

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 266 OF 2011**

(Against the Order dated 28/01/2011 in Complaint No. 13/2007 of the State Commission  
Kerala)

1. THE MANAGING DIRECTOR, MOTHER HOSPITAL  
(P)LTD.

MOTHER HOSPITAL (P)LTD. P.O.PULLAZHI, OLARI  
REPRESENTED

THRISSUR-680012

KERALA

.....Appellant(s)

Versus

1. MANJU P. & ORS.

W/O JITHESH, VADAKKUMCHERY HOUSE,  
ENGANDIYUR VILLAGE, CHAVAKAD TALUK

THRISSUR

KERALA

2. JITESH

S/O DHARMAPALAN, VADAKKUMCHERY HOUSE,  
ENGANDIYUR VILLAGE, CHAVAKAD TALUK,

THRISSUR

KERALA

3. DEVADUTT (MINOR)

REP. BY SRI JITHESH (RESPONDENT NO. 2)

4. DR. AMBADY RAMAKRISHNAN

AMBADY COLOUR DOPPLER SCAN CENTRE, S.K.V.C.  
ROAD,KANATTUKARA

P.O. THRISSUR-680011

KERALA

.....Respondent(s)

**FIRST APPEAL NO. 275 OF 2011**

(Against the Order dated 28/01/2011 in Complaint No. 13/2007 of the State Commission  
Kerala)

1. DR. AMBABY RAMKRISHNAN

AMBADY COLOUR DOPPLER SCAN CENTRE, S.K.V.C.  
ROAD, KANATTUKARA P.O.,

THRISSUR

KERALA-680011

.....Appellant(s)

Versus

1. MANJU P. & ORS.

W/O. JITHESH, VADAKKUMCHERY HOUSE,  
ENGANDIYUR VILLAGE, CHAVAKAD TALUK,

THRISSUR

KERALA

2. JITESH

S/O, DHARMAPALAN, VADAKKUMCHERY HOUSE,  
ENGANDIYUR VILLAGE, CHAVAKAD TALUK,

.....Respondent(s)

THRISSUR DIST, KERALA

3. DAVADUTT (MINOR)

REPRESENTED BY SRI. JITESH (2ND RESPONDENT),  
VADAKKUMCHERY HOUSE, ENGANDIYUR VILLAGE,  
CHAVAKAD TALUK, THRISSUR DIST, KERALA

4. MOTHER HOSPITAL (P) LTD.,

P.O.PULLAZHI OLARI, THRISSUR, KERALA-680012  
REPRESENTED BY ITS MANAGING DIRECTOR.

**FIRST APPEAL NO. 49 OF 2012**

(Against the Order dated 28/01/2011 in Complaint No. 13/2007 of the State Commission  
Kerala)

1. MANJU P. & ORS.

W/o Jithesh, Vadakkumchery House, Engandiyur Village,  
Chavakad Taluk,

TRISSUR DISTT-

KERALA

2. JITESH S/O DHARMAPALAN,

Vadakkumchery House, Engandiyur Village, Chavakad Taluk,

TRISSUR DISTT,

KAERAL

3. DEVADUTT (MINOR)

Rep. by Sri Jitesh, Vadakkumchery House, Engandiyur Village,  
Chavakad Taluk,

TRISSUR DISTT,

KERALA

.....Appellant(s)

Versus

1. MOTHER HOSPITAL (P) LTD. & ANR.

Rep. By Managing Director, P.O. Pullazhi Olari, Trissur,

TRISSUR

KERALA

2. DR. AMBADY RAMAKRISHNAN

Ambady Coour Doppler Scan Centre, S.K.V.C. Road,  
Kanattukara P.O.

