

Dr. Tarsuhree vs Smt. Babita on 1 August, 2025

SC/5/A/46/2020 The Oriental Insurance Company Limited 01.08.2025
Versus
Smt. Babita and others

AND

SC/5/A/48/2020 Metro Hospital and Heart Institute 01.08.2025
Versus
Smt. Babita and others

AND

SC/5/A/72/2020 Dr. Tarushree 01.08.2025
Versus
Smt. Babita and others
STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND
DEHRADUN

Date of Admission: 18.03.2020
Date of Final Hearing: 29.07.2025
Date of Pronouncement: 01.08.2025

SC/5/A/46/2020

The Oriental Insurance Company Limited
4E/14, Azad Bhawan, Jhandewalan Extension
New Delhi through its Regional Manager
Regional Office, NCR Plaza, Cantt. Road, Dehradun
(Through: Sh. Suresh Gautam, Advocate)
..... Appellant

Versus

1. Smt. Babita W/o Sh. Sanjeev Kumar
R/o Village & Post Askaripur, P.S. Noorpur
Tehsil Chandpur, District Bijnor (U.P.)
Presently residing at Lane No. A-6, Subhash Nagar
Jwalapur, P.S. Jwalapur, Tehsil and District Haridwar
(Through: Sh. Omprakash Rathor, Advocate)
2. Chief Medical Officer, Haridwar
Service through Government Hospital, Haridwar
(Through: Sh. Ashok Dimri,
A.D.G.C. (Civil), Dehradun, Advocate
via Video Conferencing)
3. Manager, Metro Hospital and Heart Institute
SIDCUL, Plot No. F-1, Sector-6A
SIDCUL, District Haridwar
(Through: Sh. Vaibhav Jain, Advocate)

via Video Conferencing)

4. Dr. Tarushree, C/o Metro Hospital and Heart Institute
SIDCUL, Plot No. F-1, Sector-6A
SIDCUL, District Haridwar

(Through: Sh. Parveen Kumar, Advocate)

..... Respondents

1

SC/5/A/46/2020

The Oriental Insurance Company Limited
Versus
Smt. Babita and others

01.08.2025

AND

SC/5/A/48/2020

Metro Hospital and Heart Institute
Versus
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SC/5/A/48/2020

Metro Hospital and Heart Institute
Plot No. F-1, Sector-6A
SIDCUL, Haridwar

through its Chief Executive Officer Sh. Sandeep Vaishnava

(Through: Sh. Vaibhav Jain, Advocate
via Video Conferencing)

..... Appellant

Versus

1. Smt. Babita aged about 26 years W/o Sh. Sanjeev Kumar
R/o Village & Post Askaripur, P.S. Noorpur
Tehsil Chandpur, District Bijnor (U.P.)
Currently residing at Lane No. A-6, Subhash Nagar
Jwalapur, P.S. Jwalapur, Tehsil and District Haridwar

(Through: Sh. Omprakash Rathor, Advocate)

2. Chief Medical Officer, Haridwar

(Through: Sh. Ashok Dimri,
A.D.G.C. (Civil), Dehradun, Advocate
via Video Conferencing)

3. Dr. Tarushree, C/o Velmed Hospital
Near ISBT, Turner Road, Clement Town
Dehradun

(Through: Sh. Parveen Kumar, Advocate)

4. Manager, The Oriental Insurance Company Limited
4E/14, Azad Bhawan, Jhandewalan Extension
New Delhi - 110055

(Through: Sh. Suresh Gautam, Advocate)

..... Respondents

2

SC/5/A/46/2020 The Oriental Insurance Company Limited 01.08.2025
Versus
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AND

SC/5/A/48/2020 Metro Hospital and Heart Institute 01.08.2025
Versus
Smt. Babita and others

AND

SC/5/A/72/2020 Dr. Tarushree 01.08.2025
Versus
Smt. Babita and others

AND

Date of Admission: 18.06.2020
Date of Final Hearing: 29.07.2025
Date of Pronouncement: 01.08.2025

SC/5/A/72/2020

Dr. Tarushree aged about 37 years W/o Dr. Vivek Kumar Verma
Metro Hospital and Heart Institute
SIDCUL Plot No. F-1, Sector-6A
SIDCUL, Haridwar

