

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 457 OF 2011

(Against the Order dated 10/06/2011 in Complaint No. 135/2008 of the State Commission Maharashtra)

1. JYOTI SHIVADAS

B-19, Paradise co-op hsg. society, Godrej Hill, Kalyan (W),

District- THANE-421301

MAHARASTRA

.....Appellant(s)

Versus

1. DR. KRISHNAKUMAR

Kumar Maternity And Surgical, Nursing Home, Shreeprasad,

Opp. Nehru Maidan, Dombivli (E)

District- THANE-421201

MAHARASTRA

.....Respondent(s)

BEFORE:

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

HON'BLE MR. BINOY KUMAR,MEMBER

For the Appellant :

For the Respondent :

Dated : 27 Mar 2023

ORDER

Appeared at the time of arguments:

For the Appellant : Mr. Tishampati Sen, Advocate

Mr. Anurag Anand, Advocate and

Ms. Uditia, Advocate

For the Respondent : Mr. G.N. Shenoy, Advocate

Pronounced on: 27th March 2023

ORDER

Dr. S. M. KANTIKAR, PRESIDING MEMBER

'for decades, non-steroidal anti-inflammatory drugs (NSAIDs) have been at the top of the list of potentially harmful medications in patients with Chronic Kidney Disease (CKD) , and this consensus continues to affect practice patterns today and sometimes mistakes do happen'[\[1\]](#).

1. The instant Appeal challenged the Order dated 10.06.2011 passed by the State Consumer Disputes Redressal Commission, Maharashtra (for short 'State Commission') wherein the Complaint filed by the Appellant was dismissed.
2. For the convenience, the parties are referred to as before the State Commission.
3. In brief since Sept 2005 the Complainant, Jyoti Shivadas (for short, the 'patient') was suffering from 'Stress Urine Incontinence' (for short 'SUI') and operated on 23.10.2006 by Dr. Krishnakumar (the OP) at his Kumar Maternity and Surgical Nursing Home at Dombivali (Mumbai). It was alleged that OP performed the SUI operation ignoring initial high Serum Creatinine (2.67 mg %). After the operation, OP prescribed medicines Dolamide, Odoxil-500, Ulozet & Neurobin and discharged her on 25.10.2006. It was alleged that after six month of the operation her blood pressure (BP) increased and on 26.10.2006 she consulted Dr. Suresh Thakkar, a Physician and Cardiologist at Kalyan. As there was no improvement in BP, Dr. Thakkar referred her to a Nephrologist. The blood Serum creatinine was raised to 5.2 mg% and the doctor informed the patient about renal impairment led to damage to both the kidneys (chronic kidney disease - CKD). It was due to wrongly prescribed Dolamide, containing Nimesulide. Thereafter, on 17.09.2007 she was admitted to Jaslok Hospital and found the Sr.Creatinin level 7.3mg%. There Dr. M. M. Bahadur told that SUI operation should not have been performed by the OP, when the serum creatinin level was 2.67 mg%. On 19.09.2007, AV fistula was created for regular dialysis. As per the discharge summary, she was a case of End Stage Renal Disease (ESRD) and was on regular hemodialysis since October, 2008.
4. Being aggrieved by the negligent treatment from the OP, the Complainant filed a Consumer Complaint in 2008 before the State Commission. She submitted that, subsequently in 2011, she underwent kidney transplant in Kerala. She suffered financial loss and presently incurring huge expenditure for continuous treatment.
5. The Opposite Party, in his reply denied any negligence. He submitted that since age of 28 years, the patient was already suffering from progressive kidney disorder. It was the cause of Chronic Renal Failure (CRF), dialysis and finally renal transplant. The OP further submitted that the Complainant has deliberately concealed her kidney disease. It got worsened due to uncontrolled hypertension, abnormal lipid levels and persistent proteinuria. The OP further submitted that administration of Dolamide for short period of 5 days will not cause CRF. He further submitted that tablet Dolamide containing drug Nimesulide is one of the safer form of NSAIDs (Non-Steroidal Anti-inflammatory Drug) with unique action, having less renal side effect. The OP relied upon the book 'Drug Today' (standard reference book for prescribing medicines), which stated that the NSAID can be used with caution in patients with Renal Dysfunction and is not totally contraindicated, especially if it is used for less than 15 days duration continuously. NSAIDS can cause acute renal problem only if taken for prolonged period of time, without interruption.
6. The State Commission, after going through the averments and evidence on record, dismissed the Complaint with following observation:

The Complainant had three high risk factors, which deteriorates kidney function and make the disease worsen, namely – uncontrolled hypertension, presence of proteinuria and ANA positive. The Complainant has not proved any specific allegation of any specific omission or commission on the part of the Opponent while attending the Complainant that amount to deficiency in service or negligence on the part of the Opponent. All required care & caution was taken by the health care providers inasmuch as the Complainant was not at all neglected in the pre, immediate or post-operative period. The Opponent has treated the Complainant by a line of treatment which is universally accepted. The Complainant has not filed any expert opinion to prove that the line of treatment adopted by the Opponent, as a doctor, was wrong. In the instant case, the Complainant's kidney failure was due to long standing hypertension, albuminuria and auto-immune disorder suffered by the Complainant since many years and not because of 10 tables of Dolamide, containing Nimesulide, taken by her.
7. Being aggrieved by the Order of State Commission, the Complainant filed the instant Appeal.
8. We have heard the learned Counsel on both the sides. They have reiterated the facts and the evidence before the State Commission.

