

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 2068 OF 2019**

(Against the Order dated 24/09/2019 in Complaint No. 102/2015 of the State Commission  
West Bengal)

1. MISSION HOSPITAL & ANR.

REP BY DR PARTHO PAL, CMS THE MISSION HOSPITAL,  
DURGAPUR, PLTO NO 219(P) , IMON KALYAN SARANI  
SECTO R2C, BIDHAN NAGAR DURGAPUR

BURDWAN

WEST BENGAL 713 212

2. DR. SATYAJIT BOSE

DURGAPUR, PLTO NO 219(P) , IMON KALYAN SARANI  
SECTO R2C, BIDHAN NAGAR DURGAPUR

BURDWAN

WEST BENGAL 713 212

.....Appellant(s)

Versus

1. MAHADEB DUTTA & ANR.

BHIRINGI, NACHAN ROAD, NEAR T. N. HIGH SCHOOL,  
DURGAPUR

BURDWAN

WEST BENGAL 713 213

2. DEBASHIS DUTTA

MAHADEB DUTTA & ANR. BHIRINGI, NACHAN ROAD,  
NEAR T. N. HIGH SCHOOL, DURGAPUR

BURDWAN

WEST BENGAL 713 213

.....Respondent(s)

**FIRST APPEAL NO. 2310 OF 2019**

(Against the Order dated 24/09/2019 in Complaint No. 102/2015 of the State Commission  
West Bengal)

1. MAHADEB DUTTA & ANR.

S/O. LATE SAMBHU NATH DUTTA , BHIRINGI NACHAN  
ROAD NEAR T N HIGH SCHOOL DURGAPUR

BURDWAN

WEST BENGAL 713 213

2. DEBASIS DUTTA

S/O. MAHADEB DUTTA BHIRINGI NACHAN ROAD  
NEAR T N HIGH SCHOOL DURGAPUR

BURDWAN

WEST BENGAL 713 213

.....Appellant(s)

Versus

1. MISSION HOSPITAL & ANR.

REP BY PARTNER DR SATYAJIT BOSE, DURGAPUR  
PLOT NO 219(P) IMMON KALYAN SARANI SECTOR 2C  
BIDHAN NGAR DURGAPUR

BURDWAN

.....Respondent(s)

WEST BENGAL 713212  
2. DR SATAYAJIT BOSE  
PARTNER CUM CHARMAN DURGAPUR PLOT NO 219(P)  
IMMON KALYAN SARANI SECTOR 2C BIDHAN NGAR  
DURGAPUR  
BURDWAN  
WEST BENGAL 713212

**BEFORE:**

**HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER  
HON'BLE DR. SADHNA SHANKER, MEMBER**

FOR THE APPELLANT : MR. S. K. KHATTRI, ADVOCATE  
(THROUGH VIDEO CONFERENCING)  
FOR THE RESPONDENT : MR. SANJOY MUKHERJEE, ADVOCATE  
MS. ANWESHA SAHA, ADVOCATE

**Dated : 05 December 2024**

**ORDER**

**DR. SADHNA SHANKER, MEMBER**

1. The above mentioned cross appeals have been filed under section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as the 'Act') in challenge to the Order dated 24.09.2019 of the State Commission in complaint no. 102 of 2015 whereby the complaint was partly allowed.
2. We have heard the learned counsel for the appellants in F.A. No. 1068 of 2019 and respondents in F.A. No. 2310 of 2019 (hereinafter referred to as the 'hospital') and the learned counsel for the respondents in F.A. No. 1068 of 2019 and appellants in F.A. No. 2310 of 2019 (hereinafter referred to as the 'complainants') and perused the record, including *inter alia* the impugned order dated 24.09.2019 and the memorandum of appeal.
3. The complainants have filed first appeal no. 2310 of 2019 with a reported delay of 13 days.

In the interest of justice and considering the reasons mentioned in the application for condonation of delay, the delay of 13 days is condoned.

