

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 3087 OF 2015**

(Against the Order dated 14/08/2015 in Appeal No. 2462/2011 of the State Commission Uttar Pradesh)

1. NIRAJ KUMAR SINDHU & ANR.

S/O SH.RAMVIR SINGH SINDHU R/O H.NO.497,GALI-1  
SHIVPURI MODI NAGAR-201204 DISTT.

GHAZIABAD

U.P.

2. VEENA SINDHU W/O SH. RAMVIR SINGH SINDHU

R/O H.NO. 497, GALI-1, SHIVPURI MODI NAGAR-201204,  
DISTT.

GHAZIABAD

U.P.

.....Petitioner(s)

Versus

1. FORTIS HOSPITAL & ANR.

SEC 62,NOIDA

U.P.

2. DR.MANOJ SINGHAL(NEPHROLOGIST)

C/O FORTIS HOSPITAL SEC-62, NOIDA

U.P.

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. JUSTICE SUDIP AHLUWALIA,PRESIDING MEMBER**

FOR THE PETITIONER : MR. NIRAJ KUMAR SINDHU, IN PERSON

FOR THE RESPONDENT : MR. ROHIT PURI, ADVOCATE  
MR. ADITYA AWASTHI, ADVOCATE.

**Dated : 20 September 2023**

**ORDER**

**JUSTICE SUDIP AHLUWALIA, MEMBER**

This Revision Petition has been filed by the Petitioners/ Complainants against Respondents/ Opposite Parties challenging the impugned Order dated 14.08.2015 passed by the State Consumer Disputes Redressal Commission, Lucknow, U.P., in Appeal bearing No. 2462 of 2011. Vide such Order, the State Commission allowed the Appeal while setting aside the Order dated 05.09.2011 passed by the District Consumer Dispute Redressal Forum, G.B. Nagar (U.P.) in Complaint No. 413 of 2010.

2. The brief facts of the case are that the Complainant No.1's father and Complainant No.2's husband, Lt. Sh. Ramvir Singh was a patient of kidney disease, and had gotten his first kidney transplanted on 10.06.2002 and the second one on 12.12.2003 after which he was leading a healthy life. The deceased was the Principal of Janta Adarsh Inter College, Meerut, till 01.12.2009 whereas the Opposite Party No. 2 was a Nephrologist at the Opposite Party

No.1/Hospital. It was the case of the Complainants that the deceased had experienced cough and fever on 07.12.2009 and was consequently, admitted to Opposite Party No.1/Hospital under the supervision of the Opposite Party No.2. Later, the deceased was discharged on 13.12.2009 but was again admitted in the Opposite Party No.1/Hospital on 18.12.2009 on facing problem in breathing and was again under the treatment of Opposite Party No. 2. All the tests and check-ups were conducted again, the deceased remained on oxygen and Dr. Mrinal disclosed a problem in his lungs whereafter, X-ray, ABG and CT-Scan were conducted. It was contended that neither the Opposite Party No.2 went through the reports nor treated the deceased accordingly. Thereafter, on 20.12.2009, blood started flowing from deceased's nose and consequently, the deceased was admitted in the I.C.U. by Dr. Manoj when Dr. Vohra advised Dr. Manoj to conduct a test for H1N1. Thereafter, on 22.12.2009, the Complainant was informed by the Opposite Parties that the deceased was suffering from Swine Flu and further stated that the Opposite Parties would not be treating the deceased for Swine Flu due to which the deceased was shifted to Moolchand Hospital and then to Ram Manohar Lohiya Hospital due to lack of arrangements at Moolchand Hospital, despite receiving the report on 21.12.2009. It was submitted that although the Opposite Parties took steps to transfer the deceased to another Hospital, however, they failed to examine and treat the patient properly, thoroughly and on time.

3. It was further the case of the Complainants that the deceased was shifted to Apollo Hospital on 23.12.2009 and had subsequently, expired on 28.12.2009. It was contended by the Complainants that if the H1N1 tests had been conducted in time along with other necessary examinations then the life of the deceased could have been saved. It was further contended that the Opposite Parties were negligent and careless, and had not treated the deceased seriously. It was further averred that the Opposite Party No.2 had stopped the medicines for kidneys essential for the transplanted kidneys due to which those kidneys had totally failed and the deceased had fallen back on dialysis due to which the Blood Pressure had fallen resulting in his death. Consequently, the Complainants sent a Legal Notice dated 08.07.2010. However, no reply was received. Therefore, the Complaint was filed before the Ld. District Forum being aggrieved by such acts of the Opposite Parties and alleging deficiency in services on their part, and seeking compensation of Rs.16,30,000/- for negligence and Rs.3,14,075/- for expenses incurred on the treatment, totalling to Rs.19,44,075/-.

