

**IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION,
NEW DELHI**

FIRST APPEAL NO. 698 OF 2017

(Against the order dated 10.03.2017 in C. C. No. 68 of 2014 of the
State Consumer Disputes Redressal Commission, Punjab)

1. Smt. Mohinder Kaur
W/o Late Sh. Mohinder Singh,
Through her legal representatives

(i) Narinder Pal Singh
Resident of House No. 872, Urban Estate,
Phase-II, Jalandhar

(ii) Surinderjeet Singh
Resident of House No. 830
Urban Estate, Phase-II,
Jalandhar

(iii) Bhupinder Jit Singh (since deceased)
(a) Joginder Kaur widow of Bhupinder Jit Singh
(b) Jaswinder Pal Singh son of Bhupinder Jit Singh
(c) Dupinder Jit Jot daughter of Bhupinder Jit Singh

(iv) Manmohan Singh
Resident of House No. 830,
Urban Estate, Phase – II, Jalandhar

(v) Smt. Baljit Kaur wife of Sh. Amandeep Singh
Resident of House No. 1501, Phase 3B II,
SAS Nagar, Mohali

..... Appellant

Versus

1. Fortis Hospital,
Mohali through its Managing Director,
Sector 62, Phase – III,
Mohali – 160062

2. Dr. Manuj Wadhwa,
Consultant,
Orthopedic Surgeon,
Fortis Hospital,
Sector 62,
Phase – III, Mohali – 160062

3. Doctor (Anesthetist)
the name and other details to be disclosed
by the OPs No. 1 & 2,
Fortis Hospital,
Sector 62, Phase – VIII,
Mohali – 160062
(Dr. Sandeep Khurana, presently posted at
Max Multispeciality Hospital, Phase –VI,
SAS Nagar (Mohali), Punjab

4. Dr. V. K. Khosla,
Neurosurgeon,
Fortis Hospital, Sector 62,
Phase –VIII,
Mohali 160062

..... Respondents

FIRST APPEAL NO. 1293 OF 2017

(Against the order dated 10.03.2017 in C. C. No. 68 of 2014 of the
State Consumer Disputes Redressal Commission, Punjab)

1. Fortis Hospital,
through Managing Director,
Sector 62, Phase – VIII,
Mohali – 160062
2. Dr. Manuj Wadhwa,
Orthopedic Surgeon,
Fortis Hospital,
Sector 62,
Phase – VIII, Mohali – 160062
3. Dr. Sandeep Khurana,
Anaesthetist,
Fortis Hospital,
Sector 62, Phase-VIII,
Mohali-160062

..... Appellants

Versus

1. Smt. Mohinder Kaur
W/o Late Sh. Mohinder Singh,
Through her legal representatives
- (i) Narinder Pal Singh
Resident of House No. 872, Urban Estate,
Phase-II, Jalandhar

(ii) Surinderjeet Singh
Resident of House No. 830
Urban Estate, Phase-II,
Jalandhar

(iii) Bhupinder Jit Singh (since deceased)
(a) Joginder Kaur widow of Bhupinder Jit Singh
(b) Jaswinder Pal Singh son of Bhupinder Jit Singh
(c) Dupinder Jit Jot daughter of Bhupinder Jit Singh

(iv) Manmohan Singh
Resident of House No. 830,
Urban Estate, Phase – II, Jalandhar

(v) Smt. Baljit Kaur wife of Sh. Amandeep Singh
Resident of House No. 1501, Phase 3B II,
SAS Nagar, Mohali

2. Dr. V. K. Khosla,
Neurosurgeon,
Fortis Hospital, Sector 62,
Phase –VIII,
Mohali 160062

..... Respondents

BEFORE:

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER, MEMBER

For Smt. Mohinder Kaur : Mr. R. C. Gupta, Advocate
(through video conferencing)

For Fortis Hospital & : Mr. Rohit Puri, Advocate with
Anesthetist Mrs. Kanchan Bahl, Advocate
(Dr. Sandeep Khurana) Mr. Aditya Awasthi, Advocate for R-1& 3

For Dr. Manuj Wadhwa : Ms. Ashima Sawhney, Advocate for R-2
(through video conferencing)

For Dr. V. K. Khosla : NEMO

Pronounced on : 6th June, 2025

ORDER

DR. SADHNA SHANKER, MEMBER

1. The above mentioned cross appeals have been filed under section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as the 'Act') in challenge to the Order dated 10.03.2017 of the State Commission in complaint no. 68 of 2014 whereby the complaint was partly allowed.

