

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1016 OF 2019

(Against the Order dated 19/06/2018 in Appeal No. 903/2015 of the State Commission Maharashtra)

1. PAREL HOSPITAL
THROUGH ITS DIRECTOR, 96/97, JERBAI WADIA ROAD,
NEAR TATA HOSPITAL BOIWADA PAREL,
MUMBAI-400012
MAHARASHTRA

.....Petitioner(s)

Versus

1. UMA MANGESH NIKAM & 2 ORS.
NOW RESIDING AT PANCHPAKDI, VIRANGULA CHS,
PLOT NO. 52, R.N. B/1, SAVARKAR NAGAR, MHADA
COLONY,
THANE(W)-400606
MAHARASHTRA

2. DR. AJAY RATHOD
A-25 NAIK NAGAR CO HSG SOCIETY, SHIVA SHRUSHTI
ROAD, KURLA(WEST)
MUMBAI-400024
MAHARASHTRA

3. VALAY GADA

4. DHANLAXMI GADA

.....Respondent(s)

REVISION PETITION NO. 1066 OF 2019

(Against the Order dated 19/07/2018 in Appeal No. 903/2015 of the State Commission Maharashtra)

1. DR. AJAY RATHOD
A-25, NAIK NAGAR, CO. HSG. SOC. SHIVA SHRUSHTI
ROAD, KURLA(WEST)
MUMBAI-400024
MAHARASHTRA

.....Petitioner(s)

Versus

1. UMA MANGESH NIKAM & 2 ORS.
R/O. PANCHPAKDI VIRANGULA CHS, PLOT NO. 52, R.N.
B/1, SAVARKAR NAGAR, MADHA COLONY,
THANE(W)-400606
MAHARASHTRA

.....Respondent(s)

2. PAREL HOSPITAL,
96/97, JERBAI WADIA ROAD, NEAR TATA HOSPITAL
BOIWADA, PAREL
MUMBAI-400012
MAHARASHTRA

3. DR. MULJI KHERMI GADA (DECEASED)
THROUGH LRS, 1/A MANGAL MANDIR, 2ND FLOOR,
OPP. NAPPU GARDEN 290, BHAWANJI ARJUN, KHIMJI

ROAD, MATUNGA
MUMBAI-400019
MAHARSHTRA

BEFORE:

HON'BLE DR. S.M. KANTIKAR, PRESIDING MEMBER

For the Petitioner :

For the Respondent :

Dated : 29 Mar 2023

ORDER

Appeared at the time of arguments:

RP/1016/2019

For the Petitioner : Dr. S.K. Khattri, Advocate

For the Respondents : Mr. Amit Borkar, Advocate, R-1

Ms. Uma Nikam, in person

Mr. Kapil Kher, Advocate for R-2

Mr. Vikram Hegde, Mr. Abhinav Hans,

Mr. Arman, Advocates for R-3

RP/1066/2019

For the Petitioner : Mr. Kapil Kher, Advocate

For the Respondents : Mr. Amit Borkar, Advocate, R-1

with Ms. Uma Nikam, in person

Dr. S.K. Khattri, Advocate, R-2

Mr. Vikram Hegde, Mr. Abhinav Hans,

Mr. Arman, Advocates for R-3

Pronounced on: 29th March 2023

ORDER

1. These two Revision Petitions have been filed by the Petitioners against the Order dated 19.06.2018 passed by the Maharashtra State Consumer Disputes Redressal Commission, Mumbai (in short, the 'State Commission') in First Appeal No. 903/2015, whereby the Appeal filed by the Respondent No. 1 – Complainant was allowed and the Order dated 16.07.2015, passed by the District Consumer Disputes Redressal Forum, Central Mumbai (in short, the 'District Forum') in CC/10/69, dismissing the Complaint, was set aside.
2. This Order shall decide both the Revision Petitions. The facts are drawn from R.P. No. 1016 of 2019. For convenience, the parties are being referred as stated in the Complaint before the District Forum.
3. Brief facts that on 20.06.2008, a 66 years old lady Kusum (hereinafter referred to as, the 'patient'), sustained fracture of forearm. On the next day, i.e. on 21.06.2008, she was operated by Dr. Ajay Rathore, an Orthopedician (OP-1) in Parel Hospital, Mumbai (OP-2). The Anesthetist was Dr. Mulji Khemji Gada. It was alleged that the operation was conducted in the morning, but the patient did not regain consciousness due to excessive anesthesia. Her condition worsened further, she was intubated and put on ventilator. The patient was hospitalized for long period in unconscious condition. On 16.07.2008, the Neurologist, after doing CT and MRI, diagnosed it as 'hypoxic encephalopathy'. Thereafter, the patient was shifted to another hospital, where she, without regaining consciousness, died on 24.10.2008. Being aggrieved, the patient's daughter filed a complaint before the District Forum, Central Mumbai.
4. The OPs filed their replies and denied negligence on their part. The Anesthesiologist OP-3, died during pendency of the matter.
5. The District Forum dismissed the Complaint holding that the Complainant failed to make out any case of medical negligence against the opponents.
6. Being aggrieved, the Respondent No. 1 / Complainant filed an Appeal before the State Commission. The State Commission allowed the Appeal and awarded compensation to the Complainant by setting aside the Order of the District Forum. The Order reads as below:

