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Duration	07	04	08

**BEFORE THE CONSUMER DISPUTES REDRESSAL COMMISSION**  
**GUJARAT STATE, AHMEDABAD.**

**COURT NO: 04**  
**Appeal No. 1638 of 2013**

Siddharth Yagneshbhai Panchal  
40, Vanvishram Society,  
B/h. Sahjanand College,  
Ambawadi, Ahmedabad-15  
Through his Power of Attorney Holder,  
Smt. Vaishali Panchal.

... Appellant

**V/s.**

1. Sanjivani Super Speciality Hospital Pvt. Ltd.
2. Dr. Maharshi Bhatt,
3. Dr. Amit Agrawal,

All having addressed at:  
Sanjivani Super Speciality Hospital Pvt. Ltd.  
1, Uday Park Society, Nr. Sunrise Park,  
Vastrapur, Ahmedabad -18.

... Respondents

**BEFORE:** Dr. J.G. Mecwan, Presiding Member

**APPEARANCE:** Mr. V.M. Pancholi, L.A. for the appellant.  
Mr. M.K. Joshi, L.A. for the respondent.

**ORDER BY DR. J.G. MECWAN, PRESIDING MEMBER.**

**JUDGMENT**

1. Being aggrieved by and dissatisfied with the judgment and order rendered by the District Consumer Disputes Redressal Commission, Ahmedabad (Rural) on 25.02.2013 in Complaint No. 46 of 2012, the original complainant has filed the present appeal under Section 15 of the Consumer Protection Act, 1986

before this Commission. For the sake of the convenience, parties are hereinafter referred to by their original nomenclature.

- 2.** To dispose of this appeal, few relevant facts are required to be mentioned: It is the case of the complainant that on 25.05.2011 at 9:30 PM complainant's car was met with an accident and he received severe injuries to his left hand and suffered unbearable pain. Thereafter he was admitted to the hospital of opponent no. 01 and he was advised to undergo surgery after preliminary examination by opponent no. 02 and thereafter the operation was performed by opponent no. 2 and 3 at 4:00 PM and found that there were multiple fractures in the left hand from shoulder to elbow. It is further the case of the complainant that opponent no. 02 and 03 have implanted imported plate and bolt in the left hand of the complainant and opponents have also assured the complainant that he will be cured within short time and thereafter he was discharged from the hospital on 26.05.2011. It is further the case of the complainant that as per the instruction given by opponents, complainant has followed utmost care as well but on 06.10.2011 complainant has suffered with unbearable pain in his left hand where the operation was performed and therefore he has consulted to opponents and there he was told that the plate which was planted was broken. It is further submitted by complainant that he was advised for

operation to implant new plate again. As complainant was not satisfied with the opponents, he consulted the other doctor at Medisurge Hospital on 08.10.2011 and thereafter Dr. Manoj Parikh has operated his left hand and after bone grafting treatment; the new plate was implanted and he was discharged on 13.10.2011 from Medisurge Hospital. Hence for the above various treatments complainant has incurred a huge expenses of Rs. 1,17,500/- and therefore for getting compensation for the said amount complainant has filed consumer complaint before the learned District Commission, Ahmedabad (Rural) alleging deficiency in service and unfair trade practice adopted by the opponents.

- 3.** Being dissatisfied with the deficiency in service committed by the opponents, complainant has filed Consumer Complaint before the ld. District Commission Ahmedabad (Rural) and prayed for Rs. 1,17,500/- with 12% interest from 08.10.20211 and Rs. 5,000/-towards compensation for the mental torture along with Rs. 10,000/- cost of the complaint.
- 4.** After hearing learned advocates for both the parties and after considering the documents and evidences, the learned District Commission dismissed the complaint of the complainant.
- 5.** Being aggrieved by the impugned order of the learned District Commission, Ahmedabad (Rural) the original complainant has

filed the present appeal against the original opponent before this Commission on the ground stated in the appeal memo.

