

M.P.STATE CONSUMER DISPUTES REDRESSAL COMMISSION
PLOT NO. 76, ARERA HILLS, BHOPAL (M.P.)

APPEAL NO. 1544/2012

1. Rakesh Fauzdar
S/o Late J.D. Fauzdar
2. Siddhartha Jain Fauzdar
S/o Rakesh Fauzdar
3. Nirvesh Fauzdar
S/o Rakesh Fauzdar

All R/o Pitra Bhakti
Rasulia
Hoshangabad (M.P.)

... Appellants

VERSUS.

1. Bhopal Memorial Hospital &
Research Centre,
Through the Chief Executive Officer
2. Dr. Skand Trivedi
Cardiologist
Bhopal Memorial Hospital &
Research Centre

Both – Karond, Bypass Road
Bhopal (M.P.).

... Respondents

BEFORE:

HON'BLE JUSTICE SUNITA YADAV, PRESIDENT
HON'BLE DR. MONIKA MALIK, MEMBER

COUNSEL FOR THE PARTIES:

SHRI DEEPESH JOSHI, LEARNED COUNSEL FOR APPELLANTS.
SHRI INDRAJEET SINGH RAJPUT, LEARNED COUNSEL FOR
RESPONDENT NO.1.
SHRI UZAIR TAJ, LEARNED COUNSEL FOR RESPONDENT NO.2.

ORDER
(08.01.2026)

The following order of the Bench was delivered by Dr. Monika Malik, Member.

This appeal by the appellants/complainants (hereinafter referred to as 'complainants') is directed against the order dated 19.7.2012, passed by the District Consumer Disputes Redressal Commission, Bhopal (for short 'District Commission'), in complaint case No. 389/2005, whereby the District Commission has dismissed the complaint filed by them.

2. Facts of the case in brief are that wife of appellant No.1-Paras Rani (hereinafter referred to as 'patient') complained of chest pain on 9.6.2003 and consulted a family doctor in Hoshangabad. She was given treatment under the guidance of opposite party No.2-doctor. In order to assess her actual condition, she was suggested angiography, regarding which an ambulance to bring her to Bhopal was arranged by opposite party No.2-doctor. It is alleged that while shifting from ambulance, employees of the opposite party No.1-Hospital dropped the patient, which led to development of pulmonary edema. No investigation was done for 2 days and on 11.6.2003 angiography and angioplasty were performed by the opposite

party No.2-doctor. It is submitted that two stents, amounting to Rs.1,95,000/- were implanted. It is alleged that on 16.6.2003, the complainant was administered with 'A-negative' blood group, whereas blood group of patient was 'A-positive'. The expiry date of said blood, which was transfused was 18.6.2003. Due to said blood transfusion, condition of patient deteriorated. On 17.6.2003, the patient again reported chest pain, as angioplasty failed, but the Cath Lab of the opposite party No.1/Hospital was not functioning. On 23.6.2003, patient developed acute septicemia and she was kept on dialysis. On 25.6.2003, she was diagnosed with renal failure. The condition of patient was continuously deteriorating and she finally died on 27.6.2003. It is also alleged that the opposite parties showed resistance in providing medical documents as they realized that death of the patient was due to their negligence. Therefore, the complainants alleging deficiency in service on part of the opposite parties, approached the District Commission, seeking relief.

3. The opposite parties before the District Commission submitted that condition of the patient was not good when she was brought from Hoshangabad to Bhopal. It is also submitted

that the transfusion of blood was not responsible for the health condition of the patient. It is also submitted that the prescriptions, which were demanded by the complainants, were not provided to them earlier since bill amount was pending to be paid and after the bills were cleared, necessary papers were provided to them. It is further submitted that the patient was treated well in the hospital, and it was the only hospital available in the city, regarding treatment of the patient and since there has been no negligence or deficiency in service on its part, the complaint be dismissed.