TRISSUR

KERALA-680011

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. JUSTICE A. P. SAHI, PRESIDENT**

FOR THE APPELLANT :

FOR MOTHER HOSPITAL (P) LTD. & ANR. : MR.RAGHENTH  
BASANT, ADVOCATE MS.PRERNA ACHARYA, ADVOCATE

FOR DR.AMBADY RAMKRISHNAN : DR.S. GOPAKUMARAN  
NAIR, SR. ADVOCATE

MS.PRIYA BALAKRISHNNAN, ADVOCATE (THROUGH VC)

FOR MANJU P. & ORS. : DR.KYLASANATHA PILLAY, SR.  
ADVOCATE

MR.A.VENAYAGAM BALAN, ADVOCATE (THROUGH VC)

FOR THE RESPONDENT : FOR MOTHER HOSPITAL (P) LTD. & ANR. : MR.RAGHENTH BASANT, ADVOCATE MS.PRERNA ACHARYA, ADVOCATE  
 FOR DR.AMBADY RAMKRISHNAN : DR.S. GOPAKUMARAN NAIR, SR. ADVOCATE  
 MS.PRIYA BALAKRISHNNAN, ADVOCATE (THROUGH VC)  
 FOR MANJU P. & ORS. : DR.KYLASANATHA PILLAY, SR. ADVOCATE  
 MR.A.VENAYAGAM BALAN, ADVOCATE (THROUGH VC)

**Dated : 03 January 2024**

**ORDER**

1. These three Appeals have been filed arising out of the same Order of the Kerala State Consumer Dispute Redressal Commission dated 28.01.2011.
2. The two Complainants, who are husband and wife and were employed abroad in the Computer Sector came to the Appellant Mother Hospital Ltd. in First Appeal No.266 of 2011 for consultation from one Dr. V.P. Paili, a Gynecology Specialist. The Complainant Manju states that she had a history of abortion during the previous pregnancy and therefore being cautious got her preliminary examination as directed by Dr.Paili through an Ultrasound Scanning at the Scanning Centre attached to the Hospital itself. Dr.Ambady Ramkrishnan, the Appellant in FA No.275 of 2011 was the Consultant Radiologist and employed in Mother Hospital. The Ultrasound Scanning conducted on 02.09.2005 indicated all parameters to be normal. This Ultrasonography was done when the foetus was about nine weeks five days old. The Ultrasonography Report is extracted herein under:-

***Mother Hospital (P) Ltd.***

<b>NAME :</b>	KZMIU.	<b>MRD. No.:</b>	190895.
<b>AGE :</b>	31.	<b>DATE :</b>	1.
<b>SEX :</b>	F.	<b>REF. DR :</b>	<i>Vasanthi Jayaraj</i>
		KLP.	1.
		•	<b>38W + 3D</b>

***ULTRASOUND OBSTETRICS***

***Single : Multiple***

***: Single***

**Presentation : Breech**

**BPD : 89 mm = 36W + 1D**  
**FL : 69 mm = 35W + 5D**  
**AC : 308 mm = 34W + 6D**  
**HC : 322 mm = 36 W + 3D**  
**Foetal weight : 2.6 kgms**  
**Placenta : Fundal posterior grade-III**  
**Amniotic Fluid Volume : Mild Oligohydramnios**

**(AFI-7.6 cm)**

**Foetal Movements : Present**

**FH : Present**

**Breathing movements : Present**

**Doppler study: S/D in UA : 2.4**

**S/D in MCA : 3.4**

**No gross anomalies noted**

**Foetal anatomy : Impression**

**Single Foetus of calculated gestational age of 35 weeks + 5 days**

**Dr. Ambady Ramakrishnan, MD,**

**Consultant Radiologist**

**During the ultrasound examination the gender of the foetus was not revealed.**

**Mother Hospital (P) Ltd.**

<b>NAME :</b>	KZMIU.	<b>MRD. No.:</b>	
<b>AGE :</b>	31.	<b>DATE :</b>	1.

