

Filed on : 27<sup>th</sup> July, 2015

Decided on : 29<sup>th</sup> April, 2022

**BEFORE ADDITIONAL MUMBAI SUBURBAN DISTRICT  
CONSUMER DISPUTES REDRESSAL COMMISSION  
BANDRA, MUMBAI – 400 051.**

Admin. Bldg., 3<sup>rd</sup> floor, Nr. Chetana College, Bandra – East,  
Mumbai-400 051.

**Complaint Case No. 84/2015**

Mr. Rajaram Gulabrao Awachar

146/4429, Kannamwar Nagar – 1,

Vikhroli (East), Mumbai – 400 083.

...Complainant

Mobile : +918652292966

Email : awacharraju@gmail.com

Versus

1. Godrej Memorial Hospital

Through it's Trustees

Phirojshah Nagar,

... Opponent No. 1

Vikhroli East, Mumbai – 400 079.

2. Dr. Suhas Gangurde (C.E.O.)

Godrej Memorial Hospital

Phirojshah Nagar,

... Opponent No. 2

Vikhroli East, Mumbai – 400 079.

3. Dr. Meghraj Ingale (M.D.)

Godrej Memorial Hospital

Phirojshah Nagar,

... Opponent No. 3

Vikhroli East, Mumbai – 400 079.

4. Dr. Deepesh J. Palan (M.D.)

Godrej Memorial Hospital

Phirojshah Nagar,

... Opponent No. 4

Vikhroli East, Mumbai – 400 079.

For the Complainant

: Shri. Dr. M. S. Kamat

Authorized Representative

For the Opponent No. 1, 2 & 4

: Shri. Dr. Haniraj L. Chulani

Authorized Representative

For the Opponent No. 3

: Learned Adv. Shri. Arun Mishra

**CORAM - HON'BLE PRESIDENT MR. R.G. WANKHADE**

**HON'BLE MEMBER MR. S.V. KALAL**

**JUDGMENT**

**(Delivered on – this 29<sup>th</sup> April, 2022)**

**Judgment delivered by**

**HON'BLE PRESIDENT MR. R.G. WANKHADE**

This complaint has been filed to grant of compensation for medical negligence on the part of the Opponents 1 to 4.

**Brief facts are as follows:**

2. Opponent No. 1 is Hospital. Opponent Nos. 2 to 4 are doctors attached to said Hospital – Opponent No. 1.
3. The mother of the complainant namely Late Mrs. Draupadi Gulabrao Awachar was admitted at Hospital – Opponent No. 1, on 17/05/2013 for fever and vomiting. After admission and elapse of several dates Opponent No. 1 to 3 decided to handover the patient to Opponent No. 4 for treatment. On 18/05/2013 Opponents carried out sonography to find out the problem. She was all the time complaining about acute pain in the abdomen and kept vomiting. However, no element was shown in the test report. Despite this no further sonography or treatment was carried out to find out the actual reason for the same. His mother was, however, discharged on 29/05/2013. Doctor Palam was requested to carry out sonography and review the same. However, the request was not considered and failed to provide further treatment. Opponents were not listening the reason but consulted M. D. in Gastro International Disease who in turn asked for liver biopsy, which would have endangered for her life, if conducted on patient. Thereafter, Opponent No.4 consulted

Opponent No. 3 and radiologist department. Thereafter, the patient – the mother of the complainant was discharged on the request of the complainant. On 05/06/2013 the patient was admitted to Bombay Hospital for treatment. The Bombay Hospital advised complete blood count and sonography and they noticed Tiny Bladder Polyps with terminal Calculus with Associated Dilated CRD and mildly dilated IHBR and same was due to implicated dilated CBD Calculus of the size of 1-1-2 cms. The Bombay Hospital diagnosis the issue and treatment were started. Opponents 1 to 4 have not carried out the test at their hospital and no proper treatment was given, so the condition of the patient become worsened and she would have survived for longer period. The negligent act of the Opponents contributed to the death of patient. Opponents did not prudently examine the patient health as required by medical practitioner. Opponents kept conducting the test for detecting infection as a cause of increase of bilirubin day to day in patient system. Opponents kept conducting the same test again and again with intent to over bill the complainant to use up his mother Mediclaim of Rs. 1 lakh. Hence, this complaint has been filed to held the Opponents guilty of unfair trade practice and compensation and refund of costs of medical treatment and Rs. 30000/- towards unpaid leave on account of negligence of the Opponents, expenditure incurred in the Bombay Hospital and costs of the litigation.