4. The brief facts of the case are that on 12.07.2014, Smt. Puspa Dutta, (hereinafter referred to as the 'patient') the wife of complainant no. 1 and the mother of complainant no. 2, while travelling by a bus from Sonamukhi, Bankura to Durgapur, met with a road traffic accident at Hamirhati, Sonamukhi and sustained injuries. She was immediately taken to Jeevan Suraksha Hospital, Kujuridanga, Bankura and after examining the patient, the said hospital authority referred her to the higher Centre / B.S.M.C. & H / any State Government Medical College on the same date and the patient was taken to Mission Hospital at Durgapur and as per medical advice of the doctors, attached to the said hospital, the patient had to undergo operation. During the treatment at the said hospital, the patient was improving gradually and her physical condition was absolutely normal. On 15.07.2014, the authorities

of the hospital decided to have MRI scan of brain to track the progress of recovery and on the same date 15.07.2014, while the patient was being shifted to the Radiology Department in a stretcher in semiconscious state by a nurse and an attendant placing the stretcher on a trolley to the Radiology Department, due to utter negligence, carelessness and mishandling of the nurse and the attendant, the patient fell down from the stretcher at the entry point of MRI room and the patient was left uncared for 4-5 minutes on the floor causing additional injuries on her head resulting profuse bleeding from the wound and the condition of the patient deteriorated and unfortunately, she succumbed to such injuries on 16.07.2014 at 2.00 a.m. The complainants alleged that the death of the patient occurred due to deliberate and negligent, mishandling by the nurse and the attendant while they were shifting the patient to MRI room. The complainants alleged that the death certificate was totally silent about the subsequent injuries caused due to her falling from the stretcher but only referred the injuries caused due to Road Traffic Accident though the hospital authorities were vicariously liable for the death of the patient.

5. Alleging medical negligence on the part of the Hospital, the complainant filed a consumer complaint before the State Commission seeking compensation of Rs. 50,00,000/- for the gross negligence on the part of the hospital along with Rs. 20,00,000/- and penal damages of Rs. 20,00,000/-. The complainant also prayed for refund of Rs. 2,17,849/- the expenses towards the treatment and litigation cost of Rs. 25,000/-.

6. The hospital contested the complaint by filing written version stating that the complaint was not maintainable as the complainants filed a vexatious and speculative claim. It is further stated that the patient being a victim of a road traffic accident was brought to the hospital, Durgapur, with severe head and facial injuries. It is further stated that the hospital authorities stated the condition of the patient at the pre-incident and post-incident stage and admitted that oozing of blood from the wound was only the difference in the condition of the patient after the alleged incident of falling took place on 15.07.2014. It is further submitted that the patient had cardiac arrest at 1.30 a.m. and she was declared clinically dead at 2.00 a.m. Although the factum of fall from the stretcher at the hospital premises was admitted but it is denied that the said incident took place due to deliberate carelessness, negligent and mishandling of the nurse and attendant. It is stated that there is no negligence on the part of the hospital and the complaint is liable to be dismissed.

7. The State Commission, vide its order dated 24.09.2019, allowed the complaint in part and directed the hospital to pay an amount of Rs. 10 lakh to the complainants.

8. The hospital and its partner have filed first appeal no. 2068 of 2019 before this Commission seeking setting aside of the order dated 24.09.2019 of the State Commission.

Also, not satisfied with the Order dated 24.09.2019, the complainants have filed appeal no. 2310 of 2019 for enhancement of compensation before this Commission.

9. The main issue arises in these appeals is as to whether there was deficiency in service on the part of the hospital in treating the patient.

