NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

FIRST APPEAL NO. 1778 OF 2019

(Against the Order dated 30/07/2019 in Complaint No. 157/2017 of the State Commission Rajasthan)

1. RAGHUVEER SINGH
R/O. 23-A, UMRAO VIHAR, GOKULPURA, KALWAD ROAD.
JAIPUR
RAJASTHAN .....Appellant(s)

Versus

1. NARAYANA HRIDAYALAYA LTD. (NARAYANA MULTISPECIALTY HOSPITAL) & 2 ORS.
THROUGH MANAGER. SEC-28, KUMBHA MARG, PRATAP NAGAR.
JAIPUR.
2. DR. ANKIT MATHUR NARAYANA HRIDAYALAYA LTD. (NARAYANA MULTISPECILTY HOSPITAL)
SECTOR-28, KUMBHA MARG, PRATAP NAGAR.
JAIPUR.
3. DR. ANSHU KABRA (CARDIAC CONSENTIENT) NARAYANA HRIDAYALAYA LTD. (NARYANA SPECIALTY HOSPITAL.)
SECTOR-8, KUMBHA MARG, PRATAP NAGAR.
JAIPUR. .....Respondent(s)

FIRST APPEAL NO. 1827 OF 2019

(Against the Order dated 30/07/2019 in Complaint No. 157/2017 of the State Commission Rajasthan)

1. (NARAYANA HRIDAYALAYA LTD. (NARAYANA MULTISPECIALTY HOSPITAL) & 2 ORS.
THROUGH MANAGER. SECTOR-28, KUMBHA MARG, PRATAP NAGAR.
JAIPUR
2. DR. ANKIT MATHUR, NARAYNA HRUDAYALAYA LTD.
SECTOR-28, KUMBHA MARG, PRATAP NAGAR.
JAIPUR.
3. DR. ANSHU KABRA(CARDIAC CONSULTANT) NARAYANA HRUDAYALAYA LTD.
SECTOR-28, KUMBHA MARG, PRATAP NAGAR.
JAIPUR. .....Appellant(s)

Versus

1. RAGHUVEER SINGH .....Respondent(s)
S/O. SHRI. MADHO SINGH. CURRENTLY R/O. A-58, MANGALAM CITY, KALWAAD ROAD, HATHOS.

JAIPUR.
RAJASTHAN.

BEFORE:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER
HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),MEMBER

FOR THE APPELLANT :	IN FA/1778/2019 FOR THE APPELLANT : MR. UMESH NAGPAL, ADVOCATE IN FA/1827/2019 FOR THE APPELLANTS : MR. SHIVENDRA SINGH, ADVOCATE
FOR THE RESPONDENT :	IN FA/1778/2019 FOR THE RESPONDENTS : MR. SHIVENDRA SINGH, ADVOCATE IN FA/1827/2019 FOR THE RESPONDENT : MR. UMESH NAGPAL, ADVOCATE

Dated : 17 November 2023

ORDER

AVM J. RAJENDRA, AVSM, VSM (RETD.), MEMBER

1. This Order shall decide both the appeals arising out from the impugned Judgment /Order dated 30.07.2019 passed by the State Consumer Disputes Redressal Commission, Rajasthan (hereinafter referred to as the “State Commission”) in Complaint No. 157/2017, wherein the State Commission partly allowed the complaint.

2. For convenience, the parties are referred per the Complaint before the State Commission. Mr. Raghuveer Singh is referred as the Appellant/ Complainant in FA No. 1178/ 2019 and Narayana Hridayalaya Ltd. (Narayana Multispecialty Hospital) is referred as Opposite Party No. 1 (OP-1), Dr. Ankit Mathur is referred as OP-2 and Dr. Anshu Kabra (Cardiac Consultant) is referred as OP-3.

3. Brief facts of the case as per the Complainant are that he and his wife visited Soni Hospital for a routine check for her. As he had some dental issue, the Complaint consulted a dentist at the hospital. On inspection by the dentist, he was advised tooth extraction and scheduled the extraction for 23.03.2017 at the same Hospital.

4. On 23.03.2017 the Complainant reported to Soni Hospital for tooth extraction. However, during the procedure, he experienced excruciating pain, leading to his admission in the hospital. After examination, the doctors recommended an angiography due to the Complainant's low blood pressure and seizures. Due to urgency, the Complainant's family was contacted for consent. Angiography revealed 60%, 70%, and 100% blockages in his arteries and the doctors advised stent placement. Since he came in initially seeking treatment for tooth pain, he was unable to undergo the stent procedure immediately. He then consulted another doctor Dr. Vijay Pathak at Sawai Mansingh Hospital who recommended medication instead of immediate stent placement. He consulted OP-1 Hospital, a reputed facility specialised in heart-related issues. Upon medical examination at OP-1 Hospital on 02.04.2017, he was advised to undergo stent placement by OP-3, who assured him of the hospital's expertise in the procedure. At 1200 Hrs on 03.04.2017, the Complainant was taken to the Operation Theatre (OT) by the OPs. After concluding the procedure, he regained consciousness at 4.00 PM and complained chest pain. This concern was communicated to OP-3 by his family members. In response, OP-3 reassured them that pain after stent placement was normal and it would subside and OP-3 left the place.

