

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 850 OF 2022

(Against the Order dated 29/03/2022 in Appeal No. 307/2015 of the State Commission
Maharashtra)

1. THE REGISTRAR/MANAGER, CHRISTANAND
CHARITABLE TRUST HOSPITAL & ANR.
BHRAMHAPURI, TALUKA BRAMHAPURI, DISTRICT
CHANDRAPUR,
MAHARASHTRA

2. DR. VIVEK KOKNE
CHRISTANAND CHARITABLE TRUST HOSPITAL,
BRAMHAPURI, TALUKA BRAMHAPURI, CHANDRAPUR,
MAHARASHTRA

.....Petitioner(s)

Versus

1. TULSHIRAM & 2 ORS.
S/O VISHWANATH BANGRE, R/O JANI WARD,
BRAMHAPURI, CHANDRAPUR, MAHARASHTRA.
2. DR. R. RAVI
R/O 1st FLOOR, NITIGAURAV, NEAR LOKMAT BHAWAN,
CENTRAL BAZAR ROAD NAGPUR, MAHARASHTRA.

3. GUPTE CANCER CLINIK
PROPRIETOR DR. SMITA GUPTE R/O SHRIVARDHAN
COMPLEX, MAHARASHTRA.

.....Respondent(s)

BEFORE:

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

FOR THE PETITIONER : FOR THE PETITIONER : MR. VENTIKA SUBRAMONIAM T.R.,
ADVOCATE

FOR THE RESPONDENT : FOR RESPONDENT NO. 1 : MS. AAKANKSHA BADKUR,
ADVOCATE
MS. JAYSHREE SATPUTE, ADVOCATE
MS. DAMINI CHAWLA, ADVOCATE
FOR RESPONDENT NO. 2 & 3: NONE APPEARED
(EX-PARTE VIDE ORDER DATED 15.12.23)

Dated : 12 April 2024

ORDER

1. The present Revision Petition has been filed by the Petitioner under Section 58(1)(b) of the Consumer Protection Act, 2019 (the "Act") against impugned order dated 29.03.2022, passed by the State Consumer Disputes Redressal Commission, Maharashtra ("State Commission") in First Appeal No. A/15/307. In this Appeal, the Respondent No. 1/ Complainant appeal was partly allowed, thereby setting aside the Order dated 09.04.2015,

passed by the District Consumer Disputes Redressal Forum, Chandrapur ("District Forum") in CC No. 78 of 2013, wherein the Complaint was dismissed.

2. For convenience, the parties in the present matter are denoted as per their positions in the Consumer Complaint before the District Forum. Shri Tulshiram is identified as the Complainant. Meanwhile, Registrar/ Manager, Christanand Charitable Trust Hospital is referred to as OP-1 (Petitioner No. 1 herein), Dr. Vivek Kokne is referred to as OP-2 (Petitioner No. 2 herein), Dr. R Ravi is referred to as OP-3 (Respondent No. 2 herein) & Gupte Cancer Clinic is referred to as OP-4 (Respondent No. 3 herein).

3. Brief facts, as per the Complainant, are that the Complainant sought consultation with OP-2, Dr. Vivek Kokne, at OP-1 Hospital. OP-2, a surgeon, recommended an operation to remove a tumour in the Complainant's thigh, assuring him that he would regain proper mobility afterwards. On 07.08.2012, the consent for operation was given by the wife of the Complainant. Subsequently, on 08.08.2012, OP-2 performed the surgery, excising the tumour from his left thigh. However, during the procedure, OP-2 negligently severed the 6 CM sciatic nerve, the primary nerve of the left leg. This resulted in the loss of sensation and mobility in his leg, rendering the Complainant unable to walk unaided. Further, in the OP-2's post-operative notes he failed to mention the severance of sciatic nerve. On 10.08.2012, OP-3, Dr. RR Ravi, a pathologist, provided a test report revealing that the Complainant was suffering from cancer ("Atypical Lipoma favoring well Differentiated Liposarcoma"). Consequently, the Complainant was referred to OP-4, Gupte Cancer Clinic, where cancer treatment was initiated, including chemotherapy. However, it is alleged that OP-4 erroneously reported improvement in sensation in his left leg. The Complainant incurred Rs.3 Lakhs expenses for the chemotherapy. Subsequently, due to mobility issues, he took medical advice from Christian Medical College, where a re-examination of the excised tumour tissue revealed no definitive evidence of cancer.

