

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 861 OF 2020**

(Against the Order dated 25/11/2019 in Appeal No. 935/2017 of the State Commission Uttar Pradesh)

1. AMIT KUMAR RUHELA

S/O. SHRI SHYAM SUNDER SUHELA, R/O. H.NO.  
551, CHHA/32, NEW SARDARI KHERA, ALAM  
BAGH,

LUCKNOW

UTTAR PRADESH

.....Petitioner(s)

Versus

1. SUN EYE HOSPITAL & LASIK SURGERY  
CENTER & ANR.

57-B, SINGAR NAGAR, ALAM BAGH,

LUCKNOW

UTTAR PRADESH

2. DR. SUDHIR SHRIVASTAVA,

S/O. SHRI P.K. VERMA, R/O. 57-B, SINGAR NAGAR,  
ALAM BAGH, <https://medicaldialogues.in/>

LUCKNOW

UTTAR PRADESH

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. DINESH SINGH, PRESIDING MEMBER**

**For the Petitioner :** Mr. Nikhil Jain, Advocate

**For the Respondent :** Mr. Pawan Kumar Ray, Advocate

**Dated : 01 Apr 2021**

**ORDER**

**ORDER**

**HON'BLE MR. DINESH SINGH, PRESIDING MEMBER**

**Taken up through video conferencing.**

1. These Revision Petitions have been filed in challenge to the Order dated 25.11.2019 of The State Consumer Disputes Redressal Commission, Uttar Pradesh (the 'State Commission') in First

Appeal No. 927 of 2017 and First Appeal No. 935 of 2017 arising out of the Order dated 21.04.2017 in C.C. No. 175 of 2013 passed by The District Consumer Disputes Redressal Forum, II-Lucknow (the 'District Forum').

The Petitioners No. 1 and No. 2 in R.P. No. 350 of 2020, Dr. Sudhir Srivastava and Sun Eye Hospital & Lasik Laser Center, were the Opposite Parties before the District Forum.

The Petitioner in R.P. No. 861 of 2020, Mr. Amit Kumar Ruhela, was the Complainant before the District Forum.

Dr. Sudhir Srivastava is hereinafter being referred to as the 'Doctor', Sun Eye Hospital & Lasik Laser Center as the 'Hospital' and Mr. Amit Kumar Ruhela as the 'Complainant'.

R.P. No. 350 of 2020 has been filed by the Doctor and the Hospital for setting aside the Order dated 25.11.2019 of the State Commission.

R.P. No. 861 of 2020 has been filed by the Complainant for enhancement in compensation.

2. Heard arguments from Mr. Pawan Kumar Ray, learned Counsel for the Doctor and the Hospital and from Mr. Nikhil Jain, learned Counsel for the Complainant.

Perused the material on record, including *inter alia* the Order dated 21.04.2017 of the District Forum, the impugned Order dated 25.11.2019 of the State Commission and the two Petitions.

3. In the interest of justice, to provide fair equal opportunity to the rival parties, to settle the matter on merit, the respective delay in filing the two Petitions is condoned.

4. The matter relates to medical negligence / deficiency on the part of the Doctor and the Hospital resulting in irreparable damage to the left eye of the Complainant.

5. The District Forum vide its Order dated 21.04.2017 arrived at the findings that the left eye of the Complainant was damaged due to the negligence of the Doctor / in the Hospital.

The District Forum partially allowed the Complaint and made the following Award:

Complaint of the complainant is allowed partially. Defendant are ordered jointly and severally to pay Rs. 77,000/- (seventy seven thousand) to the complainant within four weeks of the date of this judgment, which is the amount spent on his retirement, alongwith simple interest at the rate of 9 (nine) percent from the date of filing of case and upto the date of actual payment. Besides this, defendant will severally and jointly pay the amount of Rs. 20,000/- (Twenty thousand) to the complainant for mental agony suffered and Rs. 10,00,000/- (Rupees ten lakh) as compensation for damage to his eye alongwith Rs.5,000/- (Rupees five thousand) as costs of complaint. In case defendants do not pay this amount to the complainant within the above specified period then defendants will be liable to pay simple interest at the rate of 12 percent per annum on the above-said total amount from the above-said date and upto the date of payment.

(as per the translated version)

6. The Doctor and the Hospital preferred appeal before the State Commission, challenging the said Order of the District Forum. The Complainant also preferred appeal before the State Commission, for enhancement in compensation.