5. Prior to the procedure, the OPs informed the Complainant that the stent placement would be done through the veins in his hand. However, upon exiting the OT, he realized that it was done through the veins in the leg, which is considered an older and less preferred method. This raised concerns about quality of service. As his chest pain persisted and intensified further, his family members reported to Dr. Rahul, who examined him and summoned senior doctors for evaluation. Overhearing the doctors' conversation, it became apparent that the Complainant sustained a rupture in his heart, resulting in bleeding and blood accumulation. As it was critical, he was taken back to the OT to examine the source of pain. An incision was made in his chest to remove accumulated blood due to bleeding. However, there was continuous bleeding and attempts to stop it were unsuccessful. They administered an injection for blood-thickening. After about 90 minutes, he was transferred to the ICU, and the family was informed that the operation was successful. However, at about 6.00 PM on the same day, the Complained informed the medical staff that he has no sensation in his right leg. They explained to him that it was due to placement of the stent and that sensation would return in a while. However, an hour later, at 7.00 PM, he again informed OP-3 that he is unable to feel his feet and requested for examination.

6. OP-3 examined him and identified blackening at the place where the stent was inserted. He was administered a potent medicine along with Metacyne to dilute the blood. However, bleeding resumed from the site of the heart puncture as well as his feet. At 9.00 PM, the Complainant's family alerted OP-3 about his condition and chest pain. OP-3 examined him and conveyed that he developed gangrene. OP-2, who was present for a different procedure, was called in. While the severity of situation demanded specialist consultation, this was not done. At 10.00 PM, the family of the Complainant was informed that he was in critical condition, with both his right leg and heart bleeding. An urgent operation was deemed necessary to save his life. While his younger brother and son sought assistance from Dr. CP Srivastava, he declined to intervene. Despite repeated requests from his family, the Hospital management failed to engage Dr. CP Srivastava. In the midnight, he underwent two operation conducted by OP-2, which

continued until 4.00 AM. At 7.00 AM they informed the family that his heart was functioning normally, blood was circulating up to his knee and a balloon-assisted procedure was used during leg surgery to stabilize his condition. However, subsequent examination by Dr. Pradeep Goyal revealed impaired blood flow below the knee. This was informed to OP-2, prompting immediate action. Another operation was performed on him and the OP-2 informed the family that blood flow remained restricted below the knee. Later, as his leg was significantly swollen, incisions were made on both sides of the leg to prevent it from bursting. On 05.04.2015, due to festering infection posing risk of kidney failure, it was recommended that his leg be amputated below the knee. On 06.04.2017, a specialist doctor from Durlabhji Hospital confirmed the need for amputation to prevent spread of infection throughout the body. The amputation procedure was carried out on 06.04.2017. On 07.04.2017, OP-3 alerted the family to an increase in his creatinine levels and the need for dialysis. Dialysis commenced at 7.00 PM for five hours. On 13.04.2017, it was decided that blood accumulated in the lungs and necrotic muscle tissue in the leg needed to be removed. Another operation was done by OP-2 to amputate his right leg from hip joint. On 17.04.2017, OP-2 once again informed the family of blood accumulation in his chest, necessitating another surgery. It was done by OP-2 and Dr. CP Srivastava. These extensive medical interventions, totalling 14 successive surgeries, resulted in a profound deterioration in his overall physical condition. A self-reliant person now requires to be assisted in daily tasks. His right eye vision significantly reduced, which may deteriorate further. The repeated injections have left his body significantly debilitated.

7. Being aggrieved, the Complainant filed a Complaint No. 157 of 2017, before the State Commission, seeking Compensation of Rs. 98 lacs along with litigation cost of Rs.1,00,000 from Opposite Parties on various heads. The OPs filed the said cross-Appeal.

8. The OPs in their written version denied any negligence in the treatment and contended that certain important facts such as bleeding and drop in blood pressure, were not disclosed by the Complainant before or during the treatment. They asserted that he arrived at the hospital with only the Angiography CD, and the entire sequence of events was not disclosed. They emphasized that they cannot provide specific comments on undisclosed events. The OPs disputed the assertion that they assured the Complainant that the stent used would be of top quality which would not pose any future issues. No such assurance was given, and before the medical procedure, comprehensive discussions were made by doctors with patients and families as regards the procedures, complexities, costs, advantages, disadvantages, complications etc and their written consent was obtained. No anesthesia was administered and the Complainant remained conscious when taken out of the OT. They acknowledged that post-angioplasty chest pain can occur due to vessel dilation and stent insertion but typically resolves on its own. As regards the method of stent placement, OPs contended that the choice between leg and hand veins depend on a patient's condition and complexity of the procedure. In cases involving blockages in three main heart arteries or complex procedures, leg vein access is preferred to facilitate large catheter insertion. By no means this indicates any service deficiency. The OPs described the efforts to stop bleeding, emphasizing the delicate balance between thickening blood to stop bleeding and diluting it to prevent stent blockage. His treatment was done with

