



Date of Institution: 20-12-2022
Date of final hearing: 01-11-2023
Date of Pronouncement: 15-11-2023

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
CONSTITUTED UNDER CONSUMER PROTECTION ACT, 2019
(ACT NO.35 OF 2019) AT SRIKAKULAM, A.P.**

Before : Sri Raghupatruni Chiranjeevi - President
Sri Chitchula Shanmukha Rao - Member
Smt. Gollu Radha Rani - Member-Woman

COMPLAINT CASE NO. 88 OF 2022

IN THE MATTER OF:

Katam Aruna, W/o Late Suresh, aged about 38 years, Hindu,
household duties, resident of MIG-66, APHB Colony,
Srikakulam, Andhra Pradesh-532001.

(Through: Sri Paidi Visweswar Rao, Advocate)
... Complainant

VERSUS

1. The Chairman & Managing Director,
Great Eastern Medical School & Hospital,
Ragolu, Srikakulam - 532 484
2. The RMO, Great Eastern Medical School & Hospital,
Ragolu, Srikakulam-532 484
3. The Director, Great Eastern Medical School & Hospital,
Ragolu, Srikakulam - 532 484
4. Dr (Mrs) Surya Kumari, Great Eastern Medical School & Hospital,
Ragolu, Srikakulam - 532 484.

(Through: Sri S. Ramesh, Advocate for Opposite Party No.1 to 3
Smt G. Visalakshi, Advocate for Opposite Party No.4)
...Opposite parties

CORAM:

Sri Raghupatruni Chiranjeevi - President
Sri Chitchula Shanmukha Rao - Member

Present : Sri Paidi Visweswar Rao, Advocate for the Complainant
Sri S. Ramesh, Advocate for Opposite Party No.1 to 3
Smt G. Visalakshi, Advocate for Opposite Party No.4

PER: SRI RAGHUPATRUNI CHIRANJEEVI - PRESIDENT

JUDGMENT

1. This is a complaint filed under Section 35 of Consumer Protection Act, 2019 prays to direct the Opposite Parties jointly and severally...

- a) to pay a sum of Rs.75,00,000/- (Rupees seventy five lakh only) towards compensation to the complainant for gross negligence and deficiency of service committed towards the complainant by the opposite parties.
- b) to pay Rs.30,000/- (Rupees thirty thousand only) litigation expenses and advocate fee.
- c) Grant such other or further relief or reliefs as the Honourable Court deems fit and proper in the circumstances of the case.

2. The complainant in her complaint submits that the opposite parties 1 to 4 are representing on behalf of the Great Eastern Medical School & Hospital, Ragolu, Srikakulam. The Opposite party No.1 is the Chairman & Managing Director, Great Eastern Medical School & Hospital, and the Opposite parties No.2, 3 and 4 are subordinates of opposite party No.1, and all of them are jointly and severally liable for the claim of the complainant.

3. The complainant further submits that, her deceased husband visited and admitted in the opposite parties Hospital at Ragolu (Srikakulam) on 2nd April 2021 towards fever and abdominal pain for which, the patient was subjected to medical examination of any abnormality in which Opposite party No.4 had examined him and accordingly advised him to undergo medical procedures without following adequate medical protocol and standard operating procedures. And further submits that, the deceased was continuously administered and put on anesthetic drugs and as & when she visited and remained in the hospital, the deceased was in unconscious state of



mind for longer periods. When the same was queried by the complainant, it was stated by the Doctor; opposite party No.4 that such phenomenon of unconscious state is normal and not to worry. And further submits that as per Hospital's advice, the patient got admitted on dated 02-04-2021 in the GEMS Hospital, Srikakulam and the medical procedures were performed and after such, the complainant's husband had expired while undergoing treatment in the Hospital, although assured that her husband would get best facilities and service in the hospital. And further submits, that after conducting the medical procedures, Opposite parties also prescribed medicines & drugs dated 02-04-2021 (prescribed thrice on the same day), 03-04-2021, 04-04-2021, 05-04-2021 (prescribed twice on the same day), 07-04-2021, 08-04-2021 & numerous undated prescriptions and the patient took all the medicines as suggested but did not find any improvement in the health condition. Instead that was deteriorated due to over dosage of drugs in the body. The complainant raised various complaints to the opposite Parties, however time & again suggested to use the medicines regularly and assured that the health profile would certainly improve.

4. The complainant further submits that, on 05 Apr 2021, when she had visited the hospital at 2100 hrs, her husband was in highly critical condition and was observed to be struggling for oxygen and beating his hands and legs on the bed, to her astonishment the same was neither cared by the present doctors nor administered any treatment that further contributed towards extra negligence. When the same was queried from the doctors, it was intimated that there was lack of oxygen cylinders. Meanwhile the regular treating Doctor Opposite party No.4 came and shouted at the doctors to dare touch her patient without her permission. Subsequently, at the same time, the patient was shifted to ICU and put on ventilator. Thus it was intimated by the complainant that, unless she intervened after her return from home, no one took care of the patient in spite of the patient was struggling alone on the bed. And further submits significantly that, despite the sensitivity of the blood profile after the over

dosage of the drugs including antibiotics and anesthesia that deteriorated the health. On 13th of April 2021, the same medicines were advised to be continued on "Progress Record/ Doctors Orders" lackadaisically under the letter head of GEMS, Hospital, Srikakulam. Thus, the due duty of care which ought to be taken by a reasonable doctor/ employer was not observed in the case supra. After this, the 5th day of April 2021, he went into complete state of unconsciousness not to return back to his senses having been suffered from other collateral damages in the vital parameters in the body and succumbed to over dosage of drugs and medicines on 16th April 2021.

