

State Consumer Disputes Redressal Commission

The Superintendent, Government ... vs Smt. Usha Verma on 22 July, 2022

Daily Order

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,

U.T., CHANDIGARH

Appeal No.

:

107 of 2019

Date of Institution

:

30.09.2019

Date of Decision

:

22.07.2022

The Superintendent, Government Multi Speciality Hospital, Sector 16, Chandigarh
Dr.S.S. Dabar, Surgeon, Government Multi Speciality Hospital, Sector 16, Chandigarh
Dr. Kulbir Bal, Surgeon, Department of Surgery, Government Multi Speciality Hospital, Sector 16, Chandigarh

....Appellants/Opposite parties No.1 to 3

V e r s u s

Smt. Usha Verma w/o Late Sh. Sanjay Verma alias Papu, r/o Village Premnagar, P.O. Premnagar, Distt. Patiala

2nd Address:- Smt.Usha Verma W/o Late Sh.Sanjay Verma C/o Mr.Sative Chauhan s/o Sh. Satp

3rd Address:- Smt.Usha Verma W/o Late Sh.Sanjay Verma R/o House No.3529, Sector 37-D, Ch

.....Respondent No.1/Complainant

Dr. Sarabjeet Singh, Surgeon, Government Multi Speciality Hospital, Sector 16,

Second Address:- #3338, Sector 35-D, Chandigarh

.....Respondent No.2/opposite party no.4

PRESENT:-

Sh.Rajinder Singh, Govt. Pleader for appellants no.1 and 3.

Sh.Shventanshu Goel, Advocate for appellant no.2 (Dr.S.S.Dabar)

Sh.Sativ Chauhan, SPA for respondent no.1/complainant.

None for Dr.Sarabjeet Singh, respondent no.2.

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Appeal No.

:

142 of 2019

Date of Institution

:

12.07.2019

Date of Decision

:

22.07.2022

Smt. Usha Verma w/o Late Sh. Sanjay Verma alias Papu, r/o Village Premnagar, P.O. Faral,

Represented through S.P.A, Sative Chauhan s/o Sh. Satpal Chauhan, Sative Niwas, Sangti,

.....Appellant/Complainant

V e r s u s

The Superintendent, Government Multi Speciality Hospital, Sector 16, Chandigarh
Dr. Dabar, Surgeon, Government Multi Speciality Hospital, Sector 16, Chandigarh
Dr. Bal, Surgeon, Government Multi Speciality Hospital, Sector 16, Chandigarh
Dr. Sarabjeet Singh, Surgeon, Government Multi Speciality Hospital, Sector 16,

....Respondents/Opposite parties

Present:-

Sh.Sativ Chauhan, Advocate for the appellant.

Sh.Rajinder Singh, Govt. Pleader for respondents no.1 to 3.

Sh.Shventanshu Goel, Advocate for respondent no.2 (Dr.S.S. Dabar)

None for Dr.Sarabjeet Singh, respondent no.4.

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BEFORE:- JUSTICE RAJ SHEKHAR ATTRI, PRESIDENT.

MR.RAJESH K. ARYA, MEMBER.

PER JUSTICE RAJ SHEKHAR ATTRI, PRESIDENT

At the outset, we will like to state here that proceedings against Dr

"... Dated : 18 Nov 2021

ORDER

Heard the learned Counsel for the Petitioner.

Issue notice of the memo of Petition to the Respondents returnable on 23.12.2021. 'Dasti' in addition.

The proceedings before the State Commission qua the Petitioner - Dr. Sarabjeet Singh are stayed, however, the proceedings against the remaining Opposite Parties shall continue..."

In this view of the matter, we heard arguments, qua remaining respondents only i.e. The Superintendent, Government Multi Speciality Hospital, Dr. Dabar, Surgeon and Dr. Bal, Surgeon.

