NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 1171 OF 2022

(Against the Order dated 01/06/2022 in Appeal No. 8/2019 of the State Commission West Bengal)

1. LIFE LINE NURSING HOME & POLLYCLINIC & 2 ORS. .....Petitioner(s)

Versus

1. MOHD NASIM .....Respondent(s)

BEFORE:

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

FOR THE PETITIONER :	FOR THE PETITIONERS : MR. PARTHA SIL, MR. ABHIRAJ CHOUDHARY,
	MR. SAYANI BHATTACHARYA, ADVOCATES
FOR THE RESPONDENT :	FOR RESPONDENT : MS. PALLAVI, ADVOCATE WITH AUTHORITY LETTER
	FOR MR. AMIT KUMAR SINGH, ADVOCATE

Dated : 03 July 2024

ORDER

1. The present Revision Petition has been filed under Section 58(1)(b) of the Consumer Protection Act, 2019 (the "Act") against order dated 01.06.2022, passed by the State Consumer Disputes Redressal Commission, West Bengal ('State Commission') in First Appeal No. 8 of 2019. In this, the Appeal by the Respondent/ Complainant was partly allowed, thereby setting aside the Order dated 22.01.2019, passed by the District Consumer Disputes Redressal, Purba Bardhman ("District Forum") in CC No. 87 of 2010, wherein the Complainant's complaint was dismissed.

2. For convenience, the parties in the present matter are denoted as per the Complaint before the District Forum. Mohd Nasim is the Complainant. The Life Line Nursing Home & Polyclinic is referred as OP-1 (Petitioner No. 1 herein), Dr. Sandip Ghosh is referred as OP-2 (Petitioner No. 2 herein), Dr. Arunima Chowdhury is referred as OP-3 (Petitioner No. 3 herein).

3. Brief facts of the case, as per the Complainant, are that his mother, Jibabesha Begum, was admitted to Life Line Nursing Home (OP-1) on 10.06.2008 for gallbladder surgery, as per the advice of Dr. Sandip Kumar Ghosh, Surgeon (OP-2). She was operated upon at 4.00 PM on the same day by Dr. Sandip Kumar Ghosh (OP-2) and Dr. Anunima Chowdhury, anaesthetist (OP-3), along with Molla Kasem Ali, one of the proprietors of the nursing home

and some other unidentified doctors. OP-2 & 3 were responsible for his mother's death in the operation theatre, and death occasioned due to medical negligence. He contended that five of her teeth were broken during the procedure and she died due to anaesthesia reversal failure. Further, the OPs attempted to deceive them by transferring the deceased to the ICU posthumously and OPs filed a false criminal case was filed against him and his brothers. His brother lodged a complaint against OPs at Burdwan CJM Court, leading to exhumation of her body for post-mortem examination. The OPs operated illegally, violating the West Bengal Clinical Establishments Act 1950 and its regulations. The nursing home was unlicensed under the Act and that his mother's death was due to the negligence of the attending doctors. No proper consent was obtained for the abdominal surgery. He also filed complaint with the Chief Medical Officer, Burdwan and West Bengal Medical Council, alleging negligence and ethical violations by the OPs. He contended that her condition was inadequately evaluated, and the complications and procedures were not explained adequately. He thus filed CC No. 87 of 2010 before the District Forum, seeking compensation of Rs.20,000/- for treatment, Rs.7,00,000/- for mental agony and Rs.30,000/- for litigation expenses.

4. In reply, OP-1 contended that the Complainant lacked any cause of action. All necessary formalities under the WBCE Rules, 2003 were duly observed and requisite permissions from competent authorities were obtained to operate the Nursing Home. Asserting its reputation and standing as a well-known institution, OP-1 stated that choices of all patients for treatment are respected. As regards the present case, OP-1 clarified that the Complainant's mother was admitted to the Nursing Home on 10.06.2008 based on the recommendation of OP-2, who subsequently directed the operation. OP-1 facilitated the process, with OP-2 enlisting OP-3 for anaesthesia, conducted operation. Despite comprehensive treatment and efforts, the aged patient who was suffering from various ailments, died on 11.06.2008. OP-1 argued on its limited role both before and after the surgery and asserted its obligation to comply with medical advice and directions from attending physicians. OP-1 vehemently denied any deficiency in service or negligence, asserting that all requisite treatments were provided in pursuit of the patient's recovery.

