

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 2988 OF 2012**

(Against the Order dated 06/04/2012 in Appeal No. 2160/2007 of the State Commission Haryana)

1. J.N. SHORI MULTI SPECIALITY HOSPITAL &  
ANR.

Nalagarh Road, Through its Director Dr Sangeeta Shori  
Pinjore

2. Dr Sangeeta Shori, Director

J.N Shori Multi Speciality Hospital, Nalagarh Road  
Pinjore

.....Petitioner(s)

Versus

1. KRISHAN LAL & ANR.

S/o Sh Rama Nand, R/o Village Tibbi, Post Office  
Mallah, Tehsil kalka

Panchkula

Haryana

2. National Insurance Co Ltd.,

Regional Office-II SCO No-337,340 Sector-35-B  
Through its Duly Constituted Attorney

Chandiagarh

Chandiagarh

.....Respondent(s)

**BEFORE:**

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

**For the Petitioner :**

**For the Respondent :**

**Dated : 23 Jul 2021**

**ORDER**

*Appeared at the time of arguments through video conferencing*

For Petitioners : Mr. Abhineet Taneja, Advocate

For Respondent No. 1 : Mr. Bharat Swaroop Sharma, Advocate

For Respondent No. 2 : Dr. Sushil Kumar Gupta, Advocate

**Pronounced on: 23<sup>rd</sup> July 2021**

## **ORDER**

1. The present Revision Petition was filed against the impugned Order dated 06.04.2012 of the State Consumer Disputes Redressal Commission, Haryana (for short "State Commission") whereby the appeal (Appeal No. 2160/2007) filed by the appellants was dismissed.

2. Brief facts are that Smt. Kiran, (hereinafter referred to as the 'Patient') the wife of the Complainant was under regular observation in Civil Hospital, Kalka during her pregnancy. On 15.07.2006, for labour pains she was admitted in Kalka Nursing Home at 9:00 a.m. and remained under observation of Dr. Nitasha upto 2.30 p.m. and then the patient was referred to the OP-1 – J.N. Shori Multi Specialty Hospital at 3:00 p.m. The OP-2 Dr. Sangeeta Shori performed caesarean section and a female baby was delivered at 5.30 pm. According to the complainant after the operation, the patient developed pain and she became critical and unconscious; therefore the OP-2 referred the patient to PGI Chandigarh without providing any medical attendant. The patient died on the way and she was brought back to the OP-1 hospital. The Death Certificate issued by the OP-2 stated the cause of death as septicemia with labour pains. Alleging medical negligence on the part of the OP-1 and OP-2 causing death of Complainant's wife, a Consumer Complaint was filed by the Complainant before the District Forum, Kalka.

3. The OPs-1 & 2 filed their reply and denied negligence during delivery. It was submitted that the patient was brought to OP-1 hospital in serious condition on 15.07.2006 having 50% effaced cervix, fever 102<sup>0</sup> F, pulse rate was high- 106 per minute and high respiratory rate - 28 per minute. It was diagnosed as septicemia and the treatment was started immediately to save the patient as well as the baby. The patient's hemoglobin was 6.2g%, OP-2 sent the ambulance to collect the blood two units from Rotary and Blood Societies Resources Centre, Chandigarh. At 5.30 p.m., after taking informed consent of her husband Krishan Lal, the Caesarian operation was performed. After the operation during closure of operative wound the patient suffered hypotension and convulsion. The Patient was revived, but again she developed hypotension, which did not improve further despite treatment; therefore for further management, the patient was shifted to PGIMS in their ambulance alongwith the nurse and Ambubag with O<sub>2</sub> and IV lines. However, the patient was brought back at 9.40 P.M. with unrecordable BP and pulse. Despite resuscitative efforts, the patient could not be revived and declared dead at 10.00 P.M.

4. After hearing the parties and appraisal of evidence, the District Forum allowed the Complaint and ordered the OPs to pay jointly and severally a lump sum compensation of Rs. 5,00,000/- failing which the complainant would be entitled to 10 % interest on the amount of compensation till actual realization.

5. Being aggrieved by the order of the District Forum, the Opposite Parties preferred two first appeals before the State Commission. The OPs-1 and 2 filed an Appeal No. 2160 of 2007, and Ins. Co (OP-3) filed an Appeal No. 2098 of 2007.

6. The State Commission accepted Appeal No. 2098/ 2007 and the relief against the Insurance co. (OP-3) was set aside. The Appeal No. 2160/2007 filed by OPs-1 and 2 was dismissed and directed the OPs-1 and 2 to pay the entire amount as awarded by the District Forum.

