

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

Date of Institution: **13.12.2012**

Date of Final Hearing: **16.12.2021**

Date of Decision: **03.01.2022**

**COMPLAINT CASE NO.- 440/2012**

**IN THE MATTER OF**

**GURVINDER KAUR**

W/O Late Sh. Rajvinder Singh

R/O 12/1, Village Budhpur,

Prakash Marg, Alipur,

Delhi-110036

...Complainant

**(Through: Mr. A. P. Singh, Advocate)**

**VERSUS**

**1. DIRECTOR,**

**INDRAPRASTHA APOLLO HOSPITAL,**

Sarita Vihar, Mathura Road,

New Delhi-110076

**2. DR. SANJAY JAIN**

**INDRAPRASTHA APOLLO HOSPITAL,**

Sarita Vihar, Mathura Road,

New Delhi-110076

...Opposite Parties

**(Through: MR. BRIJ BHUSHAN GUPTA, Advocate)**

**CORAM:**

**HON'BLE DR. JUSTICE SANGITA DHINGRA SEHGAL,  
(PRESIDENT)**

**HON'BLE SH. ANIL SRIVASTAVA, (MEMBER)**

Present: None for the Complainant.  
Dr. Lalit Bhasin, Counsel for the Opposite Party No.1.  
None for the Opposite Party No. 2.

**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 husband of the Complainant, Mr. Rajvinder Singh (*hereinafter referred to as "Patient"*), was being treated for Jaundice and Stone at Keshlata Hospital, Stadium Road, Delapeer, Bareilly from 30.04.2011 to 08.05.2011 and was later shifted to Indraprastha Apollo Hospital i.e. Opposite Party No.1 (*hereinafter referred to as "Hospital"*) on 10.05.2011.
2. On examination by the Opposite Party No. 2, the Complainant was advised that the Patient needs to undergo surgery and was operated on 12.05.2011. After the surgery, the Patient was kept under observation till 21.06.2011 and was finally discharged on 21.06.2021. The Complainant was charged a total sum of Rs. 21,25,858.92/- for the surgery as well as for the post-operation stay in the Hospital.
3. However, after the discharge from the Hospital, the condition of the patient deteriorated and the Opposite Party No. 2 was communicated

telephonically, who advised that the Patient should be brought to the Hospital for check-up. In furtherance of the same, the patient was again admitted on 02.07.2011 and remained admitted in hospital for 20 days, for which, the Complainant was charged a total amount of Rs. 2,50,000/-.

4. The Complainant was running out of funds, when she was informed that the Hospital has certain number of beds reserved for Economically Weaker Section. Having obtained a letter from the Minister of Health & Family Welfare, GNCTD, the Patient was allowed to be admitted in EWS ward on 05.08.2011.
5. Allegedly, while the doctors used to check-up on the Patient on a daily basis in the General Ward, the same was not the case for the EWS Ward, as the doctors' visits for check-up on the Patient only after a gap of three days. The Patient was finally discharged on 25.08.2011, despite the fact that his condition was not normal. Moreover, no operation of the Discharge Bag was done by the Doctors before discharging the Patient.
6. After being discharged from the Hospital, the condition of the Patient deteriorated and the Complainant approached the Opposite Party No. 2, who allegedly refused to admit the Patient and recommended medication at home. However, despite the same, pus started accumulating near the Discharge Bag, after which, the Complainant again approached the Opposite Party No. 2 to admit the Patient in the Hospital, who again refused to do the same.
7. After about seven days, the pus spread inside the body of the Patient, and the Patient had to be brought in Emergency Ward on 13.11.2011 at around 8:00 PM. After much persuasions, the Patient was admitted

to the Surgical ICU, however, by that time the condition of the patient had become critical, leading to his demise on 15.11.2021.

8. The Opposite Party No. 2 was requested by the Complainant to conduct the post-mortem of the Patient, which request was declined by the Opposite Party No. 2.
9. Alleging that the death of the Patient took place due to the failure of the Opposite Parties to provide proper treatment in the EWS Ward and the utter negligence shown towards the treatment of the Patient, the Complainant got served a legal notice dated 22.08.2012 upon the Opposite Parties. However, the said legal notice was never replied by the Opposite Parties.
10. The present complaint has been filed by the Complainant alleging Deficiency of Services of the Opposite Parties, which led to the death of the Husband of the Complainant, who was the only earning member of the family, also leading to mental agony and pain to the Complainant and her minor children, whereby, the following reliefs have been claimed:

A. The respondents be directed to compensate a sum of Rs. 50,00,000/- (Rupees fifty lakh only) towards the loss so that she may overcome the financial, mental and social crisis that he has been suffering from the sudden demise of her husband due to the sole negligence at the part of the respondent no. 1 & 2 and because of the deficiency in services provided by them, so that she may meet out her social and financial responsibilities and her social security. The respondents also be directed to return/reimburse the

entire amount which the complainant paid to the opposite parties.

