

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 38 OF 2021

(Against the Order dated 19/08/2020 in Appeal No. 1153/2016 of the State Commission Maharashtra)

1. DR. BALIRAM DHONDIRAM PARESWAR & ANR.Petitioner(s)

Versus

1. SAKUNTALA DEVI THEVARKAR NARAYANRespondent(s)

BEFORE:

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

For the Petitioner :

For the Respondent :

Dated : 27 Jan 2023

ORDER

Appeared at the time of arguments

For the Petitioners : Mr. Akash Kakade, Advocate

For the Respondent : Ms. Anubha Agrawal, Advocate

Amicus Curiae

Pronounced on: 27th January, 2022

ORDER

DR. S. M. KANTIKAR, PRESIDING MEMBER

The “Terrible Triad Injuries” of the elbow needs careful assessment. The proper identification of these lesions is quite demanding and their early management is a favourable prognostic factor for final outcome.

1. This Revision Petition has been filed by the Petitioners/Opposite Parties under Section 58(1)(a)(iii) of the Consumer Protection Act, 2019 against the Order dated 19.08.2020 passed by the State Consumer Disputes Redressal Commission, Maharashtra (for short “the State Commission”) in First Appeal No. A/16/1153, wherein the Appeal filed by the Opposite Parties was dismissed.

2. Brief facts that, the Complainant/Respondent Smt. Sakuntala Devi Thevarkar Narayan (for short the ‘patient’) sustained injuries to right wrist and elbow due to accident on 29.07.2011. She approached the Om Sai

Hospital and consulted an Orthopaedic surgeon Dr. Bharat Rathod (the OP-2). On 30.07.2011 OP-2 performed K -wire fixation surgery of lower end radius fracture and plaster was also applied. However, the pain persisted in the elbow joint. Thereafter, on 11.11.2011, the Complainant consulted another Orthopaedic Surgeon Dr. Parag Mhatre, who opined that it was a case of comminuted Colle's fracture right hand and the previous Orthopaedic Surgeon as well as the Radiologist had missed the elbow injury (dislocation and fracture). Being aggrieved, the Complainant filed Complaint before the District Consumer Disputes Redressal Forum, Thane (for short, the 'District Forum').

3. The District Forum partly allowed the Complaint and directed the Opposite Parties to pay compensation of Rs.3 lakhs jointly and severally in addition to the cost of litigation Rs.20,000/-.

4. Being aggrieved by the Order of the District Forum, the Opposite Parties filed an Appeal with the State Commission. The State Commission modified the compensation and dismissed the Appeal with the following observations:

“1. The Appeal is dismissed with costs of Rs.25,000/- (Rupees Twenty Five Thousand only) to be paid by the appellants jointly and severally to opponent, original complainant.

2. The order of District Consumer Forum is hereby modified that, the compensation Rs.3 Lakh to be paid by the appellant no.2 (original opposite party no.2) only within one month from the date of this order failing which the amount will carry interest @ 9% per annum till realization.

3. In addition to the above, compensation of Rs.4,80,000/- (Rs. Four Lakh Eighty Thousand only) towards loss of income of the original complainant, to be paid by both appellants jointly and severally within the period of one month from the date of this order, failing which it will carry interest @ 9% per annum till realization. Rest of the order is hereby confirmed.”

5. Being aggrieved, the Opposite Parties Nos.1 & 2 filed the instant Revision Petition.

6. We have heard the learned Counsel for both the sides. Perused the entire material on record inter-alia Orders of both the fora.

7. The learned counsel for OPs argued that the patient came with fracture of lower end of Radius. K-wire fixation and reduction required stable elbow. The minor dislocation of elbow was corrected under anaesthesia. Above elbow plaster of paris slab was given. After plaster removal, physiotherapy was advised and regained 0-95 degree movement at elbow joint. It was within acceptable range, which clearly indicates the elbow dislocation was treated successfully. Patient's limb was saved and stiffness was reduced. The restricted movements and disability cannot be due to dislocation of elbow.

8. The learned Amicus Curiae, Ms. Anubha Agrawal, argued that OP-2 missed the right elbow injury, which was not treated in time, causing deformity to the patient. She became incapacitated and lost her job. Apart from Dr. Mhatre, she consulted few other doctors at Nair Hospital Mumbai and also at her native place Ernakulum. At present she is residing in Kerala.

