IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution: 07.06.2018
Date of hearing: 30.07.2025
Date of Decision: 26.08.2025

FIRST APPEAL NO.-273/2018

IN THE MATTER OF

ST. STEPHEN'S HOSPITAL
(THROUGH ITS DIRECTOR)
TIS HAZARI, DELHI-110401

(Through: Ms. Shruti Sharma, Advocate)

…Appellant

VERSUS

MS. HAMIDA KHATOON
W/O LATE MR. ABDUL REHMAN KHAN,
R/O MOH-HARMU, DISTT. RANCHI,
JHARKHAND.

(Through: Mr. Rajat Srivastav and
Mohd. Jarjish, Advocates)

…Respondent

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

Present: Ms. Shruti Sharma, Counsel for the appellant appeared through VC.
Mr. Rajat Srivastav, Mohd. Jarjish and Ms. Saba Parveen, Counsel for the respondent (Enrl. No. D/956/94, D/663-A/1992, Mobile: 9313952907, 9891251363, Email: mohdjarjish@yahoo.in

PER : HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, PRESIDENT

JUDGMENT

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

"The brief conspectus of facts of the present complaint are that on 09/05/2007 the complainant, a housewife and a senior citizen, approached the OP Hospital for check-up. She paid Registration Fee of Rs.60/- vide Receipt No. OP0700724322 dated 09/05/2007. A Registration Card with Patient No. 944307 was issued to her & she was referred to Room No.35, an OPD of General Surgery Ward. There she was attended by Dr. Shashi Tiwari. The complainant alleges to have shown to him all her medical examination reports of Ranchi & her attendant Mr. Md. Jarjish informed the said doctor that the complainant was suffering from diabetes & was on medication on daily basis since the last 3 years. After examination of the complainant, the doctor prescribed her certain blood tests. She paid Rs.200/- for the said blood tests. On 11/05/2007 pursuant to a call from the OP Hospital, the complainant visited the OP Hospital. She paid Rs.50/- & was examined by Dr. S. Tiwari, who after examining her prescribed certain medicines to be taken on 21/05/2007 on empty stomach for conducting certain tests and asked her to come again after two days for further check-up & tests. On 21/05/2007 the complainant visited the OP Hospital, paid Rs.900/- for tests and ultrasound prescribed by the doctor. On 23/05/2007 the complainant again paid Rs.50/- for consultation from Dr. Shashi.

He examined the test reports & Ultrasound Report and referred the complainant to Dr. Neeraj Goel for further opinion. After examination of the complainant & the test reports Dr. Goel further advised MRCP Test to the complainant. On 25/05/2007 the complainant paid Rs.4,200/- for the said test which was done on the same day. On 28/05/2007 the complainant consulted the doctor of the OP Hospital after payment of fee of Rs.50/-. The said doctor examined her MRCP Report and asked her to revert back on 30/05/2007. On 30/05/2007, Dr. Shashi Tiwari called the Senior Doctor, Dr. Prakash Khanduri to examine her. Dr.Prakash Khanduri examined her in the presence of Dr. Neeraj Goel & Dr. Shashi Tiwari and asked her to revert back on 22/06/2007. On 22/06/2007 after payment of consultation fee of Rs.50/- the complainant consulted the concerned doctor who advised her further tests for which she paid Rs.1,225/-. Tests were done on the same day & she was advised to come on 24/06/2007. On 24/06/2007 the complainant was admitted into the OP Hospital for ERCP and Rs.10,000/- was deposited by her as advance money. On 25/06/2007 the concerned doctor informed the complainant that the ERCP was not possible on that day as the requisite machine was not in working condition though the complainant was made to pay Rs.765/- which included Rs.370/- as the room charges for a day. She was discharged on the same day with a direction to revert back on 02/07/2007. On 02/07/2007 ERCP was done and the complainant paid Rs.5,250/- for it though she alleges that an attendant of the OP Hospital had informed him somewhere on 30/05/2007 that the cost of ERCP was Rs.3,400/-. On 03/07/2007 the complainant underwent Open Cholecystectomy under the supervision of Dr. Prakash Khanduri. On 10/07/2007 the complainant was handed over a discharge slip of Rs.19,275.37 and she was arbitrarily discharged from the hospital despite explicit protest from the attendant of the complainant as there was quick pus formation and the complainant was required to be kept under regular observation of a doctor. While at home, her condition became serious & she was rushed to the OP Hospital on 15/07/2007 where she was readmitted in serious condition and was administered insulin injections four times a day for controlling the sugar level. In the said process the complainant was further made to pay Rs.16,610/- towards hospital expenses, Rs.20,000/- on medicines

and Rs.400/- on conveyance to the OP Hospital. On 08/08/2007 she was discharged and was advised to come to the OP Hospital daily for dressing thereby burdening with an extra cost of Rs.3.400/-. Thereafter, on 26/08/2007 she was asked to come on alternate days for dressing for which she had to incur conveyance expenses to the tune of Rs.2,000/-. It is alleged that the doctors of the OP Hospital failed to take precautionary measures prior to & during the surgery and also did not take post-operative care. Besides having suffered financially, the complainant also suffered in health. Alleging gross negligence & deficiency in service on the part of the OP Hospital, the complainant has prayed for directions to the OP Hospital to refund Rs.765/-, which include Rs.370/- as the room charges, alongwith interest @ 24% p.a for giving admission to the complainant despite the non-functional machine, Refund of Rs.16,610/- alongwith interest @ 24% p.a. for its gross medical negligence & failure to take post-operative care of the complainant, refund of medical charges of Rs.30,000/-spent by the complainant, to pay a compensation of Rs.4,00,000/- for mental pain & agony and harassment and other miscellaneous expenses of Rs.5,000/-. He has also prayed for the cost of the present litigation.