(Through: Sh. Parveen Kumar, Advocate)

..... Appellant

Versus

1. Smt. Babita W/o Sh. Sanjeev Kumar
R/o Village & Post Office Askaripur, P.S. Noorpur
Tehsil Chandpur, District Bijnor (U.P.)
Presently residing at Lane No. A-6, Subhash Nagar
Jwalapur, P.S. Jwalapur, Tehsil and District Haridwar
(Through: Sh. Omprakash Rathor, Advocate)
2. Chief Medical Officer, Haridwar

(Through: Sh. Ashok Dimri,
A.D.G.C. (Civil), Dehradun, Advocate
via Video Conferencing)

3. Manager, Metro Hospital and Heart Institute
SIDCUL Plot No. F-1, Sector-6A
SIDCUL, Haridwar

(Through: Sh. Vaibhav Jain, Advocate
via Video Conferencing)

4. Manager, The Oriental Insurance Company Limited
4E/14, Azad Bhawan, Jhandewalan Extension
New Delhi - 110055

(Through: Sh. Suresh Gautam, Advocate)
..... Respondents

3

SC/5/A/46/2020 The Oriental Insurance Company Limited 01.08.2025
Versus
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SC/5/A/48/2020 Metro Hospital and Heart Institute 01.08.2025
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AND

SC/5/A/72/2020 Dr. Tarushree 01.08.2025
Versus
Smt. Babita and others

Coram:

Ms. Kumkum Rani,
Mr. B.S. Manral,

President
Member

ORDER

(Per: Ms. Kumkum Rani, President):

These three appeals filed under Section 15 of the Consumer Protection Act, 1986 have been directed against the impugned judgment and order dated 30.01.2020 passed by learned District Consumer Disputes Redressal Forum, Haridwar (hereinafter to be referred as "The District Commission") in consumer complaint No. 305 of 2017, styled as Smt. Babita Vs. Chief Medical Officer, Haridwar and others, wherein and whereby the consumer complaint was allowed and the opposite party Nos. 2 to 4 to the consumer complaint, i.e., Manager, Metro Hospital and Heart Institute; Dr. Tarushree and Manager, The Oriental Insurance Company Limited respectively, were directed to pay an amount of Rs. 2,00,000/- to respondent No. 1 / complainant - Smt. Babita towards treatment expenses and delivery expenses etc. together with Rs.

10,00,000/- towards nurturing & education of the child born after sterilization operation and Rs. 1,00,000/- towards mental agony, in all, Rs. 13,00,000/- along with interest @6% p.a. from the date of filing of the consumer complaint, i.e., 14.11.2017 till actual payment. The consumer complaint was, however, dismissed against opposite party No. 1 - Chief Medical Officer, Haridwar. Since all the appeals are arisen out of same impugned judgment and order, hence these are decided together by this order. For the sake of convenience, the parties SC/5/A/46/2020 The Oriental Insurance Company Limited 01.08.2025 Versus Smt. Babita and others AND SC/5/A/48/2020 Metro Hospital and Heart Institute 01.08.2025 Versus Smt. Babita and others AND SC/5/A/72/2020 Dr. Tarushree 01.08.2025 Versus Smt. Babita and others to these appeals are referred in the manner, as they were impleaded in the consumer complaint filed before the District Commission.

2. The brief facts are as such that the complainant - Smt. Babita had filed a consumer complaint against the opposite parties before the District Commission, claiming compensation of Rs. 17,50,000/-, alleging medical negligence in conducting her sterilization operation, due to which, a female child was born to the complainant. In the consumer complaint, it was stated that on 05.11.2015, the opposite party No. 3 - Dr. Tarushree conducted the sterilization operation of the complainant because she did not want any further child and on 07.11.2015, the complainant was discharged from the hospital. However, after a period of 1 year and 10 days', the complainant became pregnant and she had delivered one female child. The complainant had made allegation of medical negligence against opposite party No. 3 in conducting her sterilization operation.