B. Cost of the present complaint also be awarded in favour of the complainant and engage the respondents.

C. Any other of further relief, which this Hon'ble Forum may deem fit and proper, under the facts and circumstances of the case and in order to meet the ends of justice, may also be awarded in favour of the complainant and against the respondents.

11. Notice of the present Complaint was issued to the Opposite Parties, who have filed separate replies to the Complaint.

12. Opposite Party No.1 i.e. the Hospital has filed a detailed reply, wherein it has been contended

- a. that no cause of action arises against the Opposite party as due care and caution was taken while treating the patient;
- b. that the Complaint should be dismissed for non-joinder of parties since Keshlata Hospital, Stadium Road, Delapeer, Bareilly, where the Patient was being treated prior to his admission with the Opposite Party No. 1 has not been made a party to the present Complaint;
- c. that at the time of admission to the Hospital, the patient was critically ill and was diagnosed with intra-abdominal collections and doubtful perforation and the patient was advised for Exploratory Laparotomy surgery, for which High Risk consent was taken;

- d. that after treatment, the condition of the patient improved and gradually, the patient was shifted from Oral Fluids to soft diet and thereon to Normal Diet;
- e. that the Patient's drain output was varying from 5-100 ml, due to which, the drain was left in situ;
- f. that the Patient had developed multiple collection of pus in peritoneal cavity, and was given antibiotics to control sepsis;
- g. that the patient was admitted on 10.05.2011 in a very critical condition and discharged on 21.06.2011 in a stable condition on antibiotics, with advice to regularly follow up in OPD;
- h. that the allegations of improper treatment due to the shift of the patient from the Paid Ward to the Government referred patient ward does not sustain since the treating doctors have checked upon the patient regularly and only when the condition of the patient improved, the patient was discharged;
- i. that on 20.10.2011, the patient did not visit the Hospital, however, his relatives, who visited on his behalf, informed about his condition after which, consulting doctor prescribed certain antibiotics;
- j. that on 13.11.2011, the patient was admitted in the Emergency Ward of the Hospital, with complaint of altered sensorium and the Hospital was also informed that the patient was sick for the last 10-15 days after which, the patient was being treated with the best possible measures, however, despite the exercise, the patient succumbed to his illness on 15.11.2011;
- k. that the aforesaid factual matrix is reflective of the fact that the best medical treatment, which could be provided to the Patient

was provided and there isn't any scope of Deficiency of Service on the part of the Hospital.

13. The Opposite Party No. 2 has also filed a separate reply contradicting the allegations levied against him by the Complainant.
14. Pressing the aforesaid contentions, the Opposite Parties prayed that the Complaint be dismissed with exemplary costs.
15. The Complainant filed her Rejoinder rebutting the Written Statements filed by the Opposite Parties. Thereafter, all the parties were directed to file their Evidence by way of Affidavit in order to prove their averments on record. The Complainant and the Opposite Party No. 1 complied with the direction in due course.
16. However, despite multiple, the Opposite Party No. 2 failed to comply with the direction and this Commission was constrained to pass the following order on 27.09.2018, closing the right to file the Evidence by way of Affidavit of the Opposite Party No. 2:

**“27/09/2018**

**CC/440/12**

Present: Sh. Deepak Maheshwari, Counsel for the Complainant.

Sh. Anand Jain, Counsel for the OP-1.

None for OP-2.

Parties to file written arguments.

Let the needful be done within 08 weeks exchanging copies with each other.

Re-list for arguments on 08.02.2019.

(JUSTICE VEENA BIRBAL)  
PRESIDENT

(SALMA NOOR)  
MEMBER

At this stage Sh. Ravi Gopal Counsel for the OP-2 has appeared and states that his evidence is not ready as on date. The right of OP-2 to file evidence stands closed.

Re-list on 08.02.2019 for the purpose as already fixed.