- 6.** Heard learned Advocate Mr. V.M. Pancholi for the appellant and learned Advocate Mr. M.K. Joshi for the respondents at length. Perused the record, judgment submitted by appellant and order of the learned District Commission.
- 7.** First of all learned Advocate Mr. V.M. Pancholi has argued out that the learned District Commission has not appreciated the fact that the manufacturer of the plate is neither necessary nor proper party in the compliant and also the appellant has not nexus with the manufacturer of the plate. It is further submitted by learned Advocate Mr. Pancholi that appellant has paid the consideration to the respondent and the respondents have made arrangement for the purchase of the plate. It is further argued by learned Advocate Mr. Pancholi that appellant is never aware about the manufacturer of the plate but learned District Commission has grossly erred while observing that the appellant is aware about the manufacturer and wrongly co-relates the fact about the X-ray plate and plate which was implanted in the body of the complainant. It is further argued out by learned Advocate Mr. Pancholi that learned District Commission has not appreciated the above aspects of the matter and therefore the

order passed by the learned District Commission is required to be quashed and set aside.

**8.** Learned Advocate Mr. Pancholi further argued that learned District Commission has also failed to appreciate the fact that the case before the learned District Commission is clear case of Res Ipsa Loquitur and also the appellant has proved before the learned District Commission that the plate which was implanted by the respondents was broken without any external force. It is further pleaded by the learned Advocate Mr. Pancholi that as the appellant has prima facie established that the plate was broken without any external force then it is the duty of the respondents to prove that they were not negligent or deficient in their service to the appellant but the respondents have not able to prove that they were not deficient or negligent on their part. It is further contended by learned Advocate Mr. Pancholi that learned District Commission has wrongly observed that the appellant has not produced any expert evidence and the learned District Commission has not followed the settled legal position that there is a case of Res Ipsa Loquitur and therefore there is no need of expert evidence in this case.

**9.** Learned Advocate Mr. Pancholi concluded that the order passed by the learned District Commission is illegal, arbitrary and against the principle of natural justice and therefore it should be

quashed and set aside by allowing this appeal. In support of his arguments learned Advocate Mr. Pancholi has submitted following judgment:

II (2014) CPJ 5 (SC):- Hospital should be held liable for not maintaining the necessary vigil in hospital premises to ensure safety of its patients - principle of Res Ipsa Loquitur applied.

**10.** Upon service of the notice learned Advocate Mr. M.K. Joshi has appeared on behalf of the respondents and vehemently argued out that the respondents are qualified Orthopedic Surgeons. It is further alleged by the learned Advocate Mr. Joshi that the complainant has not come with clean hand as the complainant has suppressed that the accident took place near Shamlaji and taken treatment there. It is further argued out by learned Advocate Mr. Joshi that after taking X-ray and investigations complainant was operated after getting his consent for Lt. Fracture Humerus with plates and it was also shown in Post-Operative x-ray that the plate was proper fixed and it was in good union. It is further urged by the learned Advocate Mr. Joshi that though the complainant was aware about the manufacturer of the plate, he has not joined them as a party in this case. It is further submitted by learned Advocate Mr. Joshi that as there is no expert opinion or any literature has been submitted by the

complainant, though the burden is upon the complainant to prove his case.

**11.** Learned Advocate Mr. Joshi has concluded that the order passed by the learned District Commission is just reasonable and proper and therefore it should be confirmed by dismissing this Appeal. learned Advocate Mr. Joshi has cited following judgment in his written arguments :

- (I) Appeal 144-145 of 2004, *Jacob Mathews Vs. State of Punjab & Anr.* : - Complainant failed to prove either that the doctor was not qualified or did not exhibit reasonable care.
- (II) 2007 (3) CPR 117 NC: - Not produced any expert evidence which is required to prove medical negligence.
- (III) II (2009) CPJ 48 (SC):- Mere bald allegations without any proof are not sufficient to prove negligence.
- (IV) I (1999) CPJ 64 – State Commission Punjab
- (V) I (1993) CPJ 113 – State Commission Haryana.

