

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

**Complaint Case No. CC/453/2017**  
**( Date of Filing : 29 Nov 2017 )**

1. Kulwant Kaur W/o Late Pritam Singh  
R/o 46 A,Court Road,  
Amritsar  
Punjab

.....Complainant(s)

Versus

1. Dr. Harprit Singh M.B.B.S.,MS (Ortho)  
Orthonova Joint & Trauma Hospital Pvt. Ltd.,Nakodar  
Road,Near Nari Niketan  
Jalandhar  
Punjab  
2. Orthonova Joint & Trauma Hospital Pvt. Ltd.  
Nakodar Road,Near Nari Niketan,Jalandhar City,through  
its Managing Director.

.....Opp.Party(s)

**BEFORE:**

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

**PRESENT:**

Sh. Gulshan Sethi, Adv. Counsel for the  
Complainant.

.....for the Complainant

Sh. M. K. Jain, Advocate for OPs No.1 & 2.

Sh. A. K. Arora, Advocate for OP No.3.

.....for the Opp. Party

**Dated : 20 Apr 2021**

**Final Order / Judgement**

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

Complaint No.453 of 2017

Date of Instt. 29.11.2017

Date of Decision: 20.04.2021

Kulwant Kaur w/o late S.Pritam Singh, r/o 46-A, Court Road, Amritsr.

.....Complainant

**Versus**

1. Dr. Harprit Singh, MBBS, MS (Ortho), Orthonova Joint & Trauma Hospital, Pvt. Ltd., Nakodar Road, Near Nari Niketen, Jalandhar City.
2. Orthonova Joint & Trauma Hospital Pvt. Ltd., Nakodar Road, Near Nari Niketan, Jalandhar City.
3. New India Assurance Co. Ltd., BMC Chowk, Lally Building, G.T Road, Jalandhar being Insurer of the opposite party no.1 & opposite party no.2..

... .. Opposite Parties

**Complaint Under the Consumer Protection Act.**

Before: Sh. Kuljit Singh (President)

Smt. Jyotsna (Member)

Present: Sh. Gulshan Sethi, Adv. Counsel for the Complainant. Sh. M. K. Jain, Advocate for OPs No.1 & 2.

Sh. A. K. Arora, Advocate for OP No.3.

**Order**

**Kuljit Singh (President)**

1. The instant complaint has been filed by the complainant against OPs on the averments that OP no.1 is working as Ortho Specialist with OP no.2. The complainant is 78 years old lady and she

was having knee problem and she approached OP no.1 and consulted regarding the problem of knees in the month of September 2016. OP no.1 advised her that she will have to get replaced both the knees and told her that total expenses for both knees shall be of Rs.3 lakh. Upon assurance of OP no.1, she got herself admitted in the OP no.2 hospital and on 19.09.2016 as well as on 20.09.2016, OP no.1 operated both knees of the complainant and replaced both the knees. The complainant was discharged from the hospital of OP no.2 by OP no.1 on 25.09.2016 and she was advised to exercise for knees at home. As per advise of OP no.1, she followed exercise advised by him but she was not feeling well. She visited OP no.2 and tried to consult OP no.1 but he did not attend her but complainant remained suffering from pain. After checkup, she was not comfortable and contacted Dr. Guriqbal Singh Chhina, M.Ch Ortho at Amritsar and Dr. Chhina told her replacement of left knee was not proper in angle due to which shape of left leg was also tilted. She went to Medanta Hospital New Delhi and consulted Dr. Sanjeev Kumar Singh Marya and upon checking he advised that left knee will have to be replaced again. She was suffering from pain and was not able to walk, so she got herself admitted at Medanta Hospital and bones which were damaged due to wrong replacement of knee was also operated on 08.12.2016 by Dr.Sanjeev Kumar Singh Marya. After getting replacement from Medanta Hospital, the complainant got relief from pain and now he is able to walk. Attending Dr. Sanjeev Kumar Singh Marya at Medanta Hospital has also told her that the second knee will also have to be replaced in a short span of time. OP no.1 had not done replacement properly due to which she had to get left knee replacement from Medanta Hospital. Due to negligence on the part of OPs, while replacing the knee, the OP no.1 had not properly fixed the knee in the bones and they were badly damaged. Due to wrong replacement of knees by OPs, the complainant suffered another knee replacement and she had to pay further Rs.5,70,000/- at Medanta Hospital along with other expenses incurred amounting to Rs.2 lakh while travelling to Delhi along with attendant and she has also suffered physical as well as mental harassment. The complainant also served a legal notice dated 05.04.2017 upon OPs for refund of Rs.3 lakh and also to pay Rs.5,70,000/- but OPs neither refunded the said amount nor reply the same. Due to above said act and conduct of OPs, the

complainant has filed the present complaint and prayed that OPs be directed to refund Rs.8,70,000/- to the complainant i.e. Rs.3 lakh received from the complainant and Rs.5,70,000/- which she has paid to Medanta Hospital due to medical negligence on the part of OPs with interest @ 18% p.a.

