IN THE DELHI STATE CONSUMER DISPUTES

REDRESSAL COMMISSION

Date of Institution: 26.07.2016

Date of hearing: 13.03.2023

Date of Decision: 13.07.2023

COMPLAINT CASE NO.-805/2016

IN THE MATTER OF

1. **MRS. RITU SHARMA,**
   W/O LATE MR. VINOD KUMAR SHARMA
2. **MS. CHANDSI SHARMA,**
   D/O LATE MR. VINOD KUMAR SHARMA
3. **MS. VANSHIKA SHARMA,**
   D/O LATE MR. VINOD KUMAR SHARMA,
   A MINOR REPRESENTED THROUGH HER MOTHER,
   COMPLAINANT NO. 01
4. **MS. PREM LATA SHARMA,**
   M/O LATE MR. VINOD KUMAR SHARMA
   ALL RESIDENT OF
   500/32, STREET NO. 17, VIJAY PARK,
   MOUJPUR, DELHI-110052.

(Through: MR. Anoop K. Kaushal, Advocate**)**

…Complainant

VERSUS

INDRAPRASTHA APOLLO HOSPITALS,
SARITA VIHAR, DELHI-MATHURA ROAD,
NEW DELHI-110076

(Through: Mr. Lalit Bhasin, Advocate**)**

…Opposite Party

CORAM:
HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)
HON'BLE MS. PINKI, (JUDICIAL MEMBER)
HO'BLE MR. J.P. AGRAWAL, MEMBER (GENERAL)

Present: None for the Complainants.
Mr. Lalit Bhasin along with for Mr. Vijayant Sharma, counsel for the OP No. 01.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, PRESIDENT

JUDGMENT

1. The present Consumer Complaint has been filed before this Commission under Section 17 of the Consumer Protection Act, 1986, seeking the following reliefs:

> *"a) Pay to the Complainants Rs. 70 lakhs (Rupees Seventy lakhs) towards loss of income for 15 years @ minimum Rs.6 lacs per annum, for causing death by neglecting the patient wrongfully, recklessly, negligently and in a manner not at all approved by clinical or neurological surgical practice in vogue and not having taken precautions which a medical man would have in the ordinary course of discharge of his professional duties taken, and for causing complications and intra cranial disease(s) which could otherwise not be contracted by him and for completely eradicating the chances of recovery from the disease(s) which ultimately led to his untimely and avoidable death causing mental agony, torture and harassment to the Complainant and other family members;*

b) Pay to the Complainant No.1, and other family members, mother and daughters a compensation of Rs. 25,00,000/- (Rupees Twenty Five Lakhs) for life long unbearable loss of company and affection, emotional and financial security, deprivation of advanced education support, funds and guidance, mental agony and harassment ;

c) Pay to the Complainants costs of litigation and present proceedings in the sum of Rs.55,000/- (Rupees Fifty Five Thousand);

d) Any other relief(s) as may be deemed fit and proper by the Hon'ble Commission in favour of the Complainant and against the Opposite Party."

2. Brief facts necessary for the adjudication of the present Complaint are that the deceased was a known gastroenterology patient having been diagnosed and treated for obstructive jaundice and intra hepatic cholangiocarcinoma at the Pushpawati Singhania Research Institute for Liver, Renal and Digestive Diseases wide discharge on 14.12.2013 and at Medanta Medicity, Gurgaon discharged on 23.12.2013. The patient/deceased was first admitted with the Opposite Party on 18.01.2014 in the Department of Medical Oncology for chemotherapy and was discharged on 31.01.2014. The patient was thereafter admitted with the opposite party on 07.02.2014, 13.02.2014, 28.02.2014, 11.03.2014 on four occasions and was discharged on the same dates after chemotherapy. On 24.07.2014, the said patient was admitted with the Opposite Party, in the Department Gastroenterology for further treatment. On early morning of 25.07.2014, the patient was noted to have altered sensorium, not responding to commands and sustained a fall. When at about 6.30 am on 25.07.2014 the said patient had to answer the urge of urination, and rang the bedside bell, there was no duty nurse