4. The report stated: "In CMC, review of previous histology showed no definitive evidence of a high-risk grade sarcoma (however atypical lipomatous tumour cannot be excluded)." Thus, he was advised to undergo another operation. Subsequently, he sought a second opinion from doctors at Meditrina Institute of Medical Science, Nagpur, where the post-operative injury to the left sciatic nerve, resulting in left foot drop, was diagnosed. A surgery was performed to repair the severed nerve, incurring Rs.3,75,000 for tests, medicines, and hospital fees, and Rs.4,25,000 for operation. Due to negligence of OP-2 and 3, coupled with the erroneous communication of cancer diagnosis and further treatment by OP-4, he forwarded a legal notice to the parties, seeking compensation of Rs.18,30,000, along with interest @ 18%. The legal notice was responded to by the OPs, who refused to pay compensation. He thus filed CC No. 78 of 2013 before the District Forum, seeking Rs.18,30,000 as compensation, along with interest at 18%, and Rs. 25,000 towards litigation costs.

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5. In reply, before the District Forum, Opposite Parties (OP) No. 1 & 2 refuted all allegations made by him and contended that OP-1 appointed OP-2 as a Surgeon at their

hospital. The Complainant underwent tumor testing at a hospital in Nagpur through sonography, where a doctor advised him to undergo tumor removal surgery. The Complainant had been living with the tumor for 15 to 20 years. Family members were informed that both the tumor and its surrounding area needed removal. During operation on 07.08.2012, OP-2 discovered that the tumor was cancerous and had spread to the surrounding area. To prevent endangering his life, both the tumor and the affected surrounding area were excised. OP-2 specifically informed his relatives of this situation. The tumor was sent to OP-3 for testing. It was confirmed to be cancerous. The Complainant obtained this report from OP-3 through false representation. OP-2's advice was not followed by the Complainant, who chose to undergo chemotherapy at OP-4 on the recommendation of Dr. Ladukar. OP-2 contended that the nerve was not intentionally cut, and there was a risk of cancer spreading to other parts of the body of the patient. OP-2 followed the principle of "life over limb" in medical jurisprudence, prioritizing the patient's life over a particular body part and denied the allegations of any medical negligence. The Complainant did not adhere to the instructions and the prescribed post-operative medication and instead sought chemotherapy based on the cancer diagnosis. OPs contended that the complaint lacks merit due to the non-joinder of Dr. Ladukar as a necessary party. They denied any negligence or deficiency in the service and sought dismissal of the complaint filed by the Complainant with costs.

6. OP-3 & 4 in their reply, before the District Forum refuted the allegations and contended that since OP-1 & 2 conducted the tumour operation, it is not appropriate for OP-3 & 4 to respond to the contentions. The necessity of tumour removal due to its size and the entanglement of the left sciatic nerve with the tumour, led to its natural severance during the operation. They refuted the claim that the Complainant's left leg became non-functional due to this. OP-2 forwarded the tumour for testing to OP-3, who provided a report on 10.08.2012. OP-3 responsibly recommended further tests (Pinking the Patient on risk) if any changes indicative of cancer were observed in the tissues. The report indicated "Atypical Lipoma Favors well differentiated Liposarcoma" due to observed tissue changes. OP-3 advised further testing through "Immunohistology Chemistry," which he did not undergo. The report of OP-3 is deemed accurate and factual. OP-3 charged a fee of Rs.800 for the test. The similarity between OP-3's and Vellore's reports is noted, with a slight difference in wording, both indicated diagnosis of "Atypical Lipomatous tumour." Vellore's experts also recommended radiotherapy. Regarding nerve entanglement with the tumour, it was argued that, it is customary to sever the nerve to the extent needed, with the possibility of re-establishing it by a simple operation. They asserted that they did not provide negligent services.

7. The District Forum in its Order dated 09.04.2015, dismissed the complaint with the following reason /findings:

***“9. DISCUSSION -- In view of the clinical and radiological findings, the patient was advised to have resection of residual tumour and if the pathology report revealed high grade tumour, then he was advised for Radiation therapy and nerve repair. We have explained about the procedures, costs, risks and benefits to the patient and his relatives.*”**

On the basis of this, it is established that the applicant was having tumor and he was advised for radiation therapy and repairs of nerve. There appears similarity in between the report given by non-applicant no.3 and doctors at Vellur. In view of discussion on point no.2, it appears that the non-applicant nos. 1 and 2 had not shown any negligence on their part. As there is similarity in between the reports of non-applicant no.3 and doctors at Vellur, the forum comes to the conclusion that the non-applicant no.4 treated the applicant and there is no negligence on the part of non-applicants while treating the applicant.....

