

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

**Date of Institution: 28.04.2014**

**Date of hearing: 25.04.2023**

**Date of Decision: 08.08.2023**

**FIRST APPEAL NO-412/2014**

**IN THE MATTER OF**

**1. DR. N.K. GUPTA,**

D-15, Vivek Vihar

Delhi-110095.

**2. SURGI CENTRE,**

Nursing Home & Maternity Centre,

D-15, Vivek Vihar

Delhi-110095.

**(Through: Mr. Prakash Priyadarsh &  
Mr. P.N. Sharma, Advocate)**

...Complainants

**VERSUS**

**MR. RANJAN,**

R/o 465, A/1,

Bhola Nath Nagar, Shahdara,

Delhi-110032.

**(Through: Mr. Rupesh Kumar, Advocate)**

...Opposite Party

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

Present: Mr. Rajeev Sharma Sr. counsel and Mr. Saket Chandra, counsel  
for the Appellant.

Mr. Tajendra Singh, counsel for the Respondent.

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

**JUDGMENT**

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

*“This complaint has been filed with the allegations that Sh. R.N. Verma, the grand-fatner of the complainant was taken to OPI hospital on 03.08.2009 as he was suffering from Hernia. The OP suggested some medical tests and his grand-father was admitted for the purpose of surgery on 07.08.2009 and he was operated upon on 07.08.2009 and Sterilene Mesh was inserted, but after two hours of operation, there was acute pain to the patient and his condition started deteriorating. He was referred by OP to Tirath Ram Hospital or some other good hospital for management. Complainant took the patient to Sir Ganga Ram Hospital where after examining the patient, they opined that he was suffering from Peritonitis which was caused due to negligence on the part of OP at the time of operating the patient. There was no improvement in the condition of the patient and the patient was shifted to BL Kapur Memorial Hospital in emergency on 10.08.2009. Ultimately, the patient died on 27.08.2009. The cause of death has been diagnosed as Septicemia with Multi-Organ Failure due to postoperative Jejunal Perforation with Peritonitis. After operation on 08.08.2009, the Serum Creatinine of the patient rose to 2.8 mg/dl, the normal value of which is 0.6 to 1.5. This rise has been due to negligence on the part of the OP and the death has occurred simply because of the negligence on*

*the part of OP in conducting the operation. In the above circumstances, the complainant has prayed for Rs.5,07,410.67/- as cost of the treatment and Rs. 10,00,000/- towards compensation apart from cost of litigation.”*

2. The District Commission after taking into consideration the material available on record passed the order dated **27.01.2014** whereby it held as under:

*“The matter was referred by this Forum for medical opinion to a Medical Board constituted to report regarding deficiency, if any, on the part of the OP. The report has been submitted by GTB Hospital, Medical superintendent, Dr. Vinod Kumar along with a letter dated 15.12.2012. The complainant has also filed on record the order passed by Delhi Medical Council on 02.01.2012 on the complaint filed by the complainant before the Medical Council where both the parties were given reasonable opportunity to place their respective facts and cases.*

*The Ld. Counsel for the complainant argued that the documents relating to the treatment of the patient Sh. R.N. Verma, which have been placed on record along with the complaint are clear in this regard that postoperation there were complications developing with the deceased, Sh. R.N. Verma. The urine output was low and he was having constant pain. It was the OP who felt the need of consultation of Nephrologist as the blood urea was rising and Hb was going down. On the paper dated 08.08.2009, it is clearly recorded that Hb was 8.5 gm%, his pulse was 68 and Blood Urea was 52mg/dl. The Pathology Report also suggests that the Hb of the deceased was very low. Before operation there was a sudden increase in the serum creatinine but in the postoperative period it rose to 4.67 when the patient was taken to Sir Ganga Ram Hospital. On 09.08.2009, when he was taken to Sir Ganga Ram Casualty ward, he was immediately referred to Urology and Nephrology and for surgeon opinion. By that time his Hb had come down to 7.7 and serum creatinine level had further risen to 4.69. They*

*have diagnosed that it is a case of peritonitis. After two days, when he was shifted to BL Kapur Memorial Hospital, they diagnosed it as a case of Septicemia and Mesh related peri-operative infection with unrecognized bowel injury with perforation with urea and creatinine remaining high. They specifically noted operative findings- Residual Hernial defect, Infracolic compartment had about 1% L of fluid with enteric contents, 1 cm perforation in the Jejunum about 2 ft. from DJ Flexure, Large subcutaneous collection of Intestinal content over the left of the Hernia through the left flank 1cm post entry, supra colic compartment had a collection of blood of about 400-500 ml etc. The death certificate issued by BL Kapur Memorial Hospital also refers it as a case of Septicemia with Multi Organ Failure due to post operative Jejunal Perforation with Peritonitis.*

