

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

Date of Institution: 21.08.2018

Date of hearing: 05.04.2023

Date of Decision: 27.09.2023

COMPLAINT CASE NO.-1055/2018

IN THE MATTER OF

MR. RAJESH SINGH,
S/o SHRI BHAGWAN SINGH,
R/o- D-10, STREET NO. 47,
MAHAVIR ENCLAVE PART-III, NEW DELHI.

ALSO AT:

C-62, STREET NO. 14,
MADHU VIHAR, NEW DELHI-110059.

(Through: Mr. Anil Gaur, Advocate)

...Complainant

VERSUS

- 1. BHAGAT HOSPITAL PVT. LTD.,**
THROUGH ITS ADDITIONAL DIRECTOR,
MR. MAHIM BHAGAT.
 - 2. MR. CHANDER MOHAN BHAGAT,**
DIRECTOR OF BHAGAT HOSPITALS PVT. LTD.
 - 3. MRS. UPASANA BHAGAT,**
DIRECTOR OF BHAGAT HOSPITALS PVT. LTD.
 - 4. DR. RAJESH KALITA,**
 - 5. DR. ABHISHEK MARRO,**
 - 6. DR. KAUSHAL KEJRIWAL,**
ALL C/o BHAGAT CHANDRA HOSPITAL,
F-1/1 UNDER DWARKA AIRPORT FLYOVER,
PALAM DABRIMARG, PALAM COLONY, NEW DELHI-45.
- ALSO AT:**
D-2/48/49, PANKHA ROAD,
LANDMARK NEAR TCGSS, JANAKPURI, DELHI.

...Opposite Parties

CORAM:**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL,
(PRESIDENT)****HON'BLE MS. PINKI, MEMBER (JUDICIAL)**

Present: Mr. Anil Gaur, Counsel for the Complainant.

OP has already been proceeded *ex parte* vide order dated
27.08.2019.**PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL,
(PRESIDENT)****JUDGMENT**

1. Brief facts of the case as per the pleadings of the parties are that the Complainant herein contacted the Opposite Parties on 06.05.2018 for the treatment of his minor daughter namely Ms. Jhanvi Singh in the Opposite Party no. 1 Hospital situated at New Delhi. The daughter of the Complainant was admitted to the Hospital of Opposite Parties namely Bhagat Chandra Hospital on the same day. At the time of admission, the patient was diagnosed with complaints of pain in lower region of abdomen, vomiting and fever from the past four days. The patient was attended and diagnosed by Dr. Abhishek Maru & Dr. Kaushal Kejriwal of the Opposite Party no. 1 Hospital under the supervision of Dr. Rajesh Kalita. Further, upon the reference of Dr. Rajesh Kalita, various tests were performed by the Opposite Parties including Ultra sound of whole abdomen and CT Scan of abdomen and pelvis area. The CT Scan report of the abdomen clearly indicates and suggested towards the problem in the appendix which is correlated with the complaint of severe abdomen pain, vomiting and fever. However, no treatment was given to the patient to cure the pain through such appendix. Later, the patient was discharged from the Hospital of

Opposite Parties on 12.05.2018 and a bill of Rs. 58,381/- was recovered from the Complainant.

