

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 41 OF 2013

(Against the Order dated 07/11/2012 in Complaint No. 148/2005 of the State Commission Delhi)

1. M/S. INDIAN SPINAL INJURIES CENTRE & ANR.
THROUGH ITS MEDICAL SUPERINTENDENT, SECTOR-
C, VASANT KUNJ,
NEW DELHI-110070

2. DR. V.K. RAJORIA
R/O. H-17, KAILASH COLONY,
NEW DELHI-110048

3. -

-Appellant(s)

Versus

1. C.R. GAUTAM & ANR.
S/O LATE SH RAM DAS, R/O. F-365, MAHIPALPUR,
NEW DELHI-110001

2. SMT. MANOHARI DEVI
W/O. SH. C.R. GAUTAM, R/O. F-365, MAHIPALPUR,
NEW DELHI

3. NATIONAL INSURANCE CO. LTD.
32, Community Centre, Naraina Industries Area, Naraina,
Phase-I,
New Delhi

.....Respondent(s)

FIRST APPEAL NO. 251 OF 2014

(Against the Order dated 07/11/2012 in Complaint No. 148/2005 of the State Commission Delhi)

1. C.R. GAUTAM
S/O. LATE SHRI RAM DASS, R/O. F-365, MAHIPALPUR,
NEW DELHI-110037

.....Appellant(s)

Versus

1. M/S. INDIAN SPINAL INJURIES CENTRE & ANR.
THROUGH ITS MEDICAL SUPDT., SECTOR-C, VASANT
KUNJ,
NEW DELHI-110070

2. DR. V.K. RAJORIA
INDIAN SPINAL INJURIES CENTRE, SECTOR-C, VASANT
KUNJ,
NEW DELHI-110070

.....Respondent(s)

BEFORE:

**HON'BLE DR. S.M. KANTIKAR, PRESIDING MEMBER
HON'BLE MR. BINOY KUMAR, MEMBER**

For the Appellant :

For the Respondent :

Dated : 27 Jan 2023

ORDER

In FA No. 41/2013

For the Appellants : Mr. Sandeep Kapoor, Advocate

For the Respondents : Ms. Bani Singh, Advocate &
Mr. L. K. Mishra, Advocate for R-1

Ms. Aakriti Goel, Advocate &

Ms. Prachi Sharma, Advocate for NIC

In FA No. 251/2014

For the Appellants : Mr. Bani Singh, Advocate &
Mr. L. K. Mishra, Advocate

For the Respondents : Mr. Sandeep Kapoor, Advocate for R-1

Ms. Aakriti Goel, Advocate &

Ms. Prachi Sharma, Advocate for NIC

Pronounced on: 27th January 2023

ORDER

DR. S. M. KANTIKAR, PRESIDING MEMBER

1. This Order shall decide both the first appeals arising from the impugned Judgment /Order dated 07.11.2012 passed by the State Consumer Disputes Redressal Commission, Delhi (hereinafter referred to as the "State Commission") in C.C. no. 148/05, wherein the State Commission allowed the complaint and awarded lump-sum compensation of Rs.15,00,000/-.

2. For the Convenience the parties are referred to be as in the Complaint before the State Commission

3. Brief relevant facts of the case are that the Complainant's son Ajay Kumar Gautam, aged about 27 years (hereinafter referred to be the 'Deceased' or the 'Patient') on 19.03.2004 at 5:30 pm suffered an accidental fall from height and sustained head injury. He was immediately taken to the M/S. Indian Spinal Injuries Centre (for short ' ISIC - OP No. 1 Hospital) at 6:00 PM. It was alleged that the patient was in need of emergency treatment but the casualty nursing staff neither paid any heed nor provided due care. Thus , the doctors lost the Golden hour. After 3-4 hours, at about 9 PM, Dr. V.K. Rajora (the OP No. 2) examined the patient and admitted him to ICU. Advised for CT scan and on the query the doctor told the Complainant that there was nothing serious with the patient. It was a clear case of minor head injury and if any serious condition the surgery would be done in the morning on 20.03.2004. Thereafter, at 11 p.m. Dr. Mahajan performed Ultrasonography (USG) of abdomen and thereafter the patient was examined by Dr. V.P

Bhalla. It was further alleged that in the ICU patient's head was shaved and without informed consent a tube was put in the neck. The patient was not put on the ventilator nor was given any Oxygen. On the next day i.e. 20.03.2004, the patient was declared dead at 5:30 am. Being aggrieved due to negligent treatment and lack of care, the Complainants filed the Consumer Complaint No. 148/2005 before State Commission, Delhi seeking Rs. 83 lakhs as compensation.

4. The Opposite Parties in their Written Version and denied any negligence during the treatment of the patient. It was submitted that on 19.3.2004 at 7.45 p.m the patient was taken to ISIC and at the time of admission he had sustained the serious head injury. Patient was unconscious, Glasgo Coma Score (GCS) was E1 V1 M5, Pulse 92/min and BP 190/90 mm hg. His right pupil was dilated and left pupil was constricted which indicates a severe degree of head injury. He was managed by a team of doctors (surgeon & residents) supported by para medical staff as per the standard protocol. The relevant investigations were sent and the patient was kept under close monitoring. Urgent CT Scan and Neurosurgery consultation was called for. The Chief Administrative Officer of the hospital also inquired about the patient's condition.

