

IN THE STATE COMMISSION: DELHI

(Constituted under section 9 of the Consumer Protection Act, 1986)

Date of Hearing:28.07.2021

Date of Decision:09.08.2021

Complaint No.29/2013

IN THE MATTER OF

SH. NARENDRA KUMAR SENGAR

S/o Sh. Kehri Singh Sengar

Y-12, Vikas Lok Colony

Opposite Dhanipur Mandi,

G.T. Road

Aligarh (U.P.)Complainant

VERSUS

THE DIRECTOR GENERAL

RAILWAY HOSPITAL

Ministry of Railway,

Railway Board,

Rail Bhawan,

New Delhi

NORTHERN RAILWAY CENTRAL HOSPITAL

Basant Lane,

New Delhi-110055

Through its Director

...Opposite Party

HON'BLE SMT. JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)

HON'BLE SH. ANIL SRIVASTAVA, MEMBER

1. Whether reporters of local newspaper be allowed to see the judgment?

Yes

2. To be referred to the reporter or not?

Yes

Present: None for the parties

But written arguments of both sides are on record

PER: ANIL SRIVASTAVA, MEMBER

JUDGEMENT

1. This complaint under Section 17 of the Consumer Protection Act 1986, the Act, has been filed by Sh. Narendra Kumar Sengar, resident of Aligarh, Uttar Pradesh, for short complainant, against the Northern Railway Central Hospital and another, hereinafter referred to as OPs, alleging negligence on the part of the Hospital in the matter of treating his wife Smt. Guddi Sengar leading to her end and praying for the relief as under:-

In the light of the facts and circumstances as enumerated hereinabove, it is respectfully prayed that this Hon'ble Commission may graciously be pleased to:-

- a. *Direct the OPs to jointly and severally pay to the complainant an amount of Rs. 30,00,000/- as compensation for the negligent and incorrect treatment given by the OPs to the deceased wife of the complainant;*
- b. *Direct the OP to pay an amount of Rs. 10,00,000/- towards mental torture and harassment, etc.*
- c. *Direct the OP to pay to the complainant Rs. 5,00,000/- as costs of litigation;*
- d. *Direct the OP to pay interest at the rate of 24% upon the above said amount*

- a. *Pass such other order or orders as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.*

1. Facts of the case necessary for the adjudication of the complaint are these.
2. The wife of the complainant having pain in her abdomen felt uneasiness and severe pain was taken to Navjeevan Hospital at Aligarh on 17.03.2011 where some tests viz. Blood test, CT scan, ultra sound, chest x-ray were done when it was found that this is the case of an abscess and accordingly after examining the reports, the Doctors advised the complainant to take the patient to a bigger hospital having better facilities. In these circumstances the patient was brought to Delhi and admitted in the Emergency Ward of Central Hospital, Northern Railway, New Delhi at 9:00am on 18.03.2011. The patient was attended by Dr. Celestana Dungdung in the Emergency ward who after examining her, referred to the surgery department. Dr. Pankaj Arora of the surgery department on examination prescribed certain tests and recommended for her admission in the medical ward though it was notably a case of surgery. The doctor in the medical ward examined the patient and opined that was a case of “ **Liver Abscess ruptured into peritoneum, septicæmic, ac. Renal failure**”. But despite such a serious condition of the patient, the doctors kept on delaying surgery which was so vital to save the life of the patient being in a critical condition. The patient remained unattended during the entire evening of 18th March till 19th afternoon. The patient during that period was left totally at the hands of the nurses. It was only around 9:00 p.m. of 19th March, 2011 when the Doctor found the condition of the patient to be grievous the complainant was informed that the patient was required to be operated forthwith. By that time, reports of any fresh investigations were not available and thus the treating doctors operated the patient on the basis of the reports of the tests done at Aligarh. According to the complainant worst happened when the hospital did not have the facility of speciality and the surgeon who performed the surgery was also not sufficiently competent to operate cases of the kind. The patient was shifted to ICU and put on ventilator after the surgery. But she could not recover and had passed away on 29.03.2011. The allegation is that the patient was not treated timely, surgery was not done on time and when carried out it was done by doctors sufficiently not trained to deal with the cases of the kind. Further the doctors of the OP failed to exercise reasonable care and caution while treating patient suffering from

ruptured liver abscess. Infact she was dealt with in a most negligent and careless manner inasmuch as she remained in the OP Hospital unattended for almost 36 hours which ultimately proved to be fatal resulting in her death. In these circumstances the complaint has been filed against the OPs alleging negligence on their part and praying for adequate compensation.

