

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 244 OF 2010

(Against the Order dated 04/06/2010 in Complaint No. 41/2007 of the State Commission Punjab)

1. DES RAJ SINGLA & ORS.

R/o.1-S,Sant Nagar

Patiala

Punjab

2. RAMNDEEP SINGLA

R/o. 1-S, Sant Nagar

Patiala

Punjab

3. GANGAN DEEP SINGLA

R/o. 1-S, Sant Nagar

Patiala

Punjab

.....Appellant(s)

Versus

1. DAYANAND MEDICAL COLLEGE & HOSPITAL
& ORS.

Through its Director

Ludhiana

Punjab

2. DR. BALDEV SINGH AULAKH, HEAD
DEPARTMENT OF UROLOGY

Dayanand Medical College and Hospital

Ludhiana

Punjab

3. DR. SNADEEP PURI

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4. DR. ARVIND GOYAL,

C/o. Dayanand Decial College and Hospital

Ludhiana

Punjab

5. UNITED INDIA INSURANCE COMPANY
LIMITED

Savitri Complex No.I, First Floor, GT Road

Ludhiana

Punjab

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT

For the Appellant : For the Appellants : Mr. Des Raj Singla,
Appellant No.1 in person

For the Respondent : For the Respondents : Mr. Ritesh Khare, Advocate for R-1 to
4
Mr. Manmohan Singh, A/R of R-1 &
Dr. Arvind Goyal, R-4, in person
Mr. Harsh Kumar, Advocate for R-5

Dated : 22 Nov 2021

ORDER

R.K. AGRAWAL, J., PRESIDENT

1. This First Appeal, filed by the Legal Heirs of the original Complainant, namely, Saroj Singla (for short “the Patient”), under Section 19 of the Consumer Protection Act, 1986, is directed against the Order dated 04.06.2010, passed by the Punjab State Consumer Disputes Redressal Commission, Chandigarh (for short “the State Commission”) in Consumer Complaint No. 41 of 2007. By the Impugned Order, the State Commission has dismissed the Complaint.
2. Succinctly put, the material facts giving rise to the filing of the present Appeal, as culled out from the Complaint, are that on 18.03.2007 the Patient was admitted in the Dayanand Medical College and Hospital (for short “the Hospital”) for treatment of infection in urinary tract and pus in the renal pelvis. Initially, she was admitted in Hero Heart Branch of the Hospital, where she was operated on 25/26.03.2007 and the right PCNL was done. On 27.03.2007, she was shifted to the Hospital and nephrostomy drain was also put in her kidney. A sum of 65,000/- was paid for treatment of the Patient at the Hero Heart Branch of the Hospital. As the Patient had low platelet count, she was transfused 2-3 bottles of Platelet Concentrate (PC). The cost of the PC was 11,200/- per bottle. When, her condition was bit stable, she was discharged from the Hospital on 21.04.2007, with the nephrostomy drain still inside the body. As the problem of low platelet count was still continuing, she was being taken to the Hospital weekly. The attending Doctors at the Hospital also referred the Patient to PGI, Chandigarh. Though she had incurred a sum of 2.50 – 3.00 Lakhs in transportation and transfusion, but the problem of low platelet counts did not improve, for which problem it is alleged in the Complaint that the Patient developed the said problem during her stay in the Hospital because of improper handling of operation and lack of required post-operative care. When the Patient was taken to the Hospital on 12.06.2007 for removal of nephrostomy drain, Dr. Arvind Goyal, Respondent No.4 herein, removed the nephrostomy drain, planted the stent and thereafter discharged the Patient. Even thereafter, the condition of the Patient did not improve. Still she had severe pain in the right side of

lower back. When her husband contacted the Hospital, he was advised to give “Nimesulide” tablet to the Patient. The said tablet helped the Patient only for 4-5 hours, after which again a tablet had to be taken by her. Besides the complaints of burning sensation while passing urine, the problem of low platelet count worsened, for which fresh bottles of PC were to be transfused to the Patient either weekly or fortnightly, as per her condition.