5. In reply, OP-2 asserted that there was no cause of action to file the case against him and denied that the patient's death was due to any negligence by the OPs and maintained that the patient and her family were properly informed about the potential complications and the surgical procedure before the operation. OP-2 emphasized that an informed consent was duly obtained and rejected allegations in this regard as false and baseless. OP-2 further stated that both the nursing home and attending medical professionals, including the anaesthetist, exercised utmost care in treating the patient. He denied all allegations in the complaint and contended that the claims of negligence and service deficiency are unfounded and sought for dismissal of the case.

6. In her reply, OP-3, Dr. Arunima Chowdhury contended that the complaint lacked cause of action and not maintainable. Every possible care was taken by the OPs and, despite their best efforts, the patient died. OP-3 vehemently denied any negligence or lack of sincerity on her part. Allegations against her are unfounded. OP-3 contended that the Complainant

suppressed material facts and falsely implicated OPs in the case. She highlighted the presence of Dr Monaj Mukherjee, a renowned ENT surgeon in the operation theatre and submitted a report of Enquiry Committee supporting OP-3's position. Also, Dr. Amit Kumar Banerjee, an Associate Professor Dept of Anaesthesiology, also submitted a report which did not find any culpability on the part of OP-3 before the Enquiry Committee of Burdwan Medical College and Hospital. As regards broken teeth, OP-3 dismissed it as false and that there was no negligence on the part of OPs in treatment. post-operation complications are common in patients over 60 years and prayed for the dismissal of the case against her.

7. The learned District Forum vide Order dated 22.01.2019, dismissed the complaint with the following reason /findings:

> ***"After giving a patience hearing of argument tabled by Ld. Advocates of both sides in the light of above discussion with reference to all the "expert reports" and the BHT and other documents, we find that complainant failed to prove conclusively that there is any indication of carelessness or negligence on the part of Dr. Sandip Ghosh or Dr. Arunima Chowdhury for causing death of the mother of the complainant in the nursing home of OP-1. Nonetheless, to say there is no evidence to prove the case that the nursing home was negligible in giving or providing sufficient service to the patient, I, e., the mother of the complainant or cause any negligence for the fateful death of the mother of the complainant in the nursing home on 11.06.2008. As a result, the case fails. Hence it is***
>
> ***<u>O R D E R D</u>***
>
> ***That the Consumer Complaint being No. 87/2010 be and the dismissed on contest without any cost."***

8. Being aggrieved by the District Forum Order, the Complainant/ Appellant filed FA No. 8 of 2019 and the State Commission vide order dated 01.06.2022 allowed the appeal with the following observations:-

> ***"To sum up: In a case of medical negligence, negligence means failure to act in accordance to the standard of reasonably competent medical man. Hon'ble Apex Court in Civil Appeal Nos. 4126- 4127/2022, arising out of SLP (c) Nos. 10782-10783/2020 dated May 18, 2022 has been pleased to hold that in a case for claim of compensation on the basis of medical negligence, the opinion and findings of the MCI regarding the professional conduct of the doctors have great relevance. In the present case the finding of State of West Bengal Medical Council is as such-"the council then deliberated in private and at the conclusion of the deliberations, the Chairman called upon the council to vote on question whether the medical practitioners were guilty of infamous conduct in a professional respect. The council unanimously decided that the charges against both the practitioners had been substantiated".***

The West Bengal Medical Council held both the doctors medically negligent and issued a stricture warning that both the charged medical practitioner to be warned. West Bengal Medical Council further held that the anesthetist (OP3) should have been more careful in respect of an elderly patient particularly in view of her limited exposer/training in the field of Anesthesiology and that she had no post graduate degree/diploma in the field of Anesthesiology. So, we find that medical negligence was proved against both the charged doctors.

Ld. Commission below failed to appreciate the expert reports as well as the observation of the order of West Bengal Medical Council.

Ld. Commission below committed an error in appreciation of evidence and materials on record and missed the tree in the wood and arrived at an erroneous conclusion.

We are sorry to hold that the judgement dated 22.01.2019 passed by the Ld. DCDRC, Burdwan in Complaint Case No. 87 of 2010 is bad in law and is liable to be set aside.

Ld. Commission below has committed miscarriage of justice in passing the impugned judgement.