3. The opposite party No. 1 - Chief Medical Officer, Haridwar filed written statement before the District Commission and stated that the sterilization operation occasionally fails and the doctor can not be blamed for the same. The doctor always takes a consent letter from the patient before sterilization operation, in which it is clearly mentioned that sterilization operation may be unsuccessful in some case and the doctor will not be blamed for the same. The sterilization operation is always done free of cost and no operation charges are taken from the patient. The sterilization operations are always done as per the scheme SC/5/A/46/2020 The Oriental Insurance Company Limited 01.08.2025 Versus Smt. Babita and others AND SC/5/A/48/2020 Metro Hospital and Heart Institute 01.08.2025 Versus Smt. Babita and others AND SC/5/A/72/2020 Dr. Tarushree 01.08.2025 Versus Smt. Babita and others of the Government, hence the complainant does not fall under the definition of "consumer".

4. The opposite party No. 2 - Manager, Metro Hospital and Heart Institute did not file any written statement before the District Commission, hence vide order dated 14.05.2019 passed by the District Commission, the opportunity of filing the written statement by opposite party No. 2 was closed and consumer complaint was proceeded ex-parte against opposite party No. 2.

5. The opposite party No. 3 - Dr. Tarushree filed written statement before the District Commission and submitted that the complainant was admitted in the hospital on 04.11.2015 as a case of G2P1L1 + 36 weeks 3 days gestation + 1 previous LSCS. The patient was anemic, so one unit blood was transfused. In the morning of 05.11.2015, her abdomen pain increased. On examination, scar

tenderness was diagnosed and at 9:40 a.m., emergency caesarian section was done along with bilateral tubal ligation was taken after explaining all the risk factors. Sterilization operation was done by Pomeroy technique and failure rate too was explained to the patient, as mentioned in the consent. The postoperative period was uneventful and the patient was discharged on 07.11.2015. After this, the patient did not come for follow-up.

6. The opposite party No. 4 - Manager, The Oriental Insurance Company Limited also contested the consumer complaint by filing written statement, wherein it was stated that as per law, there are SC/5/A/46/2020 The Oriental Insurance Company Limited 01.08.2025 Versus Smt. Babita and others AND SC/5/A/48/2020 Metro Hospital and Heart Institute 01.08.2025 Versus Smt. Babita and others AND SC/5/A/72/2020 Dr. Tarushree 01.08.2025 Versus Smt. Babita and others chances of failure in sterilization operation to the extent of 0.4% to 2.0%, so the doctor can not be blamed for the same and there was no negligence on the part of the operating doctor. Moreover, there is no expert evidence having been filed by the complainant regarding the allegations made against opposite party Nos. 1 to 3.

7. The District Commission, after hearing the contesting parties and after taking into consideration the material available on record, allowed the consumer complaint vide impugned judgment and order dated 30.01.2020 in the above terms. On having been aggrieved by the impugned judgment and order, the present appeals have been set in motion. SC/5/A/46/2020 has been filed by The Oriental Insurance Company Limited; SC/5/A/48/2020 has been filed by Metro Hospital and Heart Institute & SC/5/A/72/2020 has been filed by Dr. Tarushree.

8. We have heard learned counsel for the parties and have also perused the record.

9. It is an admitted fact that the complainant had undergone sterilization operation on 05.11.2015 because she did not want any further child. It is also not disputed that the sterilization operation of the complainant was performed by opposite party No. 3 - Dr. Tarushree. It is further admitted that the complainant was discharged from the hospital on 07.11.2015. It is also proved on record that after 1 year and 10 days' of the sterilization operation, the complainant became pregnant and she gave birth to a female child. It was alleged SC/5/A/46/2020 The Oriental Insurance Company Limited 01.08.2025 Versus Smt. Babita and others AND SC/5/A/48/2020 Metro Hospital and Heart Institute 01.08.2025 Versus Smt. Babita and others AND SC/5/A/72/2020 Dr. Tarushree 01.08.2025 Versus Smt. Babita and others by the complainant that there was medical negligence in conducting her sterilization operation, hence she is entitled to compensation mentioned in relief clause of the consumer complaint.