3. Ops were noticed and in response thereto they have filed the reply resisting the complaint both on technical ground and on merit stating, inter alia, that the present complaint filed by complainant deserves to be dismissed relying on the provisions of Section 2(1)(d), 2(1)(g), 2(1)(o) of the Act, as the complainant is not a consumer. The OP is a government Hospital i.e. Northern Railway Central Hospital, New Delhi. The OP have not charged even a single pie from the complainant. Therefore, when the hospital has done free treatment, the service rendered by the Government Hospital, is outside the purview of the expression 'service' as defined under Section 2(1)(o) of the Act. Secondly no case of deficiency in services or professional negligence on the part of the OPs has been established. Thirdly the OP hospital and its staff had administered the best available patient care and support to the deceased patient. Fourth, the patient was given proper medical care, and treatment. In the patient's case, it was diagnosed in time and the correct drugs administered to the patient. The patient was properly cared for and received all modern medical assistance throughout and the hospital or its staff cannot in any manner be liable for any negligence or shortcoming leading to the death of the complainant's wife. Fifth she was admitted at NRCH on 18.03.2011 and was observed to be seriously ill. Within 24 hours of her hospitalisation a correct diagnosis of Large Liver Abscess with rupture and large fluid in the abdominal cavity with septicaemia, a life threatening infective illness was confirmed. She was provided all necessary management. On merit the OPs have denied the allegation and prayed for dismissal of the complaint, no cause of action as against them having been made out.
4. The complainant has thereafter filed the rejoinder rebutting the contentions raised in the reply and reiterating the averments contained in the complaint. Both sides have also filed their evidence by way of affidavit in support of their pleadings. Their written arguments are also on record.
5. This complaint was listed before this Commission for final hearing on 28.07.2021 when neither side appeared. However the written arguments of both sides having been filed we proceed to adjudicate the complaint. We have perused the records of the case and considered the rival contentions involved.
6. Short question for adjudication in this complaint is whether the OPs and the treating doctors were negligent in the matter of treatment to the patient and if so, whether the complainants are entitled to the compensation as prayed for OR in the alternate the proper procedure, stated to have been followed, whether any case for negligence made out.
7. Issue in the given case breathed into life when the complainant's wife had severe pain and the allegation is that the OPs were negligent treating her after her admission in the hospital. They were very slow in commencing the treatment.
8. Having perused the pleadings and other facts of case, we may deliberate whether the OPs were negligent in the whole process as alleged. For this purpose we may in the first instance examine as to what constitutes or accounts for negligence. Negligence per se is defined in Black's Law Dictionary as under:

Negligence per-se: conduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as to the particular surrounding circumstances, either because it is in violation of a statute or valid

municipal ordinance, or because it is so palpably opposed to the dictates of common prudence that it can be said without hesitation or doubt that no careful person would have been guilty of it. As a general rule, the violation of a public duty, enjoined by law for the protection of person or property, so constitutes.

According to Hulsbury's Law of England Ed. 4 Vol. 26 pages 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 (a) 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 (b) A breach of any of these duties will support an action for negligence by the patient.

1. In Jacob Mathew's case as reported in [2008] 6 SCC 1, the Hon'ble Supreme Court observed as under:

"78. A doctor faced with an emergency ordinarily tries his best to redeem the patient out of his suffering. He does not gain anything by acting with negligence or by omitting to do an act. Obviously, therefore, it will be for the complainant to clearly make out a case of negligence before a medical practitioner is charged with or proceeded against criminally. This court in Jacob Mathew's case very aptly observed that a surgeon with shaky hands under fear of legal action cannot perform a successful operation and a quivering physician cannot administer the end-dose of medicine to his patient."

1. In Jacob Mathew's case (supra), conclusions summed up by the Hon'ble Supreme Court are very apt and some portions of which necessary for the adjudication of the case under consideration, are reproduced hereunder-

Negligence is the breach of duty caused 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.

The definition of negligence as given in Law of Torts, Ratanlal and Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: Duty, Breach and Resulting Damage.

Negligence in the context of medical profession necessarily call for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. The standard to be applied for judging, whether the person charges has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.”

1. Hon'ble Supreme Court is pleased to approve the test as laid down in Bolam versus Friern Hospital Management Committee. The relevant principles culled out from the case of Jacob Mathew versus State of Punjab and Anr as reported in (2008) 6 SCC 1 read as under:-
 - a. *Negligence is the breach of a duty caused 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 prudent and reasonable man would not do, the definition of negligence as given in Law of Torts, Ratanlal and Dhirajlal (edited by justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: 'duty', 'breach', and resulting damage.*
 - b. *A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course method of treatment was also available or simple because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions what has to be seen is whether those precautions were taken which the ordinary experience of men has found to*

be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence.