10. Learned counsel for the hospital has argued that the patient sustained critical injuries in a road traffic accident and seeing the medical condition of the patient that she had severe

head injury with facial nerve injury, as documented in the Non-Contrast Computed Tomography), the presence of a hemorrhagic contusion in the bilateral basifrontal region, accompanied by a thin long subdural hematoma along with compression of underlying brain parenchyma, fractures in the facial and cranial bones and other serious injuries, it was explained to the patient's son and husband that there was high likelihood of both morbidity and mortality. It was also informed that in order to alleviate the pressure on the brain and evacuate the underlying hematoma, a decompressive craniectomy was performed. The decompressive craniectomy also involves removal of a portion of skull to create more space for the swollen brain. He further argued that the patient was brought to the CT Scan department on 15.07.2014 on a stretcher equipped with necessary ventilation facilities and accompanied by trained staff under the supervision of a doctor and a CT scan was done, which indicated the absence of any subdural hematoma. Subsequently, MRI Brain and MRI Venogram were advised and the patient was transferred to MRI department at about 12.45 p.m. but when the patient was being carried to MRI department for further evaluation, an unfortunate accident occurred due to mechanical dysfunction of the trolley and the patient fell down from the trolley but this incident did not impact the patient's neurological status or contribute to her demise and immediately a team of specialist doctors attended the patient. The Glasgow Coma Scale remained consistent both before and after the incident (E1M2VET) and the patient was immediately shifted back to the surgical ICU for continued care and monitoring. He further argued that on 16.07.2014 at about 01.30 a.m., the patient suffered a cardiac arrest and taking diligent efforts and expert medical attention, unfortunately, the patient died at about 2.00 a.m.

**11.** Learned counsel further argued that the hospitals and the medical practitioners may be held liable if it can be established that they acted negligently or recklessly while providing services but in the present case, although the patient had fallen from the stretcher but she had not received any injury because of fall from the stretcher and she succumbed to death due serious injuries received in road traffic accident, therefore, it cannot be said that the patient had died due to medical negligence on the part of the hospital. He also argued that the mechanical default in the trolley would fall under the product liability laws and the onus would be on the seller of the trolley for any damage caused. The hospital cannot be made liable on account of loss due to defect in the trolley. He further argued that the burden of proving negligence rests upon the complainants who assert it but in the present case, the complainants have not produced any evidence to prove that the hospital and the doctors acted negligently or recklessly while treating the patient. He further argued that the award of compensation has to be made only on well recognized principles governing the quantification of damages or compensation and not arbitrarily and the compensation can be awarded to a consumer only in respect of any loss or injury found to have been suffered by him due to negligence of the hospital. He further argued that the fall of the patient from the stretcher had not impacted the patient's neurological status or contribute to her demise and the hospital acted diligently in providing medical services, therefore, the State Commission had committed an error in granting compensation of Rs. 10 lakh. In support of his contentions, learned counsel placed reliance on the following decisions:

1. Silverhart v. Mount Zion Hospital [20. Cal. App. 3d 1022 (1971).
2. Probst vs. Albert Einstein Medical Centre (Appellate Division of the Supreme Court of NY, 1981)

3. Hector vs. Cedars Sinai Medical Center (Court of Appeals of California 1986)
4. North Miami General Hospital vs. Goldberg (Court of Appeal of Florida, 1988)
5. San Diego Hospital Assn. vs. Superior Court, Court of Appeal of California, 1994.
6. Shepard vs. Alexian Brothers Hospital, Court of Appeal, California
7. Roe and Woolley vs. Minister of Health (1954) 2 QB 66
8. Herrick vs. Middlesex Hospital, Superior Court (Judicial district of Middlesex, 2005)

He further argued that the incident in question was an unfortunate incident and devoid of negligence or deficiency in service on the part of the hospital. He further argued that the State Commission had wrongly applied the principle of '*Res Ipsa Loquitur*' and attributed the patient's death to the fall from the stretcher while there is no proof that the patient had died due to fall from the stretcher.