In response to the notice issued to the OP Hospital, written statement was filed on its behalf but the same is neither signed by the Authorised Person of the OP Hospital nor the Ld. Counsel for the OP Hospital and the affidavit accompanying the Written Statement is also not attested as per law. As such the Written Statement filed on record by the OP shall not form of the pleadings. Further, the Written Statement was filed by the OP but it was to be taken on record subject to the payment of cost imposed vide Order dated 10/04/2008. Since the cost was not paid by the OP, its Written Statement shall not form part of the pleadings on that count also.

Evidence by way of Affidavit filed by the complainant in support of her case. Evidence by way of Affidavit filed by Dr.Prakash Khanduri on behalf of the OP Hospital in support of contentions raised by it. It is pertinent to mention here that the present complaint has been filed by the complainant against St. Stephens Hospital but the affidavit in evidence has been filed by Dr.Prakash Khanduri, the doctor who asserts himself to be the treating doctor of the complainant. Since the OP Hospital is an

Institution, Resolution authorising Dr.Prakash Khanduri to file the affidavit in evidence on behalf of the OP Hospital is a precondition to authorise him to act on behalf of the OP Hospital. In the absence of a Resolution issued by the OP Hospital, bestowing upon Dr.Prakash Khanduri authority to file Affidavit in evidence on behalf of the OP Hospital the same cannot be read in evidence on behalf of the OP Hospital. Further, the Evidence by way of Affidavit was filed by the OP Hospital but it was to be taken on record subject to the payment of cost imposed vide Order dated 22/11/2011. Since the cost was not paid by the OP, its Affidavit cannot be read in evidence on that count also.

Pursuant to an Application dated 25/09/2008 moved by the OP for referring the matter to a Panel of Expert Doctors for seeking their Expert Medical Opinion as to whether the OP was negligent in giving treatment to the complainant or not? Or alternatively, for adducing expert evidence by summoning medical experts, the present complaint was referred to the HinduRao Hospital, Delhi for Expert Medical Opinion of the Medical Board constituted under the instructions of the Medical Superintendent, HinduRao Hospital, Delhi. The Expert Medical Opinion was submitted by the Medical Superintendent, HinduRao Hospital, Delhi vide Letter No. HRH/2010/5226 dated 04/09/2010. The Medical Board of the Hindu Rao Hospital opined that the procedures carried out at the OP Hospital were justified for the complainant and she was discharged from the OP Hospital on 09/07/2007 but the Discharge Summary does not mention about any treatment for Diabetes Mellitus. It, further, opined that the surgical site wound infection is not uncommon in post- operative cases and its incidence increases in diabetic patients.

It is apposite to mention here that in the case in hand though the Written Statement & Evidence by way of Affidavit filed on behalf of the OP cannot be read while deciding the present complaint due to technical & legal flaws discussed supra but it is relevant to mention here that the complaint of the complainant, the Written Statement of the OP, & the complete record of the treatment administered by it to the complainant had also been sent to the Hindu Rao Hospital for seeking Expert Opinion. Since these documents formed the basis of the Expert Opinion Report tendered by the Hindu Rao Hospital and were taken into

consideration by the Expert Panel of Doctors for rendering their opinion, so these documents being part and parcel of the said Expert Opinion need to be scrutinized to arrive at a fair & judicious decision.

Written Arguments filed by the parties to the present lis. Heard the Arguments put forth by the parties in support of their respective contentions & perused the entire record."

2. The District Commission after taking into consideration the material available on record passed the judgment dated **14.03.2018**, whereby it held as under:

The two primary questions that arise for adjudication are:
(a) Whether the OP Hospital was negligent in providing treatment to the complainant or not?
(b) Whether the OP Hospital was deficient in providing services to the complainant or not?

On an in depth perusal of the record, it is not in dispute that on 09/05/2007 the complainant first approached the OP Hospital with symptoms of burning sensation at the back but at that time she did not complain of pain in abdomen or nausea. The complainant brought it to the notice of the doctor who examined her that she had a history of Diabetes, was on Oral Hypoglycemics for the past three years but had no history of Hypertension, T.B., previous surgery, or COPD (Chronic Obstructive Pulmonary Disease). It is also not in dispute that after the necessary diagnostic & pathological tests the complainant was diagnosed to be suffering from Cholelithiasis with Choledochal Cyst Type IVa. She was advised Laproscopic Cholestectomy for which she got admitted into the OP Hospital on 02/07/2007. ERCP was done on 02/07/2007 & her Laparoscopic Cholestectomy was fixed for 03/07/3007. Though the Surgeon proposed to do Laparoscopic Cholestectomy but the said procedure was converted to Open Cholestectomy. It is alleged by the complainant that no informed consent was taken from her by the OP Hospital prior to converting the Laparoscopic Cholestectomy to Open Cholestectomy. From the perusal of the Operation Record which is at Pages 117& 118 of the Paper Book containing the treatment record it is evident that

the complainant was taken to the Operation Theatre for Laparoscopic Cholestectomy Procedure and the said procedure was commenced as is evident from the Operation Notes wherein it is noted that Port A was made, scope was inserted and pneumoperitoneum was created. Port B, C, D were also made and following findings were noted:

1. *Small Contracted (Rudimentary) Gall Bladder*
2. *Choledochal Cyst (Type IVa)*
3. *Rest of the Bowel (IV)*
4. *Stomach deeply adherent to the Liver*