Appeal bearing no.142 of 2019 titled as Smt.Usha Verma Versus The Superintendent, Government Multi Specialty Hospital and others, has been filed by the complainant- Usha Verma, for enhancement of the relief awarded by the District Consumer Disputes Redressal Commission-I, U.T., Chandigarh (in short the District Commission), vide order dated 06.05.2019 whereby the consumer complaint bearing no.717 of 2017 was partly allowed and the opposite parties no.1 to 3, jointly and severally, were directed as under:-

".....In view of the above discussion, the present consumer complaint succeeds and the same is accordingly partly allowed qua OPs 1 to 3. OPs 1 to 3 jointly and severally are directed as under :-

To pay to the complainant a sum of Rs.4,00,000/-for causing medical negligence and deficiency in service, as referred to above.

To pay an amount of Rs.2,00,000/- to the complainant as compensation for pain, suffering undergone by her and causing mental agony and harassment to her;

to pay Rs.50,000/- to the complainant as costs of litigation.

This order be complied with by the OPs 1 to 3 within thirty days from the date of receipt of its certified copy, failing which, they shall make the payment of the amounts mentioned at Sr.No.(i) & (ii) above, with interest @ 9% per annum from the date of this order, till realization, apart from compliance of direction at Sr.No.(iii) above....."

Since no medical negligence was proved against opposite party no.4-Dr.Sarabjeet Singh, Surgeon, as such, the consumer complaint qua him was dismissed with no order as to costs.

At the same time, cross appeal bearing no.107 of 2019 titled as The Superintendent, Government Multi Speciality Hospital and others Vs. Smt. Usha Verma, has been filed by opposite parties no.1 to 3 i.e. The Superintendent, Government Multi Speciality Hospital, Dr.Dabar and Dr.Bal, Surgeons of opposite party no.1-Hospital for setting aside the order impugned passed by the District Commission.

The facts in brief are that on 16.07.2015, the complainant- Smt.Usha Verma started taking treatment at Govt. Multi Speciality Hospital, Sector 16, Chandigarh, for removal of her gall bladder. She was admitted in the Hospital on 16.10.2015. On 17.10.2015, laparoscopic procedure for removal

of her gall bladder was performed by Dr.Dabar, respondent no.2 and Dr.Bal, respondent no.3. On that day, for draining of excess blood and fluid, standard surgical drainpipe make "Polymed" measuring 4 mm diameter and 152 cms long was put in the abdomen of the complainant. According to the opposite parties, 21 cms of drain of pipe was placed in abdomen cavity of the complainant for proper function, whereas remaining pipe was kept out of the abdomen cavity which was linked with Reservoir (container). Thereafter, she was discharged on 19.10.2015. On 21.10.2015, the complainant visited the hospital for removal of drainpipe, which was done on the same day. According to the complainant, removal of the drainpipe was done with highly negligent manner by Dr.Dabar, respondent no.2 and Dr.Bal, respondent no.3. Total 21 cms of drain pipe was inserted in her abdomen but only 9 cms was cut and remaining 12 cms of drain pipe remained inside the abdomen of the complainant but she was not told about the same. After removing of the partial drainpipe, she was discharged from the hospital. However, after some days from the removal of the said drainpipe, she experienced pain and, as such, visited the hospital on 26.10.2015 for removing stitches. On the same day, she visited Dr.Dabar, who told her to get her CECT Scan, which was done on the very same day by Dr.Manasa Pandit. In CECT scan, it revealed that there is a presence of some foreign object inside the abdomen of the complainant i.e. a hyper dense tubular structure was seen in GB Fossa extending anterior of stomach in her peritoneal cavity. It had a diameter of ~4mm and a length of ~12 cm. Thereafter, opposite party no.2 told the complainant that she would be operated upon again and was thus admitted in the hospital on 28.10.2015. Second surgery was performed by opposite parties no.2 and 4 on 29.10.2015 and the foreign body, which had been left in the abdomen of the complainant was removed. The complainant was discharged on 31.10.2015 in near fatal condition after the second surgery. By stating that there was a gross medical negligence on the part of the opposite parties, the complainant filed consumer complaint before the District Commission.