4. Opponents No. 1 and 2 resisted the claim by filing the written statement. It is alleged that Opponent No. 1 is the Registered Public Trust and as such the complaint is not maintainable. It is alleged that the complaint is not maintainable as Opponent No. 2 is not involved in the modalities of the treatment. They are involved in the administrative function of the Hospital. It is alleged that admitting, treating and discharging the patient is the sole discretion of consultants using Godrej Memorial Hospital as independent contract. Opponent No. 3 and 4 are honorary consultant. It is alleged that absence of a relationship of master and servant between patient and medical practitioner, the service rendered by doctor to the patient cannot be considered as service under a contract of personal service. Opponent No. 3 is not employee and Opponent No. 1 is not liable for their acts. It is alleged that there is any deficiency in service. Lastly, prayed for dismissal of complaint.

5. Opponent No. 3 resisted the claim by filling the written statement on record. It is alleged that there is no cause of action disclosed against Opponent No. 3. There is also no element of negligence on the part of Opponent No. 3. There is no evidence or expert evidence to show negligence on the part of Opponent No. 3 to make him liable. Opponent No. 4 requested it for additional opinion. He examined patient first time on 21/05/2013 and advise pathology test and sonography but deliberately avoid the advice of the doctor. It is alleged that missing of stone in CBD

on sonography rising hyper luminaria was attributed to sepsis and on recovery from sepsis. The report shows that the conditions of the patient was improving. Patient underwent ERCP after two days of admission in the Bombay Hospital. It is alleged that the patient was well at the time of discharge from Opponent No. 1. It is alleged that it is the case of complicated question and as such this Forum has no jurisdiction to decide the issue. It is alleged that all standard practice has been followed with all protocol. The complainant has failed to prove the negligence and so the complaint is liable to be dismissed. Lastly, claims dismissal with cost under Section 26 of the Consumer Protection Act, 1986.

6. Opponent No. 4 resisted claim by filing written statement on record. It is alleged that the complainant has suppressed the document of previous illness of his mother. It is not disputed that the complainant's mother was admitted under the care of Opponent No. 4 got admitted from 27/04/2013 to 01/05/2013 for fever with rigors of four days duration, vomiting. The complainant has not disclosed earlier disease of diabetes in order to claim the relief under policy. It was diagnosed during the stay at Opponent No. 1 Hospital. The complainant has suppressed the indoor record of Bombay Hospital regarding earlier treatment. The mother of complainant was admitted on 17/05/2013 and discharged on 29/05/2013 under the care of Opponent No. 4. The mother of the complainant was admitted with episodic vomiting of four days, constipation for two days,

general weakness and abdominal pain for one day. In April 2011 the mother of complainant was treated by Opponent No. 4 to her satisfaction. On 18/05/2013 sonography was done and all investigations were carried out on the patient. She has denied that any request was made by the patient or complainant to carry out further sonography. After discharge the patient was advised to visit Opponent No. 4 for further follow up. The complainant however, did not visit. At Bombay Hospital sonography was done on 04/06/2013 and ERCP was done on 05/06/2013. The procedure at Bombay Hospital was not emergent and patient was not harmed by the delay in diagnosis even at Bombay Hospital. She denied that the treatment at Opponent No. 1's Hospital contributed to the death of mother of complainant. Lastly, claims dismissal of the complaint.