It is contended by the OP hospital that since the Biliary Anatomy was not clear & a Type IV A Choledochal Cyst was noted with bilobar intrahepatic dilation alongwith contracted Gall Bladder with stones, so keeping in view the age of the patient and the complete excision of the cyst which would have mandate a major liver resurrection, decision was taken by the surgeon to convert Laparoscopic Cholestectomy into Open Cholestectomy. It is pertinent to mention here that the complainant was diagnosed with choledochal cyst preoperatively and the same was confirmed intraoperatively. Choledochal Cyst (Type IVa) is a congenital condition involving cystic dilation of bile ducts and is characterized by Multiple Dilations of the intrahepatic & extrahepatic biliary tree and are treated by surgical excision of the cyst with the reconstruction of the Gastrointestinal Tract to establish a new connection between two body structures that carry fluid. Laparoscopic Cholecystectomy, a minimal invasive procedure, is a gold standard treatment for gallbladder stone disease but conversion to Open Cholestectomy is still inevitable in certain cases to safely complete the operation and conversion should not be considered a technical failure but, rather, it must be accepted as a better surgical practice by the patient and surgeon when indicated. Merely because the Laparoscopic Cholestectomy had to be converted to Open Cholestectomy Procedure, it cannot be said that Laparoscopic Cholestectomy Procedure adopted by the surgeon was counter indicative. Once it is shown that due medical protocol was followed, no case of medical negligence is made out against the OP Hospital. In the

instant case, the required conversion was made on instant basis without prolonging the operative time as in the case of the complainant it was difficult to proceed further with the Laparoscopic Cholestectomy. It is relevant to mention here that in the event of uncertainty of anatomical landmarks & failure to progress after a reasonable period of time had been spent on dissection, the decision of the surgeon to convert Laparoscopic Cholestectomy to Open Cholestectomy reflects the sound judgment on the part of the surgeon rather than failure to accomplish an otherwise difficult & hazardous task which may be detrimental to patients surgical outcome. Thus, there is no room for doubt that the decision of the Surgeon to convert Laparoscopic Cholestectomy into Open Cholestectomy was judicious and sagacious. Though it was obligatory upon the concerned doctor to have explained to the complainant about the possibility of conversion of Laparoscopic Cholestectomy into Open Cholestectomy at the time of taking the consent for Laparoscopic Cholestectomy as in ERCP done prior to the surgery impression of Choledochal Cyst were noted by the Doctor on 02/07/2007 as is evident from the perusal of the Out Patient Continuation Sheet dated 02/07/2007 which is filed at Page 8 of the Paper Book containing the treatment record. But taking into consideration the fact that the doctor had made an all-out attempt to do Laparoscopic Cholestectomy so that the complainant had a shorter hospital stay, more rapid return to normal activity, less post-operative pain, a faster recovery, better cosmesis and lower cost of surgery, but only when it was comprehended that proceeding further with Laparosopic Cholestectomy was difficult and the complainant may suffer from post-operative complications with increase in rate of morbidity that the surgeon made an instantaneous judicious decision without prolonging the operative time and had acted in a prudent manner to convert the Laparoscopic Cholestectomy into Open Cholestectomy keeping in view the best interest of the patient (i.e., the complainant herein). In such circumstances, the allegation of the complainant that the OP Hospital did not take the informed consent from the complainant prior to converting the Laparoscopic Cholestectomy into Open Cholestectomy is not sustainable.

With regard to the allegation of the complainant that she was not allowed to take oral medicines to control Blood Sugar level before, during and after the operation. It is contended by the OP Hospital that before any surgical procedure oral drugs to control blood sugar (i.e., Oral Hypoglycemic Agents) are stopped and the patient is put on IV Insulin Infusion for better control of Blood Sugar as Oral Hypoglycemic Agents are given before meals and since the patient is not allowed to have anything orally prior to surgery the Oral Hypoglycemics are stopped prior to any surgical procedure. It is pertinent to mention here that as per the medical protocol while preparing a diabetic patient for surgery when the patient is put on NPO (i.e., (i.e., Nothing by mouth/nil per os) his Oral Hypoglycemic Agent is stopped and the management of Blood Sugar Level is done by IV Insulin Infusion. On examination of the Doctors Order Sheet which is at Page 100 of the Paper Book containing the treatment record, it is apparent that though on 02/07/2007 instructions were given for keeping the complainant on NPO from midnight but no instructions were given with regard to initiation of IV Insulin Infusion as and when required for the management of the Blood Sugar level of the complainant prior to the surgery when the Blood Sugar level of the complainant was 180mg/dl on 02/07/2007 both at 04:45p.m. & 10:00p.m and the complainant was ordered to be kept NPO for next 4-6 hrs as per the "Post ERCP Order" of Dr. Munish K. Sachdeva dated 02/07/2007 at 12:40p.m. Though the allegation made by the complainant is in sheer ignorance of medical knowledge and as such is not justifiable but simultaneously it is copiously evident that the concerned doctor, who owed a duty of taking reasonable care towards the complainant, had gravely erred while issuing instructions in the case of the complainant.

