# DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION

**DF-II**

**CONSUMER COMPLAINT NO. DC/AB1/44/CC/371/2023**

PRIYANKA SHARMA
PRESENT ADDRESS - H. NO. 2220, SECTOR 15-C,
CHANDIGARHCHANDIGARH,CHANDIGARH.
PAVIT SHARMA
PRESENT ADDRESS - H. NO. 2220, SECTOR 15-C,
CHANDIGARHCHANDIGARH,CHANDIGARH.
GARV SHARMA
PRESENT ADDRESS - H. NO. 2220, SECTOR 15-C,
CHANDIGARHCHANDIGARH,CHANDIGARH.

.....Complainant(s)

Versus

M/S FOTIS HEALTH CARE LTD
PRESENT ADDRESS - FORTIS HOSPITAL, SECTOR 62, PHASE VIII, SAS NAGAR,
PUNJAB.CHANDIGARH,CHANDIGARH.
MOHINISH CHABRA
PRESENT ADDRESS - FORTIS HOSPITAL, SECTOR 62, PHASE VIII, SAS NAGAR,
PUNJAB.CHANDIGARH,CHANDIGARH.

.....Opposite Party(s)

**BEFORE:**

**AMRINDER SINGH SIDHU , PRESIDENT**
**BRIJ MOHAN SHARMA , MEMBER**

**FOR THE COMPLAINANT:**

NAGINDER SINGH VASHIST (Advocate)
NAGINDER SINGH VASHIST (Advocate)
NAGINDER SINGH VASHIST (Advocate)

**DATED: 29/07/2025**

**ORDER**

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-II, U.T. CHANDIGARH

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Consumer Complaint No : 371 of 2023

Date of Institution : 25.07.2023

Date of Decision : 29.07.2025

1. Smt.Priyanka Sharma (Aged 43 years) wife of Late Sh.Harit Sharma son of Sh.Dharam Vir Sharma, resident of Kothi No.2220, Sector 15-C, Chandigarh-160015 (Aadhar No.7449 9256 2847, Mobile No.9501018736).
2. Master Pavit Sharma (Minor) son of Late Sh.Harit Sharma son of Sh.Dharam Vir Sharma (Aadhar No.3949 0716 5242, Mobile No.7717595987) through his mother Smt.Priyanka Sharma being natural guardian.
3. Master Garv Sharma (Minor) son of Late Sh.Harit Sharma son of Sh.Dharam Vir Sharma (Aadhar No.4291 8232 3471, Mobile No.8360461479) through his mother Smt.Priyanka Sharma being natural guardian.

Complainants No.2 and 3 through their Mother and the Natural Guardian Smt.Priyanka Sharma wife of Late Sh.Harit Sharma, all are residents of Kothi No.2220, Sector 15-C, Chandigarh-160015.

... ... ... Complainants

Versus

1. M/s Fortis Health Care Ltd., a Company registered under the Companies Act, 2013, Fortis Hospital, Sector 62, Phase VIII, S.A.S Nagar-160062, District Mohali (Punjab) through the Managing Director (Email: contactus.mohali@fortishealthcare.com)
2. Dr.Mohinish Chabra, Department of Endocrinology Department Fortis Hospital, Sector 62, Phase VIII, S.A.S. Nagar-160062, District Mohali (Punjab).

… … … Opposite Parties

**BEFORE: MR.AMRINDER SINGH SIDHU, PRESIDENT**

**MR.B.M.SHARMA, MEMBER**

**Argued by:** Sh.Dharam Vir Sharma, Senior Advocate alongwith Sh.Dinesh Madra, Advocate & Ms.Shivani Sharma, Advocate, Counsel for Complainants and Dr.Tarlochan Singh, Kiran Hospital, Ludhiana

Sh.Munish Kapila, Advocate, Counsel for OPs.

Dr.Mohinish Chabra, OP No.2 in person (through VC).