10)

ORDER

1) The complaint of applicant is dismissed.

2) Both the parties to bear their own costs.

3) The copy of this order be sent to both parties free of cost.

8. Being aggrieved by the District Forum Order, the Complainant filed a FA No. FA/307/2015 and the State Commission vide order dated 29.03.2022 allowed the appeal with the following observation: -

“14.In our view the operating Surgeon should have obtained inform consent and also he should have noticed the injury to the Sciatic Nerve and accordingly the necessary information should have been given to the patient as well as relatives. The operating surgeon failed to note this and hence the Commission observes that there was deficiency in service provided by the operating surgeon and the Hospital in which surgery was performed.

15. in our view both the respondent Nos. 3&4 performed their duties in accordance with the reports which they received and hence, there is no negligence or deficiency in service in providing treatment to the appellant/ original complainant. In view of this discussion the Commission thinks it proper to award compensation to the appellant/ original complainant to be paid by the respondent Nos. 1&2 only who were original O.P. Nos. 1&2. Since the learned District Consumer Forum (Now Commission), Chandrapur while passing the order did not consider the above facts and documents, we think it proper to set aside the order passed by the learned District Consumer Forum (now Commission) at Chandrapur. Hence, we passed the following order.

ORDER

- i. ***Appeal is partly allowed with cost a quantified to Rs. 25,000/- to be paid by the respondent Nos. 1&2 jointly and severally to the appellant.***
- ii. ***The order passed by the learned District Consumer Forum (now Commission) Chandrapur is hereby set aside.***
- iii. ***The respondent Nos. 1&2 are hereby directed to reimburse the treatment expenditure Rs.3,75.000/- at Christian Medical College, Vellore and treatment expenditure at Meditrina Institute of Medical Science Nagpur Rs.4,25,000/- along with @ 9% p.a. interest from the date of filing of complaint at District Consumer Forum, Chandrapur.***
- iv. ***The respondent Nos.1&2 are hereby directed to pay Rs.5,00,000/- jointly and severally towards the compensation to be paid to the appellant towards physical and mental harassment and loss of income.”***

9. Being dissatisfied by the Impugned Order dated 29.03.2022, the Petitioners/OP No. 1 & 2 filed the instant Revision Petition No. 850 of 2022 raising mainly the following grounds:

- a. The State Commission erroneously held the Petitioners failed to obtain "informed consent" from the Complainant. However, the medical records provided clearly indicate that on 07.08.2012, the patient was advised to undergo an MRI of the lower limb but declined further investigation due to personal reasons and opted for surgery without further tests. It was explicitly mentioned in the report that the patient was informed of the risks associated with the surgery. In addition, his consent and the consent of his wife were obtained before the surgery.
- b. The State Commission erred in awarding compensation without considering that no evidence or expert opinion was presented to prove their negligence. Mere allegations without reliable evidence and expert opinion, do not prove negligence. OPs filed affidavits of four doctors, including Dr. Deshmukh, a Senior Cancer Surgeon affirming the correctness of the procedure.
- c. The State Commission wrongly concluded that the patient was not informed about the surgery and potential complications. OP-2 advised an MRI study before the operation to pinpoint the area of concern, but Respondent No.1 declined and insisted on surgery. Moreover, the entanglement of nerves with the growth was informed to his friend, wife and daughter.
- d. The State Commission overlooked Dr. Deshmukh's affidavit clearly stating no negligence in the surgery by OP-2 and emphasizing the principle of "life over limb" and affirming that the surgery was performed responsibly to save his life.
- e. The State Commission erred in finding fault with the Petitioners, especially considering the exoneration of Respondents - 3&4. This supports the assertion that Respondent No.1 was indeed suffering from cancer, justifying the surgery performed.
- f. The State Commission failed to recognize the need to remove a significant portion of the growth from Respondent No.1's left thigh to prevent cancer spread. Given the size

of growth and its entanglement with nerves, extensive surgery was required to mitigate further complications.

10. Upon notice with respect to the Revision Petition, Respondent No. 1/Complainant appeared and filed written submissions. Conversely, Respondent No. 2 & 3/ OP-3 & 4 failed to appear on several occasions, leading to an *ex-parte* order dated 15.12.2023.