(JUSTICE VEENA BIRBAL)  
PRESIDENT

(SALMA NOOR)  
MEMBER”

17. Hence, since the Opposite Party No. 2 has failed to file the Evidence by way of Affidavit, the averments made in the Written Statement cannot be said to be proved and cannot be taken on record.
18. Though the case was ripe for Final Arguments on 06.09.2019 but was being adjourned for various reasons. Since written arguments of the parties were already filed and the case was of the year 2012, the following order was passed:

**“16.12.2021**

Present: None for Complainant.

Dr. Lalit Bhasin, Counsel for OP.

**CC/440/12**

Written arguments of both the parties are on record. Counsel for the OP does not wish to add further beyond his written arguments.

Matter is reserved for judgment.

”

19. We have perused the material available on record including the Written Arguments filed on behalf of the parties.
20. Before delving into the merits of the case, we deem it appropriate to refer to the law on the cause. 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. ”

21. In cases wherein the allegations of 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.

22. Returning to the facts of the present case, it has been contended on behalf of the Complainant that the Hospital as well as the Opposite Party No. 2 are liable for Deficiency of Service due to the fact that the treatment and care which the Patient was getting at the Paid General Ward, was completely different to that which he received when he was shifted to the EWS Ward, which led to the deterioration of the health of the Patient. It has been further contended that despite repeated requests, the Discharge Bag was not removed, wherein, the accumulation of pus took place, which gradually spread over the body, leading to the death of the Patient.
23. So far as the first leg of the argument, with respect to disparity in the treatment provided in the Paid General Ward and the EWS Ward is concerned, the perusal of the record reflects that the Patient was shifted to the EWS ward on 05.08.2011 on the request of the Nodal Officer, Ministry of Health and Family Welfare, Delhi. At the time when the Patient was admitted in the EWS Ward, his condition improved and the Patient was finally discharged on 25.08.2011. While discharging the patient, a course of antibiotics was prescribed, and the relatives of the patient were also told to regularly follow-up with the Hospital. The said fact has not been denied by the Complainant in her Rejoinder to the Written Statement.
24. Hence, from the aforesaid, it can be concluded, that only after the Operating Doctors were satisfied that the condition of the patient was improving and with routine check-ups and medication, the Patient may recover, that he was discharged from the Hospital. To say that the Patient was not given proper treatment in the EWS Ward does not stand strong ground, otherwise, the Complainant could have

easily raised the issue with the Hospital Authorities as well as the Nodal Officer, if the Complainant was actually dissatisfied with the Service.

25. So far as the other part of the contention, with respect to the leaving of the Discharge Bag is concerned, the same has been refuted by the Opposite Party No. 1 stating that the said action was taken, considering the condition of the Patient. Moreover, the patient was advised regular follow-ups with the Consulting Doctors even after he was discharged from the EWS Ward, however, the same direction was not even complied with by the Complainant or the relatives of the Patient. It has been further argued that on 20.10.2011, the relatives of the Patient reported about the condition of the Patient to the Hospital, and the Patient was not even brought to the Hospital for check-up.
26. The acts of the Medical Professionals varies from case to case and not one practice or procedure is applicable to all the cases. It is upon the Condition and Response to the Medical Practices, that the Medical Professional proceed with for the Specific Patient. In the present case also, the action of the Doctors of leaving the Discharge Bag, was taken only after considering the condition of the Patient. The record is also clear, that as a measure of precaution, the Antibiotics as well as regular follow-up was also prescribed, which the Complainant failed to comply with. Hence, we are of the considered view that the procedure followed by the Hospital and its doctors, of leaving the Discharge Bag intact, cannot be said to be an act of Medical Negligence.

27. In totality and with due regard to the settled law in this regard, we are of the view that the doctors had performed their duties and exercised an ordinary degree of professional skill and competence, for which, they cannot be held guilty of medical negligence.
28. In the given facts and circumstances and keeping into consideration the principles as laid down by the Hon'ble Apex Court in **Kusum Sharma (supra)**, we are of the considered view that there is nothing on record to prove the liability of the Hospital and its doctor for Medical Negligence, and there exists no Deficiency of Service on their part.
29. The Complaint stands dismissed, with no order as to costs.
30. Applications pending, if any, stands disposed of in terms of the aforesaid judgment.
31. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
32. File be consigned to record room along with a copy of this Judgment.

**(DR. JUSTICE SANGITA DHINGRA SEHGAL)**  
**PRESIDENT**

**(ANIL SRIVASTAVA)**  
**MEMBER**

Pronounced On:  
**03.01.2022**