Opposite party no.1 filed its written reply and, inter alia, raised preliminary objection that the complaint is not maintainable, as the complainant did not fall under the definition of consumer. It was stated that the complainant had visited the Civil Dispensary, Sector 38, Chandigarh (allied dispensary of opposite party no.1 Hospital) in the OPD and had complained of pain in the abdomen, for which she was advised ultrasonography of whole abdomen. At the same time, painkillers were recommended. It was averred that on 08.08.2015, report of ultrasonography was shown, which had diagnosed fatty liver, gall bladder stones, fibroid uterus and cervicitis. On 10.09.2015, the complainant again visited the said dispensary and was referred to opposite party no.1-hospital for further surgical opinion. Thereafter, on 11.09.2015, she was examined by opposite party no.3-Dr.Bal and was diagnosed as suffering from cholelithiasis i.e. presence of galls stone - stone in gall bladder, whereas Common Bile Duct (CBD) was normal i.e. there were no stones in it. Opposite party no.3-Dr.Bal prescribed medicines to control pain and thereafter on 16.10.2015, the complainant was admitted, where her consent of surgery was taken by opposite party no.3. On 17.10.2015, laparoscopic cholecystectomy was performed by opposite parties no.2 and 3 to remove gall bladder, which was successful and post-operative care was advised. A drain pipe (plastic tube with container) was inserted in the abdomen of the complainant to drain blood and body fluids in a container in order to avoid collection of blood and fluid inside the body. On 21.10.2015, drainpipe was removed from the abdomen of the complainant, by para medical staff of opposite party no.1. However, it was observed that complete inserted portion of the drainpipe i.e. 21 cms had not come out and the

portion which came out was only 9 cms. It was pleaded that reason for that may be, it broke or developed fracture due to twist, jerks and heavy movements by the complainant or due to inherent nature of the material, of which the drainpipe was made of. The complainant was advised second surgery for removal of the same after admission, for which CT scan/MRI was advised, but, the complainant claimed to be fine and again reported to the Hospital on 26.10.2015 in order to get her stitches removed. She was again told to get the second surgery done. CT scan was carried out, which showed a hyper dense tubular structure in her gall bladder fossa extending into the peritoneal cavity suggestive of foreign body likely residual of the broken drain. Accordingly, on 29.10.2015, procedure for removal of the part of the drainpipe was carried out under general anaesthesia through mini lap (small incision procedure) and abdomen was closed over abdominal drain. Thereafter, the complainant had also visited the Hospital on 20.11.2015 and it was observed that she was having urinary tract infection (UTI), for which medicines were prescribed. While denying remaining averments of the complaint, prayer was made to dismiss the consumer complaint against opposite party no.1.

Opposite parties no.2 to 4 filed their joint written reply, wherein, they denied any carelessness on their part. It was alleged that there the drain pipe broke inside the abdomen of the complainant, due to her own negligence and, as such, she was immediately advised second surgery on 21.10.2015, but, she did not turn up claiming to be perfectly fine. When on 26.10.2015, she visited the Hospital for removal of stitches, CT scan was got done and on 27.10.2015 second surgery was performed, whereby, the left out piece of drainpipe was removed from her abdomen. While denying remaining averments of the complaint, prayer was made to dismiss the consumer complaint against opposite parties no.2 to 4.

In the separate rejoinders filed, the complainant through her Power of Attorney i.e. Sh. Sative Chauhan, reiterated all the averments made in her complaint.

The contesting parties led evidence in support of their case.

The District Commission after considering the rival contentions of the contesting parties and on going through the material available on record, partly allowed the consumer complaint, in the manner stated above. Hence these appeals.

