

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 501 OF 2012

(Against the Order dated 25/06/2012 in Complaint No. 13/2003 of the State Commission Jharkhand)

1. CHIEF MEDICAL OFFICER, ISPAT HOSPITAL & 4 ORS.
Ispet Hospital, Shyamali, H.S.L. Colony, P.O. and P.S. Doranda,
District- Ranchi
Jharkhand

2. DR. P.K. AGRWAL
Qr. No. K-42, Shyamali, H.S.L. Colony, Doranda, P.O. & P.S.
Doranda,
District-Ranchi
Jharkhand

3. DR. S.K. MISHRA, S/o. Sri Shyam Sundar Mishra,
Qr. No. K-42, Shyamali, H.S.L. Colony, Doranda, P.O. & P.S.
Doranda,
District-Ranchi
Jharkhand

4. DR. C. SREENIVASULU, S/o. Late Rama Chand
Chandrayya C,
Qr. No. K-88, Shyamali, H.S.L. Colony, Doranda, P.O. & P.S.
Doranda,
District-Ranchi
Jharkhand

5. MECON LTD.
Having is Office at Doranda, P.O. and P.S. Doranda, Ranchi,
District-Ranchi
Jharkhand

.....Appellant(s)

Versus

1. PETER ANAND KUMAR EKKA & 3 ORS.
Son of Late John Ekka, Qr. No. C-6, Shyamali, H.S.L. Colony,
P.S. Doranda, P.O. Doranda,
Ranchi-834002
Jharkhand

.....Respondent(s)

2. ANURAG AUGUSTINE EKKA
S/o. Sri Peter Anand Kumar Ekka, All Residents of Qr. No. C-6,
Shyamali, H.S.L. Colony, P.S. Doranada, P.O. Doranda,
Ranchi-834002
Jharkhand

3. ANUJ ANTHONY EKKA
S/o. Sri Peter Anand Kumar Ekka, All Residents of Qr. No. C-6,
Shyamali, H.S.L. Colony, P.S. Doranada, P.O. Doranda,
Ranchi-834002
Jharkhand

4. ANDUR RAZZAQUE ANSARI MEMORIAL WEAVERS'
HOSPITAL (APOLLO HOSPITALS GROUP)
Through its Medical Superintendent. at- and P.O. Irba,

District- RANCCHI
Jharkhand

BEFORE:

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

For the Appellant :

For the Respondent :

Dated : 06 Apr 2023

ORDER

Appeared at the time of arguments:

For the Appellant : Ms. Nandini Sen, Advocate

For the Respondents : R-1 deleted vide Order dated 21.06.2021

Mr. Kaushik Poddar, Advocate for R-1 to 3

Mr. Tripurari Ray, Advocate for R-4

Ms. Ruchika Prasad, Advocate for Medanta

Pronounced on 06.04.2023

ORDER**Dr. S. M. KANTIKAR, PRESIDING MEMBER**

1. The instant appeal is a challenge against the impugned Order dated 25.06.2012 passed by Jharkhand State Consumer Disputes Redressal Commission Ranchi (for short 'the State Commission') in CC No. 13 of 2003 whereby the State Commission held the Opposite Parties Nos. 1 to 5 (Appellants herein) liable for medical negligence. The State Commission dismissed the complaint against the Apollo Hospital, the OP No. 6 (Respondent No. 4 herein).

2. Brief facts that, on 02.07.2001 the Complainant's wife Smt. Sudha Ekka, aged 45 years (since deceased hereinafter referred to be the 'patient') was operated by Dr. P.K. Agrawal for laparoscopic cholecystectomy (removal of gall bladder) in the ISPAT Hospital (OP-1). During hospital stay on 09.07.2001, the bile discharge found to be abnormally high. Therefore on the next day she was referred to Andur Razzaque Ansari Memorial Weavers' Hospital (OP-6), (for short 'Apollo Hospital'). There ERCP was performed but it remained incomplete as the doctor was unable to cannulate the Common Bile Duct (CBD). Finally, Hepaticojejunostomy operation was performed, but her condition deteriorated from 22.07.2001 and she expired on 24.07.2001. The cause of death was mentioned as 'Biliary Peritonitis', internal bleeding leading to cardio respiratory failure.

3. Being aggrieved, the Complainants (the husband and two sons) have filed the Consumer Complainant before State Commission. For the convenience all the Complainants are collectively further referred as a Complainant.

