

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 2485 OF 2018

(Against the Order dated 10/08/2018 in Appeal No. 1/2018 of the State Commission Manipur)

1. SHIJA HOSPITALS & RESEARCH INSTITUTE & ANR.
REP. BY ITS MANAGING DIRECTOR SHRI DR.
KHUNDONGBAM PALIN S/O. LT. KH ITOCHA OF LANGOL
LAMTHUNGCHINGJIN, P.O. AND P.S. LAMPHEL
DISTRICT-IMPHAL WEST
MANIPUR

2. DR. KSH. KALA SINGH
S/O. KSH. KARTIK SINGH OF PANGAI BAZAR, P.O.
PANGAI, P.S. HEINGANG
DISTRICT-IMPHAL WEST
MANIPUR

.....Petitioner(s)

Versus

1. KHUMAN THEM PHUNINDRO SINGH & 5 ORS.
H/O. KHUMAN THEM ONGBI HEMABATI DEVI OF
MOIRANGKHOM SOUGAIJAM LEIKAI P.O. AND P.S.
DISTRICT-IMPHAL WEST
MANIPUR-2

.....Respondent(s)

2. KHUMAN THEM TEJMANI SINGH
H/O. KHUMAN THEM ONGBI HEMABATI DEVI OF
MOIRANGKHOM SOUGAIJAM LEIKAI P.O. AND P.S.
IMPHAL WEST
MANIPUR-2

3. KHUMAN THEM LOKENDRO SINGH
H/O. KHUMAN THEM ONGBI HEMABATI DEVI OF
MOIRANGKHOM SOUGAIJAM LEIKAI P.O. AND P.S.
IMPHAL WEST
MANIPUR-2

4. LAISHRAM ONGBI KHUMAN THEM SEITYABATI DEVI
W/O. L. RAJENDRO SINGH, R/O. WANGKHEI TANGABAT
MAPAL BAMON LEIKAI P.O. AND PS. POROMPAT,
DISTRICT-IMPHAL WEST
MANIPUR

5. LANGOM ONGBI KHUMAN THEM GUNABATI DEVI
W/O. L. YANGBA MEETEI OF LUWANGSHANGBEM
MANING LEIKAI P.O. AND P.S. MANTRIPUKHRI,
IMPHAL WEST
MANIPUR

6. CANNON DEVICES PVT. LTD.
REP. BY ITS REPRESENTATIVE SHRI SH. TAPAN POUL(SE)
B2, 4TH FLOOR, F.M.C. FORTUNA 234/3/A, AJC BOSE

ROAD,
KOLKATA-700020
WEST BENGAL

BEFORE:

HON'BLE DR. S.M. KANTIKAR, PRESIDING MEMBER
HON'BLE MR. BINOY KUMAR, MEMBER

For the Petitioner : Appeared at the time of arguments
 Mr. Chingangbam Dhananjoy Singh, Advocate

For the Respondent : Appeared at the time of arguments
 Mr. Waikhom Darakeshwar Singh, Advocate

Dated : 13 Jul 2022

ORDER

DR. S. M. KANTIKAR, PRESIDING MEMBER

1. The Petitioners have filed the instant Revision Petition under Section 21(b) of the Consumer Protection Act, 1986, against the Order dated 10.08.2018 passed by the State Consumer Disputes Redressal Commission, Manipur in First Appeal No. 01/2018, wherein the District Forum allowed the Complaint and the State Commission dismissed the Appeal and confirmed the Order of the District Forum.
2. This is the case of alleged negligence due to fault in the implantation of pacemaker.
3. The District Forum held the OP-2 Dr. Ksh. Kala Singh failed to exercise reasonable care and professional skill in carrying out implantation/insertion of pacemaker with the deceased patient. The District Forum allowed the Complaint and directed OP-1 & 2 to pay jointly and severally Rs.5,90,000/- to the Complainants.
4. Being aggrieved, the OP-1 & 2 filed First Appeal before the State Commission which was dismissed. Hence, they have filed the instant Revision Petition.
5. We have heard the learned Counsel on both the sides, perused the entire record, inter-alia the Order of both the fora.
6. It is evident from the medical record and evidence that the patient was a known case of renal disease under supervision of Dr. P. Guliver at Shija Hospital. She was to undergo dialysis on 17.03.2012, however, she developed breathing difficulties and immediately shifted to ICU and she was examined by Dr. Ksh. Kala Singh (OP-2), the Professor and Head of Cardiovascular and thoracic Department of RIMS Hospital. He implanted temporary pacemaker and on the same day haemodialysis was performed. The patient's condition shown improvement and therefore on 20.03.2012, the temporary pacemaker was removed with her consent. But after its removal, she became serious again and therefore, the OP-2 advised for re-implantation of permanent pacemaker after one or two days. Accordingly, the permanent pacemaker was fixed on 25.03.2012 and it was assured by OP-2 that life of pacemaker would be 10 years and the patient could survive at least two or three years. However, the condition of patient did not improve but she developed a number of complications, like difficulties in breathing, fluid in chest and non-healing of stitches etc. It was alleged that the OP-2 did not clarify satisfactorily about such complications. Subsequently, after 9 days the patient died on 04.04.2012 after implanting the permanent pacemaker.
7. It is pertinent to note that the patient was elderly, 75 years of age, was admitted in Shija Hospital on 17.03.2012 for the treatment of Chronic Kidney Disease (CKD-V), complete heart block, type-II diabetes. She was suffering from multiple medical problems. For CKD-V, she was regularly undergoing dialysis. Due to cardiac problem, the OP-2 cardiologist implanted temporary pacemaker which showed improvement and

therefore, it was replaced by permanent pacemaker on 25.03.2012. It should be borne in mind that after the treatment, no doctor shall assure or guarantee about the life expectancy of patient. Even the Complainant failed to produce evidence to prove that the pacemaker was defective. As per medical literature, pacemakers are supportive in the therapy for the conductivity of the heart.

8. The Hon'ble Supreme Court, in its catena of judgments, discussed about the duty of medical professionals and what constitutes medical negligence. It would be apt to recollect the words of the then Hon'ble Chief Justice of India, when he said in **Jacob Mathew's case**[\[1\]](#) which reads as under:

“The subject of negligence in the context of medical profession necessarily calls for treatment with a difference. There is a marked tendency to look for a human actor to blame for an untoward event, a tendency that is closely linked with a desire to punish. Things have gone wrong and therefore somebody must be found to answer for it.

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The human body and medical science, both are too complex to be easily understood. To hold in favour of existence of negligence, associated with the action or inaction of a medical professional, requires an in-depth understanding of the working of a professional as also the nature of the job and of errors committed by chance, which do not necessarily involve the element of culpability.”

9. The patient died due to her severe was already suffering from several fatal comorbidities. The patient was treated in the ICU with reasonable duty of care by the team of doctors including cardiologist and nephrologist. We do not find any deficiency or medical negligence from the hospital and treating doctor.

10. Both the fora failed to consider the medical grounds and erred to hold the Petitioners liable for medical negligence, which in our view, the error apparent and material irregularity to exercise revisional jurisdiction under Section 21 of the Consumer Protection Act, 1986.

11. Based on the foregoing discussion, the Orders of both the fora below are set aside. The Revision Petition is allowed. Consequently, the Consumer Complaint is dismissed.

[\[1\]](#) (2005) SSC (CrI) 1369

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DR. S.M. KANTIKAR
PRESIDING MEMBER

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BINOY KUMAR
MEMBER