2. We have heard the learned counsel for the appellant in F.A. No. 698 of 2017 and respondent No. 1 in F.A. No. 1293 of 2017 (hereinafter referred to as the 'complainant') and the learned counsel for the respondents 1 & 3 in F.A. No. 698 of 2017 and appellants in 1 & 3 in F.A. No. 1293 of 2017 (hereinafter referred to as the 'hospital' and 'anesthetist', respectively) and learned counsel for respondent no. 2 in F.A. No. 698 of 2017 and the appellant no. 2 in F.A. No. 1293 of 2017 (hereinafter referred to as the 'Orthopaedic Surgeon') and perused the record, including *inter alia* the impugned order dated 10.03.2017 and the memorandum of appeal.

None is present for respondent no. 4 in F.A. No. 698 of 2017 and respondent no. 2 in F.A. No. 1293 of 2017 (hereinafter referred to as the 'neurosurgeon').

3. Not satisfied with the Order dated 10.03.2017, the complainant has filed appeal no. 698 of 2017 for enhancement of compensation before this Commission.

The hospital, anesthetist and Orthopedic Surgeon have filed first appeal no. 1293 of 2017 before this Commission seeking setting aside of the order dated 10.03.2017 of the State Commission.

4. The brief facts of the case are that on 19.03.2012, Smt. Mohinder Kaur, (hereinafter referred to as the 'patient') got herself admitted for total knee replacement. It is stated that after admission, on the same day, X-ray of both knee, AP and lateral was done. It is further stated that the surgery was conducted on 20.03.2012 and after the surgery, the patient realized some problem of severe pain in the back and numbness in one leg on 21.03.2012. The attendants of the patient informed the said problem to Orthopaedic Surgeon, who intimated that the said problem was because of effect of anaesthesia and pain killers and the patient will be alright in a day or so. It is further alleged that the patient felt numbness in the other leg but the doctors replied the same. However, on consistent complaint, the doctors re-examined the patient and referred the case to Dr. V. K. Khosla, a neurosurgeon. MRI Spine Lumber was done on 23.03.2012, which shows collection of some bacteria, suggesting spinal Subdural / epidural Hematoma. The complainant was taken for Laminectomy under Dr. V. K. Khosla and surgery was performed and number of units of blood were transfused. It is alleged that the anesthesia given by the opposite party no. 3 was not proper, accordingly, they performed the corrective surgery. It is further alleged that due to delay in taking corrective measures, the lower limbs of the patient had been paralysed. The patient's left foot did not move at all and she had no sensation of stool and urine, hence, the catheter had to be inserted in her urinary tract. It all happened due to negligent act on the part of the opposite parties.

5. Alleging medical negligence on the part of the opposite parties, the complainant filed a consumer complaint before the State Commission seeking compensation of Rs. 15,00,000/- for the medical negligence on the part of the hospital and the doctors along with refund of Rs. 2,90,000/- and Rs.1,10,000/- on account of medicine. The complainant also prayed for compensation of Rs.5,00,000/- on account of mental, physical, financial harassment and sufferings and litigation cost of Rs. 55,000/-.

6. The hospital and neurosurgeon contested the complaint by stating that the complainant has not produced any iota of evidence or expert evidence to prove that there was negligence on the part of the opposite parties. It was further stated that the patient, who was aged about 78 years, was already suffering from Osteoarthritis and was having difficulty for past 2-3 years, which was getting worse with each passing day. Additionally, the patient was a known case of (a) hypertension (b) Coronary Artery Disease (c) Cardiac Dysfunction (ECHO showed that she had low LVEF, Hypokinesia of apical and lateral wall of heart) and was having breathlessness on walking on plain surface and was on treatment for these conditions. She had a history of palpitation for which she was admitted in 1995. It is further stated that the patient was given combined spinal and epidural anesthesia as per standard protocol and after a successful total knee replacement the patient was shifted to joint replacement ICU. It is further stated that as the chance of clot formation in the veins inside the calf muscles is very high after knee replacement surgery, a prophylactic dose of injection Clexane was started. It

is further stated that the patient complained of backache and vomiting, voveran gel and anti-vomiting drugs were injected. It is further stated that on 23.03.2012 when the patient complained about the inability to move her limbs, MRI was done and Neuro Surgeon was consulted. The neuro-surgeon immediately advised to stop all blood thinners, fresh blood tests, cardiac consult and urgent de-compressive surgery was conducted. It is further stated that the anesthesia was given as per standard protocol It is further stated that there is no medical negligence on the part of the hospital and the doctors.