utmost seriousness. Upon complaining about the pain, immediate medical examination was done, and considering the possibility of blood flow in the veins of the legs might have stopped, a CTVS doctor was immediately called. On examination and it was found that there was flow of blood in the vein behind the knee, but not being felt in the veins in front. Thus, the allegation that his examination was not done seriously is wholly false. As regards the involvement of Dr. Anshu Kabra and Dr. Ankit Mathur, the OPs highlighted their expertise and that they contributed to his survival and contended that raising questions about their competence on the outcome is unjust. OP-2 and OP-3 are professionals, capable and proficient to provide treatment in such conditions. Further, the vein opened by a balloon started getting blocked again due to the blockage in the blood flow. The swelling on right leg was due to stoppage of blood flow called "compartment syndrome" which is to be treated by lessening pressure on the muscles immediately, which was done making a cut mark at the point of pressure. The Complainant was already suffering Peripheral Vascular Disease (**PVD**) and thus the veins carrying blood to internal organs became narrow or blocked. Due to this, the blood flow to all parts of the body reduces and diseases like unhealed wounds, gangrene and infection are possible. This condition can manifest in the general, especially in advanced age, leading to complications like paralysis, kidney failure, heart attack etc. As per OPs angiography, angioplasty or major surgeries can have difficulty under such circumstances. They arise from patient's condition rather than medical negligence. Later, tests revealed that the Complainant's left leg already had this disease as evident from his "Arterial Doppler" examination, in the opinion of Dr. Adarsh Kabra. As per OPs, the darkening of urine, reduced output, and elevated creatinine levels necessitated dialysis due to myoglobin release from dead leg muscles. Significant efforts were made to save his leg and kidneys by sequential dialysis. Dr. Adarsh Kabra also gave same opinion that right leg should be amputated from knee upwards immediately. They did so after obtaining his consent and as per standard procedures in major hospitals worldwide.

9. The learned State Commission partly allowed the Complaint vide order dated 30.07.2019 & directed as follows:

ORDER

"Thus, allowing the Complaint filed by the Complainant against the Opposite Parties, the Opposite Party No. 1 Narayana Hrudayalaya is directed to pay the Complainant a sum of Rs. 30,00,000/- (thirty lakh rupees only) and Opposite Party No. 2 Dr. Ankit Mathur and Opposite Party No. 3 Dr. Anshu. Kabra are directed to pay the Complainant a sum of Rs. 10,00,000/-Rs. 10,00,000/- (ten-ten lakh rupees only) and thus will pay in total a sum of Rs. 50,00,000/- (fifty lakh rupees only) and the said Opposite Parties will make the payment along with an interest at the rate of 9% per annum from the date of filing of the complaint i.e. 18.12.2017 to the date of payment."

10. Aggrieved by the Order of the learned State Commission, both parties filed the present cross Appeals seeking the following:

FA/1778/2019: filed by the Complainant

> ***"It is, therefore, most humbly prayed that this Hon'ble National Commission, may graciously be pleased to accept and allow the Appeal and set aside the impugned order dated 30.07.2019 passed by the Rajasthan State Consumer Dispute Redressal Commission, Bench No.1, Jaipur in complaint No. 157/2017 titled as RAGHUVEER SINGH versus Narayana Hridayalaya Ltd. & others and consequent there to allow the consumer complaint filed by the appellant in full as per prayer made therein."***

FA/1827/2019: By Opposite Parties-Narayana Hridayalaya & Ors

a. ***Admit the present First Appeal and set aside the Final Order dated 30.07.2019 in CC/157/2017 passed by the State Consumer Disputes Redressal Commission; and***
b. ***To pass an order against the Complainant/Respondent to pay the cost of litigation to the Appellants herein; and***
c. ***To grant any other relief which this Hon'ble Commission deems fit and proper in favour of the Appellants and against the Complainants/Respondents..***

11. In Appeal No. **1778 of 2019,** the Appellant/Complainant raised several contentions that the learned State Commission failed to accurately calculate the compensation. It did not take into account the fact that the Complainant not only lost his leg but also faces challenges in obtaining a functional artificial leg. He asserted that the State Commission failed to consider his responsibilities to the family and emphasized that he is the sole breadwinner, and they are facing significant financial difficulties as they rely solely on his pension. His pension is insufficient to maintain their quality of life. The dire circumstances he is facing are a direct result of the negligence of the doctor and the hospital. He, therefore, requested that substantial penalties be imposed on both the doctors and the hospital for such gross acts of negligence. He sought an increase in the awarded compensation amount, highlighting the need for a more just and substantial award, considering the severity of his disability and its impact on financial stability of his family and future.

12. On the other hand, in Appeal No.**1872 of 2019**, the OPs contended that the observation of the learned State Commission that the Respondent's consent was not obtained by the OPs before performing the angioplasty, is *prima facie* incorrect. They claimed that this was not even pleaded by the Complainant in their initial petition. The OPs asserted that it's an admitted fact that all consent forms were duly signed, either by the Complainant or the family members. They cited the order of the Hon'ble Supreme Court as regards the law of consent in medical procedures in ***Samira Kohli vs. Dr. Prabha Manchanda (2008) 2 SCC 1 (para. 23, 24, and 27***). The OPs also contended that the findings of the learned State Commission lack clear connection with the evidence presented and should be set aside on this basis alone. They contend that the Complainant failed to prove any negligence in his treatment, and the State Commission ignored

established legal principles, such as those outlined by the Hon'ble Supreme Court in ***CP Sreekumar v. S. Ramanujam, (2009) 7 SCC 130 (para. 37)***. The OPs also emphasized that both OP-2 and OP-3 have a solid track record in performing complex surgeries and they did their best in handling very challenging situations. They did everything possible so as to ultimately save the Respondent's life. They contended that the deterioration of his condition after the angioplasty was beyond their control. Instead of receiving credit for their untiring and life-saving efforts, the Appellants claimed that they have been unjustly brought into legal proceedings.

