

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 448 OF 2016

(Against the Order dated 18/03/2016 in Complaint No. 123/2010 of the State Commission
Uttar Pradesh)

1. METRO HOSPITAL & HEART INSTITUTE
THROUGH CMD DR. P. LAL, SECTOR-11, NOIDA DISTT,
GAUTAM BUDH NAGAR,

.....Appellant(s)

Versus

1. DR. OM PRAKASH AGARWAL & 2 ORS.
S/O. LATE SRI. R.R. AGARWAL R/O. A-1, RAMPUR
GARDEN,
BAREILLY
UTTAR PRADESH

2. DR. HARINDER SINGH BEDI,
CHRISTIAN MEDICAL COLLEGE & HOSPITAL, BROWN
ROAD, CMC-LUDHINA -141008
PUNJAB

3. ORIENTAL INSURANCE CO. LTD., (DIVISIONAL
OFFICE 17)
THROUGH 716-718, INDRA PARKASH BUILDING, 21,
BARAKHAMBHA ROAD, C.P.,
NEW DELHI-110001

4. SENIOR DIVISIONAL MANAGER, DIVISIONAL
OFFICE-II
NEW INDIA ASSURANCE COMPANY, 356, GURU TEZ
BAHADUR NAGAR,
JALANDHAR
PUNJAB - 144003

.....Respondent(s)

FIRST APPEAL NO. 1451 OF 2017

(Against the Order dated 18/03/2016 in Complaint No. 123/2010 of the State Commission
Uttar Pradesh)

1. DR. H.S. BEDI
CHAIRMAN, CARIOVASCULAR, ENDOVASCULAR AND
THORACIC SCIENCES, LUDHIANA MEDIWAYS
HOSPITAL, FEROZEPUR ROAD,
LUDHIANA
PUNJAB-142027

.....Appellant(s)

Versus

1. DR. OM PRAKASH AGARWAL & 3 ORS.
S/O. LATE SRI R.R. AGARWAL, R/O. A-1, RAMPUR
GARDEN, ABREILLY,
UTTAR PRADESH

.....Respondent(s)

2. METRO HOSPITAL & HEART INSTITUTE
THROUGH ITS CMD DR. P. PAL, SECTOR-11,
NOIDA, DISTT-GAUTAM BUDH NAGAR,

UTTAR PRADESH

3. ORIENTAL INSURANCE CO. LTD.

A-25/27, ORIENTAL HOUSE, ASAF ALI ROAD,
NEW DELHI

4. SENIOR DIVISIONAL MANAGER,

DIVISIONAL OFFICE-II, NEW INDIA ASSURANCE CO.
LTD., 356, GURU TEG BAHADUR NAGAR,
JALANDHAR-144003

FIRST APPEAL NO. 323 OF 2017

(Against the Order dated 18/03/2016 in Complaint No. 123/2010 of the State Commission
Uttar Pradesh)

1. ORIENTAL INSURANCE CO. LTD.

A-25/27, ORIENTAL HOUSE, ASAF ALI ROAD,
NEW DELHI

.....Appellant(s)

Versus

1. DR. OM PRAKASH AGARWAL & 2 ORS.

S/O. LATE SHRI S.R. AGARWAL, R/O. A-1, RAMPUR
GARDEN,

BAREILLY, UTTAR PRADESH

2. METRO HOSPITAL & HEAR INSTITUTE

THROUGH CMD, DR. P. LAL, SECTOR-11,

NOIDA, DISTT, GAUTAM BUDH NAGAR

3. DR. HARINDER SINGH BEDI

CHRISTIAN MEDICAL COLLEGE HOSPITAL, HOSPITAL
BROWN ROAD,

LUDHIANA

PUNJAB

.....Respondent(s)

FIRST APPEAL NO. 548 OF 2016

(Against the Order dated 18/03/2016 in Complaint No. 123/2010 of the State Commission
Uttar Pradesh)

1. DR. OM PRAKASH AGARWAL

S/O. LATE S.R. AGARWAL, R/O. A-1, RAMPUR GARDEN,
BAREILLY

UTTAR PRADESH

.....Appellant(s)

Versus

1. METRO HOSPITAL & HEART INSTITUTE & 2 ORS.

THROUGH CMD DR. PURSHOTAM LAL, X-1, SECTOR-12,
NOIDA DISTT.

GAUTAM BUDH NAGAR,

2. DR. HARINDER SINGH BEDI

EX- CHIEF CARDIAC SURGEON, (CARDIO VASCULAR
SURGERY), METRO HOSPITAL & HEART INSTITUTE X-
1, SECTRO-12, NOIDA,

DISTT. GAUTAM BUDH NAGAR,

3. DR. HARINDER SINGH BEDI

(CARE OF LUDHIANA MEDICITY 1 UNIT OF I.A.A.
HOSPITAL PVT. LTD.) NEAR AKTAY, POST-FIROZPUR

.....Respondent(s)

ROAD,
LUDHIANA
PUNJAB

4. ORIENTAL INSURANCE CO. LTD.,
THROUGH DIVISIONAL MANAGER, (DIVISIONAL
OFFICE-17) 716-718, INDRA PARKASH BUILDING, 21
BARAKHAMBHA ROAD, C.P.
NEW DELHI-110001

BEFORE:

HON'BLE DR. S.M. KANTIKAR,PRESIDING MEMBER

FOR THE APPELLANT :