5. The complainant highlights that, after she lost her husband on which the medical procedures were performed by the opposite parties, she got it cross checked with medical specialists on 23rd December, 2021 and 13-01-2022, where the multiple doctors revealed that the SOP was not properly performed by the Doctors. The complainant underlines the medical negligence and attracts other serious provisions of Medical Laws. And further highlights that, she has spent huge amount of Rs.2,00,000/- on the deceased's treatment, special diet, transportation etc. But due to deficiency in treatment and negligent conduct of opposite parties, an irreparable damage has been done to the complainant's husband that resulted his death which cannot be set off by any amount whatsoever. It was further reiterated that the deceased was earning handsome income before the said treatment as he owned a Flexi Printing enterprise & other businesses and the entire family was dependent upon him but due to permanent loss of a person, the future of complainant and her family is completely ruined. And further submits that, she had several times tried to meet the Hospital staff, however she was shooed away by the opposite parties and all efforts went in vain. Hence there is gross negligence and deficiency of service on the part of opposite parties.

6. The Complainant lastly got issued a legal notice dated 22nd August, 2022 to the opposite parties calling upon them to settle the dispute amicably, but the opposite



parties after receipt of said notice, issued a reply notice dated 20th September 2022 with false and untenable grounds which are against the rules and medical protocols. In the meanwhile the opposite parties engaged some henchmen/ brokers to continuously harass and emotionally blackmail to withdraw the legal notice/ complaint and threatened of dire consequences. And further submits that due to the attitude of opposite parties, the complainant sustained heavy loss and suffering lot of mental agony. The opposite parties failed to discharge their duty; as such it amounts to gross medical negligence and deficiency of service on the part of them towards the complainant. The condition of the family is continued to be in dark after the death of the deceased in the GEMS Hospital. Now the complainant has no other alternative, except to file this complaint before the Honourable Commission redressal. Hence filed this complaint.

7. Counter filed by opposite party No.2 submits that the material allegations in affidavit in support of petition are all not true, valid, and binding on the respondent. The allegations which are not specifically denied or traversed shall not deems to be admitted. The frame of complaint is not correct and not maintainable on facts. The allegations noted in para-III (1) and (2) are true and correct, but it is false to state in para-III of other paras. And further submits that the hospital of opposite party is a reputed named hospital recognized by the government and subsequently the said hospital was taken over by the government and having reputation on the functions, staff and doctors in Srikakulam district.

8. The opposite party No.2 further submits that the husband of complainant by name Suresh suffering from diseases due to drinking of alcohol since long time and he was treated by various doctors in Srikakulam since long time and he was treated by various doctors in Srikakulam and before admitting to the hospital of opposite party the deceased underwent treatment in Sindhura Hospital, Srikakulam but no

development in the disease and hence on the advice of one of doctor K. Raju, the complainant along with family members brought to the hospital of opposite party on 02-04-2021 and after taking consent from the family members, the opposite party treated the husband of the complainant as outpatient and after taking test on the said person, the opposite party no.4 and another doctor to attend the tests and informed to the complainant and her family members that the disease is chronic disease and position also in critical and advised that he may admitted in hospital as inpatient on observation from time to time for which the family members of the complainant agreed to admit in the hospital. Accordingly, the said Suresh was admitted as in patient in the hospital of opposite party on 02-04-2021. And further submits that after testing under medical gemology, the opposite party hospital doctors informed that some medicines prescribed by them has to be given to patient Suresh from time to time and watched by the duty doctor every one hour and the staff is also appointed to look after the patient and his condition every one hour. And further submits that opposite party No.4 was appointed for the said purpose and she regularly watches the patient by giving medicines from time to time in the day. While so, the patient not cooperated to staff and thereby the health condition not comes to normal even though medicines given to the patient. After 2 days the patient appears some developments in his health condition. And further submits that subsequently the patient with high blood pressure shouted and pulled his legs and hands and thereafter the breath of the patient is not in normal and hence the doctors of opposite party instructed the complainant and her family members that patient is unable to receive his breath and hence advised to kept the patient in ICU for which the complainant and their family members agreed for it and also given consent on the acceptance form. Thereafter the patient came to normal position after 2 days. The opposite party doctors took care of the patient as assured from time to time. While so, on 12-04-2021, the condition of patient came down as usual and unable to receive breath and hence the opposite party staff informed the



position of patient is critical and the only remedy to treat the patient on ventilators. Even then, they cannot give assurance of life of patient for which the complainant and family members given their consent that patient may be treated as informed by the doctors and not bothered whatever happen and they voluntarily given consent letter. Then after taking formalities the opposite party treated the patient on ventilators and treated the patient by watching the patient condition by doctors throughout day on shifting duties and the patient was treated under ventilators for 3 days and the attempts of opposite party to grown up the patient are in vain and lastly die patient was died on 16-04-2021.

9. The opposite party No.2 further submits that more than 6 months later the complainant approached the Opposite party and requested to furnish CD Copies during the period of treatment and are necessary to claim insurance in respect of deceased and her husband for which the copies were filed along with complaint were given by the c opposite party for the purpose of claiming insurance only and after receiving the compensation on the evil advise of some supporters of her with a malafide intention to extract money illegally to get unlawful gain issued legal notice dt:22-08-2022 to the opposite party by threatening the opposite party given reply on 20-09-2022. Thereafter the complainant filed the above case claiming compensation of Rs.70,00,000/- (rupees seventy lakhs only). And further submits that during the treatment of the patient either the complainant or their family members never reported against the staff or daughters to the management about their treatment. So, the allegations in the complaint are all false and created one. The opposite party submits that the complaint made false story in the complaint that the patient was died due to over drugs and specifically noted that she has taken opinion in regard to medicine used by the opposite party from the experts but no proof filed with the complaint and further the complaint invested money for medical only below Rs.25,000/- (rupees twenty-five thousand only) during the period of treatment of patient.