4. Heard. Perused the record.

5. Learned counsel for the complainants argued that the patient was in stable condition, when she was referred from Hoshangabad to Bhopal. However, while shifting the patient, due to utter carelessness, she fell on floor and as a result of which she became breathless and had froth at the mouth. She was managed in ICU but no angioplasty, CABG or CAG was advised or done for two days. On 11.6.2003, the patient was suddenly taken to Cath Lab for conducting angiography, with consent of the relatives but however, when she was brought out it was informed that angioplasty was also done, which was

without consent. Same day she observed, severe fall in her blood pressure and her condition started to worsen. He argued that after three days of said surgery a bill of Rs.1,95,000/- was raised towards cost of stents, allegedly implanted during angioplasty. The complainants were shocked to receive the bills, as the same was not issued by the opposite parties but by Rollmax India. The complainants had objected that angioplasty was done without prior consent, and the condition of the patient was not improving but they had to make payment to Rollmax India.

6. On 16.6.2003, 'A-negative' blood was transfused to the patient, whose blood group was 'A-positive' and transfused a very old blood, which was due to expire on 18.6.2003. This drastically changed the health condition of the patient. On 17.6.2003, the patient complained of chest pain and her condition deteriorated and it was informed by the doctor that it was due to failure of angioplasty. It was further revealed that exact reason cannot be diagnosed, as Cath Lab was out of order. On 23.6.2003, the patient developed acute septicemia and TLC was found to be 35,000. Despite the fact that

condition of the patient was deteriorating continuously, service of senior doctors was not called and the patient was not referred to any higher centre. The patient developed renal failure and was put on dialysis but despite that she could not be revived. The patient finally succumbed due to negligence of opposite parties. The opposite parties did not even provide treatment related documents. He therefore prayed that the impugned order be set aside and the complainants be compensated in terms of relief as was sought by them by filing the complaint. He referred to judgments of Hon'ble Supreme Court in the case of **Samira Kohli vs. Dr. Prabha Manchanda and Another (2008) 2 SCC, Post Graduate Institute of Medical Education and Research Chandigarh vs. Jaspal Singh and others (2009) 7 Supreme Court Cases 330, Arun Kumar Manglik vs. Chirayu Health and Medicare Private Limited and Another (2019) 7 Supreme Court Cases 401, Jasvinder Singh and another vs. Santosh Nursing Home and others (2012) 12 Supreme Court Cases 550, Malay Kumar Ganguly vs. Dr. Sukumar Mukherjee and others (2009) 9 Supreme Court Cases 221** and the judgment

of Hon'ble National Consumer Disputes Redressal Commission, New Delhi in the case of **Wilfred D' Mello vs. Dr. Manoj K Dhrive and another III (2013) CPJ 276 (NC)**, to support his arguments

7. Learned counsel for the opposite party No.1./Hospital supported the impugned order and argued that the patient was treated well during her entire stay in the hospital. Whatever was required to be done was done but despite best of efforts, her life could not be saved, which is not however, a ground to hold the opposite parties negligent in the instant matter and he prayed that the appeal be dismissed.

8. Learned counsel for opposite party No.2/doctor argued that the patient already had chest pain, pulmonary edema, when she was referred to the opposite parties. Angiography and angioplasty was performed as per norms. There was no side effect of blood, which was transfused. The patient developed chest pain and myocardial infraction, for which treatment was given by the opposite parties. The patient was diabetic and obese and despite everything she was managed well by the opposite parties and deterioration in her health

cannot be attributed to negligence on part of the opposite parties. He thus prayed that the appeal be dismissed.