*Before the Delhi State Medical Council, Dr. Gupta was given an opportunity to clarify the allegation. The Delhi Medical Council observed that the patient was high risk case as he had a deranged kidney function as the Blood Urea was 51mg% and he was anemic as his Hb was 8.5 gm%. He had Ischemic Heart Disease (IHD) and CABG five years back. The OP has not taken any referral from the specialist before undertaking the surgery. Postoperative patient had oliguria, 200ml in 24 hours, but no proper referral was obtained for the same which is important in view of the deranged kidney function report before surgery. This is really intriguing, how a doctor of such a high skill and repute could miss this important aspect of deranged kidney function and Hb at 8.5 gm%. He has not given any treatment for bringing the two functions within the parameters before undertaking the operation. He has not taken any Nephrologist opinion and on the contrary he put the blame upon the relatives of the deceased. The Delhi Medical Council has been critical regarding the casual approach of the OP in obtaining telephonic referral from the Nephrologist. They have also mentioned that the hospital seems to be lacking in adequate post operative high dependency postoperative unit to undertake such laparoscopic*

*procedure or any major surgical procedure in high risk patients. They have clearly mentioned that this Surgi Centre was not adequately equipped.*

*The report of the GTB Hospital is equally important in this regard. As per their opinion, the patient should have been given more importance and should have been investigated more extensively regarding his pre-existing cardiac & renal diseases prior to surgery which has not been done by Dr. Gupta in this case. The patient was hinting to some serious complication inside as he was complaining of Abdominal pain and decreased urinary output. These signs were not picked up by the operating Surgeon, Dr. Gupta in the immediate postoperative period. This is another sign of incompetency of Dr. Gupta when he was competent enough to perform such surgery and was lacking infrastructure to deal with the postoperative emergencies. The panel of doctors have also noted that Nephrologist should have been physically available and his opinion should have been recorded and the patient's treatment for decreased urine output should be regularly monitored and personally supervised. Dr. Gupta, left the patient at the mercy of the God by allowing the attendant of the patient to take him to Sir Ganga Kam Hospital even without providing the necessary referral documents. Both these reports prove that Dr. Gupta has violated his hypocratic oath and have not followed the procedures which are necessary to be followed in such high risk patients.*

*There is a clear finding of the Sir Ganga Ram Hospital as well as of BL Kapur Memorial Hospital that there was Residual Hernial defect. There was 1cm perforation in the jejunum and 400-500 ml of blood in supracolic compartment. This perforation in jejunum reflects the negligence on the part of the operating doctor. He had not sealed the operated part properly and had not ensured before completing the operation that there is no perforation in the operative part. Just after two hours of the operation, there was an acute pain in the abdomen, the Hb level was going down, serum level was rising. These were the signals*

*which could have been picked up by Dr. Gupta, instead he chose to discharge the patient from his hospital and left the patient at the mercy of the attendants to shift him to some other hospital of their choice. The entire conduct of Dr. Gupta is contrary to the medical ethics and shows that he was thoroughly negligent in performing the surgery. He has committed not only the deficiency in providing the medical services to the deceased and to their attendants, but has also committed a criminal act. He has operated patient, when he was knowing that he has heart ailments, Hb very low, urea and creatinine levels high. His unsealed portion had allowed the blood to collect in the cavity, which resulted into septicemia.*

*We do not possess the jurisdiction to record our opinion upon the criminality committed by Dr. Gupta, but we are firm in our opinion that Dr. Gupta has been thoroughly negligent and deficient in providing the services to the deceased and to their dependents. The OP has cited the judgments of Martin F.D'Souza v/s Mohd. Ishfaq (2009) 3SCC and Jacob Mathew v/s State of Punjab (2005) 6 SCC. In both these cases, the facts and the law laid down have no application to the case in hand. Rather, they support the complainant. We allow this complaint. The complainant has not filed on record the details of the amount he has spent on the operation and subsequent treatment at various hospitals. In the absence of any such evidence on record, we can only tentatively assess the amount which must have been spent on the operation and post operative treatment at various hospitals. We assess it at Rs. 3 lacs.*