10. The opposite party No.2 further submits that the claim of complaint in this case is abnormal beyond the rules. The district forum has no jurisdiction to entertain the claim more than Rs.50,00,000/- (rupees fifty lakhs only) under section 11 of district consumer act. The complainant intentionally to blackmail the opposite party and also to deceive the reputation of opposite party in public created this false case. There is no cause of action to file complaint. And further submits that as per norms of opposite party anyone affected any harm by the staff, medicine, and doctors' treatment, they would any have complained the matter before the superiors and then they appoint a body for the enquiry and later given their opinion. Hence in this case, the complainant during their stay in hospital of opposite party never gave any complaint against staff, doctors, and medicines. And after opinion of committee then the party not satisfied with that then he approaches medical tribunal but not straight away to the court. The complaint is not maintainable under law. And further submits that in view of threatens of complainant in giving false story, the opposite party astonished and suffered mental agony that the service given to patients honestly are all in vain and fell in depression which cannot be compensated by way of any money as such the complainant is liable to pay damages of Rs.2,00,000/- to the opposite party as compensatory costs. Hence, prayed to Dismiss the Complaint with exemplary costs.

11. Counter filed by opposite party No.4 submits that the material allegations in affidavit in support of petition are all not true, valid, and binding on the respondent. The allegations which are not specifically denied or traversed shall not deem to be admitted. The frame of complaint is not correct and not maintainable on facts. The allegations that are mentioned in paras 3 to 13 are all out and out false and each sentence hereby denied. The petitioner is put to strict proof of the same.

12. The 4th opposite party further submits that the deceased Suresh admitted in the Hospital on 02-04-2021 and he is chronic severe alcohol drinker and he is suffering with abdominal pain and on examination it was found that the liver of him



enlarged, hearing voices and increased shake in hand and legs and he is suffering from jaundice before admission and 4th opposite party was looking after the patient as she is psychiatrist doctor, she alone treated the patient and at the time of admission no fever and he was admitted in psychiatrist ward for his alcohol problems and after treatment admission of fever and breathlessness were developed and hence he was treated and antibiotics and oxygen was given in 3 liters was initially given in the ward and shifted to causality in 20 minutes and the patient was treated as per medical norms and injunctions given to the patient for alcohol haloperidol and patient was checked up by the 4th opposite party every one hour by keeping nurses to look after the patient and the said facts known to the family member and they never given any complaint against the 4th opposite party are staff at any point of time during the treatment. The injunctions used for patient benzodiazepines which is drug of choice in normal course and the injunction used by the doctors for treatment are LORAZ, HALOPERIDOL with PHENERGEN which treatment can be given by doctors when the patient is chronic alcohol patient. So, there is no negligence in the doctors or their staff of the hospital and further it is submitted by the date of joining patient due to his habits his liver was spoiled and after joining the hospital. The alcohol drinking was stopped and hence the body was shake with fits which is called the alcohol withdrawal syndrome by the date of joining to the hospital. The patient liver and kidneys are damaged to an extent of 80%. So, there is no deficiency of services of or any negligence on the part of the doctor and its staff.

13. The opposite party No.4 further submits that the claim of complaint in this case is abnormal beyond the rules. The district forum has no jurisdiction to entertain the claim more than Rs.50, 00,000/- (rupees fifty lakhs only) under section 11 of district consumer act. The complainant intentionally to blackmail the opposite party and also to deceive the reputation of opposite party in public created this false case. There is no cause of action to file complaint. And further submits that as per norms of

opposite party anyone affected any harm by the staff, medicine, and doctors' treatment, they would any have complained the matter before the superiors and then they appoint a body for the enquiry and later given their opinion. Hence in this case, the complainant during their stay in hospital of opposite party never gave any complaint against staff, doctors, and medicines. And after opinion of committee then the party not satisfied with that then he approaches medical tribunal but not straight away to the court. The complaint is not maintainable under law. And further submits that in view of threatens of complainant in giving false story, the opposite party astonished and suffered mental agony that the service given to patients honestly are all in vain and fell in depression which cannot be compensated by way of any money as such the complainant is liable to pay damages of Rs.2,00,000/- to the opposite party as compensatory costs. Hence, prayed to Dismiss the Complaint with exemplary costs.

14. To prove the case of the complainant, the complainant herself filed her evidence in the shape of affidavit as PW-1 and got marked Exs.A-1 to A-4, and to rebut the evidence of PW-1 one Sri Bala Murali Krishna Muppala S/o M. Akbar Raju, RMO at Great Eastern Medical School Hospital, Ragolu, Srikakulam filed his evidence on behalf of Opposite Parties No.1 to 3 in the shape of affidavit as RW-1, and the documents were got marked as Exs.B-1 & B-2 for supporting their allegations. The Opposite Party No.4 herself filed her evidence in the shape of affidavit as RW-2 and no documents were got marked as exhibits.

15. Heard both sides. Opposite Parties submitted their written arguments for consideration.

18. Now the Points for determination are:

1. Whether there was breach of duty by Opposite Parties and are guilty of medical negligence or not?
2. If so, is there deficiency in service on the part of opposite parties, as averred in the complaint?.
3. If so, the complainant is entitled to the reliefs claimed?
4. to what relief?



19. POINT NO.1 : As far as this point is concerned, the opposite parties No.2 & No.4 contested the proceeding by way of filing written version and filed the supporting affidavits and examined as RW-1 & RW-2 and got marked Exhibits B-1 & Exhibit B-2.

The opposite party No.3 filed the Bunch of documents along with memo and same was marked as Ex.B-1 and the Bunch consisting of 121 pages and all the pages are Xerox copies attested by the RW-1. The Ex.B-1 includes the Patient Registration Form, Death Report, Admission Record, General Consent letters, Case Sheet of the deceased, Discharge Summary, Admission Form along with Outpatient ticket, Admission consent form, General Examination form, Ultrasound Abdomen & Pelvis, Progress Notes, Progress Record, Discharge Summary, Medication Chart, Nurses Progress Notes, Clinical Record, ICCU Chart, Visitors Chart, Computerized ECG & 2D ECHO and Reports of Department of Pathology.

The RW-2 filed the Bunch of documents along with memo and same was marked as Ex.B-2 and the Bunch consisting of 30 pages and all the pages are Xerox copies attested by the RW-2. The Ex.B-2 includes the Case Sheet of the deceased, Discharge Summary, Admission Form along with Outpatient ticket, Admission consent form, General Examination form, Ultrasound Abdomen & Pelvis, Progress Notes, Progress Record, Medication Chart, Nurses Progress Notes, Clinical Record, Visitors Chart, Computerized ECG & 2D ECHO and Reports of Department of Pathology.