2. However, after discharge from the Hospital, the patient again started complaining of abdomen pain, vomiting and fever and was rushed to the Opposite Party no. 1 Hospital on 15.05.2018 and was finally admitted to the Hospital on 16.05.2018 at 02:00 A.M., where she was attended by Dr. Kushal Kejriwal, Dr. Abhishek Maru and Dr. Rajesh Kalita and a MRI for whole abdomen was done by the Opposite Parties which clearly reflects appendix perforation, infection and leakage in the internal area of abdomen. Further, various other tests were also done by the Opposite Parties upon the suggestion of treating doctors but they themselves failed to interpret the findings of the report and the patient was again discharged from the Hospital on 17.05.2018 without giving any proper treatment for the appendix.
3. After few hours of the discharge, the condition of the patient deteriorated with severe pain in the lower abdomen and vomiting and was admitted to Sir Ganga Ram Hospital on 18.05.2018, where she underwent through Laparoscopy Operation for drainage of pelvic abscess and after proper treatment, she was discharged on 25.05.2018 with an hospital bill of Rs.2,91,000/- for the treatment. Further, the treatment of the patient was scheduled for 11.07.2018 for the removal of the appendix and for the same, surgery was performed by Sir Ganga Ram Hospital and charged a bill amounting to Rs. 3,50,000/- for the said surgery.
4. The Complainant has alleged that there was utter negligence on the part of the Opposite Parties, who failed to give proper treatment to the patient of 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 party to pay sum of Rs.7,00,000/- to the Complainant as the same was expend by the Complainant.*
 - b) *direct the opposite party to pay Rs.82,00,000/- [Rs. Seventy Lacs only] to the Complainant as damages/compensation for causing immense, utmost, unbearable, deficiency of service and intolerable harassment, hardships, humiliations, mental and physical shock, agonies, torture, pain and suffering.*
 - c) *Direct the opposite parties to pay sum of Rs.2,00,000/- towards litigation expenses to the Complainant.*
 - d) *pass any other order[s] or relief[s], which the Hon'ble Commission may deem fit and proper, in the facts and circumstances of the case, in favour of Complainant and against the Opposite parties.”*
5. Notice of the present complaint was issued upon the Opposite Parties vide order dated 06.03.2019. The counsel for the Opposite Parties namely Mr. Chandra Shekhar marked his appearance on 19.08.2018 and undertakes to file the application for the condonation of delay in filing the written statement on behalf of the Opposite Party no. 4 and 5. Further vide same order, the Opposite Party no. 2, 3 and 6 were also directed to file the written statement alongwith the application for condonation of delay and the case was listed for 27.08.2019. Further, on 27.08.2019, no one appeared on behalf of the Opposite Party no. 1, therefore vide order dated 27.08.2019, the Opposite Party no.1 was proceeded *ex-parte*. Further, Mr. Chandra Shekhar who appeared on the last date i.e. 19.08.2019 and undertakes to file application for Condonation of delay had failed to appear on that day and also failed to file the application for condonation of delay. Consequently, vide order dated 27.08.2019, the Opposite Party no. 2 to 6

were also proceeded *ex-parte*. Since the Opposite Parties were adjudged *ex-parte*, the averments made by the Complainant in the present complaint remains unrebutted.

6. The Complainant was directed to file *ex-parte* Evidence by way of Affidavit which has been filed by the Complainant in order to prove his averments on record.
7. We have perused the material available on record and heard the counsel appeared on behalf of the Complainant.
8. Since, the averments made by the Complainant remains unrebutted, the *only question* for consideration before us is *whether the Opposite Parties are liable for the negligence and deficiency in providing the treatment to the patient (daughter) of the Complainant.*
9. To deal with this issue, we primarily 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)

10. 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 treating doctor and/or any omission to do what was actually required in the present facts and circumstances.
11. The Complainant has not challenged the competency of treating doctor i.e. Opposite Party No. 4, 5 and 6, 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. 4, 5 and 6.
12. 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 No. 4, 5 and 6 were aware of the condition of the patient and after examination, the treating doctors i.e. Opposite Party no. 4, 5 and 6 suggested for the CT scan and ultrasound of the entire abdominal area on 06.05.2018, however, even after the examination of the said reports, the Opposite Parties failed to provide the treatment in accordance with the reports. This act, as per the Complainant constitutes Negligence on the part of the Opposite Parties.