- c. *A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practises. A highly skill professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.*

1. The Hon'ble Supreme Court in *Arun Kumar Manglik Vs. Chirayu Health And Medicare Private Limited &Anr., 2019 (3) SCALE 333*, has laid emphasis on 'Patient Centric Approach' and observed that the 'Standard of Care' as enunciated in the *Bolam Case* must evolve in consonance with its subsequent interpretation by English and Indian Courts.
2. In Halsbury's Laws of England the degree of skill and care required by a medical practitioner is detailed as follows:-

"The practitioner must bring to his task 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 cases, is what the law requires, and a person is not liable in negligence because someone else of greater skill and knowledge would have prescribed different treatment or operated in a different way; nor is he guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art, even though a body of adverse opinion also existed among medical men.

Deviation from normal practices is not necessarily evidence of negligence. To establish liability on that basis it must be shown (1) that there is a usual and normal practice; (2) that the defendant has not adopted it; and (3) that the course in fact adopted is one no professional man of ordinary skill would have taken had he been acting with ordinary care." A doctor has a legal duty to take care of his patient. Whenever a patient visits a doctor for treatment there is a contract by implication that the doctor will take reasonable care to treat him. If there is a breach of that duty and if it results in injury or damage, the doctor will be held liable. The doctor must exercise a reasonable degree of care and skill in his treatment; but at the same time he does not and cannot guarantee cure.

1. In the light of the principles laid down by the Hon'ble Supreme Court what has to be seen whether the treating doctor had acted as per the standard principles of normal medical parlance.

2. What is expected from the medical practitioner is to take due care and caution while giving treatment as per the established medical jurisprudence avoiding delay. In other words, if he has acted in accordance with the practice accepted as proper by a responsible body of medical men skilled in that particular art, no question of deficiency would arise.
3. Coming back to the facts of the case, the argument of the complainant supported by evidence is that the patient having been brought to OP Hospital on the recommendations and report of the local hospital at 9.00 am of 18.03.2011 was kept in the medical ward, ignoring her deteriorating conditions whereas she was required to be taken to the surgery ward.. Dr. Pankaj Arora of the surgery department to whom the patient was recommended after wasting good time, examined the complainant and directed that she be admitted in the medical ward again ignoring the vital part, condition of the patient. Medical ward on examination reported, as under:-

“Case of ‘liver abscess ruptured into peritoneum, septicaemic, ac. renal failure...”.

Despite such serious condition of the patient, the Doctors kept on delaying surgery which was so vital so as to save the life of the patient. The patient was left unattended in such grievous condition and no Doctor attended to her for the entire evening of 18th March till 19th afternoon. The patient during that period was left totally at the hands of the nurses only.No tangible or cogent evidence has been led by the Ops controverting this serious allegation except to the extent that the patient was looked after nicely and properly.

1. The Hon’ble Supreme Court of India in the matter of Dr. S.K. Jhunjhunwala versus Smt. Dhanwanti Kumari and Anr as reported in (2019) 2 SCC 282 is pleased to observe that the negligence has to be decided on the touchstone whether the treating doctor has adhered to the normal practice of medical parlance.
2. Before deliberating the matter I may advert to the grounds taken by the OPs resisting the complaint. Their first objection that the complaint having been time barred is not entertainable, is overruled owing to the fact that there exists continuous cause of action.
3. Their next objection that there exists no cause of action as against them is devoid of merit as they have failed to properly evaluate the ailment despite undertaking many tests and doing investigations. The Id. Counsel for the OP could not establish even remotely either from the pleadings or from the evidence that OPs had done the spade work as was expected of them in due discharge of their duty as treating doctors. Their submission that due and proper care was exercised cannot be accepted for their inability to detect the ailment and commence the treatment. Timely detection and the treatment could have helped the patient and to the family.
4. The Hon'ble NCDRC in the matter of [ILS Hospital & Anr vs. Bimal Kumar Ghosh - II](#) (2013) CPJ 594 (NC) - held as under:-

"Non-exercise of reasonable caution in treatment amounts to negligence."

The Hon'ble NCDRC in the matter of [V. Srinath \(Dr.\) & Anr vs. Gaurav Lamba - III](#) (2011) CPJ 481 (NC) - held as under:-

"Wrongful surgery causing permanent disability amounts to negligence."

The Hon'ble NCDRC in the matter of dr. Anil Jain and Anr. Vs. Devender Kumar - IV(2012) CPJ 497 (NC) held as under:-

"If the surgery is not done on time, negligence stands established."