With regard to the allegation of the complainant that no precautionary measures were taken before & during the operation and no post-operative care was taken, it is significant to mention here that management of glycemic levels in the perioperative setting is critical, especially in diabetic patients. The effects of surgical stress and anaesthesia have unique effects on blood glucose levels, which should be taken into consideration to maintain optimum glycemic control. Each stage of surgery presents unique challenges in keeping glucose levels within the

target range. On perusal of the treatment record, it is evident that the complainant was admitted on 02/07/2007 at 12:05:08 for the ERCP to be followed by Cholecystectomy. On 02/07/2007 at 04:45 p.m. her Random Blood Sugar level measured by Glucometer was recorded at 180 mg/dl and at 10:00 p.m. it was again at 180mg/dl as is evident from the perusal of the Nurses Daily Record which is at Page 138 of the Paper Book containing the treatment record. On examination of the Doctors Order Sheets which are at Pages 100 & 101 of the Paper Book containing the treatment record it is noticed that on 02/07/2007 at 12:40p.m. Dr. Munish K. Sachdeva, while giving "Post ERCP Order" to keep NPO for next 4-6 hrs, had given instructions at 4:45p.m. for the administration of IV Insulin Infusion by neutralizing with 6 units of Insulin. Even the Endocrinologist had given instructions analogous to the instructions of Dr. Sachdeva. However, the Nurses Daily Record for the relevant time, which is at Page 138 of the Paper Book containing the treatment record, do not reflect that the instructions issued by the doctors were ever executed by the nursing staff of the OP Hospital attending to the complainant at that time. No IV Insulin Infusion with neutralization as per the Sliding Scale was administered to the complainant when on 02/07/2007 at 04:45 p.m. and at 10:00 p.m. her Random Blood Sugar Level measured by Glucometer was recorded as 180 mg/dl. The complainant should have been administered as per the Sliding Scale to control her Random Blood Sugar level to prepare her for the surgery. Merely entering instructions/orders in the Doctors Order Sheet would not suffice & would not exonerate the doctor from his duty of care towards his patient. The doctor has to see that the orders given by him to the staff of the OP Hospital attending to the patient were, in fact, complied with by them. Since the patient was diabetic the doctor should have verified before the commencement of the surgical procedure whether her Blood Sugar level was under control. Random Blood Sugar done at 06:00 a.m. on 03/07/3007 was 109 mg/dl (Page 138 of the Treatment Record Paper Book) and thereafter it was monitored from 02:00p.m. onwards post surgery. On perusal of the relevant extract dated 03/07/2007 of the Progress Notes, which is at Pages 130 & 131 of the Paper Book containing the treatment record it is clear that instructions for the transfer of the patient, the complainant herein, to the

Operation Theatre for surgery were given at 08:30 a.m. and the patient was received back from the Operation Theatre at 02:00 p.m. after Open Cholestectomy but there is not an iota of evidence as to when exactly the surgery was started and immediately prior to the commencement of the surgery whether her Blood sugar Level was checked or not & whether it was within the normal range apropos for the surgery to be undertaken. With regard to the intra-operative management of Blood Sugar Level, it is observed that though not an iota of evidence has been filed on record that reflects intraoperative management of glycemic level in the case of the complainant but since haemostasis (i.e., arrest of bleeding) was achieved prior to the closing of the abdomen, as is mentioned at Page 118 of the Treatment Record Paper Book, an inference shall be drawn that the glycemic level of the complainant was under control during the operation. Now coming to the post-operative management of glycemic level in the case of the complainant, it is pertinent to mention here that she was received back from the Operation Theatre at 02:00 p.m. after Open Cholestectomy, her Random Blood Sugar was recorded as 191 mg/dl and she was put on IV Insulin Infusion with neutralization according to the Sliding Scale. The Endocrinologist was informed about her status. Thereafter, her Blood Sugar Level was checked at regular intervals as is apparent from the Nurses Daily Record which is at Page 140 of the Paper Book containing the treatment record. On a comparative study of the RBS by (G) readings and relevant extract of the record of IV Insulin Infusion according to the Sliding Scale it is apparent that though the insulin dosage was administered to the complainant according to the Sliding Scale as and when required by the complainant but certain discrepancies are reflected in the Glycemic Level management on the part of the OP Hospital when despite a rise in Blood Sugar level that required management through IV Insulin Infusion according to the Sliding Scale her Blood Sugar was left unattended and she was not put on IV Insulin Infusion according to the Sliding Scale despite requirement evident from the record and the Sliding Scale Standard Readings mentioned therein viz., blood sugar level on 05/07/2007 at 10:00 a.m. was 167mg/dl, 02:00p.m. it was 170mg/dl, on 09/07/2007 at 10:00p.m. it was 180mg/dl and on 10/07/2007 at 10:00a.m. it was 183mg/dl.

Reference may be made to Pages 140 & 141 of the Paper Book containing the treatment record. In view of the above, the allegation of the complainant is acceptable to us to a limited extent.

It is, further, alleged by the complainant that she was arbitrarily discharged by the OP Hospital despite her serious condition & rapid pus formation. It is pertinent to mention here that from the examination of the Doctors Order Sheet & the Progress Notes of the Post-Operative Days filed on record at Pages 102 to 111 of the Paper Book containing the treatment record it is observed that in the post- operative days while the complainant was in hospital she complainant was afebrile throughout & her vitals were stable. 01st Post-Operative Day (i.e., 04/07/2007) as per the treatment record was uneventful & orders were given to shift her to the ward in the evening. On 02nd Post-Operative Day (i.e., 05/07/2007) her wound was healthy (Page 111 of the said Treatment Record Paper Book). On the 3rd Post- Operative Day (i.e., 06/07/2007) advice for drain removal was given and she was orally allowed liquids and then on the 4th Post-Operative Day (i.e., 07/07/2007) she was allowed soft diabetic & salt restricted diet. Further, it is relevant to mention here that on perusal of the Doctors Order Sheets at Pages 100 – 109, it is evident that on 03/07/2007 after the surgery the complainant was put on IV Insulin Infusion according to the Sliding Scale till 08/07/2007. On 08/07/2007 she was advised diabetic diet and salt restricted soft diet & administration of IV Insulin Infusion Post Prandial according to the Sliding Scale. Her case was considered for discharge but it was stalled and she was referred for endocrine review. On 09/07/2007 at 10:00a.m. when her Blood Sugar level rose considerably she was administered IV Insulin Infusion Post Prandial according to the Sliding Scale as is evident from the Nurses Daily Record which is at Page 140 of the Paper Book containing the treatment record. Billing and Discharge was prepared on 09/07/2007 despite the fact that the complainant was not fit for discharge, but it was again put on hold. On 09/07/2007 though her Blood Sugar level shot up again at 10:00p.m. to 180mg/dl but neither she was administered Insulin IV according to the Sliding Scale nor her dose of Oral