Both the opposite parties No.2 & No.4 averred in their written versions that this complaint is not maintainable under the law, this Commission is here by noted with regard to this averment is as follows.

Where as in Indian Medical Association vs V.P.Shantha & Ors on 13 November 1995, A three-Judge Bench of Supreme Court held that service rendered to a patient by a medical practitioner by way of consultation, diagnosis, and treatment, both

medicinal and surgical, would fall within the ambit of 'service' as defined in Section 2(1) (o) of the Consumer Protection Act, 1986. Deficiency in service has to be judged by applying the test of reasonable skill and care which is applicable in action for damages for negligence.

In 1995 the Supreme Court decisively included the health profession under the Act with regard to the services rendered by private and government doctors and hospitals in the decision rendered in "Indian Medical Association -Vs- V P Shantha" reported in (1995) 6 SCC 651. It was however exempted only those hospitals and the medical practitioners of such hospitals, which offer free services to all patients at all times. Similarly, all government hospitals except primary health centers where everybody is treated free of cost irrespective of their economic status did not come under the purview of the Act. The Apex Court authoritatively clarified certain/following facts in the matter -The procedure to be followed by these the Consumer Disputes Redressal Agencies in the matter of determination of the issues coming up for consideration it may be stated that under the Consumer Protection Act, it is provided that the District Commission shall proceed to settle the consumer disputes (i) on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint, or (ii) on the basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum. The aforementioned legal position clearly shows that this complaint is maintainable before this commission to entertain with regard to Medical Negligence, hence this consumer commission has jurisdiction to entertain this case.

As seen from the averments made in the complaint that the husband/deceased of the complainant admitted in the Hospital of the opposite parties at Ragolu (Srikakulam) on 2nd April 2021 with fever and abdominal pain for which, the patient was subjected to medical examination of any abnormality in which Opposite party



No.4 had examined him and accordingly advised him to undergo medical procedures without following adequate medical protocol and standard operating procedures. Further that as per the advice of the Hospital authorities, the patient got admitted into the Hospital on the same day i.e., on 02-04-2021 in the GEMS Hospital, Srikulam and the medical procedures were performed and after that, the complainant's husband expired on 16-04-2021 while undergoing treatment in the Hospital, although assured that her husband would get best medical facilities and service in the hospital. And further submitted that, after conducting the medical procedures, Opposite parties also prescribed medicines & drugs dated 02-04-2021 (prescribed thrice on the same day), 03-04-2021, 04-04-2021, 05-04-2021 (prescribed twice on the same day), 07-04-2021, 08-04-2021 & numerous undated prescriptions and the patient took all the medicines as suggested but did not find any improvement in the health condition. More over it was deteriorated due to over dosage of drugs administered.

The opposite party No.2 categorically admitted that the complainant along with family members brought to the hospital of opposite party on 02-04-2021 and after taking consent from the family members, the opposite party No.2 treated the husband of the complainant as outpatient and after taking tests on the said person, the opposite party No.4 and another doctor who attended the tests had informed to the complainant and her family members that the disease is chronic disease and position also in critical and advised that he may admitted in hospital as inpatient for observation from time to time for which the family members of the deceased / complainant agreed to admit him in the hospital. Accordingly, the said Suresh/deceased/husband of the complainant was admitted as in patient in the hospital of opposite party on 02-04-2021. Further admitted that the opposite party No.4 was appointed for the said purpose and she regularly watches the patient by giving medicines from time to time in the day. While so, the patient not cooperated to staff and thereby the health condition not comes to normal even though medicines given to the patient. After 2 days the patient appears

some developments in his health condition. And further submits that subsequently the patient with high blood pressure shouted and pulled his legs and hands and thereafter the breath of the patient is not in normal and hence the doctors of opposite party instructed the complainant and her family members that patient is unable to receive his breath and hence advised to kept the patient in ICU for which the complainant and their family members agreed for it and also given consent on the acceptance form. Thereafter the patient came to normal position after 2 days. The opposite party doctors took care of the patient as assured from time to time. While so, on 12-04-2021, the condition of patient came down as usual and unable to receive breathe and hence the opposite party staff informed the position of patient is critical and the only remedy to treat the patient on ventilators. Even then, they cannot give assurance of life of patient for which the complainant and family members given their consent that patient may be treated as informed by the doctors and not bothered whatever happen and they voluntarily given consent letter. Then after taking formalities the opposite party treated the patient on ventilators and treated the patient by watching the patient condition by doctors throughout day on shifting duties and the patient was treated under ventilators for 3 days and the attempts of opposite party to grown up the patient are in vain and lastly the patient died on 16-04-2021.

As aforementioned facts, it reveals that the deceased had been admitted into the Hospital of opposite parties and treated for 14 days (02-04-2023 to 16-04-2023) as an in-patient IP21041114 and had been treated by the opposite parties. It is pertinent to note that either complainant or opposite party No.2 & No.4 never revealed the exact disease suffered by the deceased and which disease caused to lead to the death of the deceased.

It is necessary to examine what is medical negligence?

Ordinarily negligence can be defined as a breach of duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent





and reasonable man would not do. Negligence in the context of the medical profession necessarily calls for a different definition. Being a professional a doctor may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have or he did not exercise, with reasonable competence in a given case, the skill which he did possess. The basic principle relating to medical negligence is known as the BOLAM Rule and has been accepted by the Supreme Court as the standard test for medical negligence (**Jacob Mathew v. State of Punjab (2005) 6 SCC 1**). This was laid down in the judgment in **Bolam v. Friern Hospital Management Committee (1957) 1 WLR 582** as under:

“.....Where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham Omnibus, because he was not got this special skill. The test is the standard of the ordinary skilled man exercising and profession to have that special skill. A man need not possess the highest expert skill.....It is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art...”