7. The Orthopedic Surgeon filed written statement stating that the complainant is not a 'consumer' within the meaning of Section 2(1)(d) of the Act and the complaint is barred by limitation. It is further stated that the complainant has made an exaggerated claim just to invoke the jurisdiction of the State Commission. It is further stated that the complainant was given requisite / necessary pre and post operative treatment including proper antibiotics cover/medicine as per requirement and protocols. It is further stated that the complainant has not produced any expert evidence to show that there was negligence on his part.

8. The Anesthetist also filed written statement stating that he was working as an employee of the Fortis Hospital and therefore, there is no privity of contract between him and the complainant. Hence, the complainant is not a consumer of Anesthetist and the complaint is liable to be dismissed.

9. The State Commission, vide its order dated 10.03.2017, allowed the complaint in part observing that the opposite parties hospital and the doctors are responsible for 100% disabled condition of the patient after total knee replacement surgery and directed the hospital and the doctors to pay an amount of Rs. 15 lakh in lumpsum to the complainant.

10. The main issue that arises in these appeals is as to whether there was medical negligence on the part of the hospital and the doctors.

11. Learned counsel for the complainant has argued that at the time of admission, the patient was fit for total knee replacement but due to the negligence on the part of the opposite parties, the epidural Hematoma occurred, which resulted into totally disablement of the patient. In this regard, he further states that the hospital authorities and the attending doctors have clearly admitted in their appeal that the patient developed epidural Hematoma, which was later removed on 23.03.2012. The hospital and the anaesthetist were not able to show any document, oral or otherwise, to prove that they have taken all precautions between 21.03.2012 to 23.03.2012. Further, as per medical literature produced before the State Commission, the corrective surgery was required to be done within 08 hours, however, it was done after more than two days, which had led the patient to become a paraplegic as per the disability certificate. Further, the case of the complainant strengthens from the fact that had there been no negligence on the part of the hospital or the anaesthetist, they would not have written off the charges amounting to Rs.2,18,898/- towards the corrective surgery. Hence, there is a clearly medical

negligence on the part of the hospital, Orthopadic Surgeon and the Anaesthetist. He further argued that the State Commission has rightly held that there was negligence on the part of the hospital, Orthopadic Surgeon and the Anaesthetist. As regards, quantum of compensation is concerned, he further argued that due to negligent act on the part of the hospital, Orthopadic Surgeon and the Anaesthetist, the patient became 100% paraplegic and was on the bed for the last seven years, therefore, the compensation of Rs. 15 lakhs granted by the State Commission was not just and proper and the same may be enhanced.

12. Learned counsel for the hospital and the anaesthetist has argued that the patient never complained of any numbness of legs until 23.03.2012, therefore, there was no reason for the doctors to suspect numbness of leg. He further argued that the patient was put on blood thinners post Knee Replacement Surgery and the incidence of epidural hematoma is as low as 1:100000, therefore, it cannot be said that there was medical negligence on the part of the hospital and the anaesthetist. He further argued that to prove the negligence of doctor, suffering of ailment as a result of improper performance of surgery with certain degree of negligence on the part of the doctor has to be proved by way of medical evidence expert in the field. He further argued that the mere statement of the complainant cannot be accepted to reach conclusion that the doctor lacked expertise. In support of this contention, he placed reliance on the decision in **C.P.Sreekumar (Dr.) MS ORTHO vs. Ramanujam** 2009 (7) SCC 130. The Hon'ble Supreme Court in

the case of **C.P. Sreekumar (Dr.) MS ORTHO vs. Ramanujam** 2009 (7) SCC 130 has held that "bald statement of the complainant cannot be accepted to reach conclusion that the Doctor lacked expertise. It is observed that too much suspicion about the negligence of the attending Doctors and frequent interference by courts could be a dangerous proposition as it would prevent Doctors from taking decision which could result in complications and in such a situation the patient will be the ultimate sufferer".

It was further argued that the occurrence of epidural Hematoma cannot lead to presumption of negligence as evidenced by medical literature placed before SCDRC Punjab that it is an infrequent yet possible complication of spinal anaesthesia. The patient was discharged from the hospital in a stable condition on 10.04.2012. Reliance was placed on a prescription dated 23.08.2013 of Dr. V. K. Khosla, who performed the corrective surgery wherein it has been clearly noted that the patient was moving well and walking with support.