11. In his arguments, the learned Counsel for Petitioners/OP-1 & 2 reiterated the grounds of the petition and evidence through affidavits filed before the fora below. He emphasized the absence of any evidence indicating negligence on the part of OP-2 or other doctors. It was pointed out that the Complainant had a lump on his thigh for over 15 years. Despite being advised to undergo MRI investigation, he refused citing business reasons and volunteered for surgery without further investigation, as clearly documented in medical reports.

12. As regards the issue of informed consent, it was asserted that informed consent, including high-risk consent, was obtained from the Complainant. OP-2 had also explained the risks of surgery to the Complainant. Additionally, it was asserted that during surgery, it was discovered that the tumour had affected the nerves, which was communicated to the Complainant's family and relative, as confirmed in an affidavit. Citing the precedent set by the Hon'ble Apex Court in the case of ***SAMIRA KOHLI Vs. DR. PRABHA MANCHANDA (2008 (2) SCC 1)***, the learned Counsel highlighted that it is the duty of the doctor to seek and secure the consent of the patient before commencing treatment.

13. As regards post-operative instructions, it was argued that OP-2 provided instructions and prescribed medicines upon discharge. OP-2 had indeed recorded the nerve injury during surgery, as evidenced by medical records. The Counsel emphasized that negligence is determined by whether the actions of the medical professional align with what a reasonable person would do in similar circumstances and cited precedents such as ***Kusum Sharma Vs Batra Hospital and Medical Research Centre [(2010) 3 SCC 480]*** and ***Vinita Ashok Vs. Laxmi Hospital [(2001) 8 SCC 731]***. He relied on the following judgements and urged for setting aside of the order of the State Commission:

1. ***(2001) 8 SCC 731 - Vinita Ashok Vs. Laxmi Hospital;***
2. ***2008 (2) SCC 1 - Samira Kohli Vs. Dr. Prabha Manchanda;***
3. ***(2010) 3 SCC 480 - Kusum Sharma Vs. Batra Hospital and Medical Research Centre;***
4. ***2013 NCJ 216 (NC);***
5. ***AIR 2005 Supreme Court 853; and AIR Online 2019 SC 111.***

14. The learned Counsel for the Complainant/ Respondent No. 1 reiterated the facts outlined in the complaint and strongly argued that there was gross negligence on the part of the Petitioners in operating on the Complainant. He pointed that OP-2 negligently cut his main sciatic nerve in the left leg, leaving him partially disabled. Despite undergoing another operation to repair the damage caused, the sensation in the left leg could not be fully restored

due to loss of time. The learned Counsel stated that a disability certificate issued by the Dept of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Govt of India could be provided if deemed necessary. As regards the informed consent, he argued that the consent obtained from the Complainant was not an informed consent, as it only pertained to the danger to his life due to anaesthesia administration. He relied on Hon'ble Supreme Court in ***Samira Kohli vs. Dr. Prabha Manchanda***, emphasizing that a doctor must obtain real and valid consent from the patient before commencing treatment, ensuring that the patient is adequately informed about the nature of treatment procedure, including its purpose, benefits, alternatives, risks, and adverse consequences. He highlighted gross medical negligence by pointing that the operation notes of OP-2 did not mention the cutting of the sciatic nerve, despite Respondent No. 1 informing OP-2 about the loss of sensation in the left leg. This failure to inform the patient about the excision of the sciatic nerve during the operation did not meet the standard of care and skill expected from a competent medical practitioner. Further, Respondent No.2&3 wrongly diagnosed Respondent No. 1 with cancer and subjected him to chemotherapy, causing mental agony, harassment and unnecessary side effects. He cited ***Kurian Joseph (Dr.) vs. Govindarajan***, where the doctor was held negligent for administering chemotherapy without confirming a provisional finding of carcinoma with further tests. He sought the revision petition should be dismissed with costs.

15. 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.

16. The primary issue in the case is centered on alleged medical negligence in the surgery performed on the Complainant by OP-1& 2. The allegations includes that OP-2 negligently cut the Complainant's main sciatic nerve in the left leg during the surgery, leading to partial disability. Additionally, no informed consent was obtained, adequacy of post-operative care, and accuracy of diagnosis and subsequent treatment provided by OP-3 & 4. The core issue is whether actions of the OP-1 and 2 and other medical practitioners involved, met the standard of care expected from competent medical professionals? Whether such actions amounted to medical negligence?