			•
<b>SEX :</b>	F.	<b>REF. DR :</b>	<b>V.P. Paily</b>
		KLP.	1.
		•	<b>9W + 5D</b>

### **ULTRASOUND OBSTETRICS**

***Uterus is enlarged with an intrauterine gestational sac with a foetal node showing cardiac activity.***

***CRL : 29 mm = 9W + 5D***

***Amniotic fluid is adequate.***

***Both ovaries are normal.***

***No adnexal mass.***

***POD clear.***

#### **Impression**

***INTRAUTERINE SINGLE LIVE GESTATION OF 9 WEEKS + 5 DAYS.***

***Dr. Ambady Ramakrishnan, MD,***

***Consultant Radiologist***

***Ambady Colour Doppler Scan Center***

***S.K.V.C. Road, Kanattukara P.O. Thrissur. PH : 2382007***

<b><i>Patient Name</i></b>	<b><i>MRS. MANJU</i></b>	•	<b><i>31 YEARS</i></b>
<b><i>Ref. Doctor</i></b>	<b><i>Dr.Vasanthi Jayaraj</i></b>	•	<b><i>EDKZKE.</i></b>
<b><i>ID No.</i></b>	<b><i>1.</i></b>	<b><i>Visit Date</i></b>	<b><i>1.</i></b>

**2D-3D & 4D EXAMINATION OF ULTRASOUND OBSTETRICS**

**Presentation : Breech**

**BPD: 6.7 CM Corresponding to 25 weeks 3 days**

**HC: 26.0 CM Corresponding to 28 weeks 0 days**

**AC: 20.8 CM Corresponding to 25 weeks 2 days**

**.....: 4.8 CM Corresponding to 25 weeks 5 days**

**Average Gestational Age: 26 W 1D**

**Gestational Age By LMP: 26W 2D**

**Foetal Weight: 196 GMS**

**Placenta: Fundal Posterior, Grade: 2**

**Amniotic Fluid: Adequate**

**FH: Present**

**Foetal Tone: Good**

**Foetal Movements: Present**

**Breathing Movements: Present**

**Umbilical Cord: 3 Vessels**

**Doppler Study:**

**Right Uterine Artery RI: 0.49 (No Notching)**

**Left Uterine Artery RI: 0.66 (No Nothching)**

**Foetal Anatomy:**

**Brain Normal**

**Face Normal**

**Neck Normal**

***Four Chamber View of Heart Normal******Abdomen Normal******Kub Normal******Limbs Normal******No Gross Congenetal Anomalies***

o

***26 to 27 weeks, Single Live Foetus of Sonar Gestational Age of Gestational Age by LMP: 26 to 27 weeks.***

***Dr. Ambady Ramakrishnan, MD,***

***Consultant Radiologist***

3. According to the Hospital and the concerned Doctor, she had been advised to consult the Gynecologist and also for further Ultrasonography on periodical intervals as according to them the correct picture of the formation of the foetus is available best during Ultrasonography when it is 18 to 20 weeks old.
4. According to the contesting Hospital and the Doctor, the Complainant got herself investigated abroad where she is working in the Middle East on 02.09.2005 where the development of the foetus was reported to be normal. Then again in the second trimester on 10.11.2005, when she was in the Middle East, no congenital abnormality was detected and the placenta was found to be posterior. These facts have however been denied by the Complainant contending that no such tests were either carried out and as a matter of fact she came back to India and got herself examined only on 28.12.2005. The Ultrasonography conducted on that date by Dr. Ambady also reported that the amniotic fluid was adequate but the position of the foetus was breech. The Ultrasonography was, however, taken after 26-27 weeks, but then no congenital abnormality was detected and to the contrary the said Report indicates that the limbs were normal.
5. The Complainant alleges that another Ultrasonography was carried on 11.03.2006, which was nearly a month before the expected date of delivery where again the same conditions were reported with a clear impression that no gross anomalies were noted.
6. The Complainant, therefore, went ahead with the planned delivery in the hope that she would be giving birth to a normal healthy child. She was, however, advised a Cesarean operation for the delivery but the child was born unfortunately with serious limb anomalies inasmuch as the two legs of the baby from knee downwards were not there and the right hand from above the elbow downwards were also missing.
7. The Complainant mother and the child were discharged on 01.04.2006 and then a lifelong agony commenced and experienced as the child would have to be provided