13. The contention of the learned counsel for the hospital and the anaesthetist was that the reliance of the complainant on disability certificate dated 10.05.2016 and linking the same to surgery that was conducted on 23.03.2012 cannot lead to presumption of negligence on the part of the hospital. Reliance was placed on **PGIMER Chandigarh vs. Jaspal Singh** (2009) 7 SCC 330 wherein it was held that "it needs no emphasis that in the medical negligence actions, the burden is on the claimant to prove breach of duties, injury and causation. The injury must be sufficiently proximate to the

medical practitioner's breach of duty. In the absence of evidence to the contrary adduced by the opposite party, an inference of causation may be drawn even though positive or scientific report is lacking". Reliance was also placed on **S. K. Jhunjhunwala v. Dhanwanti Kaur** (2019) 2 SCC 282 and **Malay Kumar Ganguly vs. Dr. Sukumar Mukherjee and Ors.** (2009) 9 SCC 221.

14. It is an admitted fact that the patient was about 78 years of age when she was admitted for Knee Replacement Surgery and she had many co-morbidities that are part of the record. The main thrust of the arguments of the complainant are that the doctors did not pay heed to the patient's complaint of numbness in her limbs and it was only two days after confirming diagnosis of epidural Hematoma, a corrective surgery was performed. The allegation is of medical negligence of post operation which led to epidural Hematoma, the corrective surgery was performed late and patient became paraplegic and 100% disabled as a result thereof, which is reflected by the disability certificate that has been filed. On the contrary, as per the hospital, Orthopaedic surgeon and the anaesthetist, there was no negligence during surgery, epidural hematoma is a possible complication of spinal anesthesia, especially in a patient of advance age and with other diseases. The patient only complained of numbness etc. two day after surgery and thereafter immediately, a corrective surgery was performed.

15. It is seen that as per the prescription of Dr. Khosla dated 23.08.2013, it is clearly mentioned that the patient was walking with support. This

prescription has not been denied or controverted by the patient. Therefore, the allegation of the patient that she became paraplegic as a result of surgery is unfounded because in 2013 she was walking with support. Further, it is seen that reliance has been placed on a certificate that was issued on 10.05.2016 by the Medical Officer, Civil Hospital, Jalandhar and countersigned by Medical Superintendent, Civil Hospital, Jalandhar, which clearly stated that this certificate is not valid for Medico Legal/Court Cases. The certificate shows that she has been diagnosed with paraparesis of both limbs and not paralysis of both limbs as contended by the patient. Reliance has also been placed on a certificate of Chhabra Neuro Care & Trauma Centre dated 05.05.2016 where also, motor-Disability has been noted as paraparesis at 75%. It was explained that paraparesis means weakness of limbs and not paralysis. From the record, it is seen that in 2013 that patient was walking with support. Reliance on certificate dated 10.05.2016 and linking the paraparesis and subsequent disability of the patient to the surgery conducted in 2012, without any expert evidence, cannot be sustained. It is seen from the record that there is no expert evidence of any kind adduced by the complainants to show that there was any negligence in the surgery or in the post operative care. Any discount given on the bill cannot be treated as an admission of any negligence.

16. Relying on the principles laid down by the Hon'ble Supreme Court in the judgments quoted above, we are of the view that the complainant has failed to provide any cogent evidence as regards negligence of the hospital or the anaesthetist or the Orthopaedic Surgeon in the course of the surgery or in the

post operative care. Even the allegation that she was 100% paraplegic is not borne out from the record.

17. In view of the above, we are of the view that the appeal no. 1293 of 2017 filed by the hospital, Orthopaedic Doctor and the Anaesthetist is liable to be accepted and the first appeal No. 698 of 2017 filed by the complainant for enhancement is liable to be dismissed and the order dated 10.03.2017 of the State Commission is liable to be set aside.

18. In the result, the appeal no. 1293 of 2017 filed by the hospital, Orthopaedic Doctor and the Anaesthetist is allowed and the order dated 10.03.2017 of the State Commission is set aside. The appeal no. 698 of 2017 filed by the complainant is dismissed. The complaint is dismissed. All pending applications, if any, stand disposed of.

Sd/-

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(DR. INDER JIT SINGH)
PRESIDING MEMBER

Sd/-

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(DR. SADHNA SHANKER)
MEMBER

Naresh/C-3/reserved