Finally the Hon'ble NCDRC in the matter of [Jaswinder Singh & Anr vs. Neeraj Sud & Anr. IV](#) (2011) CPJ 236 (NC)

" If during post operative complication have arisen due to lack of expertise, negligence stands established."

The Hon'ble NCDRC in the matter of Dr. T.Y. Viswaroopachari vs. Chekuri Vijaya Sinha Chaudhary as reported in II [2020] CPJ100 (NC) is pleased to award compensation when the doctor failed to take care of the patient.

1. Their next objection that no consideration having been paid for the purpose of treatment, the complainant is not a consumer within the meaning of Section 2(1)(d) of the Act and if that be the case he cannot raise consumer dispute within the meaning of Section 2(1)(e) [Supra] has already been overruled keeping in view the orders passed by the Hon'ble NCDRC in FA-260/2013 decided on 11.04.2013 in the subject matter.
2. The complaint in the facts and circumstances of the case is therefore allowed. Having reached to this conclusion the point for determination is the relief the complainants are entitled to. Keeping in view the facts of the case the complainants are to be compensated. It would be equitable to refer to the law laid down by the Hon'ble Supreme Court of India for awarding of compensation in the matters of kind.
3. In Lata Wadhwa versus State of Bihar, (20010 8 SCC 197, the Hon'ble Apex Court computed damages to be paid to dependants of deceased persons as well as burn victims in the aftermath of a fire at the factory premises. The Court took into consideration the multifarious services rendered to the home by a home-maker and held the estimate arrived at Rs 12,000 per annum to be grossly low. It was enhanced to Rs 36,000 per annum for the age group of 34 to 59 years.
4. In Malay Kumar Ganguly versus Sukumar Mukherjee, III (2009) CPJ 17 (SC) Hon'ble Justice S B Sinha held thus:

"172. Loss of wife to a husband may always be truly compensated by way of mandatory compensation. How one would do it has been baffling the court for a long time. For compensating a husband for loss of his wife, therefore, the courts consider the loss of income to the family. It may not be difficult to do when she had been earning. Even otherwise a wife's contribution to the family in terms of money can always be worked out. Every housewife makes a contribution to his family. It is capable of being measured on monetary terms although emotional aspect of it cannot be. It depends upon her educational qualification, her own upbringing, status, husband's income, etc."

Thus, in computing compensation payable on the death of a home-maker spouse who is not employed, the Court must bear in mind that the contribution is significant and capable of being measured in monetary terms.

1. In assessing the amount of compensation, principle laid down by the Hon'ble Apex Court in the case of Lata Wadhwa (Supra) and in National Insurance Company Ltd. versus Pranay Sethi as reported in (2017) 13 SCALE 12 are necessary.
2. We also find it a fit case to rely on the judgement of the Hon'ble Supreme Court in Shilaben Ashwin kumar Rana versus Bhavin K. Shah and Anr. II (2014) CPJ (NC), Civil Appeal No. 1442 of 2019, decided on 4.2.2019, in which the Hon'ble Apex Court has opined that while awarding compensation, the distress caused should be taken into consideration. In Nizam's Institute of Medical Sciences versus Prasanth S. Dhnanka, II (2019) CPJ 61 (SC)=III (2010) SLT 734=(2009) 6 SCC 1, a three-Judge Bench of the Hon'ble Supreme Court emphasized that cases involving disability are in many respects even more tragic than cases of death, particularly where the disability is of a nature involving a lifelong condition of despair and helplessness.
3. Keeping in view the principles detailed above and the facts and circumstances of the case, the age of the patient, and other necessary and essential factors, we are of the considered view that it would be just and reasonable to award compensation of Rs. 10 Lakhs (Rupees Ten Lakhs) with interest at the rate of 5% from the date when the cause of action arose and negligence was admittedly done till the realisation of the amount, to the complainant for the suffering, mental pain and agony caused. The amount so awarded be paid by the OP hospitals being liable, within a period of two months from the date of receipt of the certified copy of this order. Awarding of cost would surely serve the purpose of bringing about a qualitative change in the attitude of the hospitals for providing service to the human beings as human beings. Human touch is necessary; that is their code of conduct; that is their duty and that is what is required to be implemented more so when personal liberty is guaranteed under Article 21 of the Constitution.
4. Ordered accordingly, leaving the parties to bear the cost.
5. A copy of this order be forwarded to the parties to the case free of cost as is statutorily required.
6. File be consigned to records.

(Dr. JUSTICE SANGITA DHINGRA SEHGAL)

PRESIDENT

(ANIL SRIVASTAVA)

MEMBER

PRONOUNCED ON

09.08.2021