- with artificial limbs and had to be nursed and cared by a helper for the rest of his life.
8. The Complainant alleges that had these anomalies been detected at an earlier stage she could have exercised the option of abortion, but because of the negligence and carelessness as well as reckless casual report submitted by the Doctor, the tragedy could not be averted, hence this deficiency being a gross deficiency was complained of through CC/13/2007 before the State Commission.
  9. The Doctor and the Hospital contested the said claim by urging that the patient was informed for regular antenatal checkup and the conduct of the another Ultrasonography study at 18-20 weeks of the pregnancy to detect any anomalies. It was contended that this anomaly scan was not undergone by the mother when the foetus was 18-20 weeks old as advised by the concerned Doctor and the Hospital, who are in Appeal before this Commission. The patient, however, is alleged by them to have brought some Ultrasonography Report from the Gulf, which also did not indicate any abnormality or anomaly.
  10. It was further submitted that the Ultrasonography, which was conducted on 28.12.2005 at the Hospital was not to detect any anomalies, as the ideal time for detecting such anomalies is only between 18-20 weeks. It is also urged that the Amniotic Fluid had reduced and was less and, therefore, the level of detection of any anomalies stood considerably reduced according to medical protocols. It was urged that in such a situation, the Ultrasound will not show the optimal growth or condition of the baby. Even if any anomaly is detected after 20 weeks, then the MTP Act 1971, which is applicable in India does not allow any abortion. Thus, the allegations about any detection later on and any negligence prior to that cannot be alleged against the Hospital and Dr. Ambady as they conducted the Ultrasonography far beyond 18-20 weeks of the pregnancy. The evaluation made by them was at a stage when the anomalies could have not been detected with accuracy due to the breech foetal position and the lessening of the amniotic fluid. Even otherwise the accuracy rate of such detections is between 45-55% and all the anomalies according to the Doctor and Hospital cannot be and necessarily be detected in every examination.
  11. After having examined the evidence on record and the Ultrasonography Reports referred to above, the State Commission came to the conclusion that the Ultrasonography Reports did indicate adequate amniotic fluid and, therefore, the conclusion drawn by the Doctor was not correct. The contention of the Opposite Party about any examination of the mother or the expected child being made in the Gulf Country was disbelieved inasmuch as there was no document to support the notings in the case sheet, hence it was held that no reliance can be placed thereon with regard to any Ultrasound, Scanning or other investigation between 02.09.2005 to 28.12.2005.
  12. While proceeding to discuss the issue of any negligence during Radiological Ultrasound Examination, the State Commission also took into account the expert evidence of Radiologist, who was working as a Professor in the Department of Radiology, Medical College, Thiruvananthapuram. His deposition has been considered and it has been held that wrong Scanning Reports were tendered by the Doctor and then has proceeded to hold the Doctor and the Hospital liable to pay Rs.75,000/- each being jointly and severally liable for negligence. A sum of Rs.1,50,000/- has been awarded as compensation together with a cost of Rs.1,500/- and in the event of any failure to pay the amount, the same would carry an interest of 9% per annum from the date of the Order.