Considering the facts and circumstances, the degree of negligence on the part of the OPs we quantify the compensation at an amount of Rs. 7 Lakh as prayed for by the complainant, apart from litigation cost of Rs. 50,000/-. We have held in earlier paragraph that OP 3 was very much negligent in treating the patient and she treated the patient most casually and in a neglected manner.

We find the element of breach of duty, negligence absence of due care in the treatment of the deceased by both the OPs, specially by OP 3.

It is a maxim of law that a medical practitioner would be liable when his conduct falls below that of a standard of a reasonable competent practitioner in his field.

We are sorry to hold that we find this sort of fall of standard of reasonable competent practitioner. Regarding OP 3, we think that an exemplary punishment will be fit and proper. Nursing home authority, as we have observed, was also running without license on the date of the incident as observed by the Enquiry Committee appointed by Dy. Chief Medical Officer Health, Burdwan and Chairman of Enquiry Committee.

The impugned order cannot sustain either in law on in fact.

Consequently, the Appeal merits success. Hence,

ORDERED

That the instant Appeal being No. A/8/2019 be and the same is allowed on contest.

The impugned judgement dated 22.01.2019 passed in Complaint Case No. 87 of 2010 by the Ld. DCDRC, Burdwan is set aside.

OPs are directed jointly and severally to pay an amount of Rs. 7,00,000/- in equal proportion to the complainant towards compensation apart from litigation cost of Rs. 50,000/- for medical negligence and deficiency-in-service with interest @ 6% per annum from the date of the judgement of Ld. DCDRC till compliance. The amount shall be paid within a period of 60 days from today failing which the complainant will be at liberty to put the decree into execution U/Sec. 27 (A) of Consumer Protection Act, 1986.

We also recommend to West Bengal Medical Council to suspend the registration of Dr. Arunima Chowdhury for a period of 3 years with immediate effect, debarring her from practicing for the said period. Let her exercise some remorse when she will be debarred from practicing."

9. Being dissatisfied by the Impugned Order dated 01.06.2022 passed by the State Commission, the Petitioners/OP No. 1 & 2 filed the instant Revision Petition No. 1171 of 2022 mainly advancing the following grounds in the Revision Petition:

a) The State Commission erred in holding that no video recording or recorded CD of the operation/surgery is forthcoming to enable it to see what actually happened in the OT on 10.06.2008. It is the duty of the hospital to maintain and preserve the recorded video of operations and treatments neatly and clearly so that these can be supplied to the patient party or to the court when required, to establish the cleanliness and fairness of the treatment.

b) The State Commission failed to appreciate that under the West Bengal Clinical Establishment Act, 1950, and WBCE Rules, 2003, as in vogue, it was not mandatory for Hospital to make video recording of an operation and the same is in any case not mandate of any law.

c) The State Commission erred in placing heavy reliance on the Expert Opinion and Report of the WBMC in concluding negligence against the Petitioners.

d) The State Commission erred in holding that OP-3 did not take prior medical history of the patient into consideration for arriving at an independent opinion on whether a lady of 68 years, was fit for general anaesthesia.

e) There was failure to take into consideration that the O/T Notes clearly specify when the operation started and when she was extubated. The State Commission erred in holding that from the bed head ticket it is not evident by which procedure the open cholecystectomy of the patient was done.

10. Upon notice to the instant Revision Petition, Respondent No. 1/ Complainant appeared and filed written submission and appreciated the impugned order passed by the learned State Commission.