4. The Opposite Parties appeared before the Ld. District Forum and resisted the Complaint and denied all the allegations thereby denying deficiency in service on their part. It was contended that the patient was provided the best medical treatment and rather the Complainants were guilty of suppression of material facts including that the patient was critical at the time of admission in the Hospital, and that his condition had gotten stable due to the Opposite Parties' immediate steps. It was further stated that the patient's kidneys were not functioning normally and he had creatinine level of 3.8-4.0 mg/dl meaning thereby that the transplanted kidneys were functioning at approx. 15% of their normal capacity. Moreover, upon admission on 08.12.2009, it was found on examination that the deceased was suffering from viral infection (Influenza) with Hyponatremia and Dehydration. He was grossly malnourished and weak. It was also submitted that the Opposite Parties gave best possible treatment to the deceased whose condition improved with their general supportive care. Hence, the deceased was discharged on 13.12.2009 as he showed positive signs of

becoming stable. It was contended that the deceased was readmitted on 18.12.2009 when he was treated with Anti-biotics and other support systems.

5. It was the further case of the Opposite Parties that in view of the on-going pandemic of Swine Flu at that time, a sample of the Patient for testing for N1H1 influenza was sent to a Government approved Hospital which came out as positive. Consequently, the Opposite Parties had immediately referred the deceased to a centre authorised by the Government for treatment of patients having H1N1 Flu. It was stated that the deceased was transferred to the designated medical facility as per guidelines of Ministry of Health. It was contended that the Government of India had strictly directed the Hospitals to refer patients suffering from Swine Flu to the designated Hospitals. Accordingly, the Opposite Party No.1 had given a list of names of centres approved by the Government out of which the deceased had chosen Apollo Hospital. Accordingly, appropriate arrangements were made by the Opposite Party No.1 to transfer the deceased. Therefore, the Opposite Parties prayed for dismissal of the complaint with exemplary costs.

6. The Ld. District Forum vide its order dated 05.09.2011 allowed the Complaint and observed that the Opposite Parties never considered the patient for swine flu. It was stated that the Forum did not believe that if the test would have been done then the life of the patient would have been saved but it definitely was of the view that if the test for Swine Flu would have been done then a proper treatment could have been initiated. It was also observed that the Opposite Party Hospital knowingly disobeyed the directions of the Health Deptt. The Ld. District Forum was of the view that the treatment was given in a negligent manner and the level of treatment was very poor. Therefore, the Forum held *inter alia*:

***“The Complaint of the Complainants is admitted. Opposite Parties are ordered separately to pay Rs.3,64,075/- to the Complainants jointly and also pay Rs.5,000/- as case fee.”***

7. Aggrieved by the above order, Appeal bearing No. 2462 of 2011 was filed by Appellants/ Opposite Parties against the Respondents/ Complainants before the State Consumer Disputes Redressal Commission, Lucknow, U.P.

8. The Ld. State Commission vide the impugned Order dated 14.08.2015 allowed the Appeal while setting aside the order of Ld. District Forum by placing reliance on the judgement of this Commission in RP 3602 of 2008 and observed *inter alia*:

***“...It is true that when the patient was admitted the Swine Flu (HINI) was developing as an epidemic throughout. According to the direction of the Health Ministry (revised on dt. 05.10.2009), the Category for testing, isolation, home & are hospitalization is in mentioned and that these were ignored is not proved the doctors,***

***take about treatment the decision on the basis of symptoms & investigation. In a case of fever, cough & breathlessness, it is always not required to test H1N1. And the direction of the Health Dept. are not specified for such tests.***

***On the basis of the evidences, we found that there is no negligent act on the behalf of appellants. Only on the basis of the fact that if on dt. 08.12.2009, the test of swine Flu H1N1 was done, then Shri Ramvir Singh would have not died. It is not in the definition of lack in service. In this regard, the honourable National Commission New Delhi....”***

9. Hence, the present Revision Petition has been filed by the Petitioners/ Complainants against the above-mentioned impugned order of the Ld. State Commission.

10. Heard the Ld. Counsel for Respondents and Petitioner, party-in-person. Perused the material available on record.

11. From the Discharge Summary under which the deceased was discharged on 13.12.2009, issued by the Respondent/Hospital, it is seen that the complaints for which he had been admitted for the first time on 8.12.2009 were as follows-

**“DIAGNOSIS**

***CH V.***

***Post Kidney transplant (2<sup>nd</sup>)-Dec 2003***

***First transplant- 2002***

***CAN***

***Viral illness***

***Hyponatremia***

**PROCEDURE**

**CHIEF COMPLAINTS**

***Cough with sputum, breathlessness, Mild fever for 2 weeks***

***Symptoms increased for 2-3 days prior to admission.***

***Anorexia for 2 days.....”***

Thereafter, the Discharge Summary for the deceased’s second hospitalisation from 18.12.2009 till 22.12.2009 again shows the diagnosis and complaints at the time of his admission as follows-