13. The learned Counsel for the Complainant/Appellant reiterated the facts of the case and forcefully argued that the case presented clear evidence of medical negligence. The Counsel emphasized the lack of proper examination, informed consent, and explanations for complications during and after the procedure. The excessive number of operations conducted, failure to refer the patient to an advanced medical center and inadequate specialist consultation were also raised as significant concerns in the treatment meted out to the Complainant. He urged that the present agonizing state of the Complainant, the impact of the medical effects experienced by him clearly underscore his argument. The Counsel repeatedly asserted that the entire procedure was conducted very negligently wherein the Complainant not even remotely expected the dire outcome he met with. Having gone to the Hospital for mere tooth extraction, he is now facing a life of a handicapped person and became liability to his family instead of being strength. He stressed that the compensation initially awarded did not sufficiently account for the extent of extreme harm caused him and urged for higher compensation amount be granted. To support his arguments, the Counsel for the Complainant placed reliance upon the judgment titled as V. Krishankumar v. State of Tamil Nadu (SC), Civil Appeal No. 5065 and 5402 of 2009, decided on 01.07.2015.

14. On the other hand, the learned counsel for the OPs raised concerns about the hypothetical and presumptive findings of the State Commission, particularly as regards the suggestion that bypass surgery should have been performed on the Complainant instead of angioplasty. He forcefully argued that such findings should not have been made without seeking expert medical opinion and that they suffer from material perversity. He emphasized that there was no negligence on the part of the OPs. They had, in fact, saved his life. He disagreed with the learned State Commission determining negligence in the case. He referred to IA No. 3776 of 2020 filed on 17.03.2020, seeking the constitution of an expert medical board or reference to an expert medical board, and contended that it was not considered on its merits and cited a Three-Member Bench of NCDRC Order dated 04.10.2021 which contemplated such reference. He highlighted instances where medical boards were referred to, even at appellate and revisional stages, and implied that this practice should be consistent in this case as well. He has also contended that even if it were assumed that the OPs were negligent, the awarded compensation of Rs. 50 Lakhs was grossly disproportionate and contradicted the legal principles established by the Hon'ble Supreme Court. The Counsel relied upon the following judgments to support his arguments: -

a) Harish Kumar Khurana Vs Joginder Singh(2021)10SCC 291

b) Bombay Hospital & Medical Research Centre v. Asha Jaiswal [2021] 10 SCR 1118.

c) Pink City Heart & General Hospital v. Banarsi Devi & Ors., FA No. 1036 of 2019 (NC)

d) Dana Shivam Heart & Super Speciality Hospital v. Banarsi Meena & 2 Ors., FA No. 1018 of 2019 (NC)

e) V. Kishan Rao v. Nikhil Super Speciality Hospital & Anr. (2010) 5 SCC 513.

f) Radhika Rakesh Nigam v. Dr. (Mrs.) Swaraj Naik, (2011) 4 CPJ 486 (NC).

g) Ina Jain & Anr. v. Paro Devi, R.P. No. 48 of 2013 (NC).

h) Arun Kumar Manglik v. Chirayu Health & Medicare (P) Ltd., (2019) 7 SCC 401 and Shoda Devi v. DDU/Ripon Hospital & Ors., (2019) 14 SCC 357.

15. The Appellants/OPs prayed for deferring passing of a final order in FA/1827/2019 and FA/1778/2019 and to refer the entire treatment records with learned SCDRC, Jaipur to a Medical Board of any reputed Govt Hospital requesting it to constitute a Board and provide opinion; or allow FA/1827/2019 and dismiss FA/1778/2019 and direct the Complainant to refund Rs.12,50,000 with applicable interest to OP's No. 1 Hospital or, alternatively, allow FA/1827/2019 and dismiss FA/1778/ 2019 and direct refund of Rs.12,50,000 with applicable interest to the OP's No. 1 from Consumer Welfare Fund. They also pleaded that if the NCDRC is inclined to dismiss FA/ 1827/2019, compensation awarded to the Complainant be reduced with due regard to Hon'ble Supreme Court in ***Arun Kumar Manglik v. Chirayu Health & Medicare (P) Ltd, (2019) 7 SCC 401*** *and* ***Shoda Devi v. DDU/Ripon Hospital & Ors, (2019) 14 SCC 357.***

16. We have examined the pleadings and associated documents placed on record and thoughtfully heard the extensive arguments advanced by the learned Counsels for both the parties.

17. It is an uncontested position that the Complainant visited Soni Hospital during March 2017 and consulted a dentist for toothache. After examination, the doctor advised tooth extraction to prevent potential complications to other teeth and scheduled the extraction for 23.03.2017 at same Hospital. On 23.03.2017 he reported to the same Hospital for tooth extraction. However, during the procedure, he experienced excruciating pain, leading to admission in hospital. After examination, doctors recommended an angiography due to his low BP and seizures. Due to urgency, his family was contacted for consent. The angiography revealed 60%, 70%, and 100% blockages and the doctors advised stenting. Since he came to hospital for toothache, he was unable to immediately undergo stent procedure. When he

consulted another doctor Dr. Vijay Pathak at Sawai Mansingh Hospital, he recommended medication instead of immediate stent placement. He then consulted OP-1 Hospital, which is a reputed facility specialised in heart-related issues. Upon examination at OP-1 Hospital on 02.04.2017, he was advised to undergo stent placement by OP-3.