Hypoglyemic medicine was resumed. On 10/07/2007, at 10:00a.m. her Blood Sugar level was 183mg/dl, as is evident from the Nurses Daily Record which is at Page 140 of the Paper Book containing the treatment record, but no steps were taken to control her Blood Sugar level & bring it within the normal range. Instead she was discharged arbitrarily on 10/07/2007 at 11:43a.m., as is evident from the Discharge Bill filed by the complainant at Page 48 of the complaint, despite an elevated Blood Sugar level that required management as her Surgical Site Wound had not healed up completely. Though there is no noting by any doctor of the OP Hospital in treatment record for the relevant post-operative days that the surgical site wound was bad & there was pus formation in the surgical site wound, but keeping in view the raised Blood Sugar level and its ill-management by the OP Hospital it cannot be ruled out that her wound had turned bad due to pus formation and notwithstanding this serious issue the doctors had arbitrarily discharged her. It is a known fact that a raised Blood Sugar level hinders in the healing of a wound and if left unmanaged it leads to formation of sepsis. Indeed, keeping in view the raised Blood Sugar level of the complainant, the OP Hospital should not have discharged her on 10/07/2007 & should have kept her under observation till her Blood Sugar level was controlled & maintained within the normal range and her wound had completely healed up as after a surgery a diabetic patient generally taken a longer time to nurse back to health as compared to a non-diabetic healthy human being. In view of the above discussion, the discharge of the complainant by the OP Hospital when the complainant was not in a condition of discharge cannot be said to be justified.

Coming to the allegation with regard to the discrepancies in the Discharge Summary issued by the OP Hospital, it is pertinent to mention here that though this fact is not in dispute that the complainant was discharged on 10/07/2007 but the Discharge Summary reflects the date of discharge as 09/07/2007 instead of 10/07/2007. No steps were taken to rectify the date of discharge in the Discharge Summary, which is a vital and a comprehensive document about the stay of the patient in the hospital and the course of treatment given to the patient during her stay in the hospital. Further, in the Discharge Summary dated 09/07/2007

under the Head "Complaint & History" it has been specifically mentioned that the complainant had a history of Diabetes and she was on oral hypoglyemics. Her Oral Hypoglycemics were stopped by the doctors of the OP Hospital prior to the surgery undertaken by them. It is noteworthy that despite having knowledge of the said fact, her oral hypoglycemic agent was neither resumed after weaning off the IV Insulin Infusion post surgery nor any oral hypoglyemic medicine was prescribed for the management of her diabetes at the time of her discharge from the hospital. Infact, the Discharge Summary dated 09/07/2007 does not mention about any treatment for her Diabetes Mellitus & this fact is evident from the perusal of the "Follow Up Advice" as contained in the said Discharge Summary dated 09/07/2007. Even the Expert Medical Panel has categorically opined to this effect in the Expert Opinion rendered by it in the present case. Indeed, the Resident Doctors whose signatures are appended on the Discharge Summary made a mistake of very serious nature. Failure to incorporate the medication for the treatment of Diabetes Mellitus of the complainant is a serious lapse, which is an act of gross negligence on the part of the OP Hospital. The doctors of the OP Hospital had been grossly negligent in not recommencing her oral hypoglyemic medicine despite specific knowledge of her diabetic status. Even the instructions with regard to her diet had not been incorporated aptly in the Discharge Summary dated 09/07/2007 and were not in consonance to the doctor's instructions as contained in Doctors Order Sheets which are at Pages 108 & 109 of the Paper Book containing the treatment record. As a matter of fact her diabetes was left totally unattended and it consequently resulted in surgical site wound infection which is sheerly the outcome of the negligence on the part of the treating doctors of the OP Hospital & due to lack of post-operative care to the complainant by the OP Hospital she was constrained to be re-admitted for further treatment. Thus, it is wrong on the part of the OP Hospital to aver that the surgical site infection of the complainant was due to the fact that it was not kept clean. It is not out of place to say that the complainant was advised in the Discharge Summary to review in SOPD of the OP Hospital on 13/07/2007 but she reported to the OP Hospital only on 15/07/2007. The complainant had also been negligent in attending to the OP Hospital for review post

discharge. But the OP Hospital cannot take refuge of the laxity of the complainant to attend the SOPD of the OP Hospital on 13/07/2007 for review as per the instructions given to her by the OP Hospital at the time of discharge. It is also significant to mention here that though a general advice in case of any problem has been printed at the end of the discharge summary, but no specific instructions have been incorporated in the discharge summary outlining the conditions regarding when & how to obtain urgent care, no instructions with regard to bathing essential for the maintenance of hygiene, change of bandage when it gets dirty, etc. have been included in the Discharge Summary. Further, it is also conspicuous to note that Discharge Summary has not been signed by the Consultant Doctor who treated the complainant & performed the surgery. It is relevant to mention here that post-operative care is very essential to ensure full recovery. A doctor not giving the required instructions of what is to be done in case of any complications or untoward developments was guilty of negligence by not providing reasonable care and caution which was required of him as a good medical professional. The duty of care of a Consultant Surgeon is not restricted to the carrying out of the surgery; it extends to post-operative care also. Had the Consultant perused & signed the Discharge Summary, the aforecited discrepancies in it would have been take note of by him prior to appending his signatures and the same could have been fixed at that point itself. The negligence of the OP Hospital resulted in re-hospitalisation of the complainant. Reference may be made to the case titled Sunil Bhandari (Dr.) vs Pooja Kori & Anr. III (2013) CPJ 142 (NC). In view of the above, the allegation of the complainant with regard to the shortcomings in the Discharge Summary holds good, & is, thus tenable.