available in the room. The attendant, Mr. Hemant Sharma, brother-in-law of the said patient, had immediately tried to arrange the pot for urination, which was kept under the bed, however, in a split of second, the said patient fell from the bed. Even then no nurse, ward boy or doctor on duty came for help and the said attendant helped the said patient to get onto the bed, and a little while after that the said patient lost his senses and never recovered. Patient was shifted to Liver ICU at 7:15 a.m. and put on ventilator support. Glasgow Coma Scale was also very poor direct indicator of brain damage. Since the doctors of the Opposite Party were not at all responding to the queries of the Complainant No.1, the Complainant No.1 and her family members were in a total state of shock and requested to refer the patient to some other hospital, if the Opposite Party was unable to handle the patient. The doctors of the Opposite Party retorted to invoke the "LAMA", without any referral notes for another institute. The Complainants had no choice but to continue the treatment with the Opposite Party. Unfortunately, the patient expired on 27.07.2014 and the death certificate reflected cause of death as intracranial bleeding along with Metastate Cholangiocarcinoma.

3. The Complainants have submitted that the head injury has been thoroughly documented by the Opposite Party but there is not even a single clinical observation or investigation directing towards bleeding by pre-exisiting ailments. Secondly, it is submitted that neither the patient nor the attendants were educated about the alleged risks of fall. Thirdly, it is submitted that the treating doctors of the Opposite Party insisted the Complainant to sign a printed document “Apollo Fall Risk Assessment Tool (ARFAT)” and had forged and inserted instructions related to “Education on Fall Prevention” above the signatures of the Complainant No.1. It is further submitted that the deceased was oriented and in his

senses on 24.07.2014, still his signatures were not obtained on the alleged document and the Opposite Party filled the columns for 24.07.2014 and 25.07.2014 on its own accord. The Complainants have submitted that the sheer disregard of standard medical practice and lack of competence of the Opposite Party made the death inevitable, and as such necessity arose to file the present Complaint.

4. The Opposite Party has filed its reply and has submitted therein that the attendant of the patient took it upon himself to make the patient sit without awaiting for help from the staff and thus left the patient vulnerable to a fall. Secondly, it is submitted that the patient/deceased was a case of advanced metastatic cancerous disease, had severe jaundice with deranged liver functions and deranged coagulation parameters (prolonged Prothrombitine) which made the him very prone to bleeding anywhere in the body including intra-cranial bleeding. Lastly, it is submitted that the Nursing Admission Assessment & Action record dated 24.07.2014 clearly shows that the vitals fo the patient were taken by the nurse on duty and the patient as well as his attendant were explained the use of side rails, call bell, visitation policy, rules regarding safety precautions at the time of allotment of the bed. Therefore, the Opposite Party has submitted that the Complainants have failed to establish any medical negligence or deficiency in service on part of the Opposite Party and as such the Complaint is liable to be dismissed.
5. The Complainants have filed the Rejoinder rebutting the written statement filed by the Opposite Parties. Both the parties have filed their Evidence by way of Affidavit in order to prove their averments on record.
6. We have perused the material available on record and heard the counsel for the parties.

7. The ***first question*** for adjudication before us is ***whether the Opposite Party educated the patient/attendant regarding fall prevention.***

8. The facts reveal that the deceased was admitted with the Opposite Party on 24.07.2014 in the Department of Gastroenterology for further treatment. His vitals were recorded in the "Nursing Admission Assessment & Actions Record" (*pg-104 of medical record)* which also reflects that the Bed No.245721 ie. the bed of the patient was equipped with side rails, a call bell, telephone, lights and a bathroom. *"Section II. Orientation to Environment"* of the said document contains a direction *"Please explain to the patient/attendant"* and the columns pertaining to side rails, call bell, telephone etc have been duly checked and signed by the duty nurse. Further, the Nursing Care plan contains a note that the 'Falls Risk Assessment' will be done in *Apollo Falls Risk Assessment Tool AFRAT (form no.3011).* A perusal of the Patient and Family Education Documentation dated 24.7.2014 (*pg 82 of medical record)* clearly reflects that the Complainant No.1 i.e. the wife of the patient was educated on "Fall Prevention Modules". The said document bears the signature of the Complainant's undertaking that she has understood the education provided. The said document also bears the signatures of the treating doctor, nurse and dietician. Therefore, it is established beyond doubt that the Complainant was educated about the fall prevention on the very same day the patient was admitted with the Opposite Party.