18. At 1200 Hrs on 03.04.2017, the Complainant was taken into Operation Theatre (**OT**) and the procedure was done. At 4.00 PM, he regained consciousness and complained of chest pain. He was reassured by the OP-3 that pain after stent placement was normal and it would subside. Prior to the surgery, OPs informed him that the stent would be placed through the veins in his hand. However, upon exiting the OT, he realized that the catheter was inserted through the veins in his leg. As chest pain persisted and intensified, Dr. Rahul examined him and called senior doctors. The doctors deliberations revealed that the Complainant has a puncture in the heart, resulting in bleeding and blood accumulation. As it was critical, he was rushed to OT to examine the source of pain. An incision was made in his chest to remove accumulated blood due to bleeding. However, due to continuous bleeding, these attempts were unsuccessful, leading to the administration of an injection for blood-thickening. After about 90 minutes, he was transferred to the ICU, and family was informed that the operation was successful. However, at about 6.00 PM on the same day, he informed medical staff that he has no sensation in his right leg. He was explained that it was due to placement of the stent through the leg veins and the sensation would return over time and there was no cause for concern. An hour later, he again informed OP-3 that he is unable to feel his feet. OP-3 examined him and noticed blackening at the site where catheter was inserted. A potent medicine was administered to dilute the blood along with Metacyne. However, bleeding resumed from the site of the heart puncture and the Complainant's leg. At 9.00 PM, his family alerted OP-3 about his condition and chest pain. OP-3 examined him and informed that he developed gangrene. OP-2 was called and at about 10 PM, it was informed that he was in critical condition, with heart bleeding due to rupture and right leg where catheter was inserted also bleeding. An urgent operation was deemed necessary to save his life. Despite repeated requests from his family, OP-1 failed to engage Dr. CP Srivastava and, in the midnight, the Complainant underwent two surgeries conducted by OP-2, which continued till 4.00 AM. At 7.00 AM they informed the family that his heart was functioning normally, blood was circulating up to his knee, and a balloon-assisted procedure was used during leg surgery to stabilize his condition. However, subsequent examination by Dr. Pradeep Goyal revealed impaired blood flow below the Complainant's knee. OP-2 performed another operation and OP-2 informed his family that blood flow remained restricted below the knee. As leg was significantly swollen, two incisions were made on both sides of the leg to prevent it from bursting.

19. On 05.04.2015, due to festering infection posing a risk of kidney failure, it was recommended that his leg be amputated below the knee. On 06.04.2017, a specialist doctor from Durlabhji Hospital confirmed the need for amputation to prevent spread of infection in the entire body. The amputation was carried out on 06.04.2017. On 07.04.2017, OP-3 alerted his family as regards increased creatinine levels and need for dialysis. On 13.04.2017, it was decided that the blood accumulated in the lungs and necrotic muscle tissues in the leg needed to be removed. Another operation by OP-2 ensued and his right leg was amputated from the hip

joint. On 17.04.2017, OP-2 once again informed the family of blood accumulation in his chest, requiring another surgery by OP-2 and Dr CP Srivastava. These extensive medical interventions, totalling 14 surgeries in succession, resulted in a profound deterioration of his overall condition. Further, his vision in right eye significantly reduced. He needs frequent medical check-ups every 5-7 days. The surgical wounds from the numerous operations are yet to heal. He sought compensation for the substantial physical, emotional, and financial hardships endured because of the surgeries.

20. It is an undisputed position that 14 surgeries were conducted on the Complainant, 42 bottles of blood were administered, and he developed gangrene in the foot, and it was amputated first till the knee and thereafter from hip bone. There is no explanation given by the OPs as to why this gangrene developed. Further, his heart was ruptured, and it started bleeding. To stop bleeding, several operations were conducted. Also, the blood entered his lungs and even lungs were operated upon. No reasonable explanation was rendered as to why such situations arose wherein a patient who went for a tooth extraction ended up with one leg amputated up to hip bone, heart ruptured, and blood in the lungs and multiple surgeries. Thus, the Complainant prima-facie succeeded in establishing his contentions and version of the facts stated.

21. In **Smt Savita Garg Vs Director, National Heart Institute, IV (2004) CPJ 40 (SC)** the Hon'ble Supreme Court has held that:-

> "16. …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."

22. In **PB Desai vs State of Maharashtra & Anr**. [2013] 11 S.C.R. 863 the 'Duty of Care' towards the patient has been explained as:

> "1.4. Once, it is found that there is 'duty to treat' there would be a corresponding 'duty to take care' upon the doctor qua/his patient. In certain context, the duty acquires ethical character and in certain other situations, a legal character. Whenever the principle of 'duty to take care' is founded on a contractual relationship, it acquires a legal character. Contextually speaking, legal 'duty to treat' may arise in a contractual relationship or governmental hospital or hospital located in a public sector undertaking. Ethical 'duty to treat' on the part of doctors is clearly covered by Code of Medical Ethics, 1972. Clause

10 of this Code deals with 'Obligation to the Sick' and Clause 13 cast obligation on the part of the doctors with the captioned "Patient must not be neglected". ..."

23. Thus, once the Complainant initially discharges this burden, thereafter it is the responsibility of OPs to bring out its defence. In cases of medical negligence, the degree of skill and level of care of doctors constitute essential factors. Admittedly, Narayana Hrudayalaya is a specialist Hospital for cardio care. Thus, the reasonable corresponding expectation is that the hospital will ensure such standards of care. As per the principles propounded by Hon'ble Supreme Court, out of specialist and general, if it is specialist, then they should possess such skill and care expected of a specialist, which is not the case in question. It is uncontested that Narayana Hrudayalaya is a famous specialist hospital in Jaipur. But, after the angiography, Complainant's main arteries were found blocked at different levels, including 100% block. Of the available courses in the given situation and choices, the decision taken was to stent him, instead of any other procedure known, as that that the consent given to the patient. Thereafter, stent was put. But, it is also an admitted fact that after the stenting, his heart ruptured and started bleeding. Further, blackness started appearing on the leg where the catheter was inserted, gangrene developed and spread up to the knees and it had to be amputated. Dr. Ankit Mathur has brought out that due to the medicines given to him to increase the BP and several blood transfusions, renal failure secondary hemorrhage occurred, and blood got accumulated in the right lung. That's why he was immediately taken into the OT and surgery was done to take out the blood accumulated in the lungs. Further, the infected leg which was amputated till knee earlier was amputated till the torso to save his life. Dr. Mathur has also brought out that the Complainant was suffering from PVD and thus the arteries carrying blood to internal organs, hands and feet become narrow or completely blocked, resulting in reduced flow of blood to all parts of the body. In this condition, all kinds of diseases like unhealed wounds, gangrene and infection in organs are possible.