7. We heard the Authorised Representative Shri. Dr. M. S. Kamat for the complainant. We have heard the representative Shri Dr. Haniraj L. Chulani for Opponent No. 1, 2 and 4. We have also heard Learned Advocate Shri. Arun Mishra for Opponent No. 3.

8. We have gone through the whole record including evidence by way of affidavits and the affidavit of Dr. Vikas Pandey, as expert opinion relied upon by Opponent No. 3, with the help of the parties' representatives.

9. Earlier the complaint was filed vide Consumer Complaint No. 70 of 2015. The same was withdrawn on 14/07/2015. On 14/12/2015 the Consumer Complaint No. 84 of 2015, the present Complaint was admitted after condoning the delay.

10. One Criminal Case No. 310174/SS/2014 is pending against the Opponents before the Metropolitan Magistrate at Vikroli Court. The request of the Opponents of staying the present matter due to pendency of criminal case was rejected on 12/08/2016.

11. There is no dispute that the mother of the complainant namely Late Mrs. Draupadi Gulabrao Awachar was admitted at Hospital – Opponent No. 1, on 17/05/2013 for fever and vomiting. Several tests were carried out at Opponent No.1. The patient was claiming pain in abdomen though in the sonography nothing was noticed. The patient was under the control and care of Opponent No. 4. Opponent No. 4 was Honorary Physician at Opponent No. 1 and treating the mother of complainant.

12. The record shows that the Bilirubin Level was increasing day by day though the treatment was going on at Opponent No. 1 under the guidance of Opponent No. 4. Opponent No. 4 has taken the opinion of Opponent No. 3 in this regard. In fact, record shows that the patient was not under the treatment of Opponent No. 3 but the patient was under control and care of Opponent No. 1, 2 and 4.



13. Opponent No. 1 is the Hospital. Opponent No. 2 is the CEO of Opponent No. 1. Opponent No. 1 and 2 handed over the patient to Opponent No. 4 for treatment. The sonography was carried out at Opponent No. 1. Several other tests were carried out on the patient. Opponent No. 1, 2 and 4 were noticing Bilirubin level was not normal and was increasing day by day. The patient was continuously claiming acute pain in abdomen. Opponent No. 4 took the opinion of Opponent No. 3. However, no further sonography or further test was carried out though requested by the patient in order to find out the cause of pain or problem. It was for Opponent No. 1, 2 and 4 to carry out further investigation and sonography when the level of Bilirubin was increasing day by day causing serious health problem to the patient.

14. It is urged on behalf of the Opponents that the onus to prove medical negligence lies largely on the complainant and that this onus can be discharged by leading cogent evidence. A mere averment in a complaint by no stretch of imagination, be said to be evidence by which the case of the complainant can be said to be proved.

15. It was also urged that the Courts have to be extremely careful to ensure that unnecessarily professionals are not harassed and (or else) they will not be able to carry out their professional duties without fear.

16. It cannot be denied that a doctor owes certain duties, namely, a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give, and a duty of care in the administration of that treatment. A breach of any of these duties gives a right of action of negligence against him. There can never be a dispute that the medical practitioner has a discretion in choosing the treatment which he proposes to give to the patient and such discretion is wider in cases of emergency, but he must bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care according to the circumstances of each case.

17. It was urged on behalf of the Opponents that the doctors have adopted the standard practice as required under the medical jurisprudence. It was submitted that a doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper.

18. It is true that there is ample scope for genuine difference of opinion and a doctor is not negligent merely because his conclusion differs from that of other professional men.

19. In order to support the contention that there is no negligence on the part of the Opponents while treating the patient with reference to the facts of the present case, they relied upon certain decisions of the Hon'ble National Commission and the Hon'ble Supreme Court.

