

**Distt Consumer Disputes Redressal Commission**  
**Ladowali Road, District Administrative Complex,**  
**2nd Floor, Room No - 217**  
**JALANDHAR**  
**(PUNJAB)**

**Complaint Case No. CC/248/2015**  
**( Date of Filing : 08 Jun 2015 )**

1. I.P. Singh S/o Pritpal Singh Bhalla  
R/o Green Land,near Gurudwara Chhevin  
Patshahi,Hadiabad, Phagwara  
Kapurthala  
Punjab

.....Complainant(s)

Versus

1. Dr. Naveen Chitkara,NASA Neuro Care,Brain and  
Spine Centre  
2nd Floor,Joshi Hospital,Kapurthala Chowk,  
Jalandhar  
Punjab

.....Opp.Party(s)

**BEFORE:**

**Kuljit Singh PRESIDENT**  
**Jyotsna MEMBER**

**PRESENT:**

Smt. Harleen Kaur, Advocate counsel for  
Complainant.

.....for the Complainant

Sh.Umesh Dhingra, Advocate counsel for OP  
No.1.

Sh. Ashish Bhandari, Advocate counsel for OP  
No.2.

Sh. Sukhjot Singh, Advocate counsel for OP  
No.3.

Sh. B.P Singh, Advocate counsel for OP No.4.

.....for the Opp. Party

**Dated : 20 Apr 2021**

**Final Order / Judgement**

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,**  
**JALANDHAR**

Complaint No.248 of 2015

Date of Instt. 08.06.2015

Date of Decision : 20.04.2021

I. P. Singh s/o S. Pritpal Singh Bhalla, resident of Green Land, near Gurudwara Chhevini Patshahi, Hadiabad, Phagwara, District Kapurthala.

**.....Complainant**

**Versus**

1. Dr.Naveen Chitkara, NASA Neuro Care, Brain and Spine Centre, 2<sup>nd</sup> Floor, Joshi Hospital, Kapurthala Chowk, Jalandhar and Visiting Neuro Surgeon, Parhar Hospital 371, Guru Hargobind Nagar, Phagawara 144401, Distt. Kapurthala

**Opposite Party**

2. Dr.Manish Kumar, H.No. 265-B, Chahal Nagar, Near Civil Hospital, Phagwara.

3. Mehar Preet Singh, s/o S. Pritpal Singh Bhalla, Resident of Green Land, near Gurudwara Chhevin Patshahi, Hadibad, Phagwara.

**Performa Opposite Parties 2 & 3**

4. The New India Assurance Co. Ltd (Branch Code 361002) Industrial Area Branch 16, Patel Chowk, Jalandhar, Through its Senior Branch Manager.

**... ..... Opposite Party**

**Complaint Under the Consumer Protection Act.**

Before: Sh. Kuljit Singh (President)

Smt. Jyotsna (Member)

Present: Smt. Harleen Kaur, Advocate counsel for Complainant.

Sh.Umesh Dhingra, Advocate counsel for OP No.1.

Sh. Ashish Bhandari, Advocate counsel for OP No.2.

Sh. Sukhjit Singh, Advocate counsel for OP No.3.

Sh. B.P Singh, Advocate counsel for OP No.4.

### **Order**

#### **Kuljit Singh (President)**

1. The instant complaint has been filed by the complainant against OPs on the averments that OP no.1 is Neurosurgeon engaged in Brain and Spine Surgery at his NASA Neuro Care, Joshi Hospital, Jalandhar. OP no.1 was engaged by complainant for providing expert medical treatment to patient Smt. Avtar Kaur. He alleged that in the beginning of May 2013 his mother having some problem with working of upper and lower limbs and end of May 2013 her condition deteriorated. In June 2013, Neurologist Dr. Sandeep Goel was consulted and as per his advice Avtar Kaur (mother of the complainant) underwent MRI on June 4, 2013 and report of MRI concluded in para no.5 of the complaint. The complainant consulted OP no.1 Dr. Naveen Chitkara who after looking at the examining MRI that there was some compression in patient's spine and it was causing his weakness in limbs. It was further advised that in case she would not undergo the suggested surgery, her condition could deteriorate. In view of opinion of OP no.1 both patient and complainant decided to go in for required surgery from OP no.1 and surgery was fixed on June 10, 2013. Smt. Avtar Kaur underwent spine surgery by OP no.1 at NASA Care on June 10, 2013 as originally planned. After surgery, OP no. 1 informed him and other family members that spine surgery had gone very well and recovery would be fast. However, from subsequent events, it was totally wrong and misleading assessment which shows the callous attitude of OP no.1. OP no.1 demanded fee of Rs.50,000/- instead of earlier agreed fee of Rs.40,000/- on the pretext that there was more complication in the surgery procedure than expected. He charged Rs.1,24,000/- for