17. It is an established fact that the Complainant had a tumour in his left thigh for over 15 years. OP-2, a surgeon, advised surgery to remove the tumour. On 07.08.2012, consent for the operation was obtained from him and his wife, and the surgery was performed on 08.08.2012. During the surgery, OP-2 excised the tumour along with surrounding tissues, as well as a part of his main sciatic nerve. This resulted in loss of sensation and rendered him unable to walk without assistance. Subsequently, based on the pathological examination of the tissue, the Complainant was diagnosed with cancer by OP-3 & 4, leading to chemotherapy treatment. However, further examination revealed that there was no definite evidence of cancer in the tumour tissue. He underwent another operation to repair the

damaged nerve, incurring significant expenses for medical treatment and surgery. Alleging negligence, he filed a complaint seeking compensation for the injuries and losses suffered due to the surgery and subsequent treatment. Therefore, the dispute is centred on the adequacy of informed consent, the standard of care during surgery, accuracy of diagnosis and the appropriateness of the treatment provided.

18. As regards the diagnosis of cancer, post operation, Dr. RR Ravi OP-3 issued Histopathology report dated 10.08.2012 which revealed this to be a case of Atypical Lipoma Favours Well Differentiated Liposarcoma. Thereafter, the Complainant had taken treatment for cancer from Dr Smita Gupte, Cancer Clinic where he administered four cycles of chemotherapy. The Complainant taken second opinion from Christian Medical College where it was revealed as per report dated 24.01.2013 that in view of the clinical and radiological findings, the patient was advised to have resection of residual tumor and if the pathology report revealed high grade tumor, then he was advised for Radiation therapy and nerve repair.

19. As regards obtaining informed consent from the Complainant for surgery by OP-2, it is a legal mandate for medical practitioners to obtain an informed consent. It is not a mere procedural formality. It is most relevant in medical negligence cases, specifically, when such cases entail judicial scrutiny. Except in medical emergency case, the informed consent must be taken before a surgical intervention. Limited exception could be in cases of medical emergencies for rendering life-saving treatment. Clause 7.16 of Chapter-7 of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, **2002** reads 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.”

20. In medical negligence cases, 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.

21. The material difference between the aspects of medical care lies in the degree of passivity on the part of the 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 pressurized 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 the 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 for the same.

22. In this regard "Bolam Test" was articulated in 1957. At that time, the 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 treatments relating to illness. Now there is a seismic shift in medical ethics and societal attitude towards the practice of medicine. Further, Medical Council framed statutory regulations regarding the professional conduct, etiquette and ethics. This warrants legal tests to adjudicate the advice aspect of doctor patient relationship. The MCI Regulations as amended time to time 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 his perspective. The information disclosed is not limited to risk-related information. It should include: doctor's diagnosis of his condition, prognosis of that condition with and without medical treatment, the nature of the proposed medical treatment, the risks associated, the alternative to the proposed treatment, advantages and risks involved. The doctor must ensure that information given is "in terms and at a pace that allows the patient to assimilate and enable him to make informed decision.

23. Three instances, where withholding of information is justified, are as under:

(a) Waiver situation: is when the patient expressly indicates 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.”*

24. Now, the issue to be determined is, before surgery, whether the patient/ his wife were informed about the possible complications and risks and their informed consent was taken? It is true that every surgery has inherent risks and may lead to fatal complications. Discussing all 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, an ‘Informed Consent’ is required to satisfy the following conditions:

“The consenting party i.e. 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.”

25. Hon’ble Supreme Court in ***Samira Kohli Vs. Dr. Prabha Manchanda & Another 1 (2008) CPJ 56 (SC)*** has extensively dealt with the concept of consent to be taken from the patient/family members. In the said case, it has been held that the 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. It was further held by the Hon'ble Supreme Court that unless the procedure is necessary in order to save life or preserve the health of the patient and it would be unreasonable to delay further procedure until the patient regains consciousness and takes a decision, a doctor cannot perform such procedure without the patient’s consent. In the instant case, the insertion of catheter by Central Venous Line procedure being an invasive procedure carrying certain risk of complication including the injury to the jugular vein or bursting of the blood cells, the concerned team of doctor was legally required to obtain the consent of the patient.” Identical view was taken by the UK Supreme Court in “***Montgomery (Appellant) Vs Lanarkshire Health Board (Respondent) (Scotland)***” Hilary Term [2015] UKSC 11 on appeal from: [2013] CSIH 3; [2010] CSIH 104 emphasized the concept of informed consent. As regards obtaining informed consent with respect to surgery performed on the Complainant, the perusal of the High Risk Consent on record dated 07.05.2012 reveals that he and his wife have given consent for administering anesthesia and to undergo the surgery in question. Both have stated that the doctor had explained all information about anesthesia and the proposed surgery for the excision of tumor with which the Complainant reported to the OP-1 Hospital and sought medical attention.

