

DETAILS	DD	MM	YYYY
DATE OF DISPOSAL	25	07	2025
DATE OF FILING	27	01	2016
DURATION	28	05	09

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

**COURT NO: 01**  
**APPEAL NO. 471 OF 2017**

Legal Heirs of Deceased

Shri Bharatkumar Ranchhodbhai Gorahva

1. Ranchhodbai Polabhai Devipujak
2. Aasuben Ranchhodbhai Gorahva
3. Bhavuben Bharatbhai Gorahva
4. Bhavesh Bharatbhai
5. Tejal Bharatbhai
6. Hitesh Bharatbhai

Resi At: Barvala, Ranpur Road,  
Barvala  
Dist: Botad.

...Appellants  
(Original Complainants)

Versus

1. Akshar Surgical Hospital,  
Through Doctor K.K.Ghelani  
Behind Yogi Mansingh Mill,  
Padiyad Road, Botad.
2. The Branch Manager,  
The Oriental Insurance Company Ltd.

Kaveri Complex, Navapara,  
Bhavnagar.

...Respondents  
(Original Opponents)

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**CORAM:**

Hon'ble Mr. I. D. Patel, In-Charge President  
Hon'ble Dr. J. G. Mecwan, Member

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**APPEARANCE:**

Mr. S. G. Shah, learned Advocate for the Appellants  
Notice served to the Respondent No. 1 - remained absent  
Mr. H. L. Parmar, learned Advocate for the Respondent No. 2

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**ORDER BY MR. I. D. PATEL, IN-CHARGE PRESIDENT**

**JUDGMENT**

1. By way of this Appeal under the provisions of the Consumer Protection Act, 1986, a challenge is made to an Order dated 09.10.2015 passed by the learned District Consumer Disputes Redressal Forum, Bhavnagar in Case No. 44 of 2014.
2. The Appellants are Original Complainants and Respondents are Original Opponents. Hence, parties are referred to as placed in the Original Complaint filed before the learned District Consumer Disputes Redressal Forum, Bhavnagar.
3. Brief facts of the Complainant case are that the Complainants - Ranchhodbai Polabhai Devipujak and others, being a legal heirs of the deceased Bharatkumar Ranchhodbhai Gorahva filed a Consumer Complaint before the learned District Forum against the hospital as well as the Insurance Company. That the deceased Bharatbhai Ranchodbhai was admitted in the

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Akshar Surgical Hospital of Dr. K. K. Ghelani of Botad for the treatment of stone in the kidney and as per the advice of the Doctor, operation for removal of the stone was performed in the hospital and operation was successful and there was no any difficulty. But thereafter, later on 09.08.2013 at the time of the discharge of the Patient from the hospital, the hospital administered antiseptic injection in the vein of the Patient which directly affected in the heart of the Patient and because of that the medical condition of the Patient was deteriorated and since there was no any facility of emergency treatment in the hospital, the Patient Bharatbhai died on account of medical negligence on the part of the hospital and doctor.

4. The learned District Forum issued notice to both the Opponents i.e., hospital as well as Insurance Company and in pursuance of the said notice, both the Opponents have appeared and filed their written statement against the Complaint. That Opponent No. 1 - Hospital has filed reply wherein hospital has categorically contended that the allegation of medical negligence leveled by the Complainant against the hospital and doctor in the Complaint are not admitted. Furthermore, Opponent No. 1 has also contended that the hospital had administered the antiseptic injection which was purchased by the relatives of the deceased. Furthermore, hospital has also contended that because of poor financial

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condition of the Deceased - Patient, the hospital has provided free treatment including operation of the deceased. So, since the hospital has not charged for the treatment and operation from the deceased, there is no relation of consumer between hospital and deceased and therefore, the Consumer Forum has no jurisdiction to entertain the Complaint against the hospital.