4. All the OPs filed their replies. M/s ISPAT Hospital (OP-1) and the doctors have denied any deficiency and medical negligence. Dr. P.K. Agrawal during the proceedings expired therefore his name was deleted from the array of parties. Dr. S.K. Mishra and Dr. Sreenivasulu have filed their replies, denied any negligence during operation and post-operative care. The allegation of Complainant was vague. The treating doctors have chosen appropriate method based on the condition of the patient. The laparoscopic procedure is a least invasive and safe method for the instant patient as she was diabetic and obese. It was further

submitted that as entire preparations were ready, the procedure cannot be changed abruptly with short notice. Therefore allegation of Consent was taken for open surgery and it was changed to the laparoscopic, which was not sustainable. It was denied that due to negligence the CBD was injured and caused biliary leakage. The Apollo Hospital (OP-6) denied about the removal of the drainage tube on 11.07.2001. It was submitted that the drainage tube came out on its own. It was denied that the open surgery was delayed till 17.07.2001. The operation was not possible because of fluctuating blood sugar levels of the patient. Thus there was no deficiency or negligence.

5. After hearing both sides and considering the entire material on record & evidence, the State Commission partly allowed the Complainant and held the OP-1 to 5 (Appellants herein) liable to pay Rs. 25 lacs along with interest @9% and Rs.1 lac towards litigation charges to the Complainants. The State Commission dismissed the complaint qua the Apollo Hospital (OP No. 6).
6. Being aggrieved the OP-1 to 5 have filed the instant Appeal.
7. Heard the arguments from the parties.
8. The learned counsel for Complainants argued that the doctors at ISPAT Hospital during laparoscopic cholecystectomy had cut the CBD instead of cystic duct and wrongly clipped the lower trunk of CBD leaving upper part of duct un-clipped. It resulted in uncontrolled biliary leak in the peritoneal cavity and biliary peritonitis. However, the doctors were not serious. They just waited till 10.07.2001 and then referred for ERCP at Apollo Hospital (OP-6) to shift their liability on OP-6. Moreover, the doctors in OP-6 were also careless and performed ERCP negligently. They removed the drainage tube in the night on 10.07.2001. The doctors delayed further surgery till 17.07.2001, which resulted into accumulation of bile in the peritoneal cavity, thus, biliary peritonitis and death of patient. The learned Counsel for the Complainants pointed out the erroneous entries in the bed head ticket and the ERCP procedure. The doctors and staff at OP-6 have created the impression that the CBD was injured at ISPAT Hospital during laparoscopy.
9. The arguments from the Opposite Parties from OPs - 1-5 reiterated their evidence and the mode of treatment adopted by them.
10. The learned Counsel for M/s. Apollo Hospital (OP – 6) argued that the Complaint against OP-6 was barred by limitation. The OP-6 was impleaded in this complaint after considerable delay. The patient was referred when her condition was already deteriorated. The ISPAT Hospital tried to shift its liability of negligence and deficiency on OP-6 which was barred by limitation. The ERCP was difficult and incomplete. The doctors at Apollo Hospital took all possible steps to save the life of patient.
11. We have perused entire medical record, also took reference from several medical literature on CBD injuries and gone through the Standard text books on surgery. We have perused the expert opinion.
12. The medical record of ISPAT Hospital revealed that the patient underwent laparoscopic cholecystectomy on 02.07.2001. Admittedly, after the surgery, there was large drainage of bile till 09.07.2001 and no steps to investigate or stop the leakage were taken. It is pertinent to note that the patient was referred for ERCP after 9 days which was the ultimate cause of biliary peritonitis. The Appellants failed to produce the USG films in support of their case. The State Commission rightly observed.
13. It is pertinent to note that, the Experts, Dr. Ram Bali Sinah and Dr. Majid Alam (former Prof. of Surgery at Ranchi Medical College) examined the medical record. They have opined that the consent was general in nature without specifying the procedure. The bile duct injury was evident from bile collection in the drain. Therefore, the patient was referred to Apollo Hospital, but the ERCP was not successful. Therefore, for open surgery, the patient was referred to the Surgeon Dr. N.A.M. Ali. He performed open surgery on 17.07.2001 and confirmed the CBD injury. He performed surgery of Hepaticojejunostomy for biliary bypass. The experts opined that there was no negligence.
14. We have carefully perused the biliary drainage record. It is evident that after the surgery large amount of bile was drained for a week (03 to 09 of July, 2001). The daily bile drainage was recorded as below:-

03.07.01	04.07.01	05.07.01	06.07.01	07.07.01	08.07.01	09.07.01
175ml	300ml	Insignificant	250ml	250ml	200ml	450ml

On bare perusal of the table, it is clear that, the biliary leakage was significant. The USG abdomen revealed of large collection in sub-hepatic space.

15. It is pertinent to note that on 17.07.2001, Dr. N.A.M. Ali at Apollo Hospital performed exploratory laparotomy and Hepaticojejunostomy. On careful perusal of operative notes (Page No. 150) it was clearly recorded that **“Large amount of bile in the peritoneal cavity, CBD had been divided, leakage of bile from the cut end of CBD”**.