operation , medicines and stay etc in his NASA Neuro Care up to June 14,2013. Complainant's mother discharged from the hospital on June 14, 2013. The complainant and patient was told to visit OP no.1 at Parhar Hospital Phagwara, where he is visiting doctor to apprise the patient and her family members. The complainant's mother was taken to Parhar Hospital Guru Hargobind Nagar Phagwara District Kapurthala by complainant, her other son and daughter in law Manvinder Kaur on June 20, 2013 where OP no.1 was holding OPD. The complainant and patient's other kin accompanying her told OP that her right shoulder was lifted upwards and there was not only difficulty in its movement but also there was pain in it. The complainant and his brother explained to OP no.1 that there was no improvement in the strength of the limbs even 10 days after the surgery. Thereafter, OP no.1 convinced that there was improvement. OP no.1 was physically shown that there was no sign of any improvement and her legs were not at all able to bear any weight as was just before the surgery by lifting the complainant's mother from wheel chair by her two sons. OP no.1 advised x-ray of the right shoulder and of the cervical spine also and asked the complainant and his brother to meet OP no.1 again with x-ray images. OP no.1 also asked the patient, complainant and other son to consult an orthopedic surgeon to diagnose if there was any ortho related new problem in the shoulder. The complainant got done x-ray at Inder Scan Centre Phagwara after visiting OP no.1 and showed it to Dr.Puneet Narwala. X-ray was also shown to Dr. Shubhang Aggarwal Ortho surgeon at Jalandhar. Both of them opined that there was no local pathology in the shoulder. In the same afternoon when OP no.1 was shown x-ray and told about opinion of both the doctors, he insisted that complainant and his brother should consult Dr. Mukesh Joshi, the Ortho surgeon of Joshi Hospital Jalandhar where OP no.1 is running the NASA Neuro Care. However, complainant politely told OP no.1 that how the opinion of other two Ortho surgeons could be trashed like that and put him on phone with Dr. Narula who told him very clearly that there was no local pathology. After surgery complainant's mother started getting physiotherapy and advised by OP no.1 and it continued daily. There was gradual deterioration in condition of the patient instead of improvement as assured and after waiting for over a month the complainant against visited OP no.1 at his Hospital NASA Neuro Care on 13.07.2013 and insisted

that the surgery done by him should be re-evaluated through a post surgery MRI after which he prescribed another MRI of the cervical spine and of right shoulder also as the latter was remaining uplifted was very painful, causing lot of distress and discomfort. The report of MRI on July 13, 2015 from Super Scanning and Diagnostics Jalandhar confirmed that compression at the same levels was before surgery still persisted. The MRI Report of post surgery clearly reflected that there was no different between two MRIs Pre surgery and post surgery. On July 26, 2013 complainant's mother underwent 3D CT Scan at Super Scanning & diagnostic for further clarity on the issue and to rule out any scope of ambivalence. On July 30, 2013, the complainant consulted Dr. Rana Patir Director and HOD Department of Nuerosciences Fortis Hospital Vasant Kunj New Delhi. All the situation was explained to Dr. Patir and examined both the pre and post surgery MRIs and found that compression was still continuing. On July, 30, 2013 complainant consulted Dr. H.S. Chhabra Chief of Spine Service and medical Director, Indian Spinal Injuries Centre Vasantkunj, New Delhi. He also found that compression was still persisted. He advised more x-rays of the spine. X-rays were got done later on and then along with x-rays images, complainant wrote him a mail on August 30 to which he replied on August 31, 2013 and his reply confirming that how cervical spine was still unstable and needed another surgery of fixing the problems. In the email Dr. Chhabra also enquired about the expenses for another surgery. On July 31, 2013 complainant consulted Dr. Shankar Acharya MS FRCS M.Ch leading spine surgeon of the country at Sir Ganga Ram Hospital Delhi. All the four surgeons , two neurosurgeons and two spine surgeons who are not just some other surgeons but leading expert surgeons of the region and country were unanimous in their opinion that compression continued and now corrective measures that is re-surgery was required. The complainant consulted these four surgeons 50 days had already been passed after the surgery and due to persisting compression the damage to the cord and nervous system happened more during this period. In the meantime, patient condition kept on deteriorating as immobility was leading to several problems about which complainant had been apprising OP no.1 continuously. Amid such conditions, the patient and her family came across the callous behavior and indifferent attitude on the part of OP no.1 towards the patient, as the patient