20. Dr. Chulani for Opponent No. 1,2 and 4 relied upon the Judgment in the case of *Dr. Harish Kumar Khurana v Joginder Singh* (2021) 10 SCC 291, *Dr. T. Y. Viswaroopachari v Chekuri Vijaya* (2020) 2CPJ 465 (NC), *Smt. Savita Garg v The Director, National Health Institute* (2004) 8 SCC 56.

21. The Learned Advocate Shri. Arun Mishra for Opponent No. 3 has relied upon the Judgment in the case of *Kamala Patni v Apollo Nursing Home* 2005 (4) CPJ 41 (NC), *Govind Bhimrao Kulkarni v Mormugao Port Trust Hospital* 2018 (2) CPJ 80 (Three JJ), *Girishchandra v Bhatt Sterling Hospital* 2018 (3) CPJ 178, *Kusum Sharma Batrar Hospital* (2010) 3 SCC 480, *Jacob Mathew v State of Punjab* (2005) 6 SCC 1, *Martin F. D'Souza v Mohd. Ishafaq* (2009) 3 SCC 1 (This Judgment seems to be overruled as per the decision in the case of *V. Kishan Rao v Nikhil Super Speciality Hospital* (2010) 5 SCC 513) , *Dr. C. P. Shreekumar (M. S. ) Artho v S. Ramannjan* (2009) 7 SCC 130, *Dr. M. Kchar v Ispita Seal* 2018 (1) CPJ 41 (NC), *Bhushan Chimanlal Jain v Dr. Chandru Docid#IndiaLawLib 1437798*.

22. There is no dispute about the principles laid down in the decisions relied upon by the Opponents. Each case has to be decided on the peculiar facts of the particular case.

23. Admittedly, the patient was discharged on 29/05/2013 from Opponent No. 1. The Opponents 1, 2 and 4 have carried out examination of the patient and also done sonography. However, they did not notice any reasons for acute pain in abdomen. The nature of ailment could not be found and patient was discharged. The patient was admitted in the Hospital-Opponent No. 1 for about 13 days. It seems from the record that the Ultrasonography of abdomen and pelvis was conducted to identify obstruction as cause of rising Bilirubin. The Opponents 1, 2 and 4 should have repeat the sonography to find out the cause of pain. It also seems from the record that the Opponents 1, 2 and 4 consulted M. D. in Gastro intestinal disease who in turn asked for liver biopsy. The Opponents 1, 2 and 4 kept conducting the test for detecting infection as a cause of increase of Bilirubin, day to day in patient system but they have not carried out further sonography to identify the exact cause of pain in abdomen.

24. The patient was taken to Bombay Hospital where Doctor examined the patient and advised blood count and sonography. It seems from report that on examination it was noticed that there were Tiny Gall Bladder Polyps with Terminal Calculus with associated dilated CBD and Mildly Dilated IHBR and the same was due to implicated dilated CBD Calculus of the size of 1-1-2 cms. This position was diagnosed and determined the ailment of the patient. The same examination could have been done by

the Opponents 1, 2 and 4. But they have not carried out further sonography on the patient or other test as carried out at Bombay Hospital. The patient was admitted at Bombay Hospital on 05/06/2013.

25. It is not disputed that there was increase in Bilirubin levels of the patient progressively during the treatment at the Hospital-Opponent No. 1, where Opponent No. 4 was treating the patient. The Opponents 1, 2 and 4 acted very casually to provide treatment to the patient when the patient was claiming acute pain in abdomen. The Bombay Hospital at first instance after examination and sonography noticed stones of the size mentioned above. Opponents did not prudently examine the patient health as required by medical practitioner. A Doctor is not guilty of negligence only if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular subject.

26. In the treatment there is ample scope for genuine difference of opinion and a doctor is not negligent merely because his conclusion differs from that of other professional men. All the above facts prima facie indicates negligence on the part of the Opponents 1, 2 and 4 while treating the patient.

27. However, there is no direct evidence to show that the death of the patient caused due to treatment at Opponents No. 1. But the facts remain

that there was negligence on the part of Opponents 1, 2 and 4 for treating the patient at their hospital.