Thus to put it simply, medical negligence arises from an act or omission by a medical practitioner, which no reasonably competent and careful medical practitioner would have committed. Therefore a medical practitioner while attending to the patient is expected to adopt reasonably skilful behavior and follow the ordinary skills and practices of the medical profession with ordinary care.

A claim for compensation based on medical negligence is primarily based on the following:

- The doctor owed a duty of care to the patient
- There has been a breach in the performance of the duty
- The breach of the duty has resulted in consequential loss or harm to the patient concerned

In the case of **Dr. Laxman Balkrishna Joshi vs. Dr. Trimbarak Babu Godbole and Anr., AIR 1969 SC 128** and **A.S.Mittal v. State of U.P., AIR 1989 SC 1570**, it was laid down 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.”

The Honourable Supreme Court in *Kusum Sharma and others v. Batra Hospital and Medical Research Centre and Others*; (2010) 3 SCC 480; discussed the breach of expected duty of care from the doctor, if not rendered appropriately, it would amount to negligence. It was held that, if a doctor does not adopt proper procedure in treating his patient and does not exhibit the reasonable skill, he can be held liable for medical negligence.

Therefore, in the light of the law laid down, let us examine whether there was a breach of duty by Opposite parties and are guilty of medical negligence or not?

Here, after perusal of the entire record placed before this commission observed that, it is to be understand that the deceased is having Severe Liver problem and as well as Severe Kidney problem and opposite party No.4 also categorically admitted



the same fact. Now the question is whether the opposite parties took steps with regard to the slowdown the severity of the deceased or not? According to the opposite party No.4 the deceased is a habitual alcoholic and his liver and kidneys were seriously damaged, the impression of the opposite party No.4, according to her the death of the deceased may cause due to "Alcohol withdrawal syndrome". Further the opposite party No.4 categorically stated that the deceased liver and kidneys are damaged to an extent of 80%. But no documentary evidence was adduced by opposite party that the Liver and Kidneys were damaged to an extent of 80% and no oral evidence was adduced by the expert in both the Liver and Kidney Specialists.

Generally Common Procedures to Diagnose and Treat Liver Disease either Hematologist or Gastroenterologist and Treat Kidney Disease Nephrologists.

Hematologist

A hematologist uses a number of tests, like blood work and imaging, to check liver function, arrive at a diagnosis, and decide on a treatment plan. If they are a specialist in transplants, they may want to talk with patient about a liver transplant if that's necessary.

Gastroenterologist

A **gastroenterologist** can diagnose and treat liver problems, as well as other digestive organs that can be affected by the patient. They can use many of the same exams, blood tests, and imaging scans to look at the patient liver, see how it's functioning, and recommend treatment

Nephrologist

A nephrologist is a physician who studies and deals with nephrology. Nephrology is the adult and pediatric study of the kidneys and its diseases. The nephrologist deals with the diagnosis and management of kidney disease. The kidneys are vital for maintaining normal fluid and electrolyte balance in the body.

In this instant case the opposite party No.4 being a Psychiatric Doctor who treated the deceased at first instance and extended services to him by administering the drugs and oxygen for further and she confirmed that the disease is chronic liver & kidney disease due to alcoholic. The question is... being a Psychiatric is opposite party

No.4, eligible to diagnose and treated the deceased who suffered with liver and kidney disease?

Generally a psychiatrist is a medical doctor who's an expert in the field of psychiatry — the branch of medicine focused on the diagnosis, treatment and prevention of mental, emotional and behavioral disorders. Psychiatrists assess both the mental and physical aspects of psychological conditions. They can diagnose and treat these conditions.

At this juncture it is pertinent to discuss about the Medical Negligence. Medical Negligence basically is the misconduct by a medical practitioner or doctor by not providing enough care resulting in breach of their duties and harming the patients which are their consumers. Medical negligence occurs when a doctor, dentist, nurse, surgeon or any other medical professional performs their job in a way that deviates from this accepted medical standard of care. A medical professional is not liable in all cases where a patient has suffered an injury. He might have a valid defense that he has not breached the duty of care.

Medical negligence has caused many deaths as well as adverse results to the patient's health. Some examples of medical negligence are as follows:

- Improper administration of medicines.
- Performing the wrong or inappropriate type of surgery.
- Not giving proper medical advice.
- Leaving any foreign object in the body of the patient such as a sponge or bandage, etc. after the surgery.


Types of Medical Negligence:

Misdiagnosis:

The first step in any medical treatment is diagnosis. When a medical professional fails to diagnose what condition a patient is suffering from, then it may result in misdiagnosis. If a patient is not treated properly due to any mistake in diagnosis, the doctor can be made liable for any further injury or damages caused as a result of the wrong diagnosis.

Delayed Diagnosis:

A delayed diagnosis is treated as medical negligence if another doctor would have reasonably diagnosed the same condition in a timely fashion. A delay in





diagnosis can lead to an undue injury to the patient if the illness or injury is allowed to progress rather than being treated. In these cases the doctor / hospital / clinic may even be held liable for any damages resulting from the delay in diagnosis and treatment.

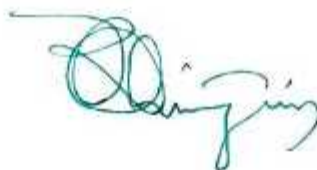
Res ipsa loquitur is a Latin phrase that means "the thing speaks for itself." In personal injury law, the concept of *res ipsa loquitur* (or just "res ipsa" for short) operates as an evidentiary rule that allows plaintiffs/petitioners to establish a rebuttable presumption of negligence on the part of the defendant through the use of circumstantial evidence. *Res Ipsa Loquitur* is maxim, the application of which shifts the burden of proof on the defendant. Generally, in a case it is the plaintiff who has to provide evidence to prove the defendants' negligence. There is however, a change when this maxim is used. The burden of proof shifts to the defendant. There is a presumption of negligence on part of the defendant and it is up to him to prove his non-liability and that it was not his act which caused the plaintiff's injury. The defendant leads the evidence.