was not only suffering from same problems with which she was originally brought to OP no.1 but situation was further deteriorated post surgery. OP no.1 was careless and would find alibis in place of behaving like a seasoned and good surgeon. It was bounden duty of OP no.1 to take proper care of such issues but he failed in taking care of such issues after failing in his earlier duty to perform a good surgery. The patient had to be supported by a catheter repeated attacks of Urinary traction infection happened and worst nightmare for the patient, when she developed septicemia and she had to be rushed to DMC Hospital Ludhiana on December 4, 2013 after a night of a admission at Phagwara Hospital, at DMC Hospital the doctors managed to bring her back from the edge with aggressive treatment which of course was expensive also and she was discharged on December 18, 2013. At DMC the complainant's mother remained in Emergency/ICU for seven days and for another eight days in semi private ward. She was unable to sit without help and support and her limbs had further weakened. OP no.1 is responsible for giving mental and physical trauma to complainant's mother. After admission of complainant's mother in NASA Nureo Care under supervision of OP No.1, the complainant incurred bill expenses of Rs.1,24,000/- during admission at NASA Neuorcare. After the patient was discharged the complainant incurred at least another Rs.33,674/- The treatment at DMC Hospital cost of complainant at least Rs.2,13,135/-. Out of these bill expenses of over Rs.3.70 lakhs complainant had got the insurance claim of Rs.3 lakh total as per his entitlement. Due to act and conduct of OP no.1, complainant has filed the present complaint and prayed that OP no.1 be directed to pay Rs.19,99,999/- inclusive expenses which were not reimbursed by insurance company may be awarded in his favour and Rs.10,000/- as cost of litigation.

2. Upon notice, OP no.1 appeared and filed its separate written reply and contested the complaint of the complainant by raising preliminary objections that complaint is not maintainable. The complaint is liable to be dismissed out rightly because the complainant has even not mentioned regarding wrong treatment or suffering any kind of problem due to the treatment. The complainant has no cause of action against OPs. On merits, it was averred that Avtar Kaur came to hospital of OP no.1 and on 10.06.2013 she was diagnosed as patient of PIVD C4-5 Spondylolisthesis with

cord compression. The patient has conveyed her past illness of HTN and who was taking medicine earlier. At the time of her presentation to OP was unable to bear weight on both legs. The patient admitted in their hospital, patient had earlier got done MRI Cervical spine on 04.06.2013 from Super Scanning & Diagnostic Pvt.Ltd as per MRI study reveal grade II spondylosisthesis of C4 over C5 with reduced height of C5 vertebral body along with fractures of pars interarticularis. Secondary hypertrophic changes are noted in facetar region. These changes along with posterior disco-osteophyte complex are causing canal compromise, residual canal diameter at the level of body C5, measuring 3.5 mm. The cord is being compressed at this level along with changes of mild cord edema. Bilateral neural foramina are also stenosed causing compression of C5 roots. Uneventful surgery was done and post up period was uneventful. The patient was discharged on 14.06.2013 in satisfactory condition and power in B/L Grip was 4+/5 accepting orally and was advised medicines. No pain killer was suggested because there was no complaint of any pain by the patient on discharge and the patient was advised indoor walking and limited outdoor walking with normal diet and physiotherapy to be. The entire procedure to the patient was conducted with complete knowledge and consent of the relations. After the discharge from the hospital the patient presented herself on 20.06.2013 in OPD at Parhar Hosptial at Phagwara and at that time on examination the patient was advised to go for x-ray right shoulder and x-ray cervical spine with an advised to have shoulder elbow sling. Thereafter, patient got herself examined on 13.07.2013 and advised MRI Cx Spine and right shoulder and was given with medicines. Patient never visited for follow up with OP. Rest of averments of complaint were denied by OP no.1 and prayed for dismissal of complaint.