**ORDER BY AMRINDER SINGH SIDHU, M.A.(Eng.),LLM,PRESIDENT**

1] The present complaint is filed by the complainants pleading that complainant No.1 namely Priyanka Sharma is the widow of deceased Sh.Harit Sharma and complainant No.2 & 3 are minor sons of the deceased and complainant No.1 and thus complaint was filed through their mother and natural guardian Smt.Priyanka Sharma. It is pleaded that Sh.Harit Sharma, who was enrolled as an Advocate with the Bar Council of Punjab and Haryana in August 2005, was admitted in the hospital of OP No.1 and treated by OP No.2 and other attending doctors of OP No.1. The father of the deceased Sh.Dharam Vir Sharma is a Senior Designated Advocate and deceased Sh.Harit Sharma had experience of 16 years of practice at Bar and had been earning handsome professional income.

That Sh.Harit Sharma was admitted to the Fortis Hospital, SAS Nagar,

Mohali, i.e. OP No.1 on the morning of 28.07.2021 as he suffered from Acute Gastric Problem. Before admitting him, OP No.1 conducted his Covid test which was found negative. It is further pleaded that since there were restricting visiting hours in the Fortis Hospital and only one visitor was allowed to visit the patient during the entire identified visiting hours, so only complainant No.1 went to see her husband between 12.30 PM to 1.00 PM on 29.07.2021 and she was told that her husband has now recovered from the gastric problem and due to improvement, patient desired to shift to private ward from ICU. However, he was kept in ICU on the pretext that ascites is to be removed from his stomach. On 28.07.2021 and 30.07.2021, tapping was done and due to negligent tapping his oxygen level came down drastically because of which he has to put on oxygen support. Therefore, there was panic amongst the Doctors. As Sh.Harit Sharma was fully conscious despite of oxygen mask, he heard the conversation made by the Director of OP No.1 during his visit that tapping has been wrongly done upon him and it will be done again. When complainant No.1 went to meet her husband during visiting hours on next day, then he was unable to speak due to mask on his mouth but by making signs, he asked for a pen and a paper from her wife as he wanted to write something which he could not convey verbally. Cannula was affixed on his hand to inject medicine, glucose etc. Regular monitoring on computer was being done. Complainant No.1 gave him pen and a paper which was a part of medical report lying besides his bed. He conveyed to complainant No.1 as to what happened with him at the time of tapping for removal of ascites and he wrote a note with a shaky hand. His wife complainant No.1 was shocked to read the hand written note by her husband which reads as under:

"*Subah Director had come Director said Chabra has done something wrong tapping. It will be done again*"

It is pleaded that handwriting of Sh.Harit Sharma, which is infact is dying declaration, is attached with the complaint as Annexure C-9. The complainants alleged that due to wrong tapping, oxygen parameters of Sh.Harit Sharma has dropped drastically because of which he was put on oxygen. The complainant No.1 was not present at the time when tapping was done so as conveyed by her husband in writing. She enquired from Dr.Mohinish Chhabra about what Sh.Harit Sharma has written to which he retorted that it was not his department but it was for the Pulmonary Department which has done the tapping. Complainant No.1 has no other source to enquire about it since her husband was under the consultancy of Dr.Mohinish Chhabra as tapping has to be done under his supervision. On the morning of 01.08.2021, a call was received from the ICU Unit on the mobile of the complainant No.1 that condition of Sh.Harit Sharma has deteriorated and he was not responding for treatment so he needs to be put on Ventilator for which the consent was sought which was given by complainant No.1. Complainant No.1 visited her husband during the visiting hours then he was unconscious and she enquired from duty doctors as to how suddenly condition of her husband deteriorated to the extent that he was immediately put on ventilator, while on her last visit on 31.07.2021 she did not find any such condition and even the doctor did not gave out any such indication. The complainants alleged that ventilator had to be put on the patient due to abdominal ascetic tap, the concerned doctor negligently ruptured the diaphragm leading to hydrothorax which further led to acute