11. In his arguments, the learned Counsel for the Petitioners reiterated the facts of the case, affidavit of evidence, and the written statement filed before the lower fora and contended that the State Commission exceeded its Appellate Jurisdiction. It is not vested with power to exercise Disciplinary Jurisdiction over medical professionals. Such power is exclusively vested in the respective State Medical Boards under the State Medical Acts. In the present case, as per the provisions of Bengal Medical Act, 1914, only the West Bengal Medical Council has exclusive jurisdiction to take disciplinary action against a delinquent medical practitioner and award appropriate punishment. In this case, the West Bengal Medical Council vide Order dated 23.08.2017 had already exercised its disciplinary jurisdiction and declared a punishment of 'warning' against only Petitioner No. 3, which is already on record. The State Commission completely ignored the fact that upon the unfortunate death of the Patient, the family, especially the brother of Respondent No. 1, created ruckus, damaged properties, and destroyed medical records relating to the present case, for which an FIR was lodged. Pursuant to the Complaint, his brother i.e. Md. Saifi was arrested and later released on bail on 25.06.20008, and the present complaint is filed as a counter blast to the Criminal case. He contended that Petitioner No. 3, i.e. Dr. Arunima Chowdhary is a qualified MBBS doctor, and it is an admitted position that in the MBBS Course, Anaesthesiology is one of the subjects. Petitioner No. 3 has vast experience in the field of Anaesthesiology. Further, it is evident from the extract of the RTI of the erstwhile Medical Council of India and also minutes of the Meeting of the Ethics Committee dated 19.04.2004 and 20.04.2004 clarified that a person with MBBS qualification can perform Caesarean section, Hysterectomy and other general surgical procedures. Even the WBMC letter dated 23.08.2017, unanimously decided that both the charged medical practitioners be "warned" with intimation to all concerned. However, the admitted position is that she has not been disqualified from practicing as an Anaesthetist as per prevalent rules of the then Medical Council.

12. Regarding the issue of informed consent, it was argued that it was evident from the Consent Form in Bengali that the consent for the surgery was given after explaining the pros and cons of the surgery in the language known to the patient and her son (in Bengali), and the same was duly counter-signed by the concerned doctor. Citing the precedent in of ***Samira Kohli vs. Dr. Prabha Manchanda (2008) 2 SCC 1***, it was asserted that the plea that no consent was taken for the surgery has no legal standing.

13. As regards expert opinion, it was argued that it would be evident from the Expert Opinion dated 31.07.2016 by Professor Dr. Bitan Kr. Chattopadhyay (Prof. and HOD Dept of Surgery, IPGMER and SSKM Hospital, Kolkata), that the standard protocol for treatment was followed. In the impugned order, the State Commission erroneously shifted the onus of proof of no negligence upon the OPs, contrary to the ratio of this Hon'ble Court in the case of ***Jacob Mathew v. State of Punjab, reported in (2005) 6 SCC 1***. Therefore, the impugned order suffers from patent illegality and misapplication of law. As regards the post-anesthetic complications, it was argued that after the anesthetic complication, the patient received standard treatment as per prevalent protocol, and both experts made no adverse comments on

the treatment, including the post-complication treatment rendered. He urged to allow this Revision Petition, set aside the State Commission order and dismiss the Complaint. He relied on the following judgments:

a. ***Malay Kumar Ganguly v. Dr. Sukumar Mukherjee, reported in (2009) 9 SCC 221-Para 33 and 34;***
b. ***V. Kishan Rao v. Nikhil Super Speciality Hospital, reported in (2010) 5 SCC 513-Para 56 and 57;***
c. ***Ramesh Chandra Agrawal v. Regency Hospital Ltd. reported in (2009) 9 SCC 709 – Para 20 and 21.***
d. ***Kusum Sharma v. Batra Hospital and Medical Research Centre, reported in (2010) 3 SCC 480.***

14. The learned Counsel for the Respondent/ Complainant argued that the revisional jurisdiction of this Commission is extremely limited and should only be exercised within specified parameters such as instances where the State Commission exceeded its jurisdiction, failed to exercise vested jurisdiction, or acted illegally or with material irregularity. In the present case, none of these parameters have been met to justify the exercise of revisional jurisdiction. He emphasized that obtaining consent is not merely a procedural formality but a legal requirement in medical practice. Consent must be obtained directly from the patient by both the conducting surgeon and anaesthetist before commencing treatment or procedure. This consent should be based on adequate information, including the patient's condition, prognosis, treatment benefits, adverse effects, available alternatives, risks of refusing treatment, and probable post-operative complications, especially in elective surgeries. Blanket consent is not valid, and consent should be procedure specific. In the instant case, the Counsel pointed out that the patient was physically fit before the operation, yet consent was not obtained from her directly, and adequate information was not provided. The consent form did not mention the procedure, and the anaesthetist's signature was absent. He argued that obtaining blanket consent through generalized pre-printed pro-forma is not valid according to medical science and legal observations. He relied on various legal precedents and judgments to support their argument, including references to the Indian Journal of Anaesthesia such as 2008 AIR(SC) 1385, 2008(2) CPJ 31, 2009(4) CPJ 9, 2017(2) CPJ 111 and the judgement passed by NCDRC in CC 428 of 2019.