**12.** On the other side, learned counsel for the complainants argued that when the patient was being taken to Radiology Department at around 1.30 p.m. for MRI, she suffered a fall from the stretcher and the patient suffered severe injuries in her head, nose and other body parts. She started bleeding profusely and her condition deteriorated very first and she lapsed into complete coma and unfortunately, she died at about 2.00 a.m. in the night of 16.07.2014. He further argued that when the condition of the patient was very serious, the hospital ought to have been very careful in handling the patient at all times but due to negligence and carelessness of the hospital staff, the patient had fallen, which constitute complete negligence on the part of the hospital. He further argued that in the enquiry report it has been stated that there is infrastructural failure of Mission Hospital, Durgapur, therefore, there is clear negligence on the part of the hospital. He further argued that the hospital has not produced any evidence to show that the patient had suffered heart attack and as per the report of the inquiry committee, the cause of death is the haemorrhagic shock, as stated in the post mortem report. Further, he argued that the inquiry conducted by SEMOH, Durgapur and Deputy CMOH – 1, Burdwan has clearly stated that there is a gross negligence on the part of the Mission Hospital because video footage clearly shows that the patient had fallen from the MRI trolley and no immediate action was taken to overcome the situation resulting in profuse bleeding from the nose and head of the patient. He further argued that due to deliberate careless and negligent attitude to a patient further aggravated her condition and finally led to her death. He further submitted that while computing the compensation, the principle of '*restitutio in integrum*', which refers to ensuring that the person seeking damages due to a wrong committed to him/her is in the position that he/she would have been had the wrong not been committed, had not been applied and the compensation of Rs. 10 lakh granted by the State Commission is not adequate keeping in view the fact that the complainant no. 1 had lost his consort and companion of life and the complainant no. 2 is deprived of love and affection. He further argued that the State Commission has rightly applied the doctrine of *Res Ipsa Loquitur* as the facts itself speaks that there was negligence on the part of the hospital.

**13.** It is apposite to read the report dated 01.08.2014 of the inquiry committee, which reads as under:

“**Analysis.** Considering all documents and statements, it is obvious that there is gross negligence on the part of Mission Hospital authority because mobile video footage clearly shows that the patient was fallen from the MRI trolley and no immediate action

was taken to over the situation resulting profuse bleeding from the nose and head of Late Puspa Dutta. Mission Hospital authority was claiming of technical fault of the trolley but it could not be verified as because it has already been ceased by the local P.S. CT scan report of brain before and after injury does not show any difference but it has been prepared by the doctors of Mission Hospital authority itself. So the plates of CT scan to be reviewed by another neurologist. One more essential document is needed to conclude the enquiry that is the post mortem report of the deceased.

**Conclusion:** Whether it is negligence of the staff concerned of Mission Hospital or the mechanical failure of the MRI trolley, negligence of the hospital authority cannot be overruled. But whether the death was occurred due to the injury at the hospital, it can not be ascertained as because patient was admitted with serious head injury.

**Recommendation”** Enquiry committee suggest to take disciplinary action as per CE Act regarding the negligence of Mission Hospital authority and at the same time to form a higher level enquiry team comprising of one neurologist at least.”

**14.** Further, it is necessary to quote Expert Committee Report dated 17.12.2014, which reads as under:

“Considering the inquiry report and the detailed evaluation of Post Mortem report, it is evident that there is infrastructural failure of Mission Hospital, Durgapur, which they have themselves admitted as mechanical fault of the trolley resulting in fall of the patient from trolley and fresh injuries at different sites.

Patient expired on that night only. Post mortem report unequivocally shows haemorrhagic shock as the cause of death.”

**15.** It is an admitted fact that the patient had fallen from the trolley and received injuries in her head, nose and other body parts and the bleeding started profusely and her condition deteriorated very first. Apart from this, the inquiry report clearly states that the cause of death was haemorrhagic shock. The death certificate dated 16.07.2014 mentions the cause of death being RTA with severe head injury with right frontotemporal prenatal acute subdural haemorrhage with midline shift with depressed right frontal bone, fracture with pneumocephalus with frontal contusions. Therefore, the contention of the hospital that the patient suffered due to heart attack, resulting in her death, lacks merit and the same is rejected.