9. We have perused the medical record, the evidence and literatures on drug induced Acute Renal Failure and the Standard text books Harrison's Internal Medicine, 20th Edition.

10. It is an admitted fact that since the age of 28 years the patient was known hypertensive, it was detected during her last pregnancy and she was under treatment of OP for more than a decade. In the month of Sept-2006, the patient approached the OP with urinary leak and urinary tract infection. The urodynamic tests confirmed SUI with significant urinary leak. She was operated on 23.10.2006 for SUI, by fixing of Trans-Obturator Tape (TOT) at middle urethra and discharged on 25.10.2006.

11. In April, 2007, for high blood pressure, she consulted Dr. Suresh Thakkar, the Cardiologist. There was no improvement in her high BP, therefore on 21.07.2007 she was referred to the Nephrologist – Dr. Avinash Chaudhary. The Sr. creatinin level was 5.2 mg%. Therefore, the Nephrologist informed the Complainant that her husband's both kidneys were damaged. Thereafter, patient was taken to Jaslok Hospital, Mumbai. Her creatinine level was 7.3 mg% on 17.09.2007 and for ESRD she was kept on regular haemodialysis under care of Dr. M.M. Bahadur of Jaslok Hospital.

12. The medical literature NSAIDs are known to worsen kidney function in CKD patients. In the instant case was it a direct cause of ESRD. NSAID-associated Acute Kidney Injury (AKI) is predominantly hemodynamically mediated, resulting in reversible reduction in GFR or ischemic tubular injury. NSAIDs are associated with adverse renal outcomes, and their risk must be weighed against the benefit of improved pain control. An accurate risk assessment must be highly individualized based on CKD stage, age, comorbid conditions, and concomitant medication^[2].

13. We note that SUI surgery was performed in October 2006 at that time Sr. Creatinin was 2.67 mg%. In April 2007 Sr. Creatinin was 5.2 mg% and in September 2007 it was 7.3 mg%. In our view, the rise was not due to consumption of Dolamide for 5 days. It should be borne in mind the patient was known case of hypertensive and on medication for a decade. Rise in Sr. Creatinin was due to chronic process of renal damage, not due to short use of Dolamide which induces Acute Renal Injury. Thereafter patient was kept on regular haemodialysis and after the gap of 4 years, on 31.09.2011 renal transplant took place at Westfort Hospital, Thrissur (Kerala).

14. Let us examine the law laid down by Hon'ble Supreme Court on medical negligence. In the case, **Kusum Sharma and ors v. Batra Hospital and Medical Research Centre & Ors.**^[3], held that the breach of expected duty of care from the doctor, if not rendered appropriately, it would amount to negligence. It was held that, if a doctor does not adopt proper procedure in treating his patient and does not exhibit the reasonable skill, he can be held liable for medical negligence.

15. The doctors are liable for medical negligence, where they act carelessly, results an action in torts. The Hon'ble Supreme Court in the case of **Spring Meadows Hospital v Harjyot Ahluwalia**^[4], observed as:

“Very often in a claim for compensation arising out of medical negligence a plea is taken that it is a case of bona fide mistake which under certain circumstances may be excusable, but a mistake which would tantamount to negligence cannot be pardoned. In the former case a court can accept that ordinary human fallibility precludes the liability while in the latter the conduct of the defendant is considered to have gone beyond the bounds of what is expected of the skill of a reasonably competent doctor...’

16. In the case on hand, the crucial question is that whether before prescribing Dolamide opinion of Nephrologist was necessary. Admittedly, the OP was a surgeon and as a common practice, painkiller like Dolamide is prescribed for short period. But in the instant case, the OP was aware that Sr. Creatinin was 2.57 mg%, the patient was in renal compromise, thus he should be very careful while further prescribing Dolamide to avoid further renal damage. Thus, in our considered view opinion from the physician or Nephrologist was necessary, particularly in this case. The OP would have told/discussed with the patient about the risks of use of NSAID. It was a failure of duty of care from OP. It was not even an ‘*error of judgment*’. We also note that, after discharge, the patient did not come for follow-up with Renal Function Tests, thus it was Contributory negligence. It is pertinent to note that there was a long gap after consumption of Dolamide tablets and the evidence of ESRD. The rising Sr. creatinin values indicate, that

Dolamide precipitated the renal damage in the existing renal disease. It was a team work, opinion of Nephrologist would have certainly avoided the mistake. Thus, advising Dolamide tantamount to negligence of the OP to certain extent. Therefore, in our view, the OP was not liable completely for the ESRD and subsequent renal transplant.

17. Based on the discussion above, the OP is liable for limited extent, the entire negligence can't be attributed to OP for ESRD and renal transplant. By no stretch of imagination, we should award a paltry sum for gross negligence; conversely exemplary compensation need not be awarded in case minimal negligence. Therefore, considering the peculiar facts of this case and in the ends of justice the OP is directed to pay Rs. 2 lakh to the Complainant within 6 weeks from today, failing which the amount shall carry 9% interest per annum till it's realization.

The instant First Appeal is partly allowed.

There shall be no order as to costs.

[1] *Am J Kidney Dis.* 2017; 69: 451-460

[2] *Am J Kidney Dis.* 76(4):546-557.

[3] (2010) 3 SCC 480

[4] (1998) 4 SCC 39

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DR. S.M. KANTIKAR
PRESIDING MEMBER
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BINOY KUMAR
MEMBER