respiratory failure. Carbon dioxide level had exceeded and blood pressure had also dropped. As the condition of her husband seemed critical so she remained in constant touch with attending doctors/staff to enquire about the health of her husband. However, at about 1.00 AM on 02.08.2021, complainant No.1 received a distress call from the hospital that they wanted the entire family come to the hospital immediately as condition of the patient had deteriorated. So, complainant No.1, her brother-in-law and sister-in-law immediately reached the hospital, there the attending doctors informed that her husband has already passed away and they are seeking her consent to remove the ventilator. Ultimately, he was declared dead at 1.47 AM on 02.08.2021 and death certificate issued by Fortis Hospital is attached as Annexure C-10. Complainant No.1 was shocked to read the reason for the cause of death which had been mentioned in the death certificate was due to septic shock and spontaneous bacterial peritonitis. Complainant No.1 was not satisfied with the reason so detailed treatment chart alongwith discharge summary was sought from the hospital but the same was not provided by hospital in order to hide the negligence and fault of the attending doctors of the hospital. It was not supplied at the same time so that record could be manipulated which would not have been possible immediately while giving the death certificate which raise huge suspicion on the part of the hospital. It is alleged that the doctors who performed the abdominal ascetic tap under the supervision of OP No.2 on deceased Sh.Harit Sharma was negligent in performing their duties and the gravity of negligence can be found from the fact that act of negligence came to light only when the Director visited on the deteriorated condition of Sh.Harit Sharma and told about the negligence of erring doctor but by that time the condition of the patient was worsened and

he went into unconsciousness and was thus put on the ventilator. An amount of Rs.4,30,000/- was paid to the OP at the time of releasing of dead body including Rs.1,00,000/- was paid on 02.08.2021. It was submitted that bill is of dated 02.08.2021 but it has been printed by OP No.1 on 06.08.2021 which shows that some manipulations have been done in the bill.

Late Sh.Harit Sharma besides the complainants is survived by his father Sh.Dharam Vir Sharma who is more than 76 years of age and his mother Smt.Ant Sharma who is more than 70 years of age. Therefore, it was expected that he would have survived upto that age if death would have not been caused due to negligence. Therefore, by applying 17 as the multiplier given in the schedule for compensation under the Motor Vehicles Act for the purpose of determining the compensation on the basis of taxable income for the last four months i.e. from 01.04.2021 to 02.08.2021, the compensation comes to Rs.1,95,69,380/-. However, the average income of the last three years has been taken and the income comes to Rs.10,68,369/-. Sh.Harit Sharma and complainants were four members of the family living in the house. If deduction of 1/4 th is made, then compensation comes to Rs.1,36,21,715/-. Expenses incurred on performing of last rites of Sh.Harit Sharma came out to be more than Rs.60,000/- besides there is loss of consortium to the tune of Rs.5,00,000/-. Therefore, complainants are entitled for compensation upto Rs.2 crore alongwith interest. The complainants further alleged that OPs are guilty of deficiency in service and unfair trade practice as they have not supplied the discharge summary in order to hide the acts of omission and commission of OPs. Lastly, the complainants prayed that the OPs may kindly be held liable for negligence, unfair trade practice

and deficiency in service and refund the amount of treatment alongwith compensation to the tune of Rs.2 crore alongwith interest be awarded to the complainants.

2] After service of notice, the OPs appeared and filed their written version taking preliminary objections that the present complaint is misconceived, unwarranted and not maintainable against the OPs as there has been no negligence, deficiency in service or unfair trade practice on their part while dealing with the patient. Further, the complaint is totally frivolous, vexatious and liable to be dismissed. It is submitted that the complainants have not approached this Commission with clean hands. Sh.Harit Sharma was admitted to the Fortis Hospital, Mohali (OP No.1) on 28.07.2021 where he ultimately expired on 02.08.2021. It is submitted that previous admissions of the patient has been willfully concealed by the complainants from this Commission. Further submitted that prior to this admission, Sh.Harit Sharma was admitted twice to this hospital, firstly on 11.12.2020 and remained admitted there till 18.12.2020 and then again admitted on 13.03.2021 and remained there till 16.03.2021. It is submitted that both these admissions have great significance to the present dispute as patient had life threatening condition of liver disease associated with alcohol dependence over a long period of time which is associated with significant mortality. Patient was suffering from end stage liver disease and its complications i.e. jaundice ascites, encephalopathy Grade III, spontaneous bacterial peritonitis (SBP) and respiratory failure. As per history, patient was daily consuming alcohol for a period of more than 10 years and last intake was 16.10.2020. The