9. We have carefully perused the medical record. The Discharge Card of the OP hospital revealed the diagnosis as "Fracture Lower end of radius Right wrist (Intra-articular)". As per the Operative notes "Closed reduction with k wire fixation done under brachial block" on 30.07.2011. Even there was nothing mentioned in the follow-up notes about the condition of right wrist and whether any treatment was given to right elbow injury or not. It is surprising to note that according to the OP-2 "minor elbow dislocation was corrected under anaesthesia and above elbow POP slab was given to the patient". But, it was not corroborating with the actual notes in the discharge card and the consent form. We have gone through the medical literatures and Campbell's Operative Orthopaedics on the subject of Elbow dislocation/fracture. There is no terminology such as **MINOR** / **MAJOR** elbow dislocation.

10. It is pertinent to note that the Complainant consulted various hospitals for her pain and further treatment. The findings of different doctors are summed-up as below:

a) On 11.11.2011 the Complainant took 2nd opinion from Dr.Parag L. Mhatre at Vasai (W). His opinion and prescription (Ex.-B) revealed as below:

"Fracture Radial Head with elbow dislocation"

Though clearly evident on first X Ray (29.07.11) **NOT NOTED** By Radiologist and Ortho Surgeon.

Hence **NOT TREATED**

Adv: "Surgery hope result doubtful"

b) In early 2014, the Complainant consulted Nair Hospital, Mumbai wherein it was diagnosed as **"a case of unreduced Fracture dislocation of Right elbow"**. On 24.03.2014, CT Scan of right elbow was done at Nair hospital, it was reported by Dr. Ravi Varma, the Associate Prof Radiology that there was dislocation of radio-ulnar joint. The report reads as:

"dislocation of radio capitellar and trochlear ulnar joints with fracture of trochlea, capitellum and coronoid, olecranon processes of Ulna. Degeneration changes noted in elbow joint. Dislocation of upper radioulnar joint is also noted".

c) The Complainant filed another report of Ortho Surgeon Dr. Manoj C.K. from Govt Maharajas Taluk Hospital, Cochin that it was Radial head break along with elbow dislocation since 29.07.11.

d) The patient consulted at General Hospital, Ernakulam on 17.12.2015 wherein the Orthopaedic Surgeon Dr. Syril Cheriyan noted that it was persistent elbow dislocation since 2011 (Ex.-A).

11. Thus, as discussed *supra* [(a) to (d)], it is clear that there was dislocation of elbow since 29.07.2011, which was missed by OP-2 and remained untreated. From the literature and Campbell's Orthopedics it was a case of **Terrible Triad Injury (TTI) of Elbow** as named by Hotchkiss, is the combination of dislocation of the elbow joint combined with fractures of the radial head and ulnar coronoid process. It is often associated with collateral ligaments injuries.

12. The "terrible triad injury" of the elbow, the main objective in the management of such injuries is to restore the stabilizing bony structures of the elbow to convert a complex dislocation of the elbow joint into a simple one. However, proper identification of these lesions is quite demanding and their early management is a favourable prognostic factor for final outcome. Most TTI are managed surgically, and good results are achievable using a standard treatment protocol that includes fixation of the coronoid fracture, fixation or replacement of the radial head, and repair of the lateral collateral ligament (LCL).

13. In the instant case, the OP-2 operated the patient but the post-operative care was not as per standard reasonable practice. He called the patient to Sanjeevani hospital after 3 months. Also advised physiotherapy from Dr. Ayaj F. Ahmed, who conspicuously used letter head of Dr. Apotikar's ICCU Diabetes Care Obesity Centre. Therefore, the genuineness of the physiotherapist is also questionable on the point of how he posed as a 'doctor' and used letterheads of other doctor / clinic. Admittedly, the patient took physiotherapy from him for 12.10.2011 to 27.10.2011, and paid the charges also.

14. It is further to note that the Complainant was a working woman and no male member in the family became helpless and handicapped due to deformity of right hand. She, way back on 29.12.2011, filed a Complaint in Maharashtra Medical Council, Mumbai against Dr. B.D. Pareswar (OP-1). Surprisingly, for one year the MMC didn't take any action, but after one year, sent a letter to the Complainant that **the MMC has not taken any action as the Complainant has not fixed Court stamp of Rs.10/- on the affidavit.** It was not expected from MMC, which is a Professional Regulatory body to delay on trivial technicality.

15. Based on the foregoing discussion, we do not find any merit in the Revision Petition. Hence, dismissed.

We appreciate the efforts of the learned Amicus Curiae in assisting this Bench.

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DR. S.M. KANTIKAR
PRESIDING MEMBER

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BINOY KUMAR
MEMBER