7. The State Commission vide its common Order of 25.11.2019 made its appraisal of the case and determined that the District Forum was correct in concluding that the left eye of the Complainant was damaged due to the negligence of the Doctor / in the Hospital:

Complainant has relied upon the judgment and order dated 05 April, 2019 passed by the State Commission in the First Appeal No. 170/2013 Ms. Prasanna Lakshmi Versus Maxivision Laser Center Pvt. Ltd., in which on the basis of Medical Literature and Medical Prescription Hon'ble National Commission after the Lasik Surgery Decentred ablation occurs due to improper Lasik treatment on the pupil of eye. Relevant part of the judgment of Hon'ble National Commission is as under:-

The medical literature and the Prescription of L.V. Prasad Eye Institute depicts “decentred ablation post Lasik” The Medical literature shows that ‘Decentred ablation is an Infrequent Complication of Lasik Surgery which occurs when the Lasik treatment is not properly centred over the pupil. The Post Lasik complications which occurred were neither explained to the Patient nor were the requisite steps taken to educate the Patient about the prognosis, to enable her to exercise her choice of opting for any line of treatment which perhaps would rectify the situation. The treating Doctor not only kept her in the dark about the treatment for microstriae and the prognosis thereof, but also did not take reasonable care to avoid decentred ablation.

<https://medicaldialogues.in/>  
From the submissions of both the parties it is clear that it is an undisputed fact that Lasik operation of both the eyes of complainant was carried out by the defendant No. 2 at defendant No. 1 hospital on 19.06.2010 and thereafter retina of the left eye of complaint detached, for which operation was conducted at defendant No.1 hospital on 14.11.2010. Defendant No. 2 of the complaint Dr. Sudhir Srivastava has submitted in the written statement before the District Forum that after the Lasik operation complainant used contact lens due to which retina of the left eye detached.

Discharge summary of the defendant No.2 hospital regarding Lasik operation of the complainant dated 19.06.2010 has been signed by defendant No. 1. Only one precaution has been mentioned in its Post Operation Management that “Avoid water in the operative eye for one week”. No advice for not using the contact lens has been mentioned in it. Therefore even if this statement of the defendants is accepted that contact lens should not be used after the Lasik operation but complainant used the contact lens which caused the detaching of retina, even then medical negligence of the defendant No. 2 is clear because no advice has been given in the Discharge summary for not using the contact lens.

Discharge summary of the operation of the complainant conducted on 14.11.2011 also bears the signatures of defendant No. 2. Therefore there is no ground to accept that this operation was not carried out by him and it was carried out by another Doctor.

Defendants have stated that complainant used Contact Lens after Lasik Operation due to which retina of the left eye detached but there is no evidence or ground to accept this, however it is clear from the Medical literature referred to in the judgment of Hon'ble National Commission that Retina Detachment is possible due to defect in Lasik Surgery.

Lasik Operation of the complainant was carried out at the hospital of defendant No.1 once, gas operation was carried out once the silicon oil operation was also carried out once, but despite this the eye-sight did not improve and left eye damaged.

On the basis of above discussion and all the facts and evidences, I am of the opinion that there are sufficient grounds to accept that defendant No. 2 doctor of the defendant No.1 hospital committed medical negligence and carelessness in the Lasik Surgery of the eye of complainant, due to which his left eye damaged. Finding of the District Forum that defendants committed medical negligence in the treatment of the eye of complainant is correct. There is no ground to interfere in the finding of District Forum.

(as per the translated version)

**8.** The State Commission also determined that the compensation awarded by the District Forum was just and equitable:

Complainant has prayed for the following relief in his complaint:-

1. That the amount of Rs. 66,000/- and Rs. 10,000/-, total Rs. 77,000/- spent on medicines, may be allowed in favour of the complainant alongwith interest at the rate of 18% percent.
2. That the compensation of Rs. 17,00,000/-(Rupees seventeen lakh) may be allowed on account of physical and mental hardships suffered by the complainant due to negligence on the part of defendant in his eye treatment.
3. That the amount of Rs. 25,000/- may be allowed in favour of complainant as costs of complaint alongwith any other relief as deemed fit by the Forum.

In view of the relief prayed for in the complaint and all the facts and circumstances of the case, relief allowed by the District Forum is appropriate and it does not require any increase or decrease.