patient was suffering from morbidly obese (Obesity Class III) as he had BMI of 38.3 kg/m $^2$. The patient's wife was counselled that patient had decompensated cirrhosis with a high mortality of 50% and need liver transplant which is not currently available with Fortis Hospital. The patients decompensate at rate of 10% per year and have 50% - 10 years survival rate. At the time of admission, the patient was diagnosed with alcoholic liver cirrhosis with acute chronic liver failure with fluid in abdomen (ascites) Grade III Hepatic Encephalopathy with acute kidney injury. Besides the above complications, he has also severe life threatening complications of Spontaneous Bacterial Peritonitis (SBP) which is infection of the ascitic fluid. In such a situation, ultrasound guided ascetic tap become the most crucial procedure for safely taking out the fluid and testing for infection of SBP. The treatment was given to the patient and he was discharged from the hospital on 18.12.2020 in a stable condition. On 15.03.2021, the patient and his wife were counselled for liver transplant. On 16.03.2021, the patient left the hospital against medical advice (LAMA) and patient was discharged LAMA. It is submitted that after second admission, patient went to PGIMER, Chandigarh on 19.03.2021 where he was again counseled for liver transplant. That in April 2021, patient has episode of Covid Pneumonia after which he was having shortness of breath. In the backdrop of the above history, the complainant was once again brought to the emergency of Fortis Hospital on 28.07.2021. His condition was critical. His complaints distension of abdomen with swelling of lower limbs for the last 3 days and complaints of drowsiness, agitation and irrelevant talk since one day. At the time of admission to the emergency, patient's respiratory rate was noted at 38 per minute and SpO2 was 92%. A diagnosis of CLD with hepatic encephalopathy was made. He

was admitted under Dr.Mohinish Chhabra. He was evaluated in the emergency by the emergency Medical Officer and after discussing with the gastroenterology team the appropriate treatment in the form of IV antibiotics (injection tazact) was started and relevant tests and investigations were ordered. He was also advised ultrasound whole abdomen, guided ascetic tap, bubble eco and duphalac bowel wash. As per information disclosed by complainant No.1, he was consuming half bottle of alcohol per day for a period of last 12 years besides consuming Gutka. It is submitted that patient was complaining pain in abdomen, fall in blood pressure, decreased urine output for the last four days. It was also noted that the patient has history of drowsiness, agitation and irrelevant talk. In ICU, the patient was required 2 litres of oxygen per minute via nasal prongs in order to maintain saturation. His saturation was 88% on room air. He was planned for ultrasound guided fluid aspiration. Patient's wife and his sister Shivani were counselled that patient may need tracheal intubation and mechanical ventilation. They were explained about guarded prognosis as well. On 28.07.2021, the patient was conscious with Grade III hepatic encephalopathy. Ultrasound guided diagnostic and therapeutic tap was planned which was done by Radiologist Dr.Purnima on 28.07.2021 at 4.45 PM. The procedure was uneventful. 70 ml of fluid was sent for analysis and rest was drained for therapeutic purpose. Subsequently his blood culture grew E.Coli and his ascitic fluid culture also grew E.Coli (gram negative Bacilli). Appropriate antibiotics were given. The patient was tachypneic with low oxygen saturation on 29.07.2021 and HRCT Chest was advised. HRCT chest showed massive right sided pleural effusion with total passive collapse of the right lung alongwith shift of trachea and mediastinum to opposite side. His PaCO2 levels were noted to be high.