Further, in the case in hand, the complainant has not impleaded any specific doctor for the alleged medical negligence in her treatment but has impleaded the OP Hospital for it. It is noteworthy that a hospital can be held vicariously liable for damages caused to the patients by the negligent act of its doctors & staff. In the judgment of the Kerala High Court in Joseph @ Pappachan v. Dr. George Moonjerly [1994 (1) KLJ 782 (Ker. HC)], in support of the following effect, it is stated that 'persons

who run hospital are in law under the same duty as the humblest doctor: whenever they accept a patient for treatment, they must use reasonable care and skill to ease him of his ailment. The hospital authorities cannot, of course, do it by themselves; they have no ears to listen to the stethoscope, and no hands to hold the surgeon's scalpel. They must do it by the staff, which they employ; and if their staffs are negligent in giving treatment, they are just as liable for that negligence as anyone else who employs other to do his duties for him. The OP Hospital cannot disown their responsibility. It does not matter whether they are permanent or temporary, resident or visiting consultants, whole or part time. The hospital authorities are usually held liable for the negligence occurring at the level of any of such personnel. The patients go and get themselves admitted in the hospital to get ease of their ailments relying on the hospital to give them medical services for which they pay the necessary fee. It is expected from the hospital, to provide such medical service and in case where there is deficiency in service and treatment has been provided without taking normal care and caution, the hospital must be held liable for medical negligence. The principle of what constitutes medical negligence is now well established in a series of judgments of the Hon'ble Supreme Court including the judgment in Jacob Mathew Vs. State of Punjab & Anr. (2005) 6 SCC 1 in which the Constitution Bench of the Hon'ble Supreme Court reaffirmed inter alia that the test for determining medical negligence as laid down in the Bolam's Case [Bolam Vs. Friern Hospital Management Committee (1957) 1 WLR 582] would hold good in its applicability in India. In the instant case of particular relevance is the ruling of the Hon'ble Supreme Court in Achutrao H. Khodwa Vs. State of Maharashtra AIR 1996 SC wherein it has been inter alia observed as follows:

"The duties which a doctor owes to his patient are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties viz., a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action

for negligence to the patient. The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care." Reference may also be made to the judgment of the Hon'ble National Consumer Disputes Redressal Commission dated 22/08/2012 in FA Nos. 168 of 2007 and 600 of 2007 in the matters titled Dr. R.K. Jain & Ors. Vs. Smt. Kamla Devi & Smt. Kamla Devi vs. The Medical Superintendent, Sunderlal Jain Hospital respectively wherein the same ratio of law has been reiterated. Further, the Hon'ble National Commission has also held in Shakil Mohd. Vakil Khan vs. C.K.Dave I (2012) CPJ 178 (NC) that it is the responsibility of the hospital to take care of the patient as the patients go to hospital and not to a particular doctor in hospital and while arriving at this decision it has referred to the judgment of the Hon'ble Supreme in Savita Garg vs. Director, National Heart Institute IV (2004) CPJ 40 (SC) wherein the Apex Court had observed that once a patient is admitted in a hospital it is the responsibility of the Hospital to provide the best service and to satisfy that all possible care was taken and no negligence was involved in attending to the patient.

With regard to the prayer for the refund of the remaining Rs.765/- deducted by the OP Hospital out of Rs.10,000/- deposited by her on 24/06/2007 [Rs.9,405/-had been refunded by the OP Hospital to the complainant on 25/06/2007 as is evident from the stamp affixed on the Discharge Bill dated 25/06/2007 which is Ex.CW-1/11(c)], the break-up of the deduction of Rs.765/- made by the OP Hospital is as follows :

1. *Admission Fee - Rs.100/-*
2. *Accommodation – Rs.370/-*
3. *Pre Anaesthesia Checkup – Rs.125/-*
4. *Medicine - Rs.170/-*

It is a cardinal principle of law that one who raises an allegation has to prove it beyond doubt. Not an iota of evidence has been filed on record by the complainant that when on 24/06/2007 she was admitted into the OP Hospital for ERCP the Fluoroscopy machine was not functional and the treating doctor despite having knowledge of this fact had directed the complainant to get

herself admitted into the OP Hospital for the ERCP. It is evident from the record that the complainant was admitted into the OP Hospital on 24/06/2007 for the ERCP but was discharged on 25/06/2007 as the ERCP could not be done due to non-functional Fluoroscopy machine which was finally done on 02/07/2007 as is evident from the Discharge Summary filed on record at Page 47-A to the complaint. It is also not the case of the complainant that she had not undergone Pre-Anaesthesia Checkup. It is also evident from the perusal of the Doctors Order Sheets dated 24/06/2007 & 25/06/2007 which are at Pages 151 & 152 of the Paper Book containing the treatment record that since her admission into the OP Hospital on 24/06/2007 for ERCP she was kept under the observation of the treating doctor, her Blood Sugar Level was regularly monitored, Endocrine Opinion was taken as she was a diabetic patient and was on Oral Hypoglycemics, her vitals were monitored, she was kept on NPO (i.e., Nothing by mouth/nil per os) and was put on IVF with prescribed Insulin dosage, etc. In such circumstances, when the OP Hospital had made all preparations for doing the ERCP on the complainant, it cannot be charged of providing deficient services to the complainant if in the intervening period the Fluoroscopy machine became non-functional due to which the ERCP could not be done. As such the prayer of the complainant for the refund of Rs.765/- is not tenable.