9. When the patient was brought from Hoshangabad in the opposite party No.1/Hospital her cardiac case sheet, Annexure A-1 shows the date of admission as 9.6.2003 and provisional diagnosis as '*acute extensive anterior wall ST elevation, MI, acute pulmonary edema with cardiogenic shock NIDDM/obesity*'. The detailed history in the said document reveals she had pulmonary edema, before shifting to opposite party No.1/Hospital. Therefore, the allegations of the complainants that she suffered pulmonary edema after fall from stretcher is found to be incorrect. As regards allegations that under guidance of opposite party No.2/doctor the patient was being treated at Hoshangabad and therefore he was responsible for her poor health condition, when she was brought to Bhopal, the District Commission has rightly observed that she was under direct observation of Dr. Tiwari and he himself should have judged medication and dosages looking at her condition.

10. Consent form of the opposite party No.1/Hospital (Annexure A-2) is available on record, in which consent for

angiography was obtained from patient's relative. The complainants have alleged that no prior consent for angioplasty was obtained, however, paragraph-4 of the said consent form clearly mentions as under:-

“4) I give consent for any change in the anesthesia or operative procedure as well as for removal of any organ as may be deemed fit and necessary by the Doctors at the time of medication/investigation/operation/therapy/procedure.”

Therefore, considering the circumstances and in the light of above, we find that the District Commission has rightly observed that no separate consent for angioplasty was required. It is admitted by the complainants that after the procedure the patient was able to sit and consume food through mouth, which shows that her condition had stabilized after the aforesaid procedure.

11. The allegations that she was wrongly administered A-Negative blood, whereas blood group of the patient was A-Positive, is not acceptable, since as per medical literature, A-Negative blood can be administered to an A-Positive blood group patient. Also, the allegations that the blood which was administered was nearing expiry and was not safe to be administered, do not hold any relevance, as admittedly

the blood which was transfused had not yet expired. Therefore, it was safe to administer such blood.

12. After procedure, admittedly, the patient suffered another myocardial infraction and the same cannot be attributed to be negligence on opposite parties' part. The complainants have alleged that the Cath Lab of the opposite party No.1/Hospital was out of order at that point of time and therefore, the opposite parties could have referred the patient to another centre. To this, the opposite parties have categorically replied stating that at that point of time the only Cath Lab available in the entire city was that of the opposite party No.1/Hospital and angioplasties were not done anywhere. Also, it was not possible to shift her safely, since general condition of the patient was not good. Therefore, the best possible treatment available at that point of time was provided by opposite party No.1/Hospital by thrombolysing her without delay. Case sheets available on record suggest that the patient was being monitored and managed with due care but since her general condition was not good, despite efforts, she could not be saved. The complications, which developed in the case cannot be held to be arisen because of opposite parties.

13. Hon'ble Supreme Court in **Jacob Mathew Vs State of Punjab & Anr III (2005) CPJ 9 (SC)** has held that true test for establishing medical negligence in diagnosis or treatment on the part of a doctor is whether he has been proved to be guilty of such failure as no doctor of ordinary skill would be guilty of, if acting with ordinary care. The accident during the course of medical or surgical treatment has a wider meaning. 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.

14. Hon'ble Supreme Court in **Martin F D'Souza Vs Mohd. Ishaq I (2009) CPJ 32 (SC)** has held that simply because the patient has not favorably responded to a treatment given by the doctor or a surgery has failed, the doctor cannot be held straightway liable for medical negligence by applying the doctrine of *Res Ipsa Loquitur*. 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.

Hon'ble Supreme Court in **Harish Kumar Khurana (Dr.) Vs Joginder Singh & Ors. II (2022) CPJ 43 (SC)** has held that '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.

15. The judgments referred by learned counsel for complainants are of no help to the complainants, since facts of those matters differ from the case in hand.

16. Therefore, we are of the view that the District Commission has rightly reached a conclusion that the complainants have not been able to establish any deficiency in service in the instant matter against the opposite parties. The District Commission has thus, rightly passed the impugned order and has committed no illegality or infirmity while passing the same.

17. The impugned order is hereby affirmed.

18. As a result, the appeal fails and it is hereby dismissed.

19. No order as to costs.

(JUSTICE SUNITA YADAV)
PRESIDENT

(DR. MONIKA MALIK)
MEMBER