BiPAP support was continuously required. The patient was considered for high risk pleural tapping. The risks and benefits of the pleural tapping were explained to his wife in understandable language. It was explained to her that draining the fluid around the right lung would ease his respiration and consent was sought from his wife. On 29.07.2021 at 1 PM, the patient's wife was again counselled for the need of pleural tapping. The wife informed that she would inform the MICU team about her decision at 3 PM. Thereafter she gave her consent at 3.10 PM on the same day. In the evening of same day, patient was again assessed by OP No.2 and he counselled complainant No.1 about the risks and benefits of pleural tapping. The patient was planned for FFP transfusion and advised continued BiPAP support to support his breathing. On 30.07.2021, ultrasound guided right side pleural tapping was performed under aseptic conditions by the Radiologist Dr.Purnima after obtaining informed consent from the wife. Total of 2 litres of fluid was aspirated. For supporting the respiration, patient was kept on BiPAP/NIV support. At 7.30 PM, patient was dyspnoeic but patient did express minimal improvements in shortness of breath as his SPO2 was 93% on 3 litres of oxygen/min, respiratory rate was 32 per minute, HR 98/min, BP 106/78, urine output was adequate and accepting small amount of oral feed. From this, it is apparent that patient had no post procedure complications.

That in the morning of 31.07.2021, patient's saturation was 92% on 3 litres of oxygen via nasal prongs. His chest X-ray was suggestive of right lung expanded as compared to previous (30.07.2021) chest X-ray. Bubble Echo was performed showed right to left shunt. Thus, confirming hepato-pulmonary syndrome (HPS). It needs to be highlighted that hepato-pulmonary syndrome almost double the mortality rate in patients awaiting liver transplant,

irrespective of other predictors of mortality such as age, MELD score and comorbidities. On 31.07.2021, a pigtail catheter was inserted in the right pleural cavity of the patient under ultrasound guidance for draining residual pleural effusion since the patient had continued oxygen requirement. On 31.07.2021, left lower limb venous Doppler was conducted which showed no DVT and moderate subcutaneous edema in the left mid leg region. On 01.08.2021 at 4.45 PM, the patient de-saturated on NIV support and became unresponsive. ABG showed severe uncompensated respiratory acidosis. In view of type II respiratory failure and worsening encephalopathy, patient was intubated and put on mechanical ventilatory support. In view of the same telephonic consent was taken from patient's wife. On 01.08.,2021, patient was started on Norepinephrine support with low BP. The patient had oliguria for 2 hours thus possibility of haemodialysis was kept. Patient's condition continued to be critical.

On 02.08.2021, patient had bradycardia (HR 32/min), de-saturation (SPo2 76%) and hypotension (BP 32 MAP) and in view of the same epinephrine infusion was started and injection atropine was also given. At 12.55 AM, the patient had asystole, CPR was started. However, despite all resuscitative measures patient could not be revived and was declared dead at 1.47 AM on 02.08.2021.

The complainants have alleged that the abdominal ascitic tap was negligently conducted which ruptured the diaphragm of the patient leading to hydrothorax. These allegations seems to have been made by complainants because the complainants are not aware of what is hydrothorax and why it occurs and simply to implicate the OPs have made such allegations. It needs to be clarified here that hepatic hydrothorax is presence of pulmonary

effusion of usually of more than 500 ml in a patient with cirrhosis who does not have other reasons to have pleural effusion i.e. cardiac disease, pulmonary disease. Patients who develop hepatic hydrothorax are more likely to have ascites, hepatic encephalopathy, acute kidney injury and increased risk of mortality. Thus hepatic hydrothorax is a complication of end stage liver disease which occurs due to trans-diaphragmatic passage of ascitic fluid from peritoneal to pleural cavity manifesting as pleural effusion. Thus, the reason for trans-diaphragmatic passage of ascitic fluid in the pleural cavity is due to high abdominal pressure and negative pressure in the pleural space. Hepatic Hydrothorax develops in the right side in approximately 73-85% of the patients. Thus it is a known manifestation of decompensated end stage liver disease and not because during ascitic tapping there was an injury to the diaphragm. Further ascitic tap is done under ultrasound guidance and thus there is no chance of diaphragm being punctured.