This Commission relied on the Supreme Court Judgement in Civil Appeal No.7175 of 2021 (decided on 26-09-2023) of CPL Ashish Kumar Chowhan (Retd) Vs. Commanding Officer & Others. held that 'Principle of *res ipsa loquitur* (*the thing speaks for itself*) can be invoked' explained, with regard to the medical negligence. "*In a case where negligence is evident, the principle of res ipsa loquitur operates and the complainant does not have to prove anything as the thing(res) proves itself. In such a case it is for the respondent to prove that he has taken care and done his duty to repel the charge of negligence*". In this instant case also the facts and circumstances itself shows the negligence on the part of the opposite parties.

As seen from the written version of the opposite party No.4 the deceased is chronic severe alcohol drinker and he is suffering with abdominal pain and on examination it was found that the liver of him enlarged, hearing voices and increased shake in hand and legs and he is suffering from jaundice before admission and 4th opposite party was looking after the patient as she is psychiatrist doctor, she alone

treated the patient and at the time of admission no fever and he was admitted in psychiatrist ward for his alcohol problems and after treatment admission of fever and breathlessness was developed and hence he was treated and antibiotics and oxygen was given in 3 liters was initially given in the ward and shifted to causality in 20 minutes and the patient was treated as per medical norms and injunctions given to the patient for alcohol haloperidol and patient was checked up by the 4th opposite party every one hour by keeping nurses to look after the patient and the said facts known to the family member and they never given any complaint against the 4th opposite party or staff at any point of time during the treatment.

The opposite party No.4 who was treated Doctor had filed an evidence affidavit reiterating and confirming the statements, averments and the contentions raised in the written version and examined as RW-2. The RW-2 categorically admitted that the deceased was suffering from Jaundice prior to the admission in to the Hospital of opposite parties but RW-2 did not explain how she concluded the same. Further RW-2 confronted that the deceased was a habitual Alcoholic and due to his bad habits the liver of the deceased was spoiled but how RW-2 concluded the same, she did not explain in her evidence affidavit. RW-2 concluded and administered the injections used for patient Benzodiazepines which the drug of choice in normal course and injections used by the doctors for treatment are LORAZ, HALOPERIDOL with PHENERGEN which treatment can be given by the doctors when the patient is Chronic Alcohol Patient. The RW-2 further categorically admitted that the Alcohol drinking was stopped and hence the deceased body was shake with fits which is called the Alcohol Withdrawal Syndrome by the date of joining into the Hospital, but how RW-2 concluded the same was not explained in the evidence affidavit. Moreover, no documentary evidence was adduced for supporting her averments. RW-2 further more categorically admitted that the deceased liver and kidneys are damaged to an extent of





80% but she did not adduce any piece of paper or any other evidence affidavits of experts with regard to Liver & Kidney of Human.

The RW-2 filed the documents along with memo and same Bunch of documents marked as Ex.B-2 and the Bunch consisting of 30 pages and all the pages Xerox copies and attested by the RW-2. The Ex.B-2 includes the Case Sheet of the deceased, Discharge Summary, Admission Form along with Outpatient ticket, Admission consent form, General Examination form, Ultrasound Abdomen & Pelvis, Progress Notes, Progress Record, Medication Chart, Nurses Progress Notes, Clinical Record, Visitors Chart, Computerized ECG & 2D ECHO and Reports of Department of Pathology.

As seen from the Ex.B-1, page No.1 is Case Sheet clearly shows that the date of admission of the deceased in the Hospital is on 02-04-2021 and date of discharge is 08-04-2021. Where as in Ex.B-1, page No.2 issued by the opposite parties Hospital clearly shows that the date of admission is on 08-04-2021 and date of discharge is 16-04-2021 which is the date of death of the deceased, moreover the treating doctor is Dr.K.Sudheer who is Doctor for General Medicine, which means the deceased had been treated by the two Doctors one is RW-2 and second one is Dr. K.Sudheer. From the date 02-04-2021 to 08-04-2021 treated by Psychiatrist/RW-2 and from the date 08-04-2021 to 16-04-2021 treated by General Medicine/Dr.K.Sudheer. These facts never revealed at any where either in written version of opposite parties No.1 to 4 or Evidence Affidavits of RW-1 & RW-2, it is not digested thing that what is the necessity to the opposite parties for suppressing the facts which were what exactly happened.

The Opposite parties Hospital and the Doctors are required to exercise sufficient care in treating the patient in all circumstances. However, in an unfortunate case, death may occur. It is necessary that sufficient material or medical evidence

should be available before this Consumer Commission is being adjudicating authority to arrive at the conclusion that the death is due to medical negligence.

In our Commission's view, it was the duty of the opposite parties' doctors to refer the deceased to Specialists in Liver and Kidney Organs for further treatment instead of treating by Psychiatrist and General Medicine Doctors, but it was not done. Moreover they didn't conclude that the exact disease caused to lead the death of the deceased in Medical Terminology. It was clear negligence on the part of the opposite parties and may be leads to death of the Husband of the complainant. Moreover, the opposite parties did not confirm/conclude that the deceased is having particular disease mentioned in Medical Terminology and which leads to the death of the deceased as not curable disease.

As afore said discussion and brief, it is true that the deceased had been suffering severe illness to his both the organs Liver & Kidneys, the RW-1 & RW-2 also categorically admitted the same but this commission concluded that after careful verification of entire record placed before this commission that there was no Proper advice given by the opposite parties to the Complainant or family members of the deceased. In fact, after conclusions made by the Hospital Authorities, they did not choose to refer the patient/deceased to appropriate specialists in Liver and Kidneys and they have to take opinion from the complainant and family members of the complainant for Transplantation of Liver and kidneys, at least for dialysis of Kidneys if necessary. When a medical professional fails to diagnose what condition a patient is suffering from, then it may result in misdiagnosis. If a patient is not treated properly due to any mistake in diagnosis, the doctor can be made liable for any further injury or damages caused as a result of the misdiagnosis.