9. The next question that falls for our consideration is ***whether the document Apollo Falls Risk Assessment Tool (AFRAT) is a document concocted by the Opposite Party.***

10. A perusal of the said document shows some handwritten instructions at the bottom of the document. The Complainants have alleged that the said instructions have been inserted by the Opposite Party. However, the

Complainants have merely made bald averments devoid of any cogent proof to show that the said document is a concocted one. It is pertinent to mention here that it is a common practice amongst medical professionals to write prescriptions/directions on documents pertaining to medical records of the patients with a view to facilitate compliance with the said prescriptions/directions. Even if it is assumed that the said instructions were inserted later, the Complainant No.1 was already educated on *Fall Prevention Modules* by the *Patient and Family Education Documentation dated 24.7.2014*. Furthermore, It is to be noted that the bed of the patient was equipped with bed rails and a call bell. The said documents is a tool to assess the risk of fall and merely reiterating the instructions for use of already existing bed rails, call bell, fall prevention etc does not amount to fabrication.

11. This brings us to the next question that ***whether the Opposite Party was negligent in treating the patient and not obtaining any neurological consultation.***

12. The Complainants have submitted that no neurological consultation was taken. However, a perusal of record suggests findings to the contrary. The Discharge Summary dated 25.07.2014 records that the patient was stabilized and shifted for Emergency CT head and neurosurgical opinion was obtained from Dr.Sudhir Tyagi and his advice was followed. Further "NCCT Brain Plain" was done and was assesed by Dr. Sunil Kumar Agrawal and Dr.Sandeep Vohra (Consultant) as is evident from pg-35 & 36 of medical record *(attached alongwith the reply*).

13. It is to be noted that the use of Non-contrast CT (NCCT) Brain is a radiological study and a part of the screening tools in the emergency departments (EDs) for neurologic and traumatic complaints. It is required both in critical and non-critical cases. Further, the neurological status chart

reflects that the patient's total coma score based on his response to external stimuli was assessed by the Opposite Party. These findings establish that the contention of the Complainants that no neurological consultation was taken is feeble.

14. Furthermore, it is not in dispute that the patient was admitted as a case of Metastatic Hilar Cholangiocarcinoma with dislodged percutaneous trans-hepatic biliary drainage (PTBD). The patient at the time of admission at the Opposite Party Hospital gave a history of increasing jaundice since last one and half month, ascites, pedal edema, left sided chest pain, weakness and fatigue, poor appetite and significant weight loss. Chest X-ray showed rib metastasis. PTBD was dislodged so he was admitted with plan for percutaneous trans-hepatic biliary drainage (PTBD) and therapeutic paracentesis. The patient's investigations revealed anaemia (Hb 7.8, TLC 32900/ cumm, (Bilirubin 20.8, direct platelets 2.16, deranged liver function parameters bilirubin 16, SGOT 206, SGPT 45, Serum Alkaline phosphatase 1457), deranged coagulation parameters (PT 34.6 / 10.8, INR 3.2). The patient was started on IV antibiotics, IV fluids and supportive care and was scheduled for blood and blood product transfusion.

15. It is to be noted that the patient was in a critical condition and had deranged international normalised ratio (INR) and blood parameters. A PT/INR test helps diagnose the cause of bleeding or clotting disorders. It is evident from the medical record that the coagulation parameters were PT 34.6 / 10.8, INR 3.2, indicating that patient was prone to bleeding risk three times that of a normal person. The medical record suggests that the patient was immediately attended to after the fall and all necessary actions were taken but if the patient did not survive, the blame cannot be passed on to the Opposite Party and the medical staff/doctors who provided all possible treatment within their means and capacity.

16. We are now faced with the ***main question*** that ***whether the Opposite Party's conduct can be attributed to the fall of the patient and whether such conduct amounts to medical negligence.***

17. Here we remark that Prevention of patient falls is critical; however, some hospitalized patients fall despite intensive efforts. Inpatient falls and fall-related injuries continue to be a complex challenge that health care organizations face. However, every fall cannot be considered a result of malpractice unless it was caused by *medical negligence.* To constitute a fall injury in a medical facility, the fall must have been the result of a medical provider's failure in providing an acceptable level of care. For instance**,** a doctor failed to diagnose or misdiagnosed a condition that affects the patient's balance or the patient was overmedicated, not made aware of a medication's side effects, or prescribed a medication that conflicted with another medication and/or the patient's fall risk was not assessed or managed correctly.