Further, it is to understood what is hepatic encephalopathy (HE). It can be defined as brain dysfunction caused by liver insufficiency and/or portosystemic shunting that produces a spectrum of neurologic and psychiatric abnormalities ranging from subclinical alterations to coma. Owing to above mentioned complications, the patient cannot be considered in a sound state of mind, to express and communicate with reason. Thus, the document which is Annexure C-9 around which the case is built up appears to be figment of imagination of a patient in a state of encephalopathy and needs to be ignored. Moreover, the veracity of this document in itself is doubtful as to when it was written or who wrote it.

It is further submitted by OPs that the complainants failed to produce any evidence or material on record to show that there has been any negligence

on the part of the OPs. There is no expert evidence to prove the negligence of the OPs. In the absence of such proof, the complaint is liable to be dismissed on this ground. The OPs further submitted that onus to prove lies upon the complainants to prove acts of omission and commission of OPs which constitutes negligence. Dr.Mohinish Chhabra is DM in Gastroenterology and thus he was competent to treat the patient. Dr.Purnima who had performed ascitic and pleural tap is qualified radiologist and competent to perform the same. Thus, the OPs are qualified for treating the patient.

On merits, the OPs denied all the allegations made against them and repeated the stand which is taken by them in their preliminary objections and lastly prayed to dismiss this complaint.

3] Replication has also been filed by the complainants controverting the assertions of OPs as made in their written version.

4] Parties led evidence in support of their contention.

5] We have heard the learned counsels for the parties and have gone through the entire documents on record.

6] The main issue involved in the present complaint is whether OPs are negligent while providing Medical treatment to patient or not?

In order to find out answer to this question, the following facts and circumstances are required to be discussed:-

7] From facts and circumstances of present complaint and the pleadings of the parties and arguments submitted by the parties, it is observed that

Sh.Harit Sharma was admitted to the Fortis Hospital, SAS Nagar, Mohali (OP No.1) on 28.07.2021 as he was suffering from Acute Gastric Problem. Though he was suffering from Grade II Hepatic Encephalopathy and other complications associated with it yet his condition was stable at the time of his admission to the hospital on 28.07.2021. It is admitted by OPs in their written version that Sh.Harit Sharma was admitted to the Fortis Hospital under supervision of Dr.Mohinish Chhabra (OP No.2). It is evident from the medical record of OP No.1, his Glasgow Coma Scale (GCS) was $E_4 V_5$ and $M_6$. All baseline vitals were stable, as is evident from Exb. OP-9 (page 141), were within normal limits upto 28.07.2021 which is evident from the following table:-

| Time | Pulse | B.P. | RR | $SPO_2$ | Temp. | Pain Score | GCS | RBS |
|---|---|---|---|---|---|---|---|---|
| 7.56 am | 117/min | 120/56 | 23 | 92% R.A. | 98.F | 03/10 | $E_4V_5$ $M_6$ | 93 |
| 9 am | 110/min | 120/56 | 20 | 92% R.A. | 98.F | 02/10 | $E_4V_5$ $M_6$ | - |
| 10am | 110/min | 120/60 | 20 | 93% R.A. | 98.F | 02/10 | $E_4V_5$ $M_6$ | - |
| 10.30 Patient shifted to MICU | | | | | | | | |

*The score is the sum of the scores as well as the individual elements. For example, a score of 10 might be expressed as GCS10 = E3V4M3*

*Best eye response (4)*
*1. No eye opening*
*2. Eye opening to pain*
*3. Eye opening to sound*
*4. Eyes open spontaneously*

*Best verbal response (5)*
*1. No verbal response*

*2. Incomprehensible sounds*
*3. Inappropriate words*
*4. Confused*
*5. Orientated*