13. On perusal of record, we find that the final report of the CT scan has been received on 07.05.2018, wherein the following impressions has been formed:

(48)

BH
BHAGAT HOSPITAL
As Women

SMART DIAGNOSTICS
Bhagat Hospitals Pvt. Ltd.
D2/48-49, Janakpuri, New Delhi-110058
Ph: 011-45102030 (50 Lines) Fax: 28521300, 45102031
Email: info@bhagathospital.com Website: www.bhagathospital.com

Bhagat Chandra Hospital
B2F, 111, Mahipal Enclave, New Delhi-110048
Tel: 011-45244525, 45244579 Fax: 011-45244530
Website: www.bhagathospital.com

Patient Name: MS. JAHANVI.
Gender/Age: F/16Y
Type Of Study: CT Abdomen & Pelvis
Image Count: 172
Requisition Time: 07/05/2018 01:39 PM

Medical Record No: 626/c2484
Location: Inpatient
Physician:
Exam Time: 07/05/2018 12:18 PM
Report Time: 07/05/2018 09:42 PM

Kidneys: Normal in size, position and attenuation. Symmetric nephrogram and excretion of contrast is noted. There is no evidence of calculus or hydronephrosis. No cystic/solid mass lesion is identified. No perinephric fluid is noted. The ureters are normal.

Aorta: No aortic aneurysm.

Pelvic organs: The uterus shows minimal nonenhancing endometrial collection. Bilateral adnexa show no obvious mass lesion.

Urinary Bladder: Wall thickness is normal. No calculus or mass lesion identified.

Soft Tissues/abdominal wall: Unremarkable.

Osseous structures: Unremarkable.

Lung bases and pleura: Clear. No pleural effusion is noted.

Impression:

1. A tubular structure with enhancing mucosa and surrounding fat stranding noted in the right iliac fossa, which may suggest a dilated and inflamed appendix. However, the base of appendix could not be visualised properly in present scan as it is not opacified with oral contrast. A well-defined hyperdense calcified noted in the right iliac fossa, which appears to lie within a small dilated bowel loop showing a few intraluminal air density specks and appears to be continuous with the above mentioned thick-walled tubular structure. These findings may suggest acute appendicitis with appendicolith with possible perforation. Needs local evaluation with ultrasound abdomen and pelvis and ascitic fluid evaluation to rule out tuberculosis. Suggested clinical correlation.
2. Ascites.

Quality Assurance: Agree / Disagree

Change in Patient Care: Yes / No

If a significant discrepancy found on this study, please email this report to qa@telradsol.com with discrepancy mentioned on the report so that appropriate action may be taken.

If you would like to discuss the findings with the radiologist, please call us on +9180-49261112, +9180-71004912, +9180-67458112 or email us at electives@telradsol.com.


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Page 2 of 3

14. From the aforesaid impression clause of the CT scan final report dated 07.05.2018, it is clear that the appendix of the patient was dilated and inflamed. Further, fluid like substance (Ascites) was also found in the abdominal area of the patient. However, the patient was not treated by the Opposite Parties as per such examination report. On the other hand, when the patient was admitted to Sir Ganga Ram Hospital, she had undergone through proper examination where essentially, the fluid in the abdomen

was extracted and sent for the examination to rule out tuberculosis, which was found negative as per the report. Further, after the extraction of the fluid like substance from the abdomen area, the patient had undergone through laparoscopic surgery at the scheduled date for the removal of the perforated Appendix. The Discharge Summary of Sir Ganga Ram Hospital has been reproduced below for the ready reference herein:


Sir Ganga Ram Hospital

DEPARTMENT OF PAEDIATRIC SURGERY (UNIT 1)
DISCHARGE SUMMARY

Dr. Alpana Prasad

Department office: 011-2251953, 2257080 Mobile: 9650066683

Patient Name	Ms Jahanvi	Registration No.	3314632
Age	16 Yrs	Episode No.	DP00858713
Sex	Female	Date of Admission	18-May-18
Discharge Type	DISCHARGE	Date Of Discharge	25-May-18
Ward	PAED WD 6	Bed	1060 CAI-113
Admitting Consultant	Dr. Alpana Prasad		