13. At the outset it may be mentioned that the Complainants have filed FA No.49 of 2012 being aggrieved by the quantum of compensation awarded, which the learned Senior Counsel contends is a pittance and is totally disproportionate to the nature of the negligence established and loss which has occurred to the Complainants. In the said Appeal, therefore, there is a claim for enhancement of the amount of the compensation with a request to confirm the other findings recorded by the State Commission.
14. The Hospital namely the Mother Hospital and the Doctor namely Dr.Ambady Ramakrishnan have filed their Appeals assailing the impugned judgment on merits and contending that there was neither any negligence established nor there was any deficiency of service so as to warrant the imposition of liability on them. The argument of the learned Counsel for the Hospital as well as for the Doctor are to the effect that it was the Complainant who failed to get the investigation conducted within the time prescribed and as intimated inasmuch as the Ultrasonography Test or anomaly scan, which was to be repeated between the 18-20 weeks of the foetus was never conducted nor any evidence in that regard has been brought forth. It is submitted that having failed to get the Ultrasonography Test conducted between 18-20 weeks of the pregnancy there was little chance of any detection in the anomaly test, later on which was admittedly conducted in December, 2005 when the Complainants came from the Middle East to India and was done when the foetus was 26-27 weeks old. This according to the learned Counsel for the Hospital and the Doctor was a voluntary choice and conduct of the Complainants as they did not arrive in time or get the anomaly test conducted in order to enable the detection of any abnormality. The submission, therefore, is that any failure on the part of the Complainants to get themselves treated as per medical protocol and advise cannot be a ground to settle any liability on the Hospital or the Doctor concerned. The defence, therefore, is that when the second round and third round of Ultrasonography was conducted, there was no likelihood of any anomaly being reported as the material and relevant medical period for conducting such exercise was already over beforehand.
15. From a perusal of the aforesaid facts and the opinion of the Expert, who was introduced on behalf of the defence before the State Commission, what appears is that no such tests or examinations including an Ultrasonography test was undertaken by the mother or reported as advised between 18-20 weeks which fact is not disputed by the Complainants. Even though the Hospital and the Doctor have endeavored to rely on the case note sheet to urge that the Ultrasonography was conducted abroad in the Middle East, no document of treatment or examination is available to substantiate the same. What they contend is that the noting on the file and the case sheet is not imaginary and must have been a disclosure made by the Complainant herself. Nonetheless the fact remains that there is no Medical Report or radiological examination from any Doctor available for the period between September, 2005 to December, 2005.
16. The Ultrasonography, therefore, conducted subsequently in December, 2005 indicates no abnormality in the formation of the body. The Report dated 28.12.2005 is categorical in stating about the limbs of the foetus being normal. The contention of the learned Counsel of the Hospital and also for the Doctor in this regard does not appear to be convincing. The anomalies did exist and which stands established post-delivery. The only issue is as to whether they could have been possibly detected or not in December or even thereafter through radiology examination. It is here that the expert evidence indicates that the best period for detection through an anomaly test is between

18-20 weeks. A doubt has also been expressed that the tests conducted may not have indicated any abnormality but that is well within the medical protocols.

17. For this reliance has also been placed on medical literature that has been placed on record. The said medical literature has been filed along with the Written Submission of the second Opposite Party/ Appellant through his Advocate Mr.Nair. This is a copy of the paper published on a Website known as IntechOpen and the same is titled as 'The Antenatal Detection of Foetal Limb Anomalies'. The said article goes on to third trimester assessment where it is stated morphological examination of the limbs in the third trimester is difficult as bone ossification increases, which impairs the visualization of the underlying structures. The said indication in the Article is extracted herein under:-

### ***5. Third-trimester assessment***

***Later in the second trimester and in the third trimester, despite the increase in the size of the fetus, morphological examination of the limbs is more difficult because:***

- the fetal position is maintained for longer periods, due to the reduced mobility;***
- the limb's segments have a complete flexion, and the proximal limb's position is maintained toward the fetal axis;***
  
- the amniotic fluid volume decreases, especially at term; and***
  
- the bone ossification increases, impairing the visualization of the underlying structures.***

***In certain cases, in the late second and third trimester, the secondary anatomy changes due to functional disturbances (some forms of skeletal dysplasia, fetal tumors, segmental deformations secondary to compression in oligohydramnios, multiple pregnancies, or other pathologies) become evident. Thus, even in cases with a normal morphological examination in the second trimester, the examination of the upper and lower members should be attempted in the third trimester. The commendation is stronger if such conditions are suspected.***

***In the third trimester, the evaluation of the fetal well-being includes the limbs and hand movements, as part of the Manning classical biophysical profile.***