3. OP no.2 appeared and filed its separate written reply and contested the complaint of the complainant by averring that patient was immobile condition and was suffering from multiple problems arising out of bed ridden conditions which were related to post-surgical complications. She was suffering from urinary tract infection which was caused due to prolonged use of catheter. The UTI started leading the patient towards septicemia which in turn pushed patient towards acute renal failure which was confirmed by different tests got conducted by OP no.2. The patient was

also diagnosed with pneumonitis having symptoms of cough and breathlessness. All these problems were consequential to the bed ridden situation after the surgery as patient did not show any signs of improvement in terms of mobility or strength in her limbs. Rest of the averments of the complainant were denied by OP no.2 and it prayed for dismissal of the complaint.

4. OP no.3 filed its separate written reply and averred that Avtar Kaur his mother who had undergone unbearable and intolerable pain, suffering in her old age on account of medical negligence of OP no.1 which has been fully described in the complaint by complainant. OP no.1 had treated her carelessly and negligently.

5. OP no.4 filed its separate written reply and contested the complaint of the complainant by raising preliminary objections that complaint is not maintainable. There is no privity of contract between the parties. There is no deficiency in service, unfair trade practice and negligence on the part of OP no.1. OP no.4 controverted averments of the complainant even on merits and prayed for dismissal of complaint.

6. We have perused the written arguments filed by the complainant and arguments of learned counsel for OPs already heard as well as record of the case very minutely.

7. The glance of evidence is required by us for settlement of the case in hand. The complainant has tendered in evidence his affidavit Ex.CW-A on the record. He alleged deficiency in service and unfair trade practice on the part of OP no.1. Ex.C-1 is letter dated 04.06.2013 addressed to complainant from Super Scanning & Diagnostic Pvt. Ltd. Ex.C-2 is copy of discharge summary issued by NASA Neuro Care Joshi Hospital in which date of admission is mentioned as 10.06.2013 and discharged on 14.06.2013. Ex.C-3 is copy of prescription slip of doctor Parhar Hospital Phagwara. Ex.C-4 is copy of x-ray report. Ex.C-5 is copy of prescription slip prepared by Dr. Naveen Chitkara. Ex.C-6 is copy of letter dated 13.07.2013. Ex.C-7 is copy of prescription slip. Ex.C-8 is copy of letter addressed to patient. Ex.C-11 is copy of OPD Card. Ex.C-12 is copy of cash receipt for payment of Rs.815/-. Ex.C-13 is copy of email. Ex.C-14 and Ex.C-15 are



prescription slips. Ex.C-16 is copy of letter dated 18.08.2013. Ex.C-17 is copy of discharge summary prepared by DMC Ludhiana. Ex.C-18 is copy of Letter written to OP no.1 from complainant. Ex.C-19 is copy of postal receipt thereof. Ex.C-20 is copy of claim form. Affidavit of Mehar Preet Singh as Ex.CW-B on the record. Affidavit of Manvinder Kaur as Ex.CW-C on the record.

8. To refute this evidence of the complainant, OP no.1 has relied upon affidavit of Dr. Naveen Chitkara MS MCh Neurosurgery NHS Hospital as Ex.OP-1/A on the record. Ex.OP-/B is copy of prescription slip of doctor. Ex.OP-1/D is copy of triage sheet of patient. Ex.R-1 is copy of Harish Chander Chadha Divisional Manager New India Assurance Co. Ltd. Ex.R-2 is copy of policy.

9. It is an established fact that in the beginning of May 2013, the mother of the complainant having some problem with working of upper and lower limbs and by end of May 2013 her condition deteriorated though she still attended to some chores. In the beginning of June 2013 Neurologist Dr. Sandeep Goel of Jalandhar was consulted. The complainant also consulted with OP no.1 Dr. Naveen Chitkara who after looking examining the MRI said that there was compression in patient's spine at C4 and C5 level it was causing weakness in limbs. OP no.1 advised complainant's mother to be operated upon and she would be able to recover after spine surgery. The surgery was conducted by OP no.1 at NASA Neuro Care on June 10, 2013 and she was discharged on June 14, 2013. OP no.1 charged Rs.1,24,000/- for operation. Then complainant's mother was taken to Parhar Hospital Guru Hargobind Nagar Phagwara District Kapurthala. The complainant and his brother Manpreet Singh explained to OP no.1 that there was no improvement in the strength of the limbs even 10 days after the surgery. After that the complainant gets suggestions from other doctors. On July 30, 2013 complainant consulted Dr. Rana Dhir Director and HOD Department of Nuerosciences Fortis Hospital New Delhi. Dr. Patir examined both pre and post surgery MRIs and he found that compression was still continuing. The complainant further consulted Dr. H.S Chhabra Chief of Spine Service and Medical Director Indian Spinal Injuries Centre Vasantkunj New Delhi, he also found that compression still