2. Upon notice, OPs no.1 and 2 appeared and filed their joint written reply and contested the complaint of the complainant by raising preliminary objections that complaint is not maintainable. The complainant has got no cause of action to file the present complaint. On merits, it was averred that the complainant was admitted in the Hospital on 19.09.2016 and was discharged on 26.09.2016 at 2.30 pm. The consent of the complainant was taken for specialized procedure which was duly signed by the son of the complainant. It was also informed regarding the package information that package does not include blood or blood products, transfusion fee, VAT and treatment of any other complications arising during the period like cardiac, kidney, infection, bleeding, Neurological, Chest or any reason for stay beyond six days. At the time of admission, all the facilities regarding indoor, Nursing, Operative and ICU facilities available in the Hospital were shown and the patient was fully satisfied. Proper treatment order chart was also made in the Hospital during the admission and surgery of the complainant. Daily progress notes were also taken. The patient was stable as were daily progress notes on 24.09.2016. On 25.09.2016, the patient was feeling better, walking was also done and she was happy and diet was also being taken by the patient orally. Accordingly, on 26.09.2016 the patient left the Hospital in walking condition. The patient was declared fit for surgery by Cardionova Hospital. At the time of discharge, the patient and her attendant were duly informed regarding the things which were to be taken care at home. OPs have got vast experience in knee replacement and have conducted so many successful surgeries. There is success rate of 98%. The OPs have been attending difficult cases and all over India, the persons are coming for treatment and surgery. It was denied that complainant was not feeling comfortable. Rest of the averments of the complainant were denied by OPs no.1 and 2 and they prayed for dismissal of the complaint.

3. OP no.3 appeared and filed its separate written reply and contested the complaint of the complainant by raising preliminary objections that complaint is not the consumer of OPs. There is no privity of contract between the complainant and OPs. There is no deficiency in service or unfair trade practice on the part of OPs. OP no.3 denied all the averments of the complainant even on merits and it prayed for dismissal of the complaint.

4. The complainant has tendered in evidence her affidavit Ex.CW-1/A along with copies of documents Ex.C-1 to Ex.C-37. On the other hand, OPs no.1 and 2 have tendered in evidence affidavits Ex.OP1&2/A, Ex.OP1&2/B and Ex.OP1&2/C along with copy of the document Ex.OP1&2/1. OP no.3 tendered in evidence affidavit of Smt. Punam Sharma Deputy Manager as Ex.OP-3/A along with copy of document Ex.OP-3/1.

5. We have heard learned counsel for the parties and have also gone through the record very minutely.

6. The glance at evidence is required by us to settle the controversy in this case. The complainant has tendered in evidence affidavit of Kulwant Kaur as Ex.CW-1/A in support of her case. Ex.CW-2/A is affidavit of Dr.Guriqbal Singh Chhina D. Ortho M.CH Ortho Amritsar. Ex.CW-3/A is affidavit of Dr. Mohit Arora MBBS MS (Ortho) M.Ch Amritsar. Ex.C-3 is copy of legal notice dated 05.04.2017 served upon OPs. Ex.C-4 is postal receipt thereof. Ex.C-5 is copy of guidelines. Ex.C-6 is copy of certificate. Ex.C-7 is copy slip of medicines. Ex.C-8 is copy of prescription slip by doctor. Ex.C-9 is copy of payment receipt. Ex.C-10 to Ex.C-14 are copies of prescription slips. Ex.C-15 is copy of bill-cum-receipt. Similarly, we have also examined other documents Ex.C-16 to Ex.C-37 on the record.

7. To refute this evidence of the complainant, OPs no.1 and 2 relied upon affidavit of Dr. Harprit Singh Orthonova Hospital Jalandhar as Ex.OP1&2/A on the record. Affidavit of Dr.Harprit Singh

Orthonova Hospital Jalandhar as Ex.OP1&2/B. Ex.OP1&2/1 is copy of patient medical record. OP no.3 has also placed on record affidavit of Punam Sharma Deputy Manager as Ex.OP-3/A on the record.

8. The complainant alleged that on the assurance of OPs, the complainant got herself admitted in the hospital of OP no.2 and on 19.09.2016 as well as on 20.09.2016, OP no.1 operated both knees of the complainant. The complainant was discharged from the hospital on 25.09.2016. But she was not feeling comfortable after replacement of the knees. She visited OP no.2 and tried to consult OP no.1 but she was advised to follow up exercise and prescription of medicines. She remained suffering from pain. She alleged that after checkup, she contacted Dr. Guriqbal Singh M.Ch Ortho at Amritsar and Dr. Chhina told that left knee was not proper in angle due to which the shape of left leg was also tilted. Further, she went to Medanta Hospital New Delhi and consulted Dr. Sanjeev Kumar Singh and on checking she was advised that left knee will have to be replaced again. She was suffering from pain and was not able to walk and told her that due to wrong replacement of knee bones were damaged. She alleged that she had to pay Rs.5,70,000/- to the said hospital along with Rs.2 lakh while travelling to Delhi.