15. The learned Counsel for the Complainant further argued that both the doctors involved in the treatment of the Respondent's mother have already been held guilty by the West Bengal Medical Council. The Council's observation itself proves that the standard of care required from the Petitioners was not met, indicating negligence in the treatment provided. The Counsel cited the order passed by the West Bengal Medical Council in C/18-2010 dated 23.08.2017 as evidence, highlighting relevant paragraphs. He also referred to a precedent, 2014(2) CPJ 60, emphasizing support the argument. He challenged the reliability of the Enquiry Report filed before the Chief Medical Officer of Health by a three-member Enquiry Committee in 2009. The report did not conclusively establish negligence on the part of the OP doctors and was deemed incomplete. The Counsel cited a relevant case, 1996(3) CPJ 263, to bolster this argument. Further, the Expert Reports submitted by Dr. KK Kundu and Dr. Bitan Chattopadhyay, along with the order of the West Bengal Medical Council, provided

clear evidence of negligence on the part of the Petitioners in providing treatment to the Respondent's mother, leading to her unfortunate demise. The failure to conduct a biopsy on the removed mass indicates a lack of reasonable skill and knowledge expected in such cases, as per another relevant case, 2017(2) CPJ 177.

16. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned Counsels for both the parties.

17. Mainly the case revolves around allegations of medical negligence concerning the treatment provided to the mother of the Complainant/ Respondent and her unfortunate demise. The issues to be determined are whether the medical practitioners involved had obtained an informed consent; adhered to the expected standards of care; and provided appropriate post-operative care to the patient? Central to the argument is the credibility of expert opinions, particularly those provided by medical professionals and the findings of the West Bengal Medical Council. Additionally, there issue of State Commission directing for disciplinary action against medical practitioners.

18. It is an established fact that the Complainant's mother was admitted to Life Line Nursing Home (OP-1) for gallbladder surgery on 10.06.2008. The surgery was performed by Dr. Sandip Kumar Ghosh (OP-2) and Dr. Arunima Chowdhury, anaesthetist (OP-3), amongst others. The patient died on 11.06.2008 due to medical complications. The Complainant alleged medical negligence, claiming that his mother died due to the negligence of the OPs. He filed a Consumer Complaint seeking compensation for mental agony and litigation costs. The District Forum dismissed the complaint, finding insufficient evidence of negligence. He appealed to the State Commission, which allowed the appeal, setting aside the District Forum order. The State Commission found medical negligence based on expert opinions and the findings of the West Bengal Medical Council and awarded compensation to the Complainant and recommended disciplinary action against Dr. Arunima Chowdhury. The Petitioners, OP-1 & OP-2, filed a Revision Petition challenging the State Commission's order.

19. The Complainant's case centres on the unfortunate demise of his mother following gallbladder surgery at Life Line Nursing Home on the very next day after the surgery. He alleged medical negligence by attending doctors in the form of failure to obtain informed consent, lack of adequate post-operative care and procedural irregularities. It was contended that the treatment fell below the standard of care expected in such procedures, leading to the tragic outcome. Expert opinions and mandate of The West Bengal Medical Council for taking disciplinary action against the doctors form critical evidence against the OPs who treated her underscores the gravity of the negligence and its impact on the Complainant's family.

20. On the other hand, the Petitioners/ OPs, contest the allegations of medical negligence and asserted that all necessary procedures were followed, including obtaining consent and providing standard post-operative care. They asserted that the State Commission exceeded its jurisdiction by delving into disciplinary matters reserved for medical councils. They emphasized the absence of mandatory video recording requirements during surgeries at the time of incident. Also, the reliance on expert opinions, questioning the basis for the finding of negligence were challenged. The Petitioners asserted that the medical practitioners acted diligently and within the accepted standards of care, refuting the allegations levelled against them.

21. As regards obtaining consent, it is undisputed that obtaining an informed consent is not a mere procedural formality but a legal requirement for medical practitioners. Except in medical emergency cases, an informed consent must be taken before any investigation, procedure or treatment. In medical emergencies, however, life-saving treatment can be given even in the absence of consent. In this regard, Chapter 7 of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, Clause 7.16 of the Regulations is as under:

> *"7.16 Before performing any operation the physician should obtain in writing the consent from the husband or wife, parent or guardian in the case of minor, or the patient himself as the case may be. In an operation which may result in sterility the consent of both husband and wife is needed."*

22. In the area of medical negligence, the contentious aspects of medical care can be broadly categorized into three categories:

a) Diagnosis: means medical condition/status of the patient;

b) Advice: treatment options reasonable alternatives and risk attending on various options; and

c) Treatment.

