prayed that the Complaint be dismissed with cost, since there is *nothing* on record to prove that the Opposite Parties are liable for Medical Negligence.
19. The Complainant has filed his Rejoinder rebutting the Written Statement filed by the Opposite Party. All the parties filed their Evidence by way of Affidavit in order to prove their averments on record. After the completion of the pleadings, the case was listed for final arguments.
20. We have heard the Counsel for the parties and perused through the material on record including the Written Arguments filed on behalf of the parties.
21. 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. ”

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.”

(emphasis supplied)

22. In the present case also, it will be 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.
23. The Complainant has not challenged the competency of the operating doctor i.e. Opposite Party No. 2, hence, the first part of the aforesaid para stands answered, that there was no lack of competence on the part of the Opposite Party No. 2.
24. So far as the question of *omission to do any act which was actually required is concerned*, the Complainant has contended that when the Opposite Party No. 2 was aware that the ESWL treatment was not fruitful in removal of the Stones from the Kidney, he should have gone forward with an alternate treatment. This act, as per the Complainant constitutes Negligence on the part of the Opposite Parties.
25. We 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.”

26. 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.
27. In the present case also, the only allegation against the Opposite Parties is that the treatment given by them was not successful, for which the Complainant had to consult another hospital (RG Stone) for the removal of the Kidney Stones. However, this alone cannot be a ground for holding the Opposite Parties liable for Medical Negligence since sometimes despite the best efforts, the patient may not favourably respond to a treatment given by doctor, due to which the treatment of a doctor may fail.
28. In totality of facts, with due regard to the pronouncements of the Hon’ble Supreme Court, as discussed above, we are of the view that the Complainant has failed to establish that there was

- a) Lack of Skill and Competence on the part of the Operating Doctor; or
 - b) breach of a duty exercised by omission to do something which a reasonable man would do or would abstain from doing; or
 - c) that the treatment which was given to the Complainant was not acceptable to the Medical Profession at that specific time period
- which are basically the essential requirements/ingredients for constituting a case of Medical Negligence covered under the Consumer Protection Act, 1986.
29. Consequently, the Complaint stands dismissed, with no order as to costs. Applications pending, if any, stands disposed of in terms of the aforesaid judgment.
30. 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.
31. 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:
24.03.2022