24. Dr. Anshu Kabra has brought out that in the condition of Triple Vessel Disease (TVD), the doctor always prescribed bypass surgery. But, due to the pressure applied by Complainant, the CGHS had given approval for angioplasty. TVD is complex where one artery is 100% calcified closed. The chances of complications are more and this was explained even by the CGHS doctor. Even then the Complainant chose angioplasty with full knowledge on the complication. He has also brought out that PVD is narrowing of the peripheral articles to the legs, stomach, arms and head. Most commonly it is in the arteries of the legs. PVD is similar to coronary heart disease (CAD). PVD and CAD are due to atherosclerosis that narrows and blocks arteries in various critical regions of the body. If the blockage remains in the peripheral arteries in the legs, it can cause pain, changes in skin colour, sores or ulcers and difficulty walking. Total loss of circulation to the legs and feet can cause gangrene and loss of a limb. Total loss of circulation to the legs and feet can cause gangrene and loss of a limb.

25. It is an established position that the Complainant was suffering from PVD in both legs. With this medical history, the course of angioplasty adopted, and the medicines given to increase blood pressure, several bottles of blood transfusion led to renal failure, secondary hemorrhage and blood got accumulated in his right lung requiring immediate surgery to take out blood from the lungs. Further, the gangrene infected leg which was earlier amputated till knee was amputated till the torso to save his life. Thus, there was a clear risk of gangrene to Complainant, and it was the duty of the doctors to have tested this aspect before deciding the medical treatment, which they failed. Further, the patient had consented for the angioplasty to be conducted from the hands. The same was, however, inserted through the legs. If his consent was obtained, the same was not brought on the record. The Apex court in ***Samira Kohli vs. Dr. Prabha Manchanda & Anr. (2008) 2 SCC 1*** has observed with regard to two issues which are relevant for our purpose and raised before the Bench were that:

> "17. (i) Whether informed consent of a patient is necessary for surgical procedure involving removal of reproductive organs? If so, what is the nature of such consent?
>
> (ii) When a patient consults a medical practitioner, whether consent given for diagnostic surgery can be construed as consent for performing additional or further surgical procedure – either as conservative treatment or as radical treatment – without the specific consent for such additional or further surgery?"
>
> …"
>
> These two questions were answered in the following terms:
>
> "18. Consent in the context of a doctor patient relationship, means the grant of permission by the patient for an act to be carried out by the doctor, such as a diagnostic, surgical or therapeutic procedure. Consent can be implied in some circumstances from the action of the patient. For example, when a patient enters a dentist's clinic and sits in the dental chair, his consent is implied for examination, diagnosis and consultation. Except where consent can be clearly and obviously implied, there should be express consent. There is, however, a significant difference in the nature of express consent of the patient, known as "real consent" in UK and as "informed consent" in America. In UK, the elements of consent are defined with reference to the patient and a consent is considered to be valid and "real" when (i) the patient gives it voluntarily without any coercion; (ii) the patient has the capacity and competence to give consent; and (iii) the patient has the minimum of adequate level of information about the nature of the procedure to which he is consenting to. On the other hand, the concept of "informed consent" developed by American courts, while retaining the basic requirements of consent, shifts the emphasis on the doctor's duty to disclose the necessary information to the patient to secure his consent. "Informed consent" is defined in Taber's Cyclopedic Medical Dictionary thus:

> "Consent that is given by a person after receipt of the following information: the nature and purpose of the proposed procedure or treatment; the expected outcome and the likelihood of success; the risks; the alternatives to the procedure and supporting information regarding those alternatives; and the effect of no treatment or procedure, including the effect on the prognosis and the material risks associated with no treatment. Also included are 32 instructions concerning what should be done if the procedure turns out to be harmful or unsuccessful."
>
> …

"21. The next question is whether in an action for negligence/ battery for performance of an unauthorized surgical procedure, the doctor can put forth as defence the consent given for a particular operative procedure, as consent for any additional or further operative procedures performed in the interests of the patient. In Murrary v. McMurchy (1949) 2 DLR 442: (1949)1 WWR 989, the Supreme Court of British Columbia, Canada, was considering a claim for battery by a patient who underwent a caesarean section. During the course of caesarean section, the doctor found fibroid tumours in the patient's uterus. Being of the view that such tumours would be a danger in case of future pregnancy, he performed a sterilization operation. The Court upheld the claim for damages for battery. It held that sterilization could not be justified under the principles of necessity, as there was no immediate threat or danger to the patient's health or life and it would not have been unreasonable to postpone the operation to secure the patient's consent. The fact that the doctor found it convenient to perform the sterilization operation without consent as the patient was already under general anaesthesia, was held to be not a valid defence. A somewhat similar view was expressed by the Court of Appeal in England in F., In re, (1933) 3DLR 260: 60 CCC 136. It was held that the additional or further treatment which can be given (outside the consented procedure) should be confined to only such treatment as is necessary to meet the emergency, and as such needs to be carried out at once and before the patient is likely to be in a position to make a decision for himself. Lord Goff observed (All ER p.566g-j)

> "…Where, for example, a surgeon performs an operation without his consent on a patient temporarily rendered unconscious in an accident, he should do no more than is reasonably required, in the best interests of the patient, before he recovers consciousness. I can see no practical difficulty arising from this requirement, which derives from the fact that the patient is expected before long to regain consciousness and can then be consulted about longer term measures."