The learned counsel for the opposite parties filed the memo along with the Xerox copy of Article relating to the "A systemic review of Clinical Management of Alcohol withdrawal" which was published in the year 2013 in Industrial Psychiatry





Journal. This commission gone through the said Article and concluded that there was no cogent and adequate evidence to show that the relevancy to this case facts and no authenticate to support the contentions made in the written versions of the opposite parties. Moreover on perusal of the entire record in the instant case, it is revealed that the opposite party No.4 is a Psychiatric doctor and she treated to the deceased for six days and later One Dr.K.Sudheer who is Doctor in General Medicine treated to the deceased for about eight days till the date of death of the deceased. In fact at the initial stage when the deceased admitted into the opposite partie's Hospital, opposite party No.4 was deputed by the opposite party No.2 for treating to the deceased. The opposite parties have to adduce the evidence of the Dr.K.Sudheer who is the Key Witness in this case as he was treated doctor at the time of the death of the deceased but the opposite parties failed to adduce0 and even they didn't choose to mention the same in their written version and as well as in their evidence affidavits.

The actions and inactions of opposite parties clearly shows that the breach of duty by Opposite parties and are guilty of medical negligence jointly and severally. This point is answered accordingly.

27. POINT NO.2: As far as this point is concerned, the learned counsel for the complainant filed the evidence affidavit of complainant for supporting the averments made in the complaint as PW-1 and filed documents got marked as Ex.A-1 to Ex.A-4. As seen from the entire record there was no expert opinion filed by the complainant and in the instant case there was no need of the expert opinion with regard to Standard of Care because there was no surgery and special medical treatment was done to the deceased by the opposite parties except the administering the medicines. Moreover, entire evidence of opposite parties itself revealed that they didn't give advice to the deceased or the family members of the deceased for proper treatment.

In view of the POINT NO.1 discussion, This Commission relied on the Judgement of NCDRC in CC.No.104/2002 of Dr. (Mrs.) Indu Sharma vs Indraprastha Apollo Hospital on 22 April, 2015, held that "The corporate hospitals and Specialists, as might be expected, must perform at a higher level than other hospitals/ general practitioners. They, after all, represent themselves as possessing highest standard facilities and care; also possess superior skills and additional training. The hospital charges and the doctor's fees normally reflect this. No doubt that the compensation in medical negligence cases has to be just and adequate, that the medical professionals need to be accountable to a certain degree".

In the case of Dr. Laxman Balkrishna Joshi vs. Dr. Trimbark Babu Godbole and Anr., AIR 1969 SC 128 and A.S.Mittal vs. State of U.P., AIR 1989 SC 1570, it was laid down 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.

As seen from the Ex.B-1, it was evident that the one Dr.K.Sudheer treated the deceased for some time and he had been treated till the date of the death of the deceased. In the instant case why the opposite parties No.2 & 4 suppressed the fact that the Dr.K.Sudheer who is General Medicine had been treated to the deceased from the date of 08-04-2021 to 16-04-2023 which was the death date of the deceased. The intention of the opposite parties should be explained, but did not choose to reveal it and even did not disclose the same in their written versions filed respectively. In fact the Dr.K.Sudheer has to be examined before this commission and even the Evidence Affidavit should have filed but opposite parties did not choose to file and they suppressed the same. As such the opposite parties committed deficiency in service. The point is answered accordingly.





28. POINT NO.3: As far as this point is concerned this consumer commission noted that the Human life is most precious, it is extremely difficult to decide on the quantum of compensation in the medical negligence cases, as the quantum is highly subjective in nature. Different methods are applied to determine compensation. The multiplier method which typically used in motor accident cases not often conclusive for 'just and adequate compensation'. Honourable Supreme Court has held that there is no restriction that courts can award compensation only up to what is demanded by the complainant.

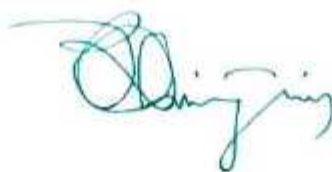
In Sarla Verma's Case 2009 (6) SCC 121, Honourable Apex Court discussed "just compensation" with a lot of clarity and precision. It was observed:

"Compensation awarded does not become 'just compensation' merely because the Tribunal considers it to be just...Just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit...Assessment of compensation though involving certain hypothetical considerations, should nevertheless be objective. Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision making process and the decisions"

The Honourable Supreme Court in the Kunal Sha's Case, very clearly mentioned that there were problems with using a strait-jacket formula for determining the quantum of compensation. It noted the problem in the following words:"... this Court is skeptical about using a strait jacket multiplier method for determining the quantum of compensation in medical negligence claims. On the contrary, this Court mentions various instances where the Court chose to deviate from the standard multiplier

method to avoid over- compensation and also relied upon the quantum of multiplicand to choose the appropriate multiplier ... this Court requires to determine just, fair and reasonable compensation on the basis of the income that was being earned by the deceased at the time of her death and other related claims on account of death of the wife of the claimant..."

The multiplier method was created to facilitate awarding compensation in relation to motor vehicle accidents to calculate "no-fault" liability. Therefore, it accounts for the loss of income of the victim only. This sum is calculated by taking into account the "multiplicand," that is, the victim's salary minus the amount he spends on himself, and the "multiplier," that is, the total number of years that the victim would have earned his salary. The multiplier is calculated by taking into account, average life expectancy, the victim's age, the number of years that the victim will be unemployed, and any other factors concerning the victim's health. The usual formula utilized in calculating compensation is $((70 - \text{age}) \times \text{annual income} + 30\% \text{ for inflation} - 1/3 \text{ for expenses})$. Defendants assert that this is the figure that will adequately calculate the loss incurred, and therefore it should be utilized in cases of medical negligence. However, compensation that is solely based on the income of the victim would imply that medical negligence causing death or injury to a wealthy individual is worth more than medical negligence that impacts an unemployed individual or homemaker or a child or senior citizen. The Supreme Court has, therefore, refused to restrict compensation to the multiplier method in the case of medical negligence. Further, the Supreme Court has added other dimensions to the calculation of compensation such as the medical costs incurred by the victim during the litigation, cost of future medical expenses, compensation toward mental agony and physical pain, and compensation toward loss of consortium and cost of litigation.