*Best motor response (6)*
*1. No motor response.*
*2. Abnormal extension to pain*
*3. Abnormal flexion to pain*
*4. Withdrawal from pain*
*5. Localizing pain*
*6. Obeys commands*

8] The ultrasound report dated 28.07.2021 shows ascites and moderate left sided pleural effusion with no right side pathology. Subsequent massive right pleural effusion was a new development post ascitic tapping not attributable to chronic liver condition. The patient was admitted to the ICU. Chest X-Ray was advised on 28.07.2021. It was shown as pending. Later Chest X-Ray was again advised but there is neither any report of Chest X-Ray on record nor anything regarding it is mentioned in the treatment history of 28 th and 29 th July 2021. Adverse inference is drawn against the hospital as they have not placed on record Chest X-Ray dated 28.07.2021 which is the best source to determine the condition of the lungs of the patient when he was admitted to the hospital on 28.07.2021.

9] It is admitted fact that ascitic tapping was performed at 4.45 PM on 28.07.2021 in the hospital of OP No.1. The OPs failed to place on record any consent form of the patient to conduct the procedure of ascitic tapping upon him on 28.07.2021 as the patient was conscious and in fit physical and mental state to give the same on 28.07.2021 so his consent was legally required. In order to ascertain his physical and mental state, the Glasgow Coma Scale (GCS) was $E_4 V_5$ and $M_6$. As per Glasgow Coma Scale (GCS), $E_4$ means eyes open spontaneously, $V_5$ means oriented and $M_6$ means obeys

command. It was also the same on 29.07.2021. It is best score which Sh.Harit Sharma can score. Hence, it is held that his consent was not obtained despite being competent to give the same. It is undisputed fact that Sh.Harit Sharma was conscious on the date of admission on 28.07.2021 and thereafter also upto 30.07.2021, as is evident from medical documents of the hospital. However, no consent was taken from him before performing the ascitic tap procedure on 28.07.2021. This omission constitutes a violation of doctrine of informed consent which has been recognized by the *Hon'ble Supreme Court in Samira* Kohli vs. Dr.Prabha Manchanda (2008) 2 SCC 1, "OPs are under legal obligation to take valid consent from a conscious patient". Moreover, no written consent was obtained from complainant No.1 to conduct the same on 28.07.2021. Performing a procedure of ascitic tapping without obtaining consent of the patient or his wife i.e. complainant No.1 in itself constitutes deficiency in service. The ascitic tapping was performed on 28.07.2021 and the procedure is claimed to have been uneventful. Ascitic tapping was done again on 30.07.2021. Subsequent clinical deterioration of the patient characterized by massive right pleural effusion, complete lung collapse and mediastinum shift is attributable to iatrogenic puncture of the diaphragm during the procedure. In order to prove the same, the complainants have placed on record handwritten note of the patient/deceased as Ex.C-9 which reads as under:-

> "*Subah Director had come Director said Chabra has done something wrong tapping. It will be done again"*

10] This handwritten note has been written by Sh.Harit Sharma since deceased in his own shaky handwriting in the front of his wife i.e. complainant No.1 who witnessed him writing the same. Hence, this document

could not be said to be a 'hear say' evidence but amounts to dying declaration as per Section 32 of the Indian Evidence Act. It was made by patient when he was conscious and alert as his Glasgow score scale was E $V_5$ and M $_6$. Though it was neither signed by him nor date was mentioned in it yet the fact could not be ignored that it was written by deceased himself. OPs have taken objections regarding discrepancies of date mentioned by complainant No.1 in her Complaint and Replication but said minor discrepancies cannot be taken into account taking into account the seriousness of the situation faced by complainant No.1 when her husband was on the edge of his death and rather such discrepancies are natural because when anyone is suffering from such trauma then such discrepancies are natural to occur.



11] The claim of hepatic hydrothorax made by OPs could not be given much weight because as per medical literature 'hepatic hydrothorax rarely exceeds 500 ml'. In the present case, it is over 9 litres of fluid was drained from the right pleural cavity between 30.07.2021 to 01.08.2021 making it irrelevant under hepatic hydrothorax due to chronic liver disease but to proceed wrong tapping during ascetic tapping procedure.