*There is a clear connection between the operation and the death of the deceased Sh. R.N.Verma. His death is the direct result of the incompetent act and the negligence on the part of the OP. His age no doubt around 70 years. Nobody can predict the longevity of any person, but where the death is the direct result of act and omission of the doctor, he needs to pay compensation to the bereaved family. Taking all the facts and circumstances into consideration, we fix the compensation at Rs.*

*7lacs. We further allow Rs.20,000/ towards cost of this litigation. OP is directed to pay the entire amount to the complainant within 45 days from the date of receipt of this order, failing which the complainant shall be entitled for interest @9% p.a. till it is finally paid.*

*Copy of this order be sent to both the parties as per rule. Let copies of this judgement be also forwarded to Medical Council of India and to Secretary, Ministry of Health & Family Planning, Govt. of India for such action as they deem proper against the doctor, may it for cancellation of license etc.”*

3. Aggrieved by the aforesaid order of the District Commission, the Appellant has preferred the present Appeal contending that the District Commission has erred in establishing deficiency on the part of Appellant and has carved out the negligence upon the pleadings extraneous to the case. The Appellant further contended that the District Commission failed to appreciate the evidence placed on record. Pressing the aforesaid contentions, the Appellant has prayed for setting aside the impugned order passed by the District Commission.
4. The Respondent has filed its reply stating therein that the District Commission was right in establishing the deficiency of service on part of the Appellant as from the past medical history, it was clear to the operating doctor that the patient was suffering from multiple ailments and the treatment should have been initiated after getting consultation or under the guidance of specialists in cardiology and nephrology. The Respondent further submitted that the present appeal is liable to be dismissed in view of the expert opinion of Delhi Medical Council and Board of doctors of GTB Hospital constituted as per the directions of District Commission.

5. We have perused the material available on record and heard the counsel appeared on behalf of the contesting parties.
6. The ***main question*** that falls for our consideration is ***whether the District Commission has erred in establishing negligence and deficiency on the part of Appellant in its conduct while providing treatment to the patient.***
7. To resolve the issue as to whether there exists any medical negligence on the part of Appellant in the present case, we deem it appropriate to refer to the case of this Commission wherein, 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, 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)*

8. 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.
9. On perusal of record, we find that the District Commission has referred the present matter before the Delhi Medical Council for expert opinion as per which, the Medical Council consisting Board of doctors of GTB Hospital has filed the report dated 02.01.2012, wherein it was found that

the Appellant Hospital was not equipped with the pre and post-operative facilities to monitor and manage the high risk patients like the patient in the present case. As it is evident that the patient was suffering from multiple ailments like deranged Kidney function, anaemia and Ischemic Heart Disease with CABG. However, the Appellant failed to take pre-operative advice from the nephrologist and performed such advanced laparoscopic surgery which went fatal in the present case.

10. Further, the perusal of the clinical records of BLK Hospital and Sir Ganga Ram Hospital reflects that there was a clear ***Residual Hernial Defect*** which was mentioned by the respective Hospitals in their report. Moreover, the findings reflects that there was perforation in the jejunum and 400-500 ml of blood in supracolic compartment. This perforation in jejunum reflects the negligence on the part of the operating doctor/Appellant as the operating doctor neither sealed the operated part properly nor ensured that there shall be no perforation in the operative part before concluding the operation.
11. Therefore, combined analysis of the abovementioned shortcomings during the treatment and the negligence culled out by the District Commission through the impugned order, we are of the opinion that such recurrent negligent conduct is against medical procedure and is intolerable in light of the casual attitude of the treating doctor towards the patient. Therefore, we opine that the impugned order does not suffer any infirmity.
12. ***Consequently, we find no reason to reverse the finding of the District Commission and uphold the order dated 27.01.2014, passed by the District Consumer Disputes Redressal Commission (East), Saini Enclave, Delhi-110092. Resultantly, the present Appeal stands dismissed with no order as to costs.***

13. Application(s) pending, if any, stand disposed of in terms of the aforesaid Judgment.
14. FDR filed along with the interest accrued till date, shall be released in favour of the Respondent/Complainant, on the presentation of an application to this effect along with the copy of this judgment before the Registrar of State Commission, Delhi, in partial satisfaction of the order and the Respondent/Complainant shall be at liberty to get the order fully executed before the District Commission, if any sum remains payable.
15. The judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.
16. 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:  
**08.08.2023**