**“DIAGNOSIS**

***CH V. First transplant- 2002,***

***Post Kidney transplant (2 nd) – Dec 2003, CAN***

***Respiratory tract infection, H1N1 POSITIVE***

**CHIEF COMPLAINTS**

***Cough with sputum, breathlessness, Mild fever for 2 weeks***

***Symptoms increased for 1 day***

**PHYSICAL EXAMINATION**

***Pt. Conscious, breathless***

***Afebrile. Chest B/L crepts +, Ronchii +***

***Blood Pressure : 150/70mm; Pulse Rate: 80/min.....,***

12. The Government Guidelines on categorisation of Influenza A H1N1 cases revised on 5.10.2009, as issued by the Directorate General of Health Services, Emergency Medical Relief, Govt. of India, vide its Office Memorandum dated 28.10.2009 had categorised individuals seeking consultations for Flu like symptoms in three categories “A, B and C”. The relevant Guidelines pertaining to Category ‘A’ patients are as follows-

***“Patients with mild fever plus cough/sore throat with or without body ache, headache, diarrhoea and vomiting will be categorized as Category-A. They do not require Oseltamivir and should be treated for the symptoms mentioned above. The***

***patients should be monitored for their progress and reassessed at 24 to 48 hours by the doctor.”***

Such relevant Guidelines for Category ‘B’ patients were as follows-

***“(i) In addition to all the signs and symptoms mentioned under Category-A, if the patient has high grade fever and severe sore throat, may require home isolation and Oseltamivir;***

***(ii) In addition to all the signs and symptoms mentioned under Category-A, individuals having one or more of the following high risk conditions shall be treated with Oseltamivir:***

- ***Children with mild illness but with predisposing risk factors;***
- ***Pregnant women;***
- ***Persons aged 65 years or older;***
- ***Patients with lung diseases, heart disease, liver disease, kidney disease, blood disorders, diabetes, neurological disorders, cancer and HIV/AIDS;***
- ***Patients on long term cortisone therapy....”***
- However, no testing of the patients of Category ‘A’ and ‘B’ was required under the Guidelines.

- But, in relation to Category ‘C’ individuals, the Guidelines were as follows-

***“In addition to the above signs and symptoms of Category-A and B, if the patient has one or more of the following:***

- ***Breathlessness, chest pain, drowsiness, fall in blood pressure, sputum mixed with blood, bluish discolouration of nails;***
- ***Children with influenza like illness who had a severe disease as manifested by the red flag signs (Somnolence, high and persistent fever, inability to feed well, convulsions, shortness of breath, difficulty in breathing, etc.)***
- ***Worsening of underlying chronic conditions.***
- ***All these patients mentioned above in Category-C require testing, immediate hospitalisation and treatment.”***

13. As seen from the two Discharge Summaries issued by the Respondent/Hospital, on the date of Ist admission, the deceased was having the complaints of cough with sputum, breathlessness and mild fever for two weeks and the symptoms had aggravated for 2-3 days prior to such date of admission. He was, therefore, certainly covered under Category ‘A’ and ‘B’ of the aforesaid Guidelines till that time.

14. But, when he was admitted again on 18.12.2009, he not only had cough with sputum with mild fever over two weeks but was also complaining of breathlessness and on physical examination also he was found to be “breathless”. This symptom of “breathlessness” is the additional component included in the Guidelines pertaining to Category ‘C’ apart from the other symptoms of Category ‘A’ & ‘B’ i.e. cough with

sputum and fever etc. Consequently, he was required to undergo testing, immediate hospitalisation and treatment, although no tests for H1N1 in the case of Category 'A' & 'B' were required in terms of the Govt. Guidelines.

15. The omission on the part of the Hospital therefore to have the patient tested for H1N1 promptly would certainly be contrary to the requirements under the aforesaid Guidelines, and therefore does constitute actionable "medical negligence".

16. The Ld. State Commission had therefore acted erroneously in not considering the applicability of the guidelines pertaining to the category 'C' individuals, which were clearly applicable to the father of Complainant No. 1, and had thus acted with material irregularity in setting aside the well-reasoned decision of the Ld. District Forum.

17. The Revision Petition is, therefore, allowed after setting aside the impugned Order of the State Commission. Consequently, the Order of the District Forum stands restored. No further orders as to costs.

18. The Respondents/Opposite parties are accordingly directed to comply with the directions of the District Forum within a month from this date failing which any outstanding payments shall attract interest @ 12% p.a.

19. Pending application(s), if any, also stand disposed off as having been rendered infructuous.

.....J  
**SUDIP AHLUWALIA**  
**PRESIDING MEMBER**