26. No explanation has been rendered as to why the foot of the Complainant from where the catheter was inserted for angioplasty as well as his heart continued to bleed, leading into emergency situations. When his heart ruptured and was bleeding continuously to alarming proportions, medicines were given to thicken the blood. He had PVD problem in his leg and despite that angioplasty was done. He was not put through the procedures of preoperative care

to check his fitness for surgery. After the operation, the heart ruptured, and bleeding started and blood went into lungs and the gangrene in his leg kept increasing. Even then the Complainant was not referred for specialist treatment. When his blood was diluted, it was oozing out of the heart and when the blood was thickened, gangrene was spreading. Due to gangrene, foot started to blacken from below and then the leg had to be amputated up to knee, and later up to hipbone. The doctors did not even try to stop it and continued to experiment and conducted 14 operations and administered 42 bottles of blood and pushed him to the verge of death. The deficiency in service and medical negligence of the OPs are clear. The OPs repeatedly asserted in their arguments that when his heart was ruptured and bleeding, most important was to save his life. However, when gangrene was developing and two contradictory results were possible and both are likely to result in unacceptable damage to the patient, it was their duty to refer him to some advanced center in time for further specialist treatment, rather than continuing to experiment on him. Evidently, this was possible within and around Jaipur but the OPs failed to do so.

27. Negligence as defined by the court in **Jacob Mathew v. State of Punjab,** (2005) SSC (Crl) 1369 that the breach of duty which one party owes to another. The duty can be in the form of an act or omission, and it is referred to as the duty of care and due to the negligence of which it causes an injury to the person. In the case of medical negligence, it is the failure of medical practitioners to exercise certain acts or omission while discharging their duties with respect to their patients could not be saved. In **Spring Meadows Hospital & Anr. Vs. Harjol Ahluwalia & Anr.,** (1998) 4 SCC 39 Hon'ble Supreme Court observed as follows:-

> **"9. ….. Very often in a claim for compensation arising out of medical negligence a plea is taken that it is a case of bona fide mistake which under certain circumstances may be excusable, but a mistake which would tantamount to negligence cannot be pardoned. ……..**
>
> **10. Gross medical mistake will always result in a finding of negligence. Use of wrong drug or wrong gas during the course of anaesthetic will frequently lead to the imposition of liability and in some situations even the principle of res ipsa loquitur can be applied. Even delegation of responsibility to another may amount to negligence in certain circumstances. A consultant could be negligent where he delegates the responsibility to his junior with the knowledge that the junior was incapable of performing of his duties properly. …"**

28. In **Dr. Laxman Balakrishna Joshi vs. Dr. Trimbak Bapu Godbole & Anr** AIR 1969 SC 128 has held that the doctor owes to his patient certain duties which are:

> ***(a) A duty of care in deciding whether to undertake the case;***

b. ***A duty of care in deciding what treatment to give; and***
c. ***A duty of care in the administration of that treatment.***

29. A breach of any of the above duties may give rise to a cause of action for negligence and the patient may, on that basis, recover damages from his doctor. In the instant case, the OPs Doctors failed on all counts stated above due to multiple failures in the procedures and processes undertaken. In the case of **Spring Meadows Hospital (Supra)**, it was observed that

> "9. …V*ery often in a claim for compensation arising out of medical negligence a plea is taken that it is a case of bona fide mistake which under certain circumstances may be excusable, but a mistake which would tantamount to negligence cannot be pardoned. In the former case a court can accept that ordinary human fallibility precludes the liability while in the latter the conduct of the defendant is considered to have gone beyond the bounds of what is expected of the skill of a reasonably competent doctor. …"*

30. In the instant case, the OP hospital is vicariously liable for the act of its doctors, who negligently treated the patient. In **Maharaja Agrasen Hospital and Ors. Vs. Master Rishabh Sharma & Ors,** 2019 SCC Online SC 1658, Hon'ble Supreme Court observed:

> "12.4.21. 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. 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. 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."

31. Thus, in our considered view, in the instant case OPs 2 & 3 were found wanting in all the counts as discussed in LB Joshi's case (*supra*). It was not even bona fide mistake, but a therapeutic misadventure.

32. The Respondents mainly contended that the stand of the learned State Commission that the patient ought to have been treated by conducting an Open-Heart Surgery was without even taking the opinion of a medical board, which is essential as per the directions of the Hon'ble Supreme Court in such matters. They also stressed that consent for surgery was duly obtained and only thereafter the surgeries were performed. There was no medical negligence whatsoever and the OPs at every stage successfully endevoured to protect the life of the Complainant.