7. Being aggrieved the Opposite Parties 1 and 2 have filed this revision petition.

8. Heard the arguments from both the sides and perused the material on record *inter-alia* the medical treatment record of Kalka Nursing Home, J.N. Shori Multi Specialty Hospital and given the thoughtful consideration.

9. The main allegation of the Complainant was that the cause of death of his wife was either due to spinal shock because of excessive anesthesia or mismanagement, while applying anesthesia or excessive bleeding at the time of delivery which the OP-2 failed to control.

10. From the prescription issued by Kalka Nursing Home, it is evident that the patient remained in Kalka Hospital from 9.30 A.M. and then was taken to OP-1 hospital at about 4:30 P.M. At the time of admission she was suffering from high grade fever and anemia. The labour pains were increasing and there was acute foetal distress, therefore after informed consent emergency caesarean delivery was performed by the OP-2.

11. Secondly, the record shows the OP-2 was an anesthetist and she had not performed Caesarian operation. On perusal of the Operation theatre (OT) register, it is evident that Dr. Talwar- a Surgeon was regularly performing surgeries in the OP-1 hospital. The operative notes revealed that Dr. Talwar performed the Caesarian operation under spinal anesthesia and a female baby was delivered at 5.37 p.m. After delivery injection Methergin 2cc IV was given and Oxytocin drip was started (10 unit). It was recorded that approximately 350ml blood was lost. After closure of the uterus, the patient suddenly developed hypotension (BP 60/30 mm of Hg). The treating doctors immediately started Dopamine drip. In the meantime, the patient developed generalized convulsion and it was managed with inj. Midazolam and the patient showed some improvement, BP became 110/60 mm of Hg. The patient was then shifted to ICU at 6.15 P.M. The patient again developed hypotension which was treated with medicines and sent to PGIMS, Chandigarh for further management.

12. I would like to rely upon the judgment of Hon'ble Supreme Court in the case of **Jacob Mathew v State of Punjab** (2005) 6 SCC 1. It is known that in a critical and emergent situation, the medical practitioner is always left between the devil and the deep sea where the decision to be taken then and there. The medical practitioner faced with such an emergency always tries his best to redeem the patient out of his suffering. No sensible professional would intentionally commit an act or omission which would result in loss or injury to the patient.

13. It was further observed that a mere deviation from normal professional practice is not necessarily evidence of negligence. Let it also be noted that a mere accident is not evidence of negligence. So also an error of judgment on the part of a professional is not negligence per se. Higher the acuteness in emergency and higher the complication, more are the chances of error

of judgment. At times, the professional is confronted with making a choice between the devil and the deep sea and he has to choose the lesser evil. The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Which course is more appropriate to follow, would depend on the facts and circumstances of a given case. It further observed that so long as it can be found that the procedure which was in fact adopted was one which was acceptable to medical science as on that date, the medical practitioner cannot be held negligent merely because he chose to follow one procedure and not another and the result was a failure.

14. In my view, in the instant case the patient was in advanced stage of labour and it was an emergency. The decision of OP-2 was correct to perform emergency Caesarian operation to save the life of patient and the foetus. Therefore, not referring the patient to PGIMS was neither act of omission nor negligence of OP-2.

15. It is pertinent to note that the patient was initially admitted at 9.30 am in Kalka Nursing Home at Kalka for delivery. She was under observation of Dr. Nitasha from 9 am to 2.30 pm. It was diagnosed that the patient was in labour with signs of septicemia. However, Dr. Nitasha was monitoring the progress of labour and then referred the patient at 2.30 pm. In my opinion the patient could have been referred in the morning itself to PGIMS from the Kalka Nursing Home; but the crucial time was wasted till 2.30 pm. Unfortunately, at 4.30 pm, the patient reached the OP-1 Hospital in advanced labour with deteriorated condition. It was an emergency managed by the OP-2 doctor as per the standard reasonable practice. The duty of treating doctor is to decide the method of treatment depending upon the condition of the patients and the circumstances of each case, thus it cannot be construed as medical negligence.

16. The Hon'ble Supreme Court in the case of **Achutrao Haribhau Khodwa vs. State of Maharashtra & Ors** ., (1996) 2 SCC 634 , observed that in the very nature of medical profession, skills differ from doctor to doctor and more than one alternative course of treatment are available, all admissible. Negligence cannot be attributed to a doctor so long as he is performing his duties to the best of his ability and with due care and caution. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.

17. Both the fora did not observe any negligence while performing the operation, but erred and held OPs liable because the patient was not referred to PGIMS from the OP-1 Hospital. Based on the foregoing discussion, the findings of both the fora are not sustainable in the eyes of law. The Orders of both the lower fora are set aside. The Revision Petition is allowed. Consequently, the Complaint is dismissed.

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**DR. S.M. KANTIKAR**  
**PRESIDING MEMBER**