18. Learned Counsel has also relied on Mudaliar And Menon's Clinical Obstetrics to substantiate his submissions.
19. The question, therefore, is whether there was any negligence in the image scanning report of the Ultrasonography conducted by Dr. Ambady and Mother Hospital December 2005 onwards and whether the Reports tendered by him do not reflect the correct picture.
20. If the defence taken by the Doctor and the Hospital, that a poor visibility of the growth of the limbs is possible during the third trimester, is taken to be correct then in that event the benefit of doubt goes in favour of the Doctor and the Hospital. The responsibility of the patient was to be careful when she was a known case of previous abortion, to have abided by the advice of the Doctor and to have taken precautionary measures in order to locate and detect the expected anomalies timely.
21. Nonetheless, the Doctor and the Hospital were persistent in their Reports of Ultrasonography that the foetus was normal and rather it was more categorical in the Report dated 28.12.2005 when it stated that the limbs were normal. The amniotic fluids volume was found to be adequate even on the Ultrasonography Report taken on 11.03.2006. Thus, it cannot be said the visuals on account of lessening of fluids would be impaired.
22. However, there is one argument, which has been advanced vehemently that the breech position of the foetus, which is indicative of the crouching nature of the child in the womb at times, may be subject to deception, inasmuch as, according to the Article cited and quoted hereinabove, the growth of the bones at times does create an obstruction in the complete visualization of the expected growth of the limbs.
23. Before proceeding to finalize the ultimate liability of deficiency against the opposite parties, it would be appropriate to assess the conduct of the complainants in adhering to the medical advice given by the opposite parties. After the ultrasound scanning was conducted on 02.09.2005, it is evident that the complainant Manju had been advised to undertake regular examination, including radiological assessment, as she had a history of past abortions. There is no denial of the fact by the complainants about the advice being rendered to get a check-up done between 18 to 20 weeks. This advice of getting herself examined between 18 to 20 weeks does not appear to have been followed by the complainant Manju. Even though the hospital and the doctor have relied on the case sheet mentioning information about examination being carried out in the Middle East where the complainant Manju was living, the same has been denied by the complainants. The fact remains that no medical examination was undertaken by the complainant Manju after 02.09.2005 and she arrived at the hospital for her examination only in December, 2005 when the ultrasound was conducted on 28.12.2005. The foetus by this time was 26 to 27 weeks old. There is no explanation or any evidence worth the name to demonstrate as to why no examination was undertaken between 18 to 20 weeks of the pregnancy. This therefore appears to be a shortcoming on the part of the complainants and would therefore be a mitigating factor while assessing liability on the Doctor and the Hospital.
24. There is yet another issue that has been raised and which needs to be clarified at the outset, namely, that the negligence is alleged to have taken away the opportunity and option of the complainant Manju to get herself timely aborted that could have avoided this situation. The contention is that had the radiological reports been given correctly, there was a possibility of the complainant Manju exercising her right to get aborted

earlier. This argument has to be rejected at the outset. As was then the law existing in India, the complainant Manju could not have made any request for abortion as she herself allowed the passage of the 18 to 20 weeks of pregnancy without any radiological test. She therefore could not have possibly exercised any such right and therefore to contend that the negligence had taken away this option from her, which also deserves to be indemnified, does not appear to be correct. The complainant Manju on account of the delay on her part cannot take any advantage of such an argument.

25. Coming to the allegations which have been made with regard to the lapse on the part of the opposite parties and the deficiency in their services, the undisputed fact is that a scan was conducted on 02.09.2005 when the foetus was only about 9 weeks and 5 days old where all parameters were indicated to be normal except a little deficiency in the amniotic fluid volume. No other abnormality was indicated and as per the radiological authorities and the contention of the opposite parties, the anomaly or defects in the growth of the child are not visible in that period. This is also reflected in the expert report of Dr. Harikumar Nair whose deposition and cross-examination as DW3 is on record. Thus, so far as the detection of any anomaly at that stage on 02.09.2005 is concerned, the same may not have been medically possible and therefore it cannot be said that the report of 02.09.2005 was incorrect.
26. The journey of this unfortunate lapse in the detection not having been made commences thereafter, when, as noted above, the complainant Manju did not undertake any ultrasonography or radiological examination carried out during the 18 to 20 weeks of pregnancy. This period was therefore allowed to lapse by the complainants which, according to the expert Dr. Harikumar Nair and the literature indicated above, is the ideal period to detect any anomaly.
27. The complainant Manju arrived at the hospital on 28.12.2005 on which date a complete ultrasonography was carried, which also appears to be an anomaly scan as the same mentions 2D, 3D and 4D examination. This was therefore the medically recognized protocol of an anomaly scan where even though the position of the child is mentioned as breech, no other abnormality has been indicated. To the contrary, what is revealing is that the report categorically states that the limbs are normal. In this regard, the defence put-forth by the opposite parties is that since the said test was carried between 26 to 27 weeks, there were greater chances of no detection as the visibility would be reduced due to the positioning of the foetus and also because of other factors. In the instant case, the amniotic fluid was stated to be adequate. The expert opinion of Dr. Harikumar Nair states that if the ratio of the amniotic fluid reduces with the growth of the child, the detection rate becomes less and it is difficult to detect anomalies. Thus even according to the expert's opinion, the detection rate is lessened only when the amniotic fluid is reduced but here the report clearly states that it was adequate.
28. The examination in chief and cross-examination of Dr. Harikumar Nair also states that after the expiry of 20 weeks period the anomalies cannot be detected in all patients. The inference that can be drawn is that anomalies even otherwise can be detected in some patients after the expiry of 20 weeks, which is not an impossibility. He has in his statement also indicated that if an anomaly scan is carried out, a radiologist will spend more time to study the same. This indicates that the examination and assessment should be more seriously undertaken.
29. It is not disputed that the test carried out on 28.12.2005 was an anomaly scan where the report categorically states that the limbs are normal.