persisted. He advised more x-rays of the spine on his prescription slip. On 31 July 2013 the complainant consulted Dr. Shankar Acharya MS FRCS Mch a leading spine surgeon of the Sir Ganga Ram Hospital Delhi. He also mentioned that the cage/implant put in during the surgery by OP was tilted. On the prescription slip it was mentioned that cage tilted with compression and myelopathy. Four surgeons and two Neurosurgeons and two surgeons who are not just some other surgeon but leading expert surgeons were give unanimous in their opinion that compression continued and re-surgery is required.

10. On the other hand, OP no.2 denied all the allegations leveled upon it. OP stated that it has attained good reputation and experience of 18 years in Neuro Surgery. OP no.1 stated that it was diagnosed mother of the complainant as patient of PIVD C4-5 Spondyloisthesis with cord compression. The patient was discharged on 14.06.2013 in a satisfactory condition. No pain killer was suggested because there was no complaint of any pain by the patient at the time of discharge.

11. The main controversy involved in this case whether medical negligence on the part of OP no.1 is proved or not? From perusal of conclusion part of report Ex.C-1 Super Scanning & Diagnostic P Pvt., “that findings are suggestive of compressive cervical myelopathy due to spondylolisthesis and secondary degenerative changes with resultant canal and foraminal stenosis at C4-C5 level as described. Ex.C-2 is discharge summary clear that the complainant admitted in the hospital of OP no.1 on 10.06.2013 and discharged on 14.06.2013. In report Ex.C-6 dated 13.07.2013 prepared by Super Scanning & Diagnostic Pvt. Ltd that cervical myelopathy due to spondylolisthesis and secondary degenerative changes with resultant canal and foraminal stenosis at C4-C5 level as described. The complainant’s mother also take treatment from DMC Hospital Ludhiana, this fact is clear from perusal of discharge summary prepared by DMC & Hospital Ludhiana Ex.C-17 on the record. In this document, the date of admission of the patient is mentioned as 04.12.2013 and date of discharge as 18.12.2013. The complainant alleged in his complaint Ex.C-18 mentioned that he consulted Dr.R.K. Kaushal Professor and Head of Neurosurgery at DMC & Hospital Ludhiana and Dr.H.S Chhabra of Indian Spinal Injury Centre New Delhi both doctors confirmed

that compression is still persisting and advised another surgery. The complainant consulted Surgeons and two Neurosurgeon and spine surgeons who advised his re-surgery was required. It proves that surgery was not done property. The surgery of mother of the complainant conducted by OP no.1 on June, 10, 2013 and she was discharged on June, 14, 2013. The complainant and patient were told to visit OP no.1 at Parhar Hospital Phagwara where Mehar Preet Singh brother of the complainant explained OP no.1 that there was no improvement in the strength of limbs even 10 days after the surgery. On 30 July 2013 the complainant consulted leading spine surgeon of the country, Dr. H.S Chhabra Chief of Spine Service and Medical Director Indian Spinal Injuries Centre Vasantkunj New Delhi found that **compression still persisted** . He advised more x-rays. On 30 July 2013 the complainant consulted Dr. Rana Patir Director and HOD Department of Nuerosciences Fortis Hospital Vasantkunj New Delhi. All the situation was explained to Dr. Patir, he examined both pre and post surgery MRIs and found that **compression was still continuing**. On 31 July 2013 complainant consulted Dr.Shankar Acharya MS FRCS Mch leading Spine Surgeon of the Sir Ganga Ram Hospital Delhi, he also noted that **compression was still continuing and another surgery was required. He also explained even put in it writing that risk of the second surgery would be very high and fraught with peril to her aging life. He also mentioned that cage/implant put in during the surgery by OP was tilted**. The remarks of above doctors proves that OP no.1 not performed the surgery as per medical protocol. In Ex.C-1 is report dated 04.06.2013 prepared by Dr. G.S Bholla MD Radio diagnosis and Dr Nitin Paul D.M.R.D Radio diagnosis. In this report, conclusion is explained that : ***Findings are suggestive of compressive Cervical Myelopathy due to spondylolisthesis and secondary degenerative changes with Resultant Canal and Foraminal Stenosis C-4 C-5 level as described.*** In discharge summary Ex.C-2 prepared by NASA Neuro Care Joshi Hospital. In this discharge summary it is mentioned that :- ***Compressive cervical mtelopathy due to spondylolisthesis and secondary degenerative changes with resultant canal and foraminal stenossis at C4-C5 level.*** In report dated 13.07.2013 the conclusion is mentioned that ***Compressive cervical myelopathy due to spondylosisthesis and secondary degenerative changes and Resultant Canal and Foraminal Stenosis at C4-C5 level as***