10. In the present appeals, it is stated that the impugned judgment and order is against facts, law and merits of the case. The District Commission has failed to consider the evidence on record, which clearly proves that there was no negligence on the part of operating doctor and she had not committed any negligence during sterilization operation of the complainant, which is also clear from the written statement filed by Chief Medical Officer, Haridwar. It was also stated that the complainant has not submitted any proof regarding medical negligence on the part of operating doctor, hence it can not be held that the said doctor was negligent in conducting the sterilization

operation. It was further stated that the District Commission has failed to appreciate that sterilization operation may be unsuccessful in some cases upto the extent of 0.4% to 2.0%, so the doctor can not be blamed for the same. Moreover, as per the advice of the operating doctor, the complainant never came for follow-up. Therefore, it is clear that there was no deficiency in service / medical negligence on the part of the operating doctor. It was stressed that the complainant has not filed any expert evidence to prove medical negligence on the part of operating doctor in conducting her sterilization operation. Thus, the District Commission has wrongly held opposite party Nos. 2 to 4 as liable and allowed the consumer complaint against them vide impugned judgment and order, which can not be legally sustained.

SC/5/A/46/2020 The Oriental Insurance Company Limited 01.08.2025 Versus Smt. Babita and others AND SC/5/A/48/2020 Metro Hospital and Heart Institute 01.08.2025 Versus Smt. Babita and others AND SC/5/A/72/2020 Dr. Tarushree 01.08.2025 Versus Smt. Babita and others

11. In reply, learned counsel for the complainant stated that it is wrong to say that the complainant does not fall under the definition of "consumer", because the complainant had paid an amount of Rs. 30,000/- to the hospital, where her sterilization operation was conducted. The said contention was denied on behalf of the appellants, stating that no proof has been submitted on record by the complainant to the effect that she had paid any amount in regard to her sterilization operation.

12. It is clear from the perusal of the consumer complaint that no such averment has been made therein that the complainant had paid sum of Rs. 30,000/- as expenses for her sterilization operation. It has not been denied that on behalf of the complainant, her husband - Sh. Sanjeev Kumar had voluntarily given consent on the consent letter for Tubal Ligation dated 05.11.2015, copy whereof is Paper No. 53 on the record of appeal bearing No. SC/5/A/48/2020. In the said consent letter, it was specifically mentioned that the failure rates in such operations have been explained and that in the event of any mishap, the doctor would not be liable. It is also admitted that the sterilization operation was conducted upon the complainant after explaining the failure rate in such type of operations, which was duly acknowledged on behalf of the complainant. The complainant has not filed any expert evidence / report to show that there was any sort of medical negligence on the part of the operating doctor in conducting her sterilization operation.

SC/5/A/46/2020 The Oriental Insurance Company Limited 01.08.2025 Versus Smt. Babita and others AND SC/5/A/48/2020 Metro Hospital and Heart Institute 01.08.2025 Versus Smt. Babita and others AND SC/5/A/72/2020 Dr. Tarushree 01.08.2025 Versus Smt. Babita and others

13. It is well settled that the methods of sterilization / tubectomy are not 100% safe and secure. Hon'ble Apex Court in the case of State of Punjab Vs. Shiv Ram and others reported in IV (2005) CPJ 14 (SC), has held that unless it is proved by cogent evidence on record that the operating doctor was negligent in the performance of the job assigned to him / her, no case of medical negligence can be sustained merely on the ground of failure of sterilization operation. It was further held that merely because woman having undergone sterilization operation became pregnant and delivered child, operating surgeon or his employer can not be held liable for compensation on account of unwanted pregnancy or child. It is worth to mention here that no medical expert evidence has been

produced on record to show that the sterilization operation of the complainant was not carried out as per the prescribed method.

14. Hon'ble National Commission in the case of Lakshmi Vs. Director of Medical Services reported in I (2008) CPJ 460 (NC), has held that failure in tubectomy operation due to natural causes would not provide any ground for claiming any compensation. It was also held that the complainant should expect only that the concerned doctor would exercise proper skill in surgery expected of a professional in his particular specialty. The complainant could not expect that the respondent should give 100% guarantee of success of the operation. The doctor can not be expected to be "a paragon combining the Qualities of polymath and prophet".