23. The material difference between these aspects of medical care lies in the degree of passivity on the part of patient. The diagnosis and treatment are in the domain of doctor and the patient is a passive participant. When advice is being given to the patient, the patient assumes an active role. Then doctor's function is to empower and enable the patient to make a decision by giving him relevant, sufficient and material information. The patient must make choices and decisions. The patient must be informed about the options for treatment, its consequences, risks and benefits. Why doctor thinks particular treatment necessary and appropriate for the patient. The prognosis and what may happen if treatment is delayed or not given. Failing to furnish correct sufficient information when obtaining consent may be a breach of duty of care. It amounts to negligence, failure to inform the patient. The patient

must be given a reasonable amount of time to consider the information to make a decision. The allowing of cooling off period is for the purpose to give time to think over the decision or take advice so that patient does not feel pressurised or rushed to sign. On the day of surgery, the patient may be under strain, mental stress or under influence of the pre-procedure drugs which may hamper his decision-making ability. The doctor performing any procedure must obtain patient's consent. No one else can consent on behalf of the competent adult. The consent should be properly documented and preferably witnessed as such consent is legally more acceptable. The video recording of the informed consent process may also be done with a prior consent of the patient.

24. Now, I would like to discuss with regard to the "Bolam Test", which was articulated in 1957. At that point of time emphasis was not on the principle of autonomy rather on the principle of beneficence. The doctor was considered to be the best person and the patient was kept in dark with regard to the risks and alternative treatment relating to the illness. Now there is a seismic shift in medical ethics and societal attitude towards the practice of medicine. Also, the Medical Council framed statutory regulations regarding professional conduct, etiquette and ethics. This warrants legal tests to adjudicate the advice aspect of doctor patient relationship. The MCI Regulations as amended up to date clearly stipulate the need to respect the patient autonomy and doctor's obligation to adequately inform the patient for self-determination. Nature of the patient doctor relationship has to be examined in the light of education and access to the knowledge of ordinary citizen. In the light of these facts and statutory provisions, the "Bolam Test" can no longer be applied to a doctor's advice to his patient, unless it complies with the statutory provisions. The information given to the patient has to be examined from the patient's perspective. The information disclosed is not limited to the risk-related inputs. It should include doctor's diagnosis of the patient's condition, the prognosis of that condition with and without medical treatment, the nature of proposed medical treatment and the risks associated with it, the alternative to the proposed medical treatment, advantages and risks of the said treatment and the proposed treatment. The doctor must ensure that information given is "in terms and at a pace that allows the patient to assimilate it, thereby enabling the patient to make informed decision".

25. Instances, where withholding of information is justified, are:

> *"a)* ***Waiver situation:*** *is when the patient expressly indicate that he does not want to receive further information about the proposed treatment or the alternative treatment.*
>
> *b)* ***Medical emergency:*** *when life-saving treatment is required and the patient temporarily lacks decision-making capacity. The "Bolam test" would continue to apply.*
>
> *c)* ***Therapeutic privileges:*** *when the patient has mental capacity, his decision-making capabilities are impaired to an appreciable degree such that doctor reasonably believes that the very act of giving particular information would cause the patient serious physical or mental harm. For example, the patient with anxiety disorder."*

26. As regards the issue whether before undergoing surgery, the patient or her husband/relatives were informed about the possible complications and risks and their informed consent was taken, it is true that every operation, as small as it may be, carries wide range of risks from the most insignificant to the most serious, may lead to fatal complications. Discussing all the complications with the patient and attending relatives is a necessity, so that he may make up his mind before undergoing the surgery. Before commencing the treatment or procedure, nowadays, an 'Informed Consent' is required to satisfy the following conditions:

> *"The consenting party i.e. the patient or his/her family members must be aware of the nature and extent of complications and risks of the surgery. The consenting party must have understood the nature and extent of the complications and risks and the consenting party or his/her family members must have consented to the harm and assumed risk. Comprehensive explanation of the possible complications and risks and the extent of entire procedure and transaction, inclusive of all its consequences, must be explained to the patient or his/her family members."*