5. The Respondent No. 2 - Insurance Company has also appeared and filed reply against the Complaint wherein the Insurance Company also accepted the contention raised by the hospital in the written statement and furthermore the Insurance Company has also contended that as per the Professional Indemnity Policy issued by the Insurance Company in favour Patient only the civil liability is covered and as per the terms and conditions of policy, the Insured has to inform the Insurance Company regarding any claim but in this case, the hospital has not send any notice or claim for process of the same by the Insurance Company. Therefore, there is no deficiency in service on the part of the Insurance Company and since the Complainant has suppressed important facts in the Complaint, the Complainant has no any right to claim any relief against the Insurance Company.
6. After hearing the learned Advocate of the parties and after perusing the material on record, the learned District Forum,

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Bhavnagar, is pleased to dismiss the Complaint of the Complainant by the Order dated 09.10.2015 on the ground that the Complainant is not a consumer as defined in the Consumer Protection Act. Therefore, being aggrieved and dissatisfied with the said Order passed by the learned District Forum, Appellant - Original Complainant has filed the present Appeal as per the provision of Section 15 of Consumer Protection Act on the ground stated in the Appeal memo.

7. We have heard learned Advocate Mr. S. G. Shah for the Appellant as well as learned Advocate Mr. H. L. Parmar for the Respondent No. 2 - Insurance Company.
8. That learned Advocate Mr. S. G. Shah has submitted that looking to the ground stated in the Appeal memo as well as looking to the conclusion of the Hon'ble Apex Court in the decision of Indian Medical Association versus V. P. Shantha reported in AIR 1996 550, regarding service rendered at a Government hospital/nursing home where services are rendered on payment of charges and also rendered free of charge to other persons availing such services would fall within the ambit of the expression 'service' as defined in Section 2(1)(o) of the Act irrespective of the fact that the service is rendered free of charge to persons who do not pay for such service. Free service would also be "service" and the recipient a "consumer" under the Act. Therefore, the impugned

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Order passed by the learned District Forum requires to be quashed and set aside and the matter is requires to be remanded back to the learned District Commission to decide the case on merits in respect of medical negligence on the part of the Hospital.

9. Per contra, learned Advocate for Respondent No. 2 - Insurance Company, Mr. H. L. Parmar has submitted that the impugned Order passed by the learned District Forum is quite just and proper and as per the decision of the Hon'ble Apex Court in the decision of Indian Medical Association versus V. P. Shantha reported in AIR 1996 550, service rendered at a non-Government hospital/Nursing home where no charge whatsoever is made from any person availing the service and all patients (rich and poor) are given free service - is outside the purview of the expression 'service' as defined in Section 2(1)(o) of the Act. The payment of token amount for registration purpose only at the hospital/Nursing home would not alter the position.

10. We have heard the learned Advocate of the parties and also perused the material on record including the impugned Order passed by the learned District Forum. That it is an admitted fact that the deceased Bharatkumar Ranchhodbhai Gorahva was admitted in the Akshar Surgical Hospital of Dr. K. K. Ghelani, Botad for the operation and treatment of the stone

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in the kidney and during the course of the treatment, he died in the hospital. As per the written statement of the hospital, because of the poor financial condition of the Patient deceased - Bharatbhai, the hospital has not charged any amount by way of fees or remuneration for the treatment and operation. That on perusal of the Para No. 7 of the impugned Order passed by the learned District Forum, it appears that considering the written statement of the hospital to the effect that the hospital has provided free services of treatment and operation to the deceased and the deceased had not paid any consideration to the hospital, therefore, the Complainant or deceased cannot be said to be a consumer as per the provision of Consumer Protection Act and therefore, the Complaint filed by the legal heirs of the deceased against the Opponents is not maintainable.

11. Therefore, here in this Appeal, the State Commission has to decide as to whether the impugned Order passed by the learned District Forum dismissing the Complaint on the ground that the Complainant or the Deceased - Patient was not a Consumer as defined in Consumer Protection Act is bad in law or not. That both the learned Advocate of the parties, i.e., Mr. S. G. Shah and learned Advocate Mr. H. L. Parmar, placed reliance upon the decision of the Hon'ble Apex Court rendered in the case of Indian Medical Association versus V. P. Shantha, reported in 1996 AIR 550. That the learned Advocate