*described. Chronic Rotator cuff tear as described.* In report dated 26.07.2013 Ex.C-8 the conclusion mentioned as *Findings are suggestive of Grade III Listhesis of C4 cover C5 with resultant bony canal stenosis along with milder degenerative changes at C3, C4,C5-C6 and C6-C-7 level as described.* In above reports the *stenossis* level is C-4-C5 but in report Ex.C-8 dated 26.07.2013 the Stenosis along with Milder Degenerative Changes at C3-C4, C-5-C6 and C6-C7 are described. This report is different from other reports. In above reports *Compressive cervical mtelopathy due to spondylolisthesis is mentioned.* The Spondylolisthesis Grades :- spondylolisthesis can be described according to its degree of severity. **One commonly used description grades spondylolisthesis, with grade 1 being least advanced, and grade 5 being most advanced .** The spondylolisthesis is graded by measuring how much of a vertebral body has slipped forward over the body beneath it. Ex.CW/B is affidavit of Mehar Preet Singh placed on the record. This witness stated that due to immobility caused by failed surgery patient had to be supported by a catheter which resulted in repeated attacks of Urinary Tract Infection (UTI) and it took worst turn in first week of December 2013 when she developed septicemia and had to be rushed to DMC and Hospital Ludhiana on December 4, 2013 after a night of admission at a Phagwara Hospital. At DMC Hospital, she was saved from going in the well of death with very aggressive treatment and she was discharged on December 18, 2013. This witness stated that there was gradual deterioration in condition of the patient instead of improvement as assured and after waiting for over a month patient was again taken to OP no.1 at his hospital NASA Neuro Care on July, 13, 2013. This witness further stated that condition of patient did not improve, so again visited Dr. Chitkara and Dr. Sandeep Goel on July 26, 2013 and Dr. Goel prescribed 3 D CT Scan which was got conducted on that day and confirmed that **compression persisted on that spinal cord and the surgery had failed to remove it.** The patient consulted the four surgeons, as mentioned in the complaint, 50 days had already been passed after the surgery and due to persisting compression the damage to the cord and nervous system happened more during this period. The complainant consulted four prominent spine/Neuro surgeons of the country and again met Dr. Chitkara and asked him about such glaring contradiction between what he had been

claiming about the results and what the four surgeons had opined about the surgery what meant that first surgery had failed to achieve decompression. Ex.CW-D is affidavit of Manoj Kumar Lukhi son of Sh. Surinder Kumar on the record. This witness stated that after the surgery in second week of June, the family of the patient assured them that her spine surgery was perfect and she would recover faster than what he had earlier expected. However, after surgery, there was no improvement at all rather she started deteriorating further. In report Ex.C-6 dated 13.07.2013 the residual canal diameter at the level of body of C5, measuring 4.2 mm. The cord is being compressed at this level along with changes of mild cord edema. Mild degenerative changes of marginal osteophytosis and disc bulge noted as C5-C6 and C6-C7 level causing no significant neural compression. In report dated 26.07.2013 Ex.C-8 C4 vertebra shows Grade III anterolisthesis with respect to C5 with a 7 mm displacement spinal canal and bilateral neural foramina are compromised secondary to these changes with AP canal diameter which measures up to 5.1 mm. The diameter level of the body is measuring 4.2 mm in report Ex.C-6 dated 13.07.2013 while the diameter measures up to 5.1 mm in report dated 26.07.2013 Ex.C-8.