**16.** Further, the report clearly states that due to fall from MRI trolley in front of MRI room at noon of 15.07.2014, the patient received fresh injuries over head and face with haemorrhage and the bed head ticket and time to time clinical records are usually mentioned in the BHT, not given to us. There is no reason for the hospital for not providing the clinical records.

**17.** We have considered the report and detailed evaluation of post mortem report. It is apparent from the report that there is infrastructural failure of Mission Hospital, Durgapur, which they have themselves admitted as mechanical fault of the trolley resulting in fall of the patient from the trolley and fresh injuries at different sites. Considering the report, it is clear

that the patient had received some fresh injuries due to fall. The inquiry report clearly states that after the fall, the patient had profuse bleeding from the nose and there was fresh injuries. In our opinion, it is clear negligence on the part of the hospital and the hospital cannot evade its liability by taking the plea of mechanical fault or the product liability in the trolley. It is the responsibility of the hospital authorities to ensure that the stretcher is working properly. Further, the fact that after the fall, the patient lay unattended on the floor for 4 – 5 minutes bleeding profusely has not been controverted. The apathy and negligence of the employee of the hospital in not ensuring safe transit of a comatose patient for a test is writ large in the event. It is to be noted that there is no allegation of negligence in the treatment against the hospital and/or the doctors. We are of the opinion that the patient had died to the negligent act of the employees of the hospital and the hospital is vicariously liable for the death of the patient.

**18.** In the case of Maharaja Agrasen Hospital and Ors. Vs. Master Rishabh Sharma and Ors. I (2020) CPJ 3 (SC), the Hon'ble Supreme Court has categorically held as under:

“11.4.17 It is well established that a hospital is vicariously liable for the acts of negligence committed by the doctors engaged or empanelled to provide medical care (Savita Garg v. National Heart Institute (supra); Balram Prasad, (2014) 1 SCC 384 : (2014) 1 SCC (Civ) 327; Achutrao Haribhau Khodwa vs. State of Maharashtra, 1996 (SLT Soft) 1000=(1996) 2 SCC 634; V. Krishnakumar v. State of Tamil Nasdu (supra). It is common experience that when a patient goes to a hospital, he/she goes there on account of the reputation of the hospital, and with the hope that due and proper care will be taken by the hospital authorities [Savita Garg v. National Heart Institute (supra). 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 the acts of commission or omission on behalf of their doctors (Savita Garg v. National Heart Institute. (supra)].

11.4.18 Accordingly, we hold Appellant No.1-Hospital to be vicariously liable for the acts of omission and commission committed by Appellant Nos. 2 to 4. We hold all the Appellants as being jointly and severally liable to pay compensation to the Complainants.”

**19.** The complainant has also challenged the quantum of compensation awarded by the State Commission and has sought enhancement of compensation.

**20.** The learned counsel for the complainants contended that after recording a finding that there is negligence on the part of the hospital and the doctor, the State Commission erred in awarding just Rs. 10 lakhs as the amount of compensation on account of death of the patient.

**21.** Having affirmed the findings recorded by the Commission on the question of medical negligence and deficiency in services rendered by the Hospital, we are required to examine as to whether the amount of compensation awarded by the Commission was just and reasonable. The State Commission awarded compensation of Rs.10 lakh. As on the date of the death, the patient was aged about 69 years. Keeping in view the conspectus of the matter, we are of the opinion that Rs. 10 lakh granted by the State Commission is just and reasonable.

**22.** In view of the above, we are of the view that the State Commission has passed a well-reasoned order that warrants no interference. The hospital and the doctor are directed to comply with this Order within a period of eight weeks from the date of receipt of the copy of this Order.

**23.** In the result, both the appeals i.e. first appeal No. 2068 of 2019 filed by the hospital and the doctor and first appeal no. 2310 of 2019 filed by the complainants, being without merit, are dismissed. All pending applications, if any, stand disposed of.

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**SUBHASH CHANDRA  
PRESIDING MEMBER**

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**DR. SADHNA SHANKER  
MEMBER**