The Opinion of the Expert Panel of the Hindu Rao Hospital is acceptable to a limited extent with regard to the justification given for the procedure followed in the case of the complainant and not mentioning about any treatment for Diabetes Mellitus in the Discharge Summary dated 09/07/2007 but the Expert Panel of the Hindu Rao Hospital has erred in opining that the surgical site wound infection is not uncommon in post-operative surgical cases and its incidence increases in diabetic cases. From the discussion made supra there is not a scintilla of doubt that the surgical site wound infection was due to the sheer negligence of the OP Hospital. The wholly unwarranted discharge of the complainant by the OP Hospital in a huff in utter disregard of her diabetic status was the sole cause of her surgical site wound infection and the Expert Panel cannot put a veil on the negligence of the doctors of the OP Hospital by opining it as a common

complication of open cholestectomy incidence of which increases in diabetic patients. The Expert Panel while giving their Opinion in the present case have failed to consider the documents mentioned supra containing the details of management of Blood Sugar Level of the Complainant during her initial stay in the OP Hospital. As such the Opinion rendered by the Expert Panel cannot be described as totally reasonable as it does not withstand the logical analysis.

Taking into consideration the sequel of the observations and discussion made supra, there is no room for doubt that the OP Hospital was negligent in administering treatment to the complainant and the complainant needs to be compensated for it. We direct the OP Hospital to refund Rs.16,610/- (Rs. Sixteen thousand six hundred ten only), the billed amount paid to the OP Hospital for the treatment upon re-admission. Further, the complainant has claimed a sum of Rs.30,000/- towards medical charges out of which receipts of Rs.22,281/- (Rs. Twenty two thousand two hundred eighty one only) have been placed on record. Hence, the claim of Rs.30,000/- is restricted only to the extent of Rs.22,281/-, which is allowed to the complainant. Since the complainant has suffered physically, mentally & financially and was constrained to be re-hospitalized, we further, direct the OP Hospital to pay to the complainant Rs.60,000/- (Rs. Sixty thousand only) towards compensation for the physical pain & mental trauma suffered by her at the hands of the OP Hospital which will also include the medical expenses initially incurred by the complainant during the course of her earlier treatment at the OP Hospital wherein it has been found guilty of medical negligence. We also direct the OP Hospital to pay to the complainant Rs.10,000/- towards the cost of litigation cost which was thrust upon her. Let the entire amount of Rs.1,08,891/- [(Rs. One Lakh eight thousand eight hundred ninety one only) (i.e., Rs.16,610/- + Rs.22,281/- + Rs.60,000/- + Rs.10,000/-)] be paid within 45 days from the date of this order. If the OP Hospital fails to pay the amount so awarded to the complainant within the stipulated period of 45 days, the complainant shall also be entitled to get interest on the entire said amount @ 6% p.a. from the date of institution of the present complaint till the date of its realization.

Copy of the order be sent to the parties as per rules. Announced on this the 14th day of March, 2018."

3. Aggrieved Aggrieved by the aforesaid order of the District Commission, the Appellant/Respondent has preferred the present appeal on mainly three grounds. It is submitted that the District Commission ignored the Expert Opinion given by the Hindu Rao Hospital. Secondly, it is submitted that the District Commission failed to appreciate that the surgical site infection was caused due to Respondent's failure in reporting to the surgical OPD on 13.07.2007 and the failure in maintaining hygiene of the surgical site. Thirdly, it is submitted that the District Commission ignored the Evidence Affidavit filed by the Treating Doctor-Prakash Khanduri. Lastly, it is submitted that the District Commission went beyond the pleadings in the Complaint and the Impugned Order is based on no evidence in so much so the administration of insulin is concerned as insulin is not administered repeatedly or at will and is only given as and when required. Pressing the aforesaid submissions, the Appellant has prayed for setting aside the order of the District Commission.
4. The Respondent, on the other hand, has filed the Reply denying all the allegations of the Appellant and has submitted that there is no error in the impugned order as the entire material available on record was properly scrutinized before passing the order. The Respondent further submits that there is clear negligence and deficiency of service by the Appellant Medical Centre in the services provided. It is submitted that the fact that Respondent suffered from acute diabetes was ignored. She was prematurely discharged despite protest and expert opinion found that discharge summary does not mention about any treatment for diabetes mellitus. It is submitted that vide Doctors order sheet at page 100 of the paper book it was found that on

02.07.2007 though instructions were given for keeping the Respondent on NPO from midnight and no instruction were given with regard to initiation of IV insulin infusion as and when required for the management of Blood Sugar Level (BSL) prior to surgery though the level was 180 mg/dl. Secondly, it is submitted that not even an iota of evidence was found, after going through relevant extract of progress notes as to when exactly the surgery started and whether immediately prior to the commencement of the surgery Blood Sugar level (BSL) was checked or not and as to whether BSL was within the normal range, certain discrepancies also reflected in the Glycaemic Level Management conforming the fact that despite a rise in BSL it was left unattended and the Respondent was not put on IV insulin infusion. Thirdly, it is submitted that Discharge Summary reflected the date of 09.07.2007 instead as of discharge 10.07.2007, no steps taken to rectify the same. Fourthly, it is submitted that despite there being a mention in Discharge Summary (DS) that Respondent had a history of diabetes and she was on oral hypoglycaemic which were stopped prior to surgery there was nothing in the discharge summary as to when it was to be resumed and also there was no prescription for medicine to be continued for the management of diabetes. Lastly, it is submitted that no specific instructions were found to be incorporated in the Discharge Summary, it was not found to be signed by the consultant Doctor who performed the surgery and resultantly the District Commission rightly found, in view of fact that the duty of care extends to post-operative period as well, that there was negligence on part of the Appellant and this resulted in the re-hospitalization. Pressing on the aforesaid submission, the counsel for the Respondent prayed for the dismissal of the present Appeal.