33. In the present case, however, it is undisputed that the Complainant who had sought medical attention for tooth extraction, ended up in undergoing a total of 14 successive surgeries, administering of 42 units of blood, rupture to his heart, blood into his lungs, gangrene in the leg

where the catheter was inserted, amputation and his leg up to the knee and further amputation up to the hip. As regards the contention pertaining to the stand of the State Commission in respect of option of open-heart surgery, the same was an observation, based on the version of the OP doctors themselves that, in the given condition of the blockages of the Complainant, open heart surgery was more appropriate and that it was the Complainant who had sought angioplasty as against open-heart surgery. As regards consent, after he was taken in for angioplasty, all along, he was in very critical state with imminent threat to his life. Thus, the consent that was obtained was without scope for any informed deliberations and making decision. It was rather without option to him or his relatives. As regards allegation of medical negligence, evidently the critical pre-operative checks to determine his suitability to undergo the surgery were not carried out. This failure was discovered after completion of angiography when continuous bleeding was noticed from the leg where catheter was inserted. Only then it was discovered that he was suffering from PVD, and further complications emerged as a sequel. In addition to the insertion of catheter from the leg to patient suffering PVD, the negligence is also conspicuous as this procedure further resulted in rupturing his heart, profuse bleeding, accumulation of blood in lungs, loss of sensation to his leg and infection. Ultimately, this led to gangrene, 14 surgeries and amputation of his right leg first to the knee and thereafter up to the hip. Even when the patient was in critical distress, the OPs continued with experimental procedures, instead of promptly ensuring more seeking specialized medical attention. It jeopardized his safety. Therefore, medical negligence is conspicuous even to the naked eye.

34. As regards the quantum of compensation and the basis for its computation the common law lies in the principle of **'restitutio in integrum'** [***Malay Kumar Ganguly vs. Sukumar Mukherjee and Ors., (2009) 9 SCC 221]*** 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. This implies that the victim needs to be compensated for financial loss caused by the doctor's/hospital's negligence, future medical expenses, and any pain and suffering endured by the victim. By no stretch of imagination, the court should award a paltry sum for gross negligence, and vice versa exemplary compensation need not be awarded in case of slight or normal negligence. Further, the Hon'ble Supreme Court in **Sarla Verma vs. Delhi Transport Corporation case (2009)** 6 SCC 121 noted:

> "14. The lack of uniformity and consistency in awarding compensation has been a matter of grave concern… If different tribunals calculate compensation differently on the same facts, the claimant, the litigant, the common man will be confused, perplexed, and bewildered. If there is significant divergence among tribunals in determining the quantum of compensation on similar facts, it will lead to dissatisfaction and distrust in the system."

35. In catena of judgments, the Hon'ble Supreme Court, laid down different methods to determine '**just and adequate compensation'**. It was held that there is no restriction that courts can award compensation only up to what is demanded by the complainant. We would like to rely upon few judgments of Hon'ble Supreme Court viz **Sarla Verma & Ors. vs Delhi Transport Corp. & Anr., 2009 (6) SCC 121, Nizam's Institute of Medical Sciences Vs Prasanth S. Dhananka & Ors. 2009 (6) SCC 1 & Dr. Balaram Prasad vs. Dr. Kunal Saha**

& Ors. (2014) 1 SCC 384. It was observed by the Hon'ble Supreme Court in **Sarla Verma's** case (Supra) that:

> "17. … While it may not be possible to have mathematical precision or identical awards, in assessing compensation, same or similar facts should lead to awards in the same range. When the factors/inputs are the same, and the formula/legal principles are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just compensation. …"

36. In the **Nizam Institute case,** the Hon'ble Supreme Court did not apply the multiplier method. In 1990, twenty-year old Prasant S. Dhananka, an engineering student, was operated upon at the Nizam Institute of Medical Sciences, Hyderabad. Due to medical negligence of the hospital, Prasant was completely paralysed. The court did not apply multiplier method and awarded a compensation of Rs. 1 crore plus interest. In **Balram Prasad's case (Supra) the Hon'ble Supreme Court has observed** that there were problems with using a straight-jacket formula for determining the quantum of compensation. It noted the problem in the following words:

> "124 … this Court is sceptical about using a strait jacket multiplier method for determining the quantum of compensation in medical negligence claims. On the contrary, this Court mentions various instances where the Court chose to deviate from the standard multiplier method to avoid over- compensation and also relied upon the quantum of multiplicand to choose the appropriate multiplier. … this Court requires to determine just, fair and reasonable compensation on the basis of the income that was being earned by the deceased at the time of her death and other related claims on account of death of the wife of the claimant …"

37. While the learned State Commission awarded compensation to the Complainant, in his Appeal he disputed the adequacy of the same and argued that it does not adequately account for the extent of his disability, pain and the suffering he endured. Instead of being a support to his family, he has become a liability at this age itself. He needs to secure his future and, therefore, he needs to be adequately compensated. On the other hand, in their cross-Appeal, the Opposite Parties raised several issues, including disputes over consent, absence of medical negligence, non-seeking of expert medical opinion and proportionality of compensation awarded. Challenging the findings of the learned State Commission, the OPs emphasized that they acted in his best interest and that the State Commission should have sought expert medical opinion. They also contested the amount of compensation awarded, asserting that it is excessive and not in line with established legal principles. The primary issues as to whether the OPs who treated the Complainant are correctly held liable for medical negligence is already addressed above. Considering the facts and circumstances of the case, the compensation awarded by the learned State Commission to the Complainant is just and fair.

ORDER

Based on the discussions above, the Order of the learned State Commission in CC No. 157/2017 dated 30.07.2019 is upheld. We also hold that the compensation awarded to the Complainant by the learned State Commission is just and fair and, therefore, the same is affirmed. Both the Appeals are, therefore, dismissed.

38. All pending Applications, if any, also stand disposed of accordingly.

39. The Registry is directed to release the Statutory deposit amount, if any, in favour of the parties who deposited, after due compliance of the order of the learned State Commission.

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SUBHASH CHANDRA
PRESIDING MEMBER

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AVM J. RAJENDRA, AVSM VSM (Retd.)
MEMBER