The moot question which falls for consideration in this case is, as to whether, the treating doctors/opposite parties no.2 and 3 were responsible to remove the surgical drainpipe from the abdomen of the complainant-Smt. Usha Verma or not? In our considered opinion, removal of surgical drainpipe from the body of the patient comes under the duty of care in the administration of the treatment given to him/her, by the treating doctors. Thus, before deciding this question, we may like to refer a case titled as Dr. Laxman Balkrishna Joshi vs. Dr. Trimbark Babu Godbole and Anr., AIR 1969 SC 128 and A.S.Mittal v. State of U.P., AIR 1989 SC 1570, wherein, it was laid down by the Hon'ble Supreme Court that when a doctor is consulted by a patient, the doctor owes to his patient certain duties which are: (a) duty of care in deciding whether to undertake the case, (b) duty of care in deciding what treatment to give, and (c) duty of care in the administration of that treatment. A breach of any of the above duties may give a cause of action for negligence and the patient may on

that basis recover damages from his doctor. In the aforementioned case, the apex court inter alia observed that negligence has many manifestations - it may be active negligence, collateral negligence, comparative negligence, concurrent negligence, continued negligence, criminal negligence, gross negligence, hazardous negligence, active and passive negligence, willful or reckless negligence, or negligence per se. Black's Law Dictionary defines negligence per se as "conduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as to the particular surrounding circumstances, either because it is in violation of statute or valid Municipal ordinance or because it is so palpably opposed to the dictates of common prudence that it can be said without hesitation or doubt that no careful person would have been guilty of it. As a general rule, the violation of a public duty, enjoined by law for the protection of person or property, so constitutes." Thus, it has been made clear by the Hon'ble Supreme Court of India that a doctor owes to his patient certain duties of care in deciding whether to undertake the case and duty of care in the administration of that treatment and any breach thereof may give a cause of action for negligence and the patient may on that basis recover damages from his doctor.

In appeal bearing no.107 of 2019 titled as The Superintendent, Government Multi Speciality Hospital and others Vs. Smt. Usha Verma, the appellants/opposite parties no.1 to 3 have taken a specific plea that after performing surgical operation, the doctors are absolved from any liability and it was the para-medical staff, who were responsible for the aforesaid medical negligence, as they removed the drainpipe from the abdomen of the patient-Usha Verma. We have considered this contention but it does not provide any help to their case. It is significant to mention here that firstly; the names of any such para-medical staff have not been mentioned in the written reply filed by the opposite parties before the District Commission. In our considered opinion, the operating surgeon(s) cannot absolve themselves from their liability in post operation activities and are duty bound to provide care in the administration of the treatment already given to a patient. The treating doctors/surgeons are duty bound to supervise and watch the removal of surgical drainpipe to rule out possibility of any complications out of the treatment given to a patient. Surprisingly, in joint written reply filed by the appellants/opposite parties no.2 to 4 before the District Commission, it has been candidly admitted by them that when drainpipe of 12 cms remained inside the abdomen of the complainant, the paramedical staff had informed Dr.Dabar, Dr.Bal and Dr.Sarabjeet in that regard. In the joint reply filed by opposite parties no.2 to 4 i.e. Dr.Dabar, Dr.Bal, and Dr.Sarabjeet Surgeons of opposite party no.1-Hospital, it has been specifically pleaded by them, twice, that they were informed that only 9 cms of drainpipe out of 21 cms has come out from the abdomen of the complainant, firstly in the preliminary objections in para number 7, contents of which are reproduced hereunder:-

".....She followed up in Surgery OPD for dressings and drain removal. The job of drain removal and dressing is done by the expert staff engaged by the respondent No. 1 hospital in a separate section. The drain of the complainant was also removed by the said expert staff. On removing the drain, the said staff observed that 21 cm pipe should have come out from the abdomen of the complainant but only 9 cm drain came out of the abdomen. The matter was immediately reported to the surgeons/respondents No. 2 to 4...."

Secondly, while giving para-wise reply, the aforesaid fact has been reiterated by the appellants/opposite parties no.2 to 4. Not only as above, while replying to the legal notice dated 28.03.2017 issued by the complainant, Dr.Dabar and Dr.Sarabjeet, have furnished the following reply on 25.04.2017:-