5. Written Arguments have been filed by both the parties and the same have been given due consideration.

6. We have perused the material available on record and heard the counsel for the parties at length.
7. The main question that falls for our consideration is ***whether the District Commission failed to appreciate the material on record and erred in carving out negligence on the part of the Appellant.***
8. It is the first limb of contentions of the Appellant that the District Commission ignored the Expert Opinion given by the Hindu Rao Hospital. On the other hand, it is the Respondent's case that the she developed a surgical site infection after her discharge as she was not administered with medicines to control her diabetes before and after the surgery. In order to resolve the aforesaid controversy, we deem it appropriate to refer to the Expert Opinion furnished by Hindu Rao Hospital dated 04.09.2010, reproduced hereinbelow for ready reference:

> *"As per instructions of Medical Superintendent, HRH (vide O/o HRH.2010/4751 dated 12.8,.2010) a board was constituted of the following doctors-*
>
> *1. Dr. S K Gupta, HOD/Surgery, HRH.*
> *2. Dr. P.K.Govila, Surg. Deptt,HRH.*
> *3. Dr. Sanjiva Kumar, Surg. Deptt, HRH.*
>
> *They examined the relevant papers containing of complaint of patient Hamida Khatoon (pages 01-084). Reply of respondent (pages 085-097) and complete hospital record (pages 98-254).*
>
> *As per records, patient Hamida Khatoon was suffering with Cholelithis with Choledochial Cyst with DM and the procedures carried out at St. Stephens Hospital like ERCP) with Sphirctontomy followed by Cholecystectomy were justified for the patient.*
> *Patient Hamida Khatoon was discharged after these procedures on 9.7.2007. However, the discharge slip at pages 118-119 does not mention about any treatment for Diabetes Mellitus.*

Patient was readmitted on 15.7.2007 for surgical site wound infection for which dressing, suitable antibiotics and antidiabetic treatment were given and patient was discharged on 8.8.2007 in satisfactory condition.

The board is of the opinion that surgical site wound infection is not uncommon in post operative surgical cases.

This incidence of surgical site wound infection increase in diabetic patients. "

9. A perusal of the aforesaid medical opinion reflects that the Medical Board has opined that the patient was treated with ERCP with Sphirctontomy followed by Cholecystectomy, which is the standard treatment for the condition of *Cholelithis/Choledochial Cyst* and the patient was discharged on 08.08.2007 in satisfactory condition. However, the Respondent has submitted that the Board has further opined that the Discharge Slip does not mention about any treatment for Diabetic Mellitus.

10. In this regard, it is to be noted that the treatment record reflects that the Respondent's blood sugar was monitored 4 times a day viz. 6:00 A.M., 10:00 A.M, 2:00 P.M. and 10:00 P.M., throughout her admission. Here, it is to be noted that though the Discharge Summary does not mention the treatment of Diabetes Mellitus, the treatment record makes it clear that the blood sugar parameters of the patient were closely monitored. Furthermore, the Appellant has submitted that the readings were not such as required infusion of insulin and patient was administered insulin as and when required in the opinion of the treating doctors. Here, it is pertinent to remark that the patient was discharged in a satisfactory condition and the surgery was uneventful. Therefore, in view of the aforesaid findings, it cannot be said that the Appellant-hospital or the treating doctors were negligent in their conduct.

However, it is worthwhile to mention here that the doctors and the Appellant-hospital have prima-facie erred in record keeping in so much so that the Discharge Summary does not mention of any treatment pertaining to Diabetes Mellitus, and the same, in the thoughtful opinion of this Commission, amounts to professional misconduct.

11. At this juncture, it is further pertinent to note that the record reflects that the patient was advised to visit the Appellant Hospital on 13.07.2007, however, the patient failed to adhere to the advise of the Appellant and did not report on the aforesaid date. The Appellant has further submitted that pus formation in the surgical site was not on account of medicine for controlling blood sugar not being administered but due to poor hygiene and result of the failure of the Respondent to report to the Appellant Hospital on 13.07.2007 as specifically advised.

12. Here, it is to be noted that the Expert Opinion categorically mentions that higher incidence of surgical site infections are known to occur in diabetes especially following open procedures. Keeping the same in mind, the Treating Doctors had advised the Respondent for a follow-up on 13.07.2007 which was disregarded by the patient and the patient returned to the Appellant-hospital on 15.07.2007 with a surgical site infection.

13. In view of the aforesaid, it is clear that the patient's act of acting in contravention of follow-up advice amounts to contributory negligence. In such circumstances, it cannot be conclusively said as to what caused the surgical site infection; whether the infection was caused by the Treating Doctor's negligence or owing to the patient's failure in maintaining hygiene or failure in reporting to the hospital, or as a natural consequence to the patient's diabetic status.

14. Therefore, in the absence of any conclusive proof to establish that the patient suffered surgical site infection on account of the Appellant's negligence and keeping in view the observation of the Expert Medical Board, no negligence can be carved out on the part of the Appellant. However, the Appellant-hospital and treating doctors are further directed to ensure proper record keeping in the future in so much so that the treatment of diabetes mellitus did not find mention in the Discharge Sheet and the Discharge sheet was wrongly dated.

15. ***Accordingly, the present Appeal stands allowed and the impugned order dated 14.03.2018 passed by the District Consumer Disputes Redressal Commission, North, Tis Hazari is set aside.***

16. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment

17. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.

18. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

Pronounced On:
26.08.2025

L.R.-G.P.K