Hon' ble National Commission in the above-said judgment passed in Appeal No. 170/2013 titled Ms. Prasanna Lakshmi versus Maxivision Laser Center Pvt. Ltd. has allowed the compensation of Rs. 50,00,000/- but in the present case complainant has prayed for the total compensation of Rs. 17,00,000/-. Therefore, compensation of Rs. 10,00,000/- allowed by the District Forum is appropriate.

(as per the translated version)

**9.** Accordingly, the State Commission dismissed both the appeals, the one for setting aside the Order of the District Forum and the other for enhancement in compensation:

On the basis of above entire discussion, I am of the opinion that both the appeals filed by both the parties are liable to be dismissed.

Therefore, both the Appeal No. 927 of 2017 titled Sun Eye Hospital Lasik Surgery Center and another versus Amit Kumar Ruhela and Appeal No. 935 of 2017 titled Amit Kumar Ruhela versus Sun Eye Hospital & Lasik Surgery Center and another are dismissed.

(as per the translated version)

**10.** The material on file and the examination by the two Fora below show that due to high myopia in his eyes, the Complainant consulted the Doctor, in the Hospital. The Doctor advised lasik surgery. The procedure was undertaken by the Doctor, in the Hospital, on 19.06.2010. Retinal displacement in the left eye occurred due to the surgery. The Discharge Summary dated 19.06.2010 was signed by the Doctor.

After the injury caused to the eye due to the lasik procedure, another operation was conducted in the Hospital on 14.11.2010 using gas procedure. The patient (the Complainant) was discharged the next day. The Discharge Summary in this instance also was signed by the Doctor. The injury to / the problems with the Complainant's left eye could not be corrected.

The Complainant again met the Doctor, who told him that the gas procedure was not successful and that he will now have to undertake silicon oil procedure. The silicon oil procedure was conducted on 29.08.2012. Thereafter also the problems in the left eye persisted.

The Doctor, saying that he can do nothing more, advised the Complainant to consult a higher medical facility in Delhi, Chennai or Mumbai. <https://medicardialogues.in/>

The Complainant then consulted one Dr. S. Natarajan at Aditya Jyoti Hospital, Badala City, Mumbai in the first week of November 2012, who informed him that due to multiple operations his eye has now been irreparably damaged and the possibility of improvement is negligible.

**11.** The State Commission has passed a well-appraised reasoned Order. It has concurred with the findings of the District Forum. No palpable error in appreciating the evidence is visible. The Award made by the District Forum, as upheld by the State Commission, appears just and equitable in the facts of the case. No jurisdictional error, or legal principle ignored, or miscarriage of justice, is visible.

**12.** It is well evinced that the lasik procedure was not performed with reasonable care and skill, it caused retinal displacement. Rather than most immediately referring the patient (the Complainant) to a higher medical facility, trialing by way of gas and then silicon oil procedures was undertaken. When these too were not successful, rather than a detailed professional referral, giving the complete case history, to a higher medical facility, callous general oral advise to get treated at Delhi, Chennai or Mumbai was offered.

Medical negligence in conducting the lasik surgery caused retinal detachment. Thereafter, timely referral to a higher medical facility was not made. Trialing with gas and silicon oil procedures was undertaken. Thereafter, again, professional referral, in writing, with the complete case history, to a higher medical facility, was not made.

Medical negligence / deficiency is conclusively established on the Doctor and the Hospital.

The Complainant has to live with the disability caused.

**13.** Permanent damage to an eye cannot be quantified in monetary terms. However, as observed by the State Commission, the Award made by the District Forum appears just and equitable in the facts of the case.

**14.** Based on the discussion above, nothing warrants interference by this Commission with the impugned Order of the State Commission.

**15.** The R.P. No. 350 of 2020, filed by the Doctor and the Hospital, for setting aside the Order of the State Commission, being totally ill-conceived and completely bereft of merit, is dismissed with cost of Rs. 50,000/- to be paid by the Doctor and the Hospital to the Complainant within four weeks of the pronouncement of this Order.

**16.** The R.P. No. 861 of 2020, filed by the Complainant, for enhancement in compensation, is dismissed.

**17.** The District Forum's Order, as upheld by the State Commission, is sustained.

**18.** A copy each of this Order be sent by the Registry to all parties, as well as to their learned Counsel, and additionally to the District Commission, within three days from today. The stenographer is requested to upload this Order on the website of this Commission today itself.

<https://medicaldialogues.in/>

.....  
**DINESH SINGH**  
**PRESIDING MEMBER**