26. As regards the circumstances under which his sciatica nerve was cut during the surgery, the Complainant contended that he had sought consultation with OP-2, Dr. Vivek Kokne, surgeon at OP-1 Hospital. OP-2 recommended an operation to remove a tumour in his thigh

and assured proper mobility afterwards. On 08.08.2012, OP-2 performed the surgery and excised the tumour. However, during the procedure, OP-2 negligently severed 6 cm of the sciatic nerve of the left leg. This was never informed earlier and he came to know only when is unable to walk unaided. Also, it was not even mentioned in the post-operative notes and was never notified and advised of the implications and cautions to be taken. He had to spend substantial amount of money to restoring the same. The failure to take consent and not even informing about cutting sciatic nerve during surgery did not meet the standard of care and skill expected of OP-1 and 2.

27. On the other hand, the OP-1 & 2 asserted that the Complainant reported with history growth of tumour in his left thigh for long period. The Complainant underwent necessary tests, including sonography and tumour removal surgery was advised and necessary consent was taken for removal of the tumour and its surrounding affected tissues. During operation on 08.08.2012, OP-2 noticed that the tumour was likely to be cancerous and spread to the surrounding. To prevent endangering his life, both the tumor and the affected surrounding area including a portion of sciatic nerve was cut due to risk of cancer spreading to other parts of the body of the patient. In this, OP-2 followed the medical jurisprudence principle of "life over limb" in, prioritizing the patient's life over a particular body part and denied the allegations of any medical negligence. OP-2 filed affidavits of medical professionals to corroborate his actions. The tumour was sent to OP-3 for testing and was confirmed to be cancerous.

28. In this regard, it is the main assertion of the Complainant that the removal of the sciatica nerve was neither explained to him nor his wife prior to surgery or during the surgery. Further, it was not even reflected in the operation notes prepared by OP-2 post surgery. He realized removal of 6 cm of sciatica nerve when he found himself unable to walk and had to undergo multiple treatments and surgery to restore the sciatica nerve. There is no evidence on record to indicate that consent for removal of sciatic nerve was taken. The post operation record also does not have mention of the same. There is also no record to indicate that the Complainant was even informed of to such removal and was given necessary guidelines to dealing with such condition and process for restoration. Therefore, while the requirement of cutting sciatica nerve has been adequately defended, at the same time, not obtaining the consent and not recording in the post operation notes as well as informing him and guiding him with respect to handling such conditions at the time of discharge certainly constitutes negligence on part of OP-1 and 2. The Complainant subsequently underwent surgery in Meditrina Institute and got the sciatica nerve restored. Therefore, it deserves to be compensated.

29. After the surgery, OP-2 considered it necessary to forward the tissue of the tumour he excised from the thigh of the Complainant for biopsy to OP-3. Admittedly, OP-3 examined the tissue and ascertained the same to be a case of cancer and he was treated at OP-4. After receiving treatment for some time, he approached Christian Medical College, vellore where

the diagnosis and treatment were reviewed. In any case with respect to pathological examination, diagnosis and treatment of cancer, OP-1 and 2 have no role. Also no liability has been attributed in this regard against OP-3 and 4.

30. In view of the foregoing with respect to allegation of medical negligence, the liability of OP-1 and 2 is with respect to removal of 6 cm sciatica nerve, without taking consent, not recording in the post operation notes, not notifying the Complainant even thereafter and not giving him requisite counseling in handling the situation as part of discharge notes. These failures do not align with what a reasonable medical professional would do in similar circumstances. Therefore, OP-1 and 2 are liable to this extent.

31. In consideration of the above discussions, the impugned order dated 29.03.2022 passed by the learned State Commission is modified as under:

ORDER

The Petitioners/OP-1&2 are jointly and severally directed to pay a lump sum of Rs.5,00,000/- to the Complainant on account of deficiency in service in not taking consent for removal of 6 cm sciatica nerve without taking consent, not recording its removal in post operation notes, not notifying the Complainant even thereafter and not giving him the requisite counseling as part of discharge notes, mental agony and harassment, loss of income and litigation costs. This amount shall be paid within one month from the date of this order. In the event of delay beyond the said period of one month, the simple interest applicable for such extended period shall be @ 12% per annum, till realization.

32. The RP No.850 of 2022 is accordingly disposed of.

33. All other pending Applications, if any, stand disposed of.

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