SC/5/A/46/2020 The Oriental Insurance Company Limited 01.08.2025 Versus Smt. Babita and others AND SC/5/A/48/2020 Metro Hospital and Heart Institute 01.08.2025 Versus Smt. Babita and others AND SC/5/A/72/2020 Dr. Tarushree 01.08.2025 Versus Smt. Babita and others

15. Hon'ble National Commission in its judgment dated 31.05.2013 passed in Revision Petition No. 2758 of 2008; St. Stephens Hospital and another Vs. Smt. Shalini, has held that sterilization is not 100% safe & secure and after getting knowledge of conception inspite of having undergone the sterilization operation, if the couple opts for bearing the child, it ceases to be an unwanted child and compensation for maintenance and upbringing of such a child, can not be claimed.

16. Hon'ble National Commission in the case of Kamla Kesharwani Vs. Superintendent, Shyamshah Medical College and Gandhi Memorial Hospital and others reported in III (2009) CPJ 17 (NC), has held that there is no guarantee that after tubectomy operation, the child birth will not take place. It was also held that the failure of tubectomy operation has been explained in medical texts. It was also held that, "the methods of sterilization so far known to medical science which are most popular and prevalent are not 100% safe and secure. Inspite of the operation having been successfully performed and without any negligence on the part of the surgeon, the sterilized woman can become pregnant due to natural causes. Once the woman misses the menstrual cycle, it is expected of the couple to visit the doctor and seek medical advice. Section 3(2) Explanation II provides that if the woman has suffered an unwanted pregnancy, it can be terminated and this is legal and permissible under the Medical Termination of Pregnancy Act, 1971".

SC/5/A/46/2020 The Oriental Insurance Company Limited 01.08.2025 Versus Smt. Babita and others AND SC/5/A/48/2020 Metro Hospital and Heart Institute 01.08.2025 Versus Smt. Babita and others AND SC/5/A/72/2020 Dr. Tarushree 01.08.2025 Versus Smt. Babita and others

17. We may also advantageously refer to a judgment dated 03.12.2008 of Hon'ble National Commission rendered in the case of The Chief Executive Officer and others Vs. Sagunabai Navalsing Chavan reported in 2011 (1) CCC 286 (NS). The facts of the said case were that the complainant underwent tubectomy operation and even after the tubectomy operation, she became pregnant and delivered a female child. The District Forum awarded compensation of Rs. 500/- per month towards the expenses of the child upto the age of 18 years and directed the opposite party Nos. 1 to 4 to pay jointly and severally sum of Rs. 1,15,000/- as compensation along with cost of Rs. 5,000/- to the

complainant. It was held by Hon'ble National Commission that the tubectomy operation was performed free of cost and the complainant got incentive from the government for undergoing operation. It was also held that once the complainant has conceived, she could have approached same hospital for undergoing MTP, which she has not done. As per the Medical Literature, there are chances of failure of sterilization and recanalisation could take place due to natural causes. The order of the Foras below was set aside and the complaint was dismissed.

18. For the foregoing reasons, we are of the considered opinion that the impugned judgment and order passed by learned District Commission suffers from material illegality, warranting interference by this Commission, as the District Commission has failed to consider law on the subject. Consequently, the appeals deserve to be allowed and SC/5/A/46/2020 The Oriental Insurance Company Limited 01.08.2025 Versus Smt. Babita and others AND SC/5/A/48/2020 Metro Hospital and Heart Institute 01.08.2025 Versus Smt. Babita and others AND SC/5/A/72/2020 Dr. Tarushree 01.08.2025 Versus Smt. Babita and others the impugned judgment and order passed by learned District Commission is liable to be set aside.

19. Appeals are allowed. Impugned judgment and order dated 30.01.2020 passed by the District Commission is set aside and consumer complaint No. 305 of 2017 is hereby dismissed. No order as to costs of the appeals. The amount deposited by the appellants with this Commission in their respective appeals, be released in their favour.

20. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 / 2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties. A copy of this Order be sent to the concerned District Commission for record and necessary information.

21. File be consigned to record room along with a copy of this Order.

22. A copy of this judgment be kept on the record of connected appeal Nos. SC/5/A/48/2020 and SC/5/A/72/2020.

(Ms. Kumkum Rani) President (Mr. B.S. Manral) Member Pronounced on: 01.08.2025