18. Here, it is pertinent to refer to the decision of the Hon'ble Apex Court in ***Civil Appeal No. 1658 Of 2010*** *titled as* "***Bombay Hospital & Medical Research Centre Vs. Asha Jaiswal & Ors" decided on 30.11.2021***, hereunder as:

> *"42. When a patient dies or suffers some mishap, there is a tendency to blame the doctor for this. Things have gone wrong and, therefore, somebody must be punished for it. However, it is well known that even the best professionals, what to say of the average professional, sometimes have failures. A lawyer cannot win every case in his professional career but surely he cannot be penalised for losing a case provided he appeared in it and made his submissions."*

19. The Hon'ble Apex Court in a celebrated judgment titled as ***Jacob Mathew v. State of Punjab and Anr*** (***2005) 6 SCC 1***, held that simple lack of care, an error of judgment or an accident, is not a proof of negligence on the part of a medical professional. The Court held as under:

> *"48. We sum up our conclusions as under:*
>
> *(1) 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". Negligence in the context of the medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable*

for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed.

When it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial."

20. What is to be gleaned from the aforesaid decisions is that a simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. To establish a claim for medical negligence, it is imperative to meet the following criterion i.e. **firstly**, the patient was owed a duty of care. **Secondly,** that duty was breached by a deviation from accepted standards of care**.. Thirdly**, the patient suffered damages and **fourthly** the damages suffered were a direct result of the medical provider's breach of duty.

21. It is clear from the record that the bed of the patient was equipped with bed side rails and a call bell. The vitals of the patient were being timely recorded and there was never a stage when the patient was left unattended. The patient was kept under the supervision of specialist doctors. The

Complainants have alleged that the nurse on duty did not respond to the call bell and the patient fell himself while making an effort to sit. Here, it is to be noted that the Complainant has herself admitted that the patient fell himself in para 5 of the rejoinder which is reproduced hereunder as:

> *"The patient himself rang the bell without response from OP staff, made the effort himself and fell, while the attendant was looking for a pot to be handed over to the patient on the bed itself. After the fall, as the patient lay helpless, the attendant did help the patient to get up as there was no response from hospital staff."*

22. It is crucial to mention here that the patient was admitted in the general ward where a limited number of nurses have to look after several patients, to the extent that at times a single nurse is duty bound to attend 3-4 patients. The medical staff/nurse cannot be expected to be present round the clock around the patient and can only be expected to provide reasonable care and attention to the patient. Moreover it is pertinent to mention here that the family attendant i.e. brother in law of the patient was present in the ward to look after the patient. It is to be noted that despite the presence of the family attendant, the patient sustained a fall. It is admitted that the patient sustained a fall within a split of a second and the family attendant despite being there in the close vicinity of the patient, could not prevent the fall. Therefore in facts and circumstances of the present case, the blame cannot be entirely shifted on the Opposite Party and the medical staff/doctors.
23. In this regard we further deem it appropriate to refer to decision of The Hon'ble Apex Court in ***C.P. Sreekumar (Dr.), MS (Ortho) v. S. Ramanujam (2009) 7 SCC 130*** , wherein it was held that the Commission

ought not to presume that the allegations in the complaint are inviolable truth even though they remained unsupported by any evidence as under:

> *"37. We find from a reading of the order of the Commission that it proceeded on the basis that whatever had been alleged in the complaint by the respondent was in fact the inviolable truth even though it remained unsupported by any evidence. As already observed in Jacob Mathew case [(2005) 6 SCC 1 : 2005 SCC (Cri) 1369] the onus to prove medical negligence lies largely on the claimant and that this onus can be discharged by leading cogent evidence. A mere averment in a complaint which is denied by the other side can, by no stretch of imagination, be said to be evidence by which the case of the complainant can be said to be proved. It is the obligation of the complainant to provide the facta probanda as well as the facta probantia."*