9. On the other hand, OPs refuted the allegations of the complainant they alleged that complainant has failed to produce any expert opinion regarding any lapse on their part. They alleged that consent of the complainant was taken for specialized procedure, which was duly signed by son of the complainant. The patient was stable as were daily progress notes on 24.09.2016. On 25.09.2016 the patient was feeling better. On 26.09.2016, the complainant left the hospital in walking condition.

10. From perusal of entire record, it has revealed that the complainant admitted in the hospital of OPs no.1 and 2 for treatment of his both knee problem. She admitted in the hospital of OPs on 19.09.2016 and discharged on 26.09.2016, this fact is clear from document Patient Medical Record as Ex.OP1&2 on the record. The complainant spent Rs.3 lakh on his treatment, this fact is clear from copy of certificate Ex.C-6 on the record. This document issued by OPs /Institute of

Orthonova, in this document it has been mentioned that : *it is to certify that patient named Kulwant Kaur w/o S. Pritam Singh is admitted in our Hospital from 19.09.2016 to 25.09.2016 for (B/L TKR) Total knee replacement. We have received total amount of Rs.3 lakh.*” The treatment of knee replacement taken by complainant from OPs is not successful, as such, she consulted with other doctor in this regard. If, OPs no1 and 2 operated the knee replacement of the complainant in a well manner, then why she consulted with other doctor in this regard. The complainant also produced on record affidavit of Dr. Guriqbal Singh Chhina Ortho M.Ch Ortho at Amritsar as Ex.CW-2/A this doctor stated that “ *complainant’s knee tibial component was malpositioned due to which she was having pain and problems in walking. After examining the complainant, prescribed some medicines and also advised her to get further operated upon her knees for permanent solution of her problem.*” Further, the complainant has produced on record affidavit of Dr.Mohit Arora MBBS MS (Ortho) Amritsar as Ex.CW-3/A on the record, this doctor also stated that “ *upon examining complainant’s knee, came to know that her knees tibial component was malpositioned due to which she was having pain and problems in walking. After examining the complainant, prescribed some medicines and also advised her to get further operated upon her knees for the permanent solution of her problem.*” Dr.Mohit Arora MBBS MS (Ortho) Amritsar is senior consultant, Department of Orthopedics & Joint Replacement Surgery, Fortis Escorts Hospital, Amritsar. He is competent in his field and working as Doctor in a renowned hospital. This doctor has also given prescription slip to the complainant regarding medicines, which is Ex.C-13 on the record. The affidavit of Dr. Guriqbal Singh Chhina Ortho M.Ch Ortho at Amritsar as Ex.CW-2/A and affidavit of Dr.Mohit Arora MBBS MS (Ortho) Amritsar are the vital documents on the record. If OPs no.1 and 2 operated knee replacement of the complainant in a well manner then why Dr.Guriqbal Singh Chhina and Dr.Mohit Arora MMBS gave his different opinion from the opinion of OPs. The complainant consulted Dr.Sanjeev Kumar Singh Marya and upon checking this doctor advised her that her left knee will have to be replaced again. The said doctor told her that bones were damaged due to wrong replacement of knee. The complainant admitted in the Medanta Hospital New Delhi, this fact is clear from discharge summary Ex.C-34

on the record. In this document, the date of admission of the patient /complainant is mentioned as 06.12.2016 and date of discharge as 12.12.2016. From perusal of this document, it is clear that complainant consulted Dr. Sanjeev Kumar of Medanta Bone & Joint Institute New Delhi after getting treatment from OPs no.1 and 2 hospital. Firstly, the complainant admitted in the hospital of OPs no.1 and 2 on 19.09.2016 and discharged on 26.09.2016 and after that she admitted on 06.12.2016 and discharged on 12.12.2016 further treatment. It proves medical negligence on the part of OPs no.1 and 2 in performing their duties.

11. 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.”*

12. 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."*

13. 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".

14. 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.

15. 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.”

16. 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”.

17. 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.

18. Keeping in view the facts and circumstances of the case, we allow the present complaint and OPs no.1 and 2 are directed to refund Rs.3,00,000/- which has spent by complainant on her treatment for knee replacement, as per certificate Ex.C-6 placed on record. The complainant is also entitled Rs.7000/- as compensation for mental harassment and physical harassment faced by complainant including cost of litigation. The opposite parties No. 1 and 2 are also directed to deposit Rs.3000/- as costs in the Consumer Legal Aid Account maintained by this Commission.

19. The compliance of the order be made within 45 days from receipt of copy of this order. The complaint could not be decided within stipulated period due to rush of work and spread of Covid-19.

20. C copies of the order be sent to the parties, as permissible, under the rules.

21. 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**