16. It is pertinent to note that the State Commission erred, which, despite having held that Apollo Hospital (OP-6) was negligent, dismissed the Complaint qua OP-6 as barred by limitation. We note that during first round of litigation in FA No. 860 of 2003, this Commission, vide order dated 28.04.2010, remitted back the matter to the State Commission to implead OP-6. The OP-6 never challenged that Order, thus it attained finality. Therefore, the impleadment of OP-6 was not barred by limitation.

17. We deem it more appropriate to go through the para no.12 & 14 of the Complaint. It is stated as below:

12.....xxx.....

On 11.07.2001, ERCP test of Sudha Ekka was done but the same was without any result because bile flow was tremendous, connecting discharge tube also came out with all the bile following form body, subsequently from the USG test large deposit of bile inside abdomen was detected."

13.....xxx.....

14.....xxx.....

That the death of Sudha Ekka was caused due to erosion of tissues of abdomen by continuous storage of bile for almost twenty days. After operation on 02.07.2001 at Ispat Hospital when bile flow did not stop, no open surgery was done there”

It is pertinent to note that, the drainage tube was removed, but it was not clear whether it was removed at ISPAT or APOLLO.

Thus, it proves that there was leak of bile due to CBD injury.

18. The medical record of Apollo Hospital revealed that on 10.07.2001 at 11 PM, it was recorded as “C/o drainage tube removed”. Thus, it confirms in Apollo Hospital that the drainage tube was removed. Thereafter, the ERCP was performed on next day. It was not successful, therefore, the decision to perform open surgery was taken. But it was not done immediately. Nothing is forthcoming as to why the patient was kept waiting till 17.07.2001. The findings of bile drainage during intervening period i.e. 11.07.2001 to 16.07.2001 were conspicuously missing. It was just mentioned that abdomen soft and there was no leakage from drain site. Since the drain tube was removed, the abdominal accumulation of bile increased. The doctors / staff on duty at Apollo Hospital failed to insert drainage tube, which could have accumulated the bile. Thus, the condition of the patient further deteriorated.

19. We would like to rely upon few decisions of the Hon’ble Supreme Court, which laid down the law on medical negligence and the liability of hospital and doctors. In the cases of **Dr. Laxman Balakrishna Joshi vs. Dr. Trimbak Babu Godbole & Anr.**[\[1\]](#) and **A.S. Mittal vs. State of U.P.**[\[2\]](#), it was observed that the doctor owes to his patient certain duties which are:

- a. a duty of care in deciding whether to undertake the case;
- b. a duty of care in deciding what treatment to give; and
- c. a duty of care in the administration of that treatment.

Taking clue from above judgment, it is clear that at ISPAT hospital, during laparoscopy, the CBD was cut, whereas in Apollo Hospital, after ERCP, the doctors delayed the exploratory laparotomy for a week. Thus, in our considered view, the doctors at both the hospitals (ISPAT & Apollo) failed in their duty of care. It further resulted into biliary peritonitis and death of the patient.

In another case of **Kusum Sharma & Ors. v. Batra Hospital and Medical Research Centre & Ors.**^[3], it was held that the breach of expected duty of care from the doctor would amount to negligence. It was further 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.

20. We do not agree with the State Commission which dismissed the complaint against the OP-6 (Apollo Hospital) relying upon the Discover Rule as discussed by the Hon'ble Supreme Court in **V.N. Shrikhande (Dr.) Vs. Anita Sen Fernandez**^[4] case. However, in the case in hand, it is pertinent to note that the patient was operated in two Hospitals and sustained injuries, which led to the death. From ISPAT Hospital, she was referred to Apollo Hospital, but the Complainant raised the entire allegations on OP-1 only. Therefore, merely on such technicality, the OP-6 cannot be exempted from its liability of negligence, otherwise, it would defeat the principles of natural justice under the Consumer Protection Act, 1986.

21. Based on the discussion above, we hold the doctors at ISPAT and Apollo Hospital liable for not exercising their reasonable skills and failed to provide standard of reasonable care. Thus, both the hospitals are vicariously liable for the acts of their employees (doctors). We find the State Commission has awarded just and adequate compensation, but erred while deciding negligence against the OP-6 (the Apollo Hospital).

22. Considering the entirety of the fact of the case, we affirm the Order of State Commission with the modification that the compensation awarded by the state commission shall be paid in equal proportion by the OP-1 & OP-6 within 6 weeks from today, failing which, the entire amount shall carry interest @10% p.a. till its realization.

23. Accordingly, the Appeal is dismissed with above modification.

The Parties to bear their own costs.

[1] AIR 1969 SC 128

[2] AIR 1989 SC 1570

[3] (2010) 3 SCC 480

[4] IV (2010) CPJ 27-38 (S.C.)

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DR. S.M. KANTIKAR
PRESIDING MEMBER

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BINOY KUMAR
MEMBER