3. In such a situation, when the Patient had become totally bedridden and the pain in her lower right back was also continuing, on 27.06.2007 she was taken to Amar Hospital in Patiala. As advised by this Hospital, the Patient underwent x-ray and ultrasound at Alpha Radiological Hospital, Behind Rajindra Hospital, Patiala. The x-ray revealed that the Patient had a small rubber/synthetic tube in her body. It is averred that the said piece was left in the body due to negligence either at the time when PCNL was done or at the time when the nephrostomy drain was removed and stenting was done on 12.06.2007.
4. On 27.06.2007 itself, the Patient was taken to the Hospital, where she was attended by Respondent No.4. As regards the presence of a piece of tube, the Patient was again subjected to x-ray in the Hospital, which also showed the same thing. When the matter was brought to the notice of Dr. B.S. Aulakh, HOD of the Urology Department, Respondent No.2 herein, he took over the case and got admitted the Patient in the Hospital with the piece of PCN. On 05.07.2007, the said piece and the stent were removed and again PCNL was done. On 10.07.2007, the Patient was discharged from the Hospital, though her condition had not shown any semblance of stability. On 29.07.2007, finally Respondent No.2 removed the nephrostomy pipe/PCNL from the body of the Patient at his home clinic. Even after all this, the condition of the Patient deteriorated further, for which she was undergoing regular treatment at PGI, Chandigarh, costing her 50,000/- per week.
5. In the said background, alleging that on account of gross negligence and deficiency in service on the part of the Hospital and its Doctors, the life of the Patient, who was highly educated and running a school in Patiala, earning more than 1.00 Lakh every year, had been ruined and she needed a permanent attendant, as she was unable even to do her daily chores herself; and there was failure on their part to explain why the PCNL had to be done second time, the afore-noted Complaint came to be filed before the State Commission, praying for a total sum of 35,11,000/- on different heads, along with interest @ 18% p.a.
6. Upon notice, the Hospital and its Doctors filed their joint Written Version. While admitting that on 17.03.2007 the Patient, aged 58 years, was admitted in the Emergency Ward of the Hero Heart Branch of the Hospital, it was pleaded that she had acute pain in the abdomen and history of hypertension, diabetes etc. On clinical examination, the Patient was subjected to a number of tests, including Routine Urine and Culture, Electrolytes/Liver Function Test, Haemograph/ Counts/Blood Group, Renal Function Test, Arterial Blood Gas, Ultrasound

Abdomen/ECHO, Serum Amylase/Lipase and Coagulation Profile. On the basis of the investigation reports, the Patient was diagnosed to have Pyonephrosis (pus in the kidney) right sided with chronic renal failure and Septicaemia and, accordingly, she was put on life-saving treatment, recorded in the bed-head ticket. On 21.03.2007, huge collection of pus in the right kidney was drained by way of a safe, feasible and efficient procedure, i.e. nephrostomy under local anaesthesia. Because of Septicaemia, platelets of the Patient had come down from 1,01,000 to 73,000, for which two units of blood were transfused to her and she was put on broad spectrum antibiotics. However, TLC count started coming down when the infection was controlled with drainage of pus from kidney (PCN) and administration of appropriate drugs/antibiotics. Then Nephrostogram was planned on the Patient, which showed complete blockage at right Uretero – Vesical junction with no spill in the bladder. As the Patient was a high risk patient, on 27.03.2007 she was taken to the Hospital for surgery. For the said procedure, including anesthesia and post-operative care, consent form was taken and risks involved were explained to the Patient and her attendants. After the procedure, the blockage on account of thick pus was cleared and uretic catheter was placed to drain pus. Though the condition of the Patient improved but her platelet count remained low, i.e. within the range of 12000 to 70000 from 27.03.2007 to 21.04.2007, when she was discharged on her request. As regards treatment of the Patient, different specialists were consulted. In this way, on the advice of Dr. D.S. Sandhu, Consultant (Oncologist), a bone-marrow biopsy was conducted on the Patient, which showed the findings of megakaryocytic prominence and erythroid prominence. Though the Patient was well managed, she continued to have low platelet count and indwelling per cutaneous nephrostomy (PCN). On the request of the Patient, she was discharged on 21.04.2007 and discharge card, indicating the entire procedure and treatment, was given to her. On her OPD visit to the Hospital on 30.04.2007, the Patient consulted Respondents No. 3 and 4 on two separate OPD cards as both the Doctors belonged to different specialization. As the Patient was found to have high blood pressure of 160/70, she was advised by Respondent No.3 to take insulin injections and anti-hypertension medicines for controlling anxiety, paid in the abdomen, acidity etc. On examination, Respondent No.4 found that TLC of the Patient was 23000 (normal count being less than 11000) and platelets were 23000, which manually came out to be 36000 and accordingly advised her to continue with Nephrostomy drainage i.e. PCN, which was intact. On her subsequent visit to the Hospital on 29.05.2007, the Patient was advised by Respondent No.3 to continue with steroids to enhance the platelet count, as there was drop of platelet count. As the life of the PCN tube, which had been inserted in the kidney of the Patient on 21.03.2007, was about 3 months, on 06.06.2007 she was advised PCN change by Respondent No.4. On conduct of blood tests, it was found that TLC was almost normal, i.e. 12750, and the platelet count was also 72000, which showed that the Patient was recovering and was fit for PCN change but she left the Hospital without undergoing the PCN change. When the Patient again visited the Hospital on 12.06.2007, her platelet count was found to be 94000 and she was recovering. In order to facilitate drainage of pus from the kidney through the bladder, Respondent No.4 suggested stenting of right ureter. After the stenting was done under Local Anaesthesia, the Patient was discharged with PCN intact and functioning. On the request of the Patient, the PCN was retained and was not changed. While maintaining that the procedure of removal of PCN was never conducted by Respondent No.4 or in the Hospital, it was pleaded that sometime fracture of the pipe, inserted in the kidney to drain the pus, takes place owing to texture of the pipe, which has small pores/holes on its end, which could not be presumed as medical negligence. When the Patient visited the Hospital on 27.06.2007, she stated that she had got her PCN pipe removed. From the x-ray and ultrasound report, it was found that the rear proximal end which was inserted into the kidney for drainage had broken inside and the