27. In ***Samira Kohli Vs. Dr. Prabha Manchanda & Anr 1(2008) CPJ 56 (SC)***, the Hon'ble Supreme Court has extensively dealt with the concept of consent to be taken from the patient or his family members. It has been held that patient has an inviolable right in regard to his body and he has a right to decide whether or not he should undergo the particular treatment or surgery. The Hon'ble Supreme Court held that unless the procedure is necessary in order to save the life or preserve the health of the patient and it would be unreasonable to delay the further procedure until the patient regains consciousness and takes a decision, a doctor cannot perform such procedure without the consent of the patient. Identical view was taken by the U.K. Supreme Court in "***Montgomery (Appellant) v.* Lanarkshire Health Board (Respondent) (Scotland)"** Hilary Term [2015] UKSC 11 on appeal from: [2013] CSIH 3; [2010] CSIH 104, wherein also the concept of the informed consent has been emphasized.

28. In the case in question, while the Complainant contended that informed consent was not obtained, the Petitioners/ OP-1 & 2 contended that the medical condition, scope of treatment, need for surgery and the risks involved were explained in detail in Bengali language, which is the mother tongue of the patient and her family members.

29. In the case in question, it is undisputed that the patient is admitted in the OP Hospital on 10.06.2008 for Gallbladder surgery to be done by OP-2. The Petitioner had brought on record the specific consent form with detailed explanations to the patient which addressed to the patient and her family members on 10.06.2008 and duly acknowledged by signatures. The consent form contains specific details with respect to the surgery in Bengali, the mother tongue of the patient and her family members. Therefore, prima facie, the allegation that uninformed consent was obtained from the patient is untenable. She was informed of the

details which have been duly acknowledged and the same is placed on record. Therefore, as regards consent there is no deficiency in service on the part of OP-1 and 2.

30. As regards duty of care, the Hon'ble Supreme Court in the case of **Dr. Laxman Balakrishna Joshi Vs Dr. Trimbak Babu Godbole (2013)15 SCC 481** has held that a person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for that purpose:

1. He owes a duty of care in deciding whether to undertake the case.

2. He owes a duty of care in deciding what treatment to give and,

3. He owes a duty of care in the administration of that treatment.

31. A breach of any of these duties gives a right of action for negligence to the patient. This means that when a medical professional, who possesses a certain degree of skill and knowledge, decides to treat a patient, he is duty bound to treat him/her with a reasonable degree of skill, care, and knowledge. Failure to act in accordance with the medical standards in vogue and failure to exercise due care and diligence are generally deemed to constitute medical negligence.

32. In P**.B. Desai vs State of Maharashtra & Anr [2013] 11 S.C.R. 863** the 'Duty of Care' towards the patient is explained as below:

> "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".

33. With respect to accuracy of the diagnosis, the standard of care during surgery and the appropriateness of treatment that was provided to the patient, there have been specific allegations and vigorous resistance to the same by OPs bringing details of treatment that was given to the patient. It is undisputed that, the patient unfortunately died the very next day. It has been brought on record that the WB Medical Council has gone into in depth investigation and held OP-1 and 2 liable on specific grounds stated therein. Thus, medical negligence with respect to treatment of the patient has been established. OP-1 to 3 persisted with efforts to

conceal facts as to why, during the course of Gallbladder surgery, the patient died under such trying circumstances within some hours of operation. It has been stated that the Complainant and his family members had resorted to physical violence against the hospital which, if true, would entail action under penal law.

34. The allegations of medical negligence have also been duly examined by the Medical Experts and the lapses of OPs in providing treatment to the patient have been established. The learned State Commission went into details and passed a well-reasoned order to bringing out the negligence and deficiency in service with respect to treating the patient. I, therefore, find no reason to interfere with the order of learned State Commission, except with respect to certain penal actions against Respondent No.3. Therefore, I modify the order of learned State Commission to the extent that "*We also recommend to West Bengal Medical Council to suspend the registration of Dr. Arunima Chowdhury for a period of 3 years with immediate effect, debarring her from practicing for the said period. Let her exercise some remorse when she will be debarred from practicing."* is set aside. The present Revision Petition No.1171 of 2022 is disposed of accordingly.

35. There shall be no order as to costs.

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

.....

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