This Commission expressed that, in negligence cases, one must prove that there was a duty, that duty was breached, and the breach of that duty caused damages. Compensation in Medical Negligence Cases It was noted by the Commission that, in the present case, the two treated doctors and Hospital failed in their duty of care, and it was not a reasonable standard of practice, thus all the opposite parties were negligent. Hence, in Commission's opinion, the medical negligence was attributed to the doctor and hospital, and the Complainant deserved the compensation.

It is pertinent to note that the complainant stated the earnings of the deceased that he was earning handsome income before the said treatment as the deceased has own a Flexi Printing Enterprise and other businesses and the entire family was dependants upon the deceased but due to permanent loss of a person, the future of the complainant and her family is completely ruined. The learned counsel for the complainant failed to specified the particular annual income of earning by the deceased, at this juncture this commission considered that the income of the deceased annually is of Rs.1,20,000/- as it is common practice that the adjudication authorities may consider the income of the unemployed is of Rs.10,000/- per month when the calculation of compensation and expected life of Human is 70 years. As seen from the entire record, disclosed the age of the deceased is about 40 years on the date of the death.

Before fixing the quantum of compensation this Commission has taken in to account the sufferings of Complainant and treatment, other expenses, the metal agony. In this instant case the age of the decease as per record placed before this commission is 40 years as per the Ex.A-4 and deceased being self employed. Generally the life expectancy is 70 years as such the usual formula utilized in calculating the compensation is 30 years $(70-40) \times$ annual income of the deceased of Rs.1,20,000/- is of Rs.36,00,000/- and + 30% inflation on Rs.36,00,000/- is of Rs.10,80,000/- and deduction 1/3 for expenses which is Rs.46,80,000/- - 1/3 expenses (15,60,000/-) = Rs.31,20,000/-.

1) Minimum Income of the deceased per year	: Rs.1,20,000/-
2) The age of the deceased by the time of death	: 40 years
3) The average life span of a Human	: 70 years
4) Then the deceased person's loss of earnings in his further life time : (70 years – 40 years)	: 30 years
5) Then the deceased person's earning in his life time (Rs.1,20,000/- x 30 years)	: Rs.36,00,000/-
6) (+) 30% Inflation (Rs.36,00,000 x 30%)	: Rs.10,80,000/-

TOTAL	: Rs.46,80,000/-
7) (-) 1/3 rd as Expenses (Rs.46,80,000/- x 1/3)	: Rs.15,60,000/-

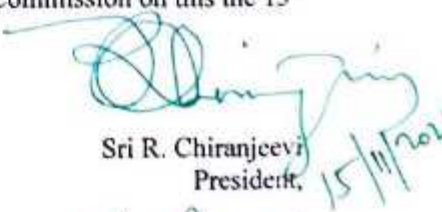
Net earnings of the deceased	: Rs.31,20,000/-

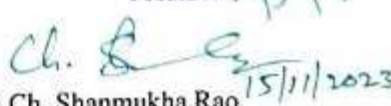
This Commission further relied on the Judgment of National Consumer Disputes Redressal Commission in F.A.No.559/2019 of Vishnu Priya Giri vs. G.M. Modi Hospital Research Centre for Medical Sciences, dated 13-05-2022 held that the surgeon was liable for medical negligence; as well, the hospital was vicariously liable. The hospital needed qualitative change and systemic improvement also. Therefore, on the basis of the foregoing discussion, OP.1 & OP.2 shall pay total compensation of Rs 20 lakhs with interest of 6 %pa and cost of litigation shall remain at Rs.1 lakh only.

This point is answered accordingly.

29. In the result, this complaint is allowed partly by directing the opposite parties No.1 to 4 jointly and severally to pay a sum of Rs.31,20,000/- (Rupees thirty one lakh and twenty thousand only) towards compensation to the complainant for gross negligence, mental agony, loss of consortium and deficiency of service committed towards the complainant by the opposite parties, and further directing to pay Rs.10,000/- (Rupees ten thousand only) towards litigation expenses including Advocate Fee within 45 days from the date of this Judgement.

Typed, corrected and pronounced by us in the open Commission on this the 15th day of November, 2023.


Sri R. Chiranjeevi
President, 15/11/2023


Sri Ch. Shanmukha Rao
Member, 15/11/2023

APPENDIX OF EVIDENCE

Witnesses examined

For Complainant :

PW.1 : Katam Aruna


For opposite parties :

RW.1 : Sri Bala Murali Krishna Muppala
RMO at GEMS Hospital,
Ragolu, SrikakulamRW.2 : Dr (Mrs) Surya Kumari,
GEMS Hospital, Ragolu,
SrikakulamDOCUMENTS MARKEDComplainant's Side :

1. Ex.A1 : A Bunch of papers (Xerox copies) consisting of 'Initial Assessment and Patient History', 'Plan of Primary Consultant', 'Progress Record/Doctors Orders' 'Department of Pathology' of K. Suresh issued by the opposite parties Hospital, and Doctor Prescription & Liver Test Report issued by Sindura Hospitals.
2. Ex.A2 : Office copy of Legal Notice dated 22-08-2022 got issued by the complainant.
3. Ex.A3 : Reply Legal Notice dated 20-09-2022 got issued by the opposite parties.
4. Ex.A4 : Death Certificate of the deceased Katam Suresh

Opposite Parties side :-

1. Ex.B-1 : A Bunch of papers (Xerox copies) consisting of Patient Registration Form (Dr YSR Arogyasri Health Card Trust), Medical Treatment papers of the deceased including Death Summary, Test Reports etc. belongs to the deceased K. Suresh issued by GEMS Hospital duly attested by opposite parties.
2. Ex.B-2 : A Bunch of papers (Xerox copies) of Case Sheet of the deceased K. Suresh issued by GEMS Hospital with IP No.21040184


President,
District Consumer Commission,
Srikakulam

15/11/2023

Pronounced on: 15-11-2023

Dix. NO :- 526/23
Dt:- 16/11/23