

IN THE DELHI STATE CONSUMER DISPUTES
REDRESSAL COMMISSION

Date of hearing: 06.04.2022

Date of Decision: 25.07.2022

COMPLAINT CASE NO.-459/2013

IN THE MATTER OF

MR. BALKAR SINGH,

R.O B-38, ANAND VIHAR,

UTTAM NAGAR (WEST)

DELHI - 110059

...Complainant

(Through: Mr. Subash C. Jindal, Advocate)

VERSUS

DR. SIDDHARTH SAIN

C/o SHARP SIGHT CENTER

81, DEFENCE ENCLAVE,

OPP. PREET VIHAR, VIKAS MARG,

DELHI – 110092

...Opposite Party

(Through: Ms. Sobhaa Gupta, Advocate)

CORAM:

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

HON'BLE SH. RAJAN SHARMA, MEMBER (JUDICIAL)

Present: None for the parties.

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

JUDGMENT

1. Brief facts necessary for the adjudication of the present complaint are that on 01.06.2012, the complainant went for check-up of his eyes to Guru Nanak Eye Centre, New Delhi, where Cataract (Safed Motia) was reported in his right eye and was advised surgery. The complainant, thereafter, went to Ex- Servicemen Contributory Health Scheme (ECHS) on 11.06.2012, who after investigation referred him to Sharp Singh Centre at premises of Medfort Hospital at A3/24, 3rd Floor, Janakpuri, New Delhi.
2. The surgery for removal of Cataract was done on 03.07.2012 by the opposite party. After the surgery, he was discharged but was called in the evening. In the evening, the doctor removed the dressing to check the eye sight of the complainant. The complainant could not see anything, however, the opposite party informed him that it could take 2-3 days for vision to come back, prescribed medicines/ Eye Drops and advised him to come again.
3. On 06.07.2012, he was again assured by the doctors that it will take more time to get the vision back. The complainant made multiple visits to the opposite party i.e. on 16.07.2012, 20.07.2012 & 27.07.2012 but no improvement could be seen in his eyesight. The complainant was prescribed four injections by the opposite party on 10.08.2012 and advised him to visit again.

4. On 14.08.2012, the complainant was referred by the opposite party to Dr. Rajesh Sinha in AIIMS, Delhi. Dr. Rajesh examined him, changed the medicines numerous times but was of no purpose to the complainant. The complainant, thereafter, again consulted ECHS, who referred him to Dr. Chaudhary Eye Clinic and Laser Vision, Darya Ganj, New Delhi. After examination, the complainant was informed that both his Pupil and retina was damaged. Thereafter, the complainant pointed out this fact to the opposite party, who advised him to undergo minor surgery from Dr. Rajesh Sinha in AIIMS. Dr. J. S Tatiyal (AIIMS) conducted DSAEK (Descemet Stripping Endothelial Keratoplasty) on the right eye of the complainant, which was ineffective. On 30.04.2013, another operation of Pupil was done by Dr. J. S Tatiyal and the complainant got slight vision of his right eye.
5. On the aforesaid grounds, the complainant has alleged medical negligence against the opposite party and has prayed the following reliefs: -
 - a. *Pay a lump sum compensation of 22,00,000/- only plus interest @ 24% per annum from 28.5.13 and till the payment is being made by the respondent for his acts of omission and Commission and for the deficiency in services and negligence on his part.*
 - b. *Pass any other order or orders as this Hon'ble Commission may deem fit and proper in the facts and circumstances of this case in the interest of justice.*
6. Notice was issued to the Opposite Party and the written statement was also duly filed by the Opposite Party. The opposite party submitted that he is working with Medfort Hospital and the consideration for the services was paid to the hospital. He further submitted that the said surgery was performed by a team of doctors

and he was only a member of doctor's team at Medfort Hospital. Since the Hospital has not been made a party in the present complaint, the same is liable to be dismissed for non-joinder of necessary parties. The opposite party further contended that the complainant was operated/ examined by various doctors/ specialists i.e. Chaudhary Eye Centre & Laser Vision, AIIMS, Dr. Alka Pandey, Dr. Pallavi, Dr. J. S Tatiyal after the said surgery, therefore, they all are proper and necessary parties to the present complaint.

7. The Opposite party has pleaded that facts are clear that there was no negligence in operating the complainant and the complications, if any, is clearly attributable to the Complainant himself, due to which, the present complaint should be dismissed with cost.
8. The Complainant has filed rejoinder to the Written Statement filed on behalf of Opposite Party and has even filed his Evidence by Way of Affidavit. The Opposite Party has also filed their Evidence by way of Affidavit.
9. We have perused through the material on record including the Written Arguments filed by the opposite party.
10. 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.

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(emphasis supplied)

11. 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.
12. The Complainant has not challenged the competency of the Opposite Party, hence, the first part of the aforesaid para stands answered, that ***there was no lack of competence on the part of the Opposite Party.***
13. So far as the question of *omission to do any act which was actually required is concerned*, the Complainant has contended that the opposite party committed negligence while removing the Cataract from his right eye, which damaged both his Pupil and Retina.
14. 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.”

15. 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.
16. In the present case, the Complainant has vaguely alleged that the Opposite Party committed negligence in operating him, due to which his eye got damaged. However, this alone cannot be a ground for holding the Opposite Party 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. The Complainant has failed to establish that there was breach of a duty exercised by omission to do something which a reasonable man would do or would abstain from doing or that the treatment which was given to the Complainant was not acceptable to the Medical Profession at that specific time period.
17. Since there exists no evidence to substantiate the submission of the complainant, ***we are of the view that there exists no Negligence on part of the Opposite Party in the present case.***
18. *Another question which requires our adjudication is whether the present complaint is bad for misjoinder or non-joinder of parties.*
The opposite party has contended that he was working as an

employee of Medfort Hospital, no consideration was paid to him and the consideration for the services was paid to the hospital, therefore, the hospital is a necessary party in the present complaint.

19. To comment on this issue, we need to understand who are the necessary and proper parties to the case. A *necessary party* is one whose presence is a sine qua non to the constitution of the suit and without whom, *no effective order can be passed with respect to the questions arising before the court*. In contradistinction to this, a *proper party* is one in whose absence *although an effective order can be passed, but whose presence is necessary for a complete and final decision on the questions involved in the proceeding*. (**Reference: Vidur Impex and Traders (P) Ltd. v. Tosh Apartments (P) Ltd., reported in (2012) 8 SCC 384.**)
20. Perusal of the record reflects that the consideration was paid by the complainant to Medfort Hospital, which is evident from ***Annexure P-2 of the complaint***. The complainant further failed to show that the said surgery was actually performed by the opposite party only. Since the opposite party is working in the hospital and the consideration for services was also paid to Medfort Hospital, we hold that Medfort Hospital is a necessary party in the present case and no effective order can be passed with respect to the questions arising before this commission.
21. It is clear from the record that the opposite party was working with the Medfort Hospital and the hospital, being an employer of the opposite party, is vicariously liable for the acts of his employees. Once an allegation is made that the patient was admitted in a particular hospital and evidence is produced to satisfy that he suffered complications because of lack of proper care and negligence, then the burden lies on the hospital to justify that there

was no negligence on the part of the treating doctor/or hospital. Since the hospital is a necessary party in the present case and the same has not been made party in the present complaint, the present complaint is dismissed for non-joinder of necessary party.

22. No order as to costs. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.
23. 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.
24. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(RAJAN SHARMA)
MEMBER (JUDICIAL)

Pronounced On:
25.07.2022