12] Taking into account the fact that Mr.Harit Sharma, though suffering from chronic liver disease Grade II yet he was admitted in the hospital of OP No.1 in a stable and conscious condition. Further, X-rays were conducted by OPs on 28.07.2021 but not placed on record gives an adverse inference against hospital presuming that condition of lungs is normal on 28.07.2021. Had there been any defect in the chest x-ray then the OPs would have placed it on record to clarify this document that he was suffering from Respiratory

Rate (RR) and pleural effusion on the date of his admission.

13] Further, the OPs have committed overwritings/cuttings in their record in order to bring the case within the four walls of evidence that patient is suffering from pleural effusion since 28.07.2021. The cuttings are visible with the naked eye and all cuttings are made with an ulterior motive to misguide the LRs and this Commission that patient was also suffering from Respiratory Rate (RR) function and pleural effusion since the day of his admission. It was tampered as digit 38 instead of actual digits of 23. It was tampered to make RR (Respiratory Rate) recorded as 23 per minute to reflect it as 38 per minute. The digit '3' was made digit '8' by overwriting and digit '2' as digit '3' to mislead this Commission. This overwritings and cuttings constitute not only deficiency in service but also unfair trade practice adopted by OP No.1. Further, the deceased with his own ears over heard the Director stating that Chhabra has done wrong tapping and it has to be done again. Patient since deceased wrote a note in his own shaky handwriting before his wife i.e. complainant No.1 who was witnessed to it. Lack of legal consent of patient also goes against the OPs. Once the complainants have discharged their onus of prove of the medical negligence of OPs by leading corroborative evidence of chain of circumstances then the burden of proof shift to the OPs. OPs being expert in medical profession are legally bound to disproof the same to discharge their burden of proof which they failed to do so in the present case. Hence, OPs are liable not only for medical negligence but also deficient in service and also adoptive of Unfair Trade Practice. Hence, the present consumer complaint deserves to succeed.

14] Now coming to the quantum of compensation to be awarded to the

complainants. Complainants have demanded compensation to the tune of Rs.2 crore alongwith interest taking into account previous income of the deceased and on the basis of probility of his life over the life span of his mother & father as per schedule for compensation under the Motor Vehicles Act for the purpose of determining the compensation but it is quite on higher side on the basis of the fact that as deceased Sh.Harit Sharma was suffering from Grade II Varix with Portal Hypertensive Gastropathy alongwith other associated diseases and also advised for liver transplant so condition of his health was not good. It is clarified that though Mr.Harit Sharma was suffering from serious diseases as already discussed above yet the immediate cause of his death is medical negligence of OPs. While awarding compensation, we have to take into consideration health of the deceased as well as serious diseases he was suffering from. Hence the ends of justice would meet if a lumpsum compensation of Rs.50 lacs is awarded to the complainants in lieu of the medical negligence committed by OPs.

15] In view of the above discussion, the present consumer complaint succeeds, the same is accordingly partly allowed and the OPs are directed as under:-

i) to pay lump sum compensation of Rs.50 lacs alongwith interest @ 9% per annum from the date of death i.e. 02.08.2021 till its realization to the complainants within 45 days of receipt of certified copy of this order.

ii) OPs are jointly and severally held liable to pay above mentioned amount to the complainants.

16] The pending application(s) if any, stands disposed of accordingly.

The Office is directed to send certified copy of this order to the parties, free of cost, as per Rules under The Consumer Protection Rules, 2020. After compliance file be consigned to record room.

**Announced**

29.07.2025

**Sd/-**

**(AMRINDER SINGH SIDHU)**

**PRESIDENT**

**Sd/-**

**(B.M.SHARMA)**

**MEMBER**

**.....**
**AMRINDER SINGH SIDHU**
**PRESIDENT**

**.....**
**BRIJ MOHAN SHARMA**
**MEMBER**