30. Coupled with this, it goes without saying that the ultrasonography on 11.03.2006 and 23.03.2006 also did not indicate any anomaly and the said tests were carried out by the same doctor in the same hospital. It does not stand to reason that if the limbs were normal on 28.12.2005, how would they get deformed as became evident immediately on the delivery of the child on 27.03.2006.
31. The finding therefore recorded by the State Commission of deficiency in the radiological report about no anomalies being detected was obviously correct and the report submitted by the doctor in the tests conducted at the radiological centre in the hospital was therefore a careless and adhoc exercise which is nothing short of negligence. Had the report been indicative of anything inconclusive or hazy or doubtful, one could have leaned in favour of the suggestion regarding the correctness of the report, but in the present case as indicated above the anomaly scan on 28.12.2005 categorically mentions that the limbs are normal.
32. It is now established that the lower part of the limbs and the foot were totally absent and so was the position of the right arm of the child. Thus the limbs were not normal and a clear deformity existed. This was therefore a clear case of lapse on the part of the doctor who tendered the report. This is not an error of judgment but a lapse due to neglect. At one place in the affidavit filed before the State Commission, it was suggested even though mildly that there could have been a machine error. Neither any evidence was led nor any authority cited that such an error could be attributable to a machine error, and not a human error. In the absence of any such proof or evidence, this suggestion is worth rejection.
33. Coming to the statement by the expert, it is evident that the possibility of detection of any anomaly after 20 weeks of age of the foetus is not absolutely ruled out. It may be difficult but not impossible. This defence could also have been read for assessing the stand taken by the doctor and the hospital but even though being repetitive, the report was positively to the effect that the limbs were normal. No doubt was expressed in the report about any abnormality or congeniality existing. Thus, this is not a case where a doubt can be entertained with regard to the positive noting of normal limbs in the report dated 28.12.2005 which is just contrary to the exact physical status of the child that was established on his birth. The doctor cannot take the plea of less visibility or non-visibility of the growth of limbs because he does not say in his report dated 28.12.2005 that he is unable to visualize the growth of the limbs. He assertively reports that the limbs are normal. This would not have been possible had he not observed the growth of the limbs. The preponderance of the probability therefore is that the plea of invisibility is incorrect looking to the clear report stating normalcy of limbs. There is no indication whatsoever in the report about any deformity or defect or otherwise of non-visibility of the said defect.
34. Looking from another angle, the scan was an anomaly scan. If the assessment had been made after carefully looking at the images, and if there were anomalies, then there was no occasion to report normalcy. This also raises a serious doubt, and is quite probable that the doctor himself either did not scan the images and left it to someone else to perform his job. This possibility also cannot be ruled out adding to the unmindful approach in preparing the report.
35. On this issue of negligence, the report dated 28.12.2005 is clearly indicative of a lapse on the part of the doctor but one argument has been advanced on his behalf and the hospital that whatever be the negligence alleged, the contention that loss and harm has