DIAGNOSIS
PELVIC ABSCESS


CLINICAL HISTORY
History:
Jahanvi, 16yrs old female was apparently well till 14days back, when she had complaints of acute pain abdomen with fever and multiple episodes of bilious vomiting. She was admitted in a near by hospital and further investigated. Blood investigation - raised TLC. USG abdomen done outside revealed free fluid in pelvis. CT abdomen revealed dilated small bowel loops and appendix with free fluid. USG guided ascitic tap done and fluid was sent for investigations to rule out tuberculosis, which was negative. She was managed conservatively by IV antibiotics and then discharged after 5days after complete relief from the symptoms. She again had acute pain abdomen 2 days back and further evaluated with USG KUB and MRI abdomen which were s/o ? perforated appendix. TLC raised. She has not passed stool for last 2days. She also had e/o fever and multiple episodes of vomitings. She is now admitted for further management.

PHYSICAL EXAMINATION
Pulse: 98/min. BP: 110/68 mmHg. Temperature: 37 degree C. Weight: 41.7 Kg. Height: 158 cm.
General examination:
Child was conscious, oriented, afebrile.
No pallor, icterus, clubbing, cyanosis, lymphadenopathy or oedema.
Systemic examination:
RS - Chest clear bilaterally. Air entry equal. No crepitations or wheeze.
CVS - Heart sounds normal. No murmur heard.
P/A - Abdomen is mildly distended. Vague fullness in lower abdomen.
Tenderness present in the right iliac fossa and lower abdomen.
No hepatomegaly. Bowel sounds are normal.
P/R: Rectum - empty.
Fullness palpable in the anterior rectal wall - suggestive of pelvic collection.
External genitalia - normal.

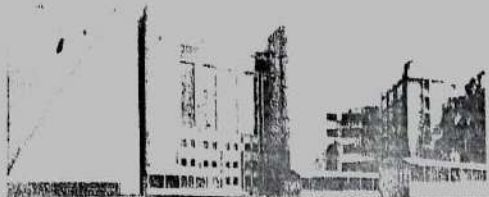
PRE - ADMISSION INVESTIGATIONS
MRI abdomen:
Localised pocket of fluid collection with air fluid level and marginal enhancement in the pelvis - measuring about 8x6x4.5 cms. (measuring 117cc). Fluid predominantly seen anterior to uterus and superior to urinary bladder. Dilated small bowel loops of perforated appendix.
USC abdomen (16.5.2018) revealed dilated small bowel loops measuring about 7cm with sluggish peristalsis.

OPERATIONS/ PROCEDURES
18/05/2018 Diagnostic laparoscopy and drainage of pelvic abscess done under GA.

Page 1 of 1


Sir Ganga Ram Hospital, 15, Bahadur Zafar Jung Road, New Delhi - 110029
Phone: 011-22519500, 2257080 Fax: 011-22519501 Email: sirganga@srgh.com

78



Sir Ganga Ram Hospital

CLINICAL SUMMARY

The child came to ER with the above mentioned history. After stabilisation, child was shifted to ward. Pre operative routine investigations were as below

UIC - increased.

Urine routine and examination revealed turbid urine with numerous pus cells and 5-10 RBCs

She underwent diagnostic laparoscopy and drainage of pelvic abscess (18.5.2018) on an emergency basis. Post op revealed growth of E. Coli and Enterococcus faecium colonies which are sensitive to Amikacin, Irgoicid and Meropenam. The antibiotics were upgraded accordingly. She tolerated the procedure well and post operative course was smooth.

Post operatively child developed cough and nausea, for which reference was given to peds unit I and the child was advised to take cough syp, nebulisation with Asthalin and Tab. Ondem. Post operative blood investigations revealed Hb - 10.4g/dl, raised TLC, Hypoalbuminemia (albumin - 2.51). Chest X-Ray was normal.