".....On 21.10.2015, as advised, the patient showed up in surgery OPD for further dressings and drain removal, which was done in the dressing room by the paramedical staff, as per the Hospital procedure. During the exercise of the removal of the drain, it was noticed by the concerned paramedic that the length of the drain removed was shorter than its normal length and therefore, the concerned paramedical staff brought the matter to the notice of the operating surgeons, who explained in detail to the patient about the possibility of there being a fracture of the drain inside the body and advised the patient to get the radiological investigations done, to find out if any section of the drain broke off inside the body. The patient was subjected to an ultrasound of the abdomen on the same day (vide ultrasound No. 6760 dated 21.10.2015) which turned out to be normal. The concerned doctors being not satisfied with the ultrasound report, advised the patient to undergo CT scan of the abdomen, to be carried out on the same day, which however, the patient did not get it done, on the same day. She got the CT scan done on 26.10.2015 (vide CT scan No. 6938). Both the ultrasound and the CT scan investigations were done at Sector 16 Hospital at Chandigarh, only and on the requisitions made by the concerned surgeons. The CT scan report confirmed the presence of residual drain, broken off from the original drain, in GB fossa (area left empty upon removal of gall bladder). All the organs in the abdomen in the CT scan were found normal and there was no collection of the body fluids at the site of the surgery. On receiving the CT-scan report on 27.10.2015 the patient was explained that a fragment of the drain, got fractured inside the body and she needed to get herself admitted for the surgical removal of the said fractured part of the drain. It is important to mention here that Dr. Sarabjeet Singh, till this stage of the treatment, of the patient, was not associated with any part of the treatment that was being given to the patient thus far..."

On conjoint reading of the above-said reply by Dr.Dabar as well as Dr. Sarabjeet; and joint written reply by opposite parties no.2 to 4 i.e. Dr.Dabar, Dr.Bal and Dr.Sarabjeet, Surgeons of opposite party no.1-Hospital, it makes it very clear that immediately after the fractured drainpipe was removed from the abdomen of the complainant, the operating surgeons were informed by the paramedical staff.

In the grounds of appeal as well as in the written statement submitted before this Commission, Dr.Dabar and Dr.Bal have now deviated from their original stand, as has been taken in the written replies filed before the District Commission and also in the reply given to the legal notice aforesaid.

It is significant to mention here that opposite parties no.2 and 3 i.e. Dr.Dabar and Dr.Bal, Surgeons of opposite party no.1-Hospital have failed to place on record any document/standing instructions whereby it has been ordered that the Doctors/Surgeons who have performed surgeries and thereafter have inserted drainpipe in the body of the patient concerned, are not under obligation to remove the same. As stated above, in our considered opinion, the treating doctors/surgeons only are under obligation to remove the drainpipe from the body of the patient and not the para-medical staff. It is therefore held that there was a gross medical negligence on the part of the opposite parties 1 to 3. They have failed to perform their duty of care in the

administration of the treatment of the complainant, which resulted into fracture of the drainpipe inside her abdominal, for which she was compelled for second surgery.

Now coming to Appeal bearing no.142 of 2019 - Smt. Usha Verma Versus The Superintendent, Government Multi Specialty Hospital and others, filed by the complainant/appellant for enhancement of compensation; in our considered opinion, the total compensation of Rs.6 lacs awarded by the District Commission, which includes Rs.4,00,000/- towards medical negligence and deficiency in service and Rs.2,00,000/- towards pain, suffering undergone by the complainant and also mental agony and harassment, alongwith cost of litigation to the tune of Rs.50,000/-, is fair and adequate and in no way can be said to be on lower side, especially, when it has not been proved by the complainant that she is still suffering from complications on account of the medical negligence referred to above. Thus, no case is made out by the complainant, for enhancement of compensation already awarded by the District Commission in the order impugned.

For the reasons recorded above, we are of the considered opinion that the order impugned passed by the District Commission does not warrant interference of this Commission. Resultantly, both these appeals stand dismissed with no order as to cost. Nothing observed above shall effect the merits of the case against Dr.Sarabjeet Singh.

Certified Copies of this order be sent to the parties, free of charge .

The file be consigned to Record Room, after completion.

Pronounced.

22.07.2022 Sd/-

[JUSTICE RAJ SHEKHAR ATTRI] PRESIDENT Sd/-

(RAJESH K. ARYA) MEMBER Rg.