ORDER

1. The Appeal is allowed and the order of the learned District Consumer Disputes Redressal Forum, Central Mumbai is hereby set aside with costs of Rs.25,000 (Rupees Twenty Five Thousand only) to be paid by the opposite parties jointly and severally to the complainant.
2. It is hereby declared that, the opposite parties have indulged in deficiency in service while giving treatment to the complainant's mother.
3. The opposite parties are directed to pay jointly and severally Rs.1,68,049 (Rupees One Lakh Sixty Eight thousand forty Nine only) towards the treatment expenditure incurred by the complainant for the patient with inte of interest @ 9% from the date of filing the complaint, within 3 months, failing which the amount shall carry interest @ 12% p.a. from the date of this order till realization.
4. The opposite parties are also directed to pay to the complainant, Rs.10 Lakh only towards compensation for loss of life, suffering by the family and mental agony within 3 months from the date of this order. The opposite party no.2, Parel hospital will pay Rs.8 Lakh and the opposite party no.1, Dr.Ajay Rathod will pay Rs.2 Lakh. In case of default, the amount will carry interest at the rate of 12% per annum from the date of order till realization.
7. Being aggrieved, the OPs – 1 and 2 filed these Revision Petitions.
8. Heard the arguments from learned Counsel on both the sides. Perused the order of both the fora.

9. It is evident that the Anesthetist had not performed the pre-anesthetic test properly. He administered anesthesia by Ketamine along with injection Fortwin 25mg and Compose 10 mg. It is pertinent to note that Ketamine was given as 5ml in Ringer Lactate and later on 3ml was administered. It was an excessive dose of ketamine in the old patient of 66 years. In my view, it was the negligence and failure of duty of care from the Anesthetist, who administered excessive dose of ketamine and failed to managed the hypoxic event.

10. It is pertinent to note that the anaesthesiologist (OP-3) did not even read the reports of investigations of patient and relied on telephonic communication by OP-1, given fitness for anaesthesia. After the surgery the patient did not come out of anaesthesia and she was shifted to another hospital for ICU Care. The patient was in vegetative state for next 4 months and died on 24.1-.2008. The anaesthesia record of Parel Hospital on 21.06.2008 the day of operation it was noted that the patient suddenly suffered from hypoxia and was intubated. However, for emergency lifesaving intubation Dr. Brijesh Gupta the intensivist from ICU was called. Thus, the said delay was fatal and the patient was not properly managed. It was the negligence on the part of Anaesthesiologist (OP-3).

11. The expert Committee report from department of Traumatology and Orthopaedic Surgery of Grant Medical College and Sir J.J. group of Hospitals; Mumbai has given the report that there was no medical negligence on the part of operating surgeon. However, one of the experts- Dr. Kamlesh Jagyasi the Neurosurgeon opined that, as the Hb% of the patient was 7.4 gm%, it was low and it should have been built up before surgery, also pre-anaesthetic fitness should have been recorded. It was the valid point that the other experts have not commented on this point. As there was no recovery from anaesthesia after the operation, in my view, the pre and postoperative care was certainly doubtful in the instant case. The District Forum wrongly concluded that, Dr. Kamlesh Jagyasi has nowhere stated that the doctor was negligent during the operation. There is no record showing that the patient was monitored during operation under anaesthesia and why a qualified anaesthesiology had to call another intensivist doctor for endotracheal intubation. However, I agree with the opinion of expert committee which found no negligence of OP-1 in performing the Orthopaedic surgery.

12. As during proceedings before State Commission (appellate stage) ,the OP-3 expired and his legal heirs were brought on record. In my view, right to sue survives against the OP-3. Though, negligence was attributable to the OP-3, the hospital shall not be absolved from the vicarious liability. Moreover, in the instant case 'Captain of the Ship' was the Orthopedic Surgeon (OP-1) before proceeding to surgery, he was supposed to be careful to ascertain proper pre-anesthetic check-up and fitness from OP-3, but it was lacking in the instant case.

13. Based on the afore discussion, I do not find any error apparent to interfere in Order of State Commission.

Both the Revision Petitions are dismissed. There shall be no order as to costs.

.....
DR. S.M. KANTIKAR
PRESIDING MEMBER