been caused to the child and to his parents throughout life cannot be entertained. The contention of the learned counsel is that this fate of the child is ordained by providential governance and is not an outcome of the negligence alleged against the hospital and the doctor. This argument appears to be sound inasmuch as the negligence is not about the deformity in the physical growth of the child but is confined to a lapse regarding detection of the same during scanning. This argument also has to be understood in the light of the fact that the complainant Manju could not have attempted abortion after the expiry of 20 weeks and the allegation of negligence comes much thereafter, which is obviously in December 2005 when the foetus was 25 to 27 weeks old. The lapse in the detection at that stage, even if had been avoided and the correct report given, there was no chance under the then existing law for the lady to have attempted abortion. The baby would have to be delivered as more than 25 weeks had lapsed and therefore the loss and damage due to such deformity cannot be saddled and coupled with the alleged deficiency in the submission of the radiological report. Learned counsel for the doctor and the hospital are correct in their submissions on this count.

36. However, once the fact of negligence in tendering of the report is established, then the issue is about the quantum of the compensation, to which the complainants are entitled. Learned counsel for the complainants appears to be correct that the amount of Rs.75,000/- each on the doctor and the hospital is a pittance. The nature of the negligence and the sufferings emanating therefrom were definitely to result in a lifelong experience. The child, if living, must have attained now the age of about 18 years. The difficulties being faced in bringing up such a child and then to look after the child is a serious burden but at the same time the liability on the doctor and the hospital can be saddled only to the extent of the negligence that has been found by the State Commission and also affirmed hereinabove. The services rendered by the doctor and the hospital in giving an incorrect report and that too even consistently from 28.12.2005 till the birth of the child calls for a heavier compensation than what has been awarded by the State Commission. It is careless handling, a gross mistake and the omission bordering a blunder.
37. On the issue of enhancement of the compensation, the complainants have filed First Appeal No. 49 of 2012 and it has been asserted that given the physical status of the child, it is not only his future but also the entire life of the parents that would continue with a permanent sense of grief and disappointment. A handicapped baby will have to be nursed and cared and skilled treatment will have to be given. It is also asserted in the appeal that artificial limbs will have to be provided and changed apart from making appropriate arrangements for providing normal education to the child. A claim has been made in the appeal that the mother Smt. Manju lost her job as she was earning a sum of Rs.40,000/- per mensem. Thus loss of career and earnings have also been claimed together with expenses like future medical treatment and manual assistance for the child.
38. Apart from this, life-long disability to be suffered by the child and the agony to be suffered by the parents due to such physical disability would need to be additionally compensated. The question is of assessing the aforesaid claim to be quantified in the manner as prayed for. The complainants in their appeal have prayed for Rs.78,00,000/-, the computation whereof is indicated in paragraph-Q of the appeal. Even though there is no substantial evidence or material for inferring the claimed amount to be just, yet a just compensation has to be in such circumstances viewed from the point of view of the

facts of the present case. It is no doubt true that some amount of guess work and speculative calculation has to be made and in the present case the amount of Rs.75,000/- appears to be a pittance. The observations of the Apex Court in the case of **Malay Kumar Ganguly Vs. Dr. Sukumar Mukherjee (2009) 9 SCC 221** and the pronouncement in the case of **Balram Prasad Vs. Kunal Saha And Ors. (2014) 1 SCC 384** have to be kept in mind in situations like the present one. The enhancement therefore is deserving on the facts of the present case.

39. In the opinion of this Commission, the amount of Rs.75,000/- each on the doctor and the hospital is negligibly disproportionate. On the overall circumstances of the case, the said amount deserves to be enhanced to the tune of Rs.7,50,000/- each on the hospital and the doctor. This liability of Rs.7,50,000/- shall be on Mother Hospital (P) Ltd. and Dr. Ambady Ramakrishnan respectively for the lapse and deficiency in tendering an incorrect radiological report and their failure to detect the anomalies and report accordingly.
40. Consequently, First Appeals No. 266 of 2011 and 275 of 2011 cannot succeed and are hereby consigned. First Appeal No. 49 of 2012 is partly allowed to the aforesaid extent.
41. All the three appeals are disposed of affirming the decision of the State Commission subject to the aforesaid modification in First Appeal No. 49 of 2012.

.....J  
**A. P. SAHI**  
**PRESIDENT**