24. In another judgment reported as ***Kusum Sharma and Others v. Batra Hospital and Medical Research Centre and Others (2010) 3 SCC 480*** , a complaint was filed attributing medical negligence to a doctor who performed the surgery but while performing surgery, the tumour was found to be malignant. The patient died later on after prolonged treatment in different hospitals. The Hon'ble Apex Court held as under:

> *"47. The ratio of Bolam case [(1957) 1 WLR 582 : (1957) 2 All ER 118] is that it is enough for the defendant to show that the standard of care and the skill attained was that of the ordinary competent medical practitioner exercising an ordinary degree of professional skill. The fact that the respondent charged with negligence acted in accordance with the general and approved practice is enough to clear him of the charge. Two things are pertinent to be noted. Firstly, the standard of care, when assessing the practice as adopted, is judged in the light of knowledge available at the time (of the incident), and not at the date of trial. Secondly, when the charge of negligence arises out of failure to use some particular equipment, the charge*

> *would fail if the equipment was not generally available at that point of time on which it is suggested as should have been used.*
>
> *78. It is a matter of common knowledge that after happening of some unfortunate event, there is a marked tendency to look for a human factor to blame for an untoward event, a tendency which is closely linked with the desire to punish. Things have gone wrong and, therefore, somebody must be found to answer for it. A professional deserves total protection. The Penal Code, 1860 has taken care to ensure that people who act in good faith should not be punished. Sections 88, 92 and 370 of the Penal Code give adequate protection to the professionals and particularly medical professionals."*

25. Recently, the Hon'ble Apex Court in a judgment reported as ***Dr. Harish Kumar Khurana v. Joginder Singh & Others (2021) SCC Online SC 673*** held as under:

> *"11……Ordinarily an accident means an unintended and unforeseen injurious occurrence, something that does not occur in the usual course of events or that could not be reasonably anticipated. The learned counsel has also referred to the decision in Martin F.D'Souza v. Mohd. Ishfaq, (2009) 3 SCC 1 wherein it is stated that simply because the patient has not favourably responded to a treatment given by doctor or a surgery has failed, the doctor cannot be held straight away liable for medical negligence by applying the doctrine of Res Ipsa Loquitor. It is further observed therein that sometimes despite best efforts the treatment of a doctor fails and the same does not mean that the doctor or the surgeon must be held guilty of medical negligence unless there is some strong evidence to suggest that the doctor is negligent.*
>
> *Having noted the aforesaid decisions , it is clear that in every case where a mishap or accident takes place, it cannot be automatically assumed that the medical*

> *professional was negligent. To indicate negligence there should be material available on record or else appropriate medical evidence should be tendered. The negligence alleged should be so glaring, in which event the principle of res ipsa loquitur could be made applicable and not based on perception*

26. In the instant case, it may be mentioned here that the Complainants have led no evidence of experts to prove the alleged medical negligence except their own affidavits. The experts could have proved if any of the doctors in the Opposite Party hospital providing treatment to the patient were deficient or negligent in service. A perusal of the medical record produced does not show any omission in the manner of treatment.
27. As discussed above, the sole basis of finding the Opposite Party negligent is by way of *res ipsa loquito*r which would not be applicable herein keeping in view the treatment record produced by the Opposite Party. For the application of the maxim *res ipsa loquitur* no less important a requirement is that the *res* must not only bespeak negligence, but pin it on the Opposite Party. The experts of different specialities and super-specialities of medicine were available to treat and guide the course of treatment of the patient. The doctors are expected to take reasonable care but none of the professionals can assure that the patient would overcome the ailments in all probability.
28. Therefore, we opine that the Opposite Party provided standard level of fall prevention services and medical care. The Opposite Party hospital and the doctor/nurses exercised sufficient care in treating the patient in all circumstances. However, in an unfortunate case, death may occur. Here, It is necessary to remark that sufficient material or medical evidence should be made available before an adjudicating authority to arrive at the

conclusion that death is due to medical negligence. Every death of a patient cannot on the face of it be considered to be medical negligence.

29. In light of the above discussion, we conclude that the Complainants failed to establish medical negligence on part of the Opposite Party. Consequently, Consumer Complaint no. CC-805/2016 stands dismissed.
30. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.
31. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
32. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
JUDICIAL MEMBER

J.P.AGRAWAL
MEMBER (JUDICIAL)

Pronounced On:
13.07.2023