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Mr. S. G. Shah has submitted that as per the discussion and the conclusion arrived at by the Hon'ble Supreme Court regarding the service rendered to a Patient by a medical practitioner either by taking charges or by not taking charges. More particularly, conclusion arrived by the Hon'ble Supreme Court in Para No. 10 of the said Judgment, that in this case, even though the hospital has not charged any amount from the Deceased - Patient, even then the hospital falls within the ambit of the definition of the service as defined in Section 2(1)(o) of the Consumer Protection Act and therefore, the recipient of the service, i.e., the deceased Bharatbhai is said to be Consumer under the Act. As against the same, learned Advocate Mr. H. L. Parmar placed reliance upon the Para No. 6 of the conclusion arrived by the Hon'ble Apex Court in the said decision and submitted that when the hospital has not charged any fees from the Deceased - Patient, then the said hospital is out of the purview of the expression "service" as defined in section 2(1)(o) of the Act.

12. That on perusal of the conclusion arrived at by the Hon'ble Supreme Court on Page Nos. 17 and 18 of the above mentioned Judgment of the Hon'ble Apex Court, it appears that as per Para No. 6 of the conclusion service rendered at a non-government hospital or nursing home where no charge whatever is made from any person availing the service and all parties

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(rich and poor) are given free service is outside the purview of expression "service" as defined in section 2(1)(o) of the Act. But, as per Para No. 8 of the conclusion service rendered at non-government hospital or nursing home where charges are required to be paid by persons who are in a position to pay and persons who cannot afford to pay are rendered service free of charge, would fall within the ambit of expression "service" as defined in Section 2(1)(o) of the Act, irrespective of fact that the service is rendered free of charge to persons who are not in a position to pay for service. Free service would also be service and the recipient is Consumer under the Act.

13. So according to our considered opinion, looking to the facts of the present case, the conclusion arrived at by the Hon'ble Supreme Court in Para No. 8 of Page No. 17 of the Judgment would be applicable in this case and accordingly, even when the Opponent No. 1 - Hospital has not charged any fees from the Deceased - Patient Bharatbhai, the service provided by the hospital would fall within the definition of service and the deceased Bharatbhai is said to be consumer as defined in Consumer Protection Act, 1986 and therefore, the impugned Order passed by the learned District Forum dismissing Complaint on the ground that deceased Bharatbhai is not a Consumer is not just and proper and the same is erroneous and perverse and against the Judgment of the Hon'ble Apex Court

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and hence, the impugned Order passed by the learned District Forum dismissing Complaint requires to be quashed and set aside and Case No. 44 of 2014 filed by the legal heirs of the deceased Bharatbhai Ranchodbhai before the learned District Forum, Bhavnagar requires to be remanded back to the learned District Forum for deciding the case afresh on merits in respect of the medical negligence on the part of the hospital after giving sufficient opportunity to produce the evidence of all the parties of the case. Hence, we pass the following final Order:

**ORDER**

1. Appeal No. 471 of 2017 filed by Appellants - Legal Heirs of Deceased - Ranchhodbhai Polabhai Devipujak and others against the Opponents - Akshar Surgical Hospital and others is hereby allowed.
2. The Order dated 09.10.2015 passed by the learned District Consumer Disputes Redressal Forum, Bhavnagar in Case No. 44 of 2014 is hereby quashed and set aside.
3. The learned District Commission, Bhavnagar is hereby directed to decide the Case No. 44 of 2014 filed by the legal heirs of the deceased Bharatkumar Ranchhodbhai Gorahva against the Akshar Surgical Hospital and Oriental Insurance Company Limited afresh

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on merits in respect of the medical negligence of the hospital by giving sufficient opportunity to lead evidence of all the parties.

4. Since the matter is of year 2014, learned District Commission is hereby requested to decide the matter, preferably within a period of six months from the date of the Order of this Appeal. Parties are also directed to extend their fullest cooperation to the learned Commission to dispose of the matter as per the direction given by this Commission as aforesaid.
5. No order as to costs.
6. Registry is hereby instructed to send a copy of this Order in PDF format by E-mail to the learned District Consumer Disputes Redressal Forum, Bhavnagar for taking necessary action.
7. The office is directed to forward a free of cost certified copy of this Judgment and Order to the respective parties.

Pronounced in open Court today on 25<sup>th</sup> July, 2025.

(Dr. J. G. Mecwan)  
MEMBER

(Mr. I. D. Patel)  
IN-CHARGE PRESIDENT