12. From perusal of x-ray reports of the patient, affidavit of witnesses and different views of Spine/Neuro Surgeons, we have to come to this conclusion that OP no.1 failed in performing the surgery of the patient as per medical standard protocol. It has also confirmed that compression persisted on the spinal cord and the surgery had failed to remove it.

13. The fact of medical negligence is settled by **Apex Court has also held in case of titled as Nizam Institute of Medical Sciences vs. Parasnath S. Dhananka & Ors 2009 (2) CPC 402 (SC)** that once the complainant had discharged initial burden, it was incumbent upon hospital authorities to prove that they had done their duty without any negligence on their part which they have failed to do.

*“ A professional 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 possessed, or, he did not exercise, with reasonable*

*competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence."*

14. The fact of medical negligence is also proved from judgment **Savita Garg vs. Director National Heart Institute reported in (2004) 8 SCC 56** it has been observed as under:

*"Once an allegation is made that the patient was admitted in a particular hospital and evidence is produced to satisfy that he died because of lack of proper care and negligence, then the burden lies on the hospital to justify that there was no negligence on the part of the treating doctor or hospital. Therefore, in any case, the hospital is in a better position to disclose what care was taken or what medicine was administered to the patient. It is the duty of the hospital to satisfy that there was no lack of care or diligence. The hospitals are institutions, people expect better and efficient service, if the hospital fails to discharge their duties through their doctors, being employed on job basis or employed on contract basis, it is the hospital which has to justify and not impleading a particular doctor will not absolve the hospital of its responsibilities."*

15. Negligence is the breach of a 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. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes

actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: "duty", "breach" and "resulting damage".

16. The treatment given to patient by doctor based on liability of medical practitioner. There is an unwritten contract between the two. Patient entrust himself to doctor that doctor agrees to do his best at all times for patient. Such doctor-patient contract is almost always an implied contract except when written informed consent is obtained. This fact is clear from citation of **Hon'ble Supreme Court of India in case titled as Dr. P.B Desai vs. State of Maharashtra and another reported in (2013) 6 Supreme Court 450** that due to very nature of medical profession, degree of responsibility on practitioner is higher than that of any other service provider. Concept of doctor-patient relationship forms foundation of legal obligations between doctor and patient.

17. The citation *Dr.P.B Desai vs State of Maharashtra (supra)* further held that “if patient suffered because of negligent act/omission of the doctor, the same gives right to the patient to sue the doctor for damages. This is a civil liability of the doctor under law or tort or contract. The negligent act of doctor may also give rise to criminal liability as well.” When reasonable care, expected of the medical profession is not rendered, the same amounts to negligence.”

18. This citation of Apex Court is applicable in the case in hand. This citation proves that the patient taken the treatment from doctor on good faith that he has done his duty in a very good manner and to do his best, at all times for patient. If doctor fails to perform his duty during treatment then he is liable for medical negligence. The fact of medical negligence is also proved by judgment of Apex Court in **V. Krishnakumar versus State of T.N reported in 2015(2) Apex Court Judgments 762 (S.C)** wherein it has been held that “Hospital is vicariously liable for the acts of its doctors”.

19. We also observed that in this case principle of res ipsa loquitur is applicable in this case where negligence is evident, principle of res ipsa loquitur operates and complainant does not have to prove anything as the thing prove itself. In this case, no document regarding qualification of the doctor is produced to support of his case that he is qualified to perform his duty.

20. In the light of our above discussion, we allow the complaint of the complainant against OP No.1 only. OP No.1 is directed to pay Rs.5,00,000/- (Rupees Five Lakhs only) including expenses incurred by the complainant and compensation for mental harassment faced by the complainant. The complainant is also entitled Rs.7000/- as cost of litigation. The opposite party No. 1 is also directed to deposit Rs.3000/- as costs in the Consumer Legal Aid Account maintained by this Commission.

21. The compliance of the order be made within the period of 45 days from the date of receipt of copy of this order.

22. C opies of the order be sent to the parties, as permissible, under the rules. File be indexed and consigned to the record room after due compliance.

**Announced in open Commission**

**20<sup>th</sup> of April 2021**

**Kuljit Singh  
(President)**

**Jyotsna**



**(Member)**

**[ Kuljit Singh]  
PRESIDENT**

**[ Jyotsna]  
MEMBER**