28. So far as Opponents No. 3 is concerned there is no evidence that any treatment has been given by him to the patient. The facts on record made it clear that his opinion was sought by Opponent No. 4 over the cause of the issue. Therefore, he cannot be made liable for medical negligence. However, Opponent No.1 being Hospital and Opponent No. 2 being the CEO of Opponent No. 1 and Opponent No. 4 attached to Opponent No. 1 treated the patient are liable for medical negligence and they are liable jointly or severally.

29. The objection was raised regarding pecuniary jurisdiction of the Forum. There is no force in the objection taken by the Opponents about pecuniary jurisdiction. If one goes through the prayer in the complaint no specific amount has been claimed by the complainant which overrides the pecuniary jurisdiction of the Forum. He claims the amount of expenditure which he has incurred in both the Hospitals, costs and compensations. He claims refund of costs of treatment of Rs. 90000/-, Rs. 30000/- towards unpaid leave, Rs. 80000/- towards the expenditure incurred at Bombay Hospital, Costs of Rs. 30000/- and compensation to meet the complete pecuniary jurisdiction of the Forum.

30. There is no specific pleadings and evidence with reference to the pleadings about expenditure incurred at both the Hospitals. It can be gathered from the facts on record that the patient and the complainant is sufferer of mental agony, harassment and costs. The complainant would also be entitled to get the compensation from the Opponents 1,2 and 4. Considering the facts on record and the material available on record, we quantified the amount of Rs. 1,00,000/- towards the costs of the treatment, Rs. 1,00,000/- towards the compensation and costs of Rs. 50000/- towards the litigation. The liability of Opponent No. 1 is vicarious. The liability of Opponent No. 1, 2 and 4 is joint or several.

31. From the above discussion, this Forum (now Commission) can not reach to the conclusion that this complaint is false in order to attract the provisions of Section 26 of the Consumer Protection Act, 1986 as alleged by Opponent No. 3. Hence, contention of Opponent No. 3 to grant him relief under that section is rejected.

32. The cumulative effect of the above discussion leads to the conclusion that the complainant is required to be partly allowed against Opponents 1, 2 and 4 and should be dismissed against Opponent No. 4. Accordingly, we proceed to pass the following order.

**ORDER**

1. The Consumer Complaint No. 84 of 2015 is partly allowed against Opponent No. 1, 2 and 4.
2. It is hereby declared that the Opponents 1, 2 and 4 are guilty of medical negligence.
3. They shall pay Rs. 1,00,000/- towards the costs of treatment, Rs. 1,00,000/- towards the compensation, and Rs. 50,000/- towards the costs of the litigation, to the complainant, within Three months from the date of order. Their liability is joint and several.
4. The Consumer Complaint No. 84 of 2015 is dismissed against Opponent No.3.
5. All Opponents to bear their respective costs.
6. A copy of the final order be given to the parties free of costs as per Regulation 21 (1) read with Regulation 18 (6) of Consumer Protection (Consumer Commission Procedure) Regulations, 2020 with the endorsement of mode by which it is sent and the date on which it is sent shall be stamped on the last page of the order.
7. Extra copy of the order, if party requires, be issued to him duly certified by the Registry on a payment of rupees twenty irrespective of



number of pages as per Regulation 21 (2) of Consumer Protection (Consumer Commission Procedure), Regulations, 2020.

8. Certified copy of an order shall clearly specify the date when free copy was issued, date of application, date when the copy was made ready and the date when it was so delivered to him as provided under Regulation 21 (3) of Consumer Protection (Consumer Commission Procedure) Regulations, 2020.

9. Member sets are not available, hence no order.

Date : 29<sup>th</sup> April, 2022.

Place : Mumbai – 400 051.

**Sd/-**

**[HON'BLE MR. S.V. KALAL] [HON'BLE MR. R.G. WANKHADE]**  
**MEMBER**

**Sd/-**

**PRESIDENT**