**12.**In the present case opponent/respondent has raised following two issues before this Commission:

**(A)**For the quality of the plates, manufacturer is responsible but complainant had not joined manufacturer as a party though he was aware about it.

**(B)**No expert opinion has been produced.

**13.** As far as the first issue is concerned, it is the submission of the opponent/respondent that the plates were purchased by the complainant but on the other hand it is an averment of the complainant that opponent Hospital had purchased the plates

and retail invoice of the plate was issued in the name of the opponent Hospital.

**14.**I have gone through the retail invoice of the plate which is on record at page no. 30 wherein party name was shown as 'Sanjivani Super Speciality Hospital' on it. On the other hand the opponent Hospital has not produced any evidence which proves that the plates were purchased by the complainant.

**15.**Looking to the above retail invoice which was issued in the name of the opponent Hospital. It is crystal clear that the opponent Hospital had purchased the said plates for the operation of the complainant.

**16.**As far as second issue is concerned, it is an averment of the complainant that discharge summary itself proves that the complainant was operated once again for removal of the broken plate. I have also gone through the discharged summary which is on record at page no. 31 wherein it has been clearly shown that the complainant was admitted in the HCG Medi-Surge Hospitals Pvt. Ltd. and his operation was carried out for the removal of the broken plate.

**17.**Hence in the opinion of this Commission this is a clear case of Res Ipsa Loquitur and therefore a burden is upon the opponent Hospital to prove that there was no any negligence on their part.



**18.**It is the submission of the opponents that the patient was treated as per the general medical practice and also it was proved in post operative X-ray that the plate was properly fixed and it was in good union.

**19.**Normally biomaterials like eye lenses, stent, plates, Pacemaker which are used in operations are purchased by the Hospital/Doctor because patient being a layman has not any knowledge about the quality of such biomaterials. In the present case as per retail invoice the opponent Hospital has purchased plates because patient was layman and therefore it was upon the opponent Hospital to decide that what type of plate and plate of which Company it to be purchased. Furthermore invoice issued in the name of the opponent Hospital and therefore there is no contract between the complainant and manufacture of the plates and hence in the opinion of this Commission for the broken plate, complainant is entitled to get the compensation from the opponents as opponent Hospital has purchased plate and that was implanted in the body of the complainant.

**20.**The opponent has submitted the judgments of I (1999) CPJ 64 of State Commission Punjab and I (1993) CPJ 113 of State Commission Haryana but the said judgments are not binding to this State Commission and therefore this Commission has not

considered the observation made in the said judgments.

**21.**In view of the above discussion in depth, in the opinion of this Commission the order passed by the learned District Commission is not just and proper and therefore it requires interference of this Commission and hence the following final order is passed.

### **ORDER**

- 1.** The present appeal is hereby partly allowed.
- 2.** The order passed by the learned District Commission, Ahmedabad (Rural) dated 25.02.2013 rendered in C.C No. 46 of 2012 is hereby quashed and set aside.
- 3.** Opponent Hospital is hereby ordered to pay Rs. 1,17,500/-(Rupees one Lac seventeen thousand five hundred only), to the complainant with interest at the rate of 9% from the date of filing of the compliant till its realization.
- 4.** The opponent is also ordered to pay Rs. 10,000/- (Rupees ten thousand only) to the present appellant/original complainant as costs of the appeal/complaint and shall bear its own cost if any.
- 5.** Opponent shall comply with this order within 60 days from the date of this order.

6. Registry is hereby instructed to send a copy of this order in PDF format by E-mail to learned District Commission Ahmedabad (Rural) for necessary action.
7. Office is directed to forward a free of cost certified copy of this judgment and order to the respective parties.

Pronounce in the open Court today on 16<sup>th</sup> September, 2021.

[Dr. J.G.Mecwan]  
Presiding Member