The child regained bowel sounds on POD 1 and she was allowed sips of clear liquids. She tolerated liquids well. POD 2, she was allowed soft diet and passed flatus. POD 3, stools passed. Review USG abdomen revealed small amount of fluid collection of size 1.4x2.8x0.8cms (volume 5.8ml) seen underneath the anterior abdominal wall in paramedian region on right and 1.6x0.6x1.6cms (volume 0.9ml) on left side. Para colic gutter drain was removed on POD3. Dressing changed and wound site was found to be healthy. Pelvic drain was removed on POD 6 and dressing was changed. Main wound site was healthy. CBC, DLG, CRP, BUN, Sr. Creatinine and G6PD screening tests were sent and the reports awaited.

Currently child is afebrile, alert, accepting orally well, no abdominal distension, no vomiting, passing urine and stool, urine output adequate, operation wound healthy. Child is being discharged in hemodynamically stable condition with advice to follow up.

DISCHARGE ADVICE

Normal diet.
Plenty of fluids.

- Tab. Septtran DS (160mg/800mg strength) 1 tab - twice daily x 5 days
- Inj. Irgoicid 400mg IM Once daily X 5 days
- Tab. Crocin 500mg as and when required for pain and fever.
- Syp. Livoluk 20ml at bedtime for constipation.
- Syp. Cremaffin 15ml twice daily for constipation.
- Care of local wound. Apply T-Bact ointment twice daily after cleaning.

PLAN: Interval appendicectomy after 1 month.

PLEASE CONTACT IMMEDIATELY TO CASUALTY IN CASE OF PAIN, FEVER AND VOMITING
Condition of patient at the time of discharge is stable.

PENDING REPORTS
Collect pending reports


FOLLOW UP
to review with Dr. Alpna Prasad, in Pvt. OPD, R. No. 1-89, between 2pm-4pm with prior appointment on next Thursday (31.5.2018).
For appointment please call on 011-42254000/25750000.
If your baby/child has any problem and are not able to contact your doctor, please come to the emergency department of Sir Ganga Ram Hospital. The doctor on duty will attend to your child.

- Reports of investigations done during hospital stay are provided on a separate sheet
- Pending reports can be collected from Room No. 7, CIC - 52, Ground Floor on working days between 8 AM - 8 PM
- Histopathology Reports, Blood & Extra Slides can be collected from Lab 1st floor SSRB on all working days between 9 AM - 5 PM
- Contact no. of emergency: 011-42254098, 42251099. Contact no. of SRBH Telephone Exchange: 42253000, 25750000


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Page 3 of 3



Sir Ganga Ram Hospital 4 Mayapuri, New Delhi 110004, INDIA
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15. Keeping in view of the above situation, we find sheer negligence on part of the Opposite Parties as the patient (daughter of the Complainant) was not treated with due care and caution by the Opposite Parties and the treatment was not done in accordance with the medical practice followed by the doctors while treating the patient of similar condition.
16. Therefore, from the above discussion, we hold that the Opposite Parties are negligent in providing its services to the patient (daughter) of the Complainant and 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. 2,50,000/- along with interest at the rate of 6% p.a. from 06.05.2018 (date on which the patient was admitted to the Hospital of the Opposite Parties) till the realization of the amount, to the Complainant for the suffering, mental pain and agony caused.*
17. Further, as per the facts of the complaint, the Complainant was charged with an amount of Rs. 6,41,000/- (Rs. 2,91,000/- + Rs. 3,50,000/-) by Sir Ganga Ram Hospital for the treatment of the patient (daughter of the Complainant). *Therefore, we also direct the Opposite Parties to refund the entire amount of Rs. 6,41,000/- to the Complainant.*
18. The amount so awarded in the para no. 16 and 17 be paid by the Opposite Parties being liable, within a period of *two months* from the date of present judgment i.e. **27.09.2023**, failing which, the Opposite Parties would be liable to pay the said amount alongwith the interest at the rate of **9% p.a.** from **06.05.2018** (date on which the patient was admitted to the Hospital of Opposite Parties) till the realization of said amount.
19. Applications pending, if any, stands disposed of in terms of the aforesaid judgment.

20. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
21. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

Pronounced On:
27.09.2023