5. The State Commission based on the averments allowed the Complaint and awarded a lump-sum compensation of Rs. 15 Lakh.

6. Being aggrieved by the Order of State Commission, the Opposite Parties filed the First Appeal No. 41/2013 for dismissal of the Complaint and the Complainant also filed the First Appeal No. 251/2014 for enhancement of compensation to Rs. 2 crore.

7. We have heard the learned Counsel on both the sides. They have reiterated the facts and the evidences which were filed before the State Commission.

8. The learned Counsel for Complainants submitted that the duty doctor failed to put the patient immediately on ventilator as directed by the Neurosurgeon, but it was delayed. The OP deliberately not supplied the case papers (medical record), therefore, adverse inference can be drawn against the hospital and the doctor for sheer negligence. There were several discrepancies in the documents like MLC report, Case sheet and nursing notes with respect to time of admission as 7.40 pm on 19.3.2004.

9. The counsel for the OP argued that the State Commission did not consider the experts' evidence (affidavits) filed by Dr. (Prof) R. Bhatia (AIIMS), Dr. Rana Patir (AIIMS) working with Ganga Ram Hospital, who were the employees of the hospital (Appellant). He further submitted that the medical board opinion was not conclusive as the documents were not intentionally provided by the complainants/respondents.

10. The learned Counsel for the Complainant argued that this is a case of medical negligence which involves technical knowledge and appreciation of technical evidence. In the instant case, the patient was taken to Hospital in good faith with the hope that doctors of the Hospital knew the best and will provide the best treatment to the patient. Therefore, main onus lies on the Hospital and the doctors to prove that they knew the procedure and the treatment. The hospital miserably failed to discharge its onus.

11. We note that the State Commission sought opinion from Maulana Azad Medical College (MAMC). The Dean of MAMC constituted the Board of Medical Expert consists of three experts namely, 1. Dr. Ajay Sharma, HOD (Neurosurgery) GB Pant Hospital - Convenor 2. Dr. J.S. Dolly, Prof. (Anesthesia), MAMC - Member 3. Dr. Anjali Prakash, Prof. (Radio diagnosis), MAMC - Member. The State Commission framed certain issues for the opinion. The said opinion is reproduced as below:

1. Regarding the alleged delay in the treatment, although the provided hospital admission record papers mentioned doctor's observations timed at 9.15 PM but in absence of the admission record slip no comments could be made. There Is no record to document the fact If the patient was managed in the casualty department before formal admission, and what first aid treatment if any, was given to the late Mr. Gautam. In view of these facts no further observations regarding this point can be made.

2. Regarding ultrasound examination, in road traffic accidents, to exclude other intra-abdominal injuries ultrasound examination of the abdomen is undertaken. This cannot be termed as unnecessary.

3. In absence of complete hospital records no comments can be made on this point. However, it is mandatory to undertake consent for any procedures to be performed on a patient. Often this is recorded at the time of admission.

4. In absence of complete hospital records including doctor's notes, no comments can be made on this point.

5. Regarding the Issue of putting the patient on ventilator, although the available records documented that the neurosurgeons have instructed that the patient Late Mr. Gautam be put on ventilator, however, as per available records he was not put on ventilator till 10.30 pm. However, in absence of complete hospital records no comments can be made on whether he was put on ventilator and after how much time after admission. In a patient when a conservative management is planned ventilator support to be patient, if decided by the neurosurgeon, is the standard of the care.

6. In view of non-availability of all Brain Imaging films no conclusion may be drawn on this point. Whether late Mr. Gautam should have been operated or drawn on this point. Whether late Mr. Gautam should have been operated or treated by conservative therapy cannot be comment from the provided hospital records. In absence of any Intracranial space occupying Lesion (Intracranial Hematoma) conservative therapy is standard treatment.

12. On the point of enhancement of compensation, the learned Counsel for the Complainant prayed for enhancement of the compensation to Rs. 2,19,05,000/- with interest @12% p.a. from the date of filing the Complaint. He argued that the State Commission awarded lump sum compensation without proper appreciation of the facts and details. The interest was not allowed, therefore, considering the gravity of negligence and sufferings of the patient, the enhancement is justified. He further He relied upon the judgment of Hon'ble Supreme Court in the case of **Balram Prasad v. Kunal Saha and Ors.** [1], wherein it was held as:

“It is the duty of the Tribunals, Commission and Courts including Supreme Court to award just and reasonable compensation even if the same is more than what was originally claimed.”

13. In our considered view, we find that the State Commission allowed the Complaint with reasoned Order and granted just and adequate compensation in the instant case.

14. Based on the discussion above and relying upon the opinion of Board of medical experts at MAMC, the medical negligence is attributed to the hospital and treating doctor. The Order of the State Commission is reasoned and awarded just and fair compensation to the Complainants; same is affirmed. Both the Appeals are dismissed.

However, it is made clear that the Insurance Co. shall comply with its insurance liability, if any, towards the Opposite Parties.

[1] (2014) supreme Court Cases 384

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DR. S.M. KANTIKAR
PRESIDING MEMBER

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BINOY KUMAR
MEMBER