Dated : 06 June 2023

ORDER

Appeared at the time of arguments

For Dr. H.S. Bedi : Mr. Ritesh Kr. Pandey, Advocate
Ms. Sagri Dhanda, Advocate
Mr. Prashant Sharma, Advocate
Dr. H.S. Bedi, in person

For Dr. Om Prakash Agarwal : Mr. Partha Sil, Advocate
Mr. Deepak Goyal, Advocate
Mr. Tavish B. Prasad, Advocate
Ms. Sayani Bhattacharya, Advocate

For Metro Hospital : Mr. Sandeep Kapoor, Advocate
Mr. Sumit Dubey, Advocate

For Oriental Insurance Co. Ltd. : Mr. Anshum Jain, Advocate

For New India Assurance Co. Ltd.: None

Pronounced on : 06th June 2023

ORDER

1. This Order shall decide all the first appeals arising from the impugned Judgment /Order dated 18.03.2016 passed by the State Consumer Disputes Redressal Commission, Lucknow, Uttar Pradesh (hereinafter referred to as the "State Commission") in Consumer Complaint No. 123/2010, wherein the State Commission allowed the complaint and held the Opposite Parties negligent and awarded lump sum Compensation sum of Rs.20,00,000/- along with 9% interest & Rs.20,000/- towards litigation costs.
2. For the Convenience, the parties involved in the complaint before the State Commission have been referred to as follows: Dr. Om Prakash Agarwal referred to as Complainant, Metro Hospital & Heart Institute is referred to as OP-1, Dr. Harinder Singh Bedi is referred to as OP-2, & Oriental Insurance Co. Ltd. is referred to as OP-3.
3. The issue involved alleged medical negligence in which the Complainant-Dr. OM Prakash Agarwal, a cardiologist, visited Metro Hospital & Heart Institute for a cardio routine check-up. He underwent bypass surgery without his consent, and later discovered that foreign objects, including needles and pins, were left in his chest during the surgery. The patient experienced severe pain and consulted multiple doctors who confirmed that the needle could only be removed through a risky surgery.
4. Heard the arguments from the parties. I have perused the record, *inter-alia* the Order of State Commission.
5. On 02.08.2003 Dr. Om Prakash Agarwal, himself was a cardiologist (referred to as the Complainant/ 'Patient'), visited Metro Hospital & Heart Institute (OP-1) for a routine cardiac check-up. Based on the reports, on 03.08.2003, bypass surgery was performed. It was alleged that it was done without obtaining his consent. The Patient was discharged from the hospital on 18.08.2003. After 7 years, in November 2010, the Patient began experiencing unbearable pain on the left side of his chest and consulted a doctor who advised a chest X-ray. According to the Complainant the chest X-ray report revealed the presence of Sternotomy sutures and soft tissue staples + Curved metallic shadow seen in the left lower zone. The contention of Complainant that during the CABG surgery performed by the (OPs) in 2003, the foreign material as needles and pins were left in his chest. He consulted various doctors and all of them have expressed that the needle could not be removed without a life-threatening surgery.
6. As OPs denied any negligence. The patient was himself Cardiologist. It is evident that the cause of action arose in 2003 and the complaint was filed after delay of 7 years. The medical record is already destroyed after 5 years. The X-Ray report, on which the complaint relied did not conclusively prove it as any foreign object near to the heart. OPs further submitted that the staples and sutures remained in the body without causing any problems or pain, and complainant would not suffer any harm as a result of their presence.
7. To resolve the controversy, whether it was a metallic foreign body, vide the Order dated 14.12.2022 the complainant was directed to undergo CT Scan of the chest with or without contrast from any medical college (Govt./private) and get the report along with films and the CD recording. Accordingly the as directed by this Commission the Complainant Dr. Om Prakash Agarwal underwent CT Scan at Shri Ram Murti Smarak Institute of Medical Sciences and filed the CD along with CT films and reports.

8. The crux of the instant case is whether it was a metallic object (? surgical curved needle) as misplaced in the chest-wall during CABG performed in past. I have examined the CT scan films and the CD, but it was not convincing that the object was a curved needle. Moreover, the needles are sharp and by any stretch of imagination, such foreign body certainly will not remain in chest for long 7 years without any symptoms.

9. I would like to rely upon the “Discovery Rule” as observed by the Hon’ble Supreme Court in the case of **V.N. Shrikhande vs. Anita Sena Fernandes**^[1], wherein it was held that the limitation period should be calculated from the date of surgery and not from the date when the complainant became aware of the foreign object.

10. The State Commission while allowing the complaint partly observed that:

“In this case taking cognizance of two X-ray report and the evidence, this fact is undisputed that the particle of metal are present even today near heart in the body of the complainant. Hence this fact is it self an evidence to prove the deficiency of ser vice and shows the medical negligence on behalf of the respondents taking cognizance of the above mentioned circumstances, we reach at the conclusion that there is a deficiency of service by the respondents and they are found guilty of medical negligence. The complaint is liable to be allowed partially.”

11. Based on the discussion above, I find that the findings recorded by the State Commission, holding both the OP guilty of medical negligence, are not sustainable in law. The Discovery Rule is not helpful to the Complainant. The Appeals filed by OPs are allowed and Appeal filed by the Complainant is dismissed. The Order passed by the State Commission is set aside. Consequently, the Complaint is dismissed.

12. The Registry is directed that, if any amount deposited by the Appellants before this Commission or the State Commission, shall be released with accrued interest, to the respective Appellants after 6 weeks from today.

[1] (2011) 1 SCC 53

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DR. S.M. KANTIKAR
PRESIDING MEMBER