patient had come to the Hospital for getting the same removed. As per the policy of the Hospital, a new file of the patients was being made on their every subsequent indoor admission. Respondent No.4 was working in the Unit of Urology and Transplant, headed by Respondent No.2, under whom the Patient was admitted on 27.06.2007. The Patient was not found to be fit for the surgery, which was deferred till she was stable, and the treatment was started. On 05.07.2007 the surgery was conducted, wherein the stent and the piece of PCN were removed. At the same time, another procedure called Percutaneous Nephroscopy was conducted by Respondents No. 2 and 4 with the other team members to remove the thick pus flakes and the dead necrotic tissue from the kidney. The kidney was washed and nephrostomy tube was placed. Both the said procedures were entirely different. In view of the persisting decrease in the platelets, the same were transfused post-operatively and on 10.07.2007 the Patient was discharged with nephrostomy tube. After the said date, the Patient never visited the Hospital. Accordingly, while contending that the PCN tube was not removed by Respondent No.4 in the Hospital, the allegations levelled against Respondents No. 1 to 4 were denied and it was stated that there was no medical negligence on their part.

7. As far as Respondent No.5, i.e. United India Insurance Company Ltd., which had subsequently been impleaded in the Complaint, had also filed its Written Version, denying the allegations made in the Complaint and praying for dismissal of the Complaint.

8. After hearing Ld. Counsel for the parties and on evaluation of the evidence adduced by them, the State Commission, as noted above, vide the order impugned in this Appeal, dismissed the Complaint by observing as under:-

“The patient herself has pleaded in the Complaint that she had been going to other hospitals also. It was reflected in the X-ray report dated 27.06.2007 that the pieces of PCNL tube were found in her body but from where the patient got removed the PCNL between 12.06.2007 to 27.06.2007 it is not proved by her. Instead of feeling obliged to the respondent Hospital and doctors respondents No. 2 to 4, the Complainants thought it fit to slam them with a complaint that they have done medical negligence while treating the patient. The respondent hospital and doctor respondent Nos. 2 to 4 cannot be held negligent merely on presumption bas basis whereas the law is otherwise. Onus of proof of medical negligence is higher than the onus to prove deficiency in service in cases other than the medical negligence.”

9. Feeling aggrieved, the present Appeal has been filed by the Legal Heirs of the Patient, who had died during the pendency of the Complaint.
10. Mr. Des Raj Singla, Appellant No.1, submitted that the State Commission has dismissed the Complaint on surmise and conjecture and has not properly appreciated the facts of the case which clearly points out the negligence of the Respondents in leaving the pieces of PCN

tube while removing the same from the body of the Patient on 12.06.2007 during the operative procedure. He prayed that the Complaint be allowed and the Order passed by the State Commission may kindly be set aside.

11. < > *contra*, Mr. Ritesh Khare, learned Counsel appearing on behalf of the Respondents supported the Order passed by the State Commission as according to him the State Commission had passed a well-reasoned order which is based on a correct and rightful appreciation of evidence and material available on record and does not call for any interference.

I have heard Mr. Des Raj Singla, Appellant No.1, who has appeared in person, Mr. Ritesh Khare, learned Counsel appearing on behalf of the Respondents, perused the Order dated 04.06.2010 passed by the State Commission and have given a thoughtful consideration to the pleas raised by both the Parties.

12. Considering the sequence of events and on perusal of the medical record it is clear that prior to admission in the Hospital on 18.03.2007, the Patient was not only having infection within her body but also collection of pus in her kidney. The Discharge Summary clearly shows that when the condition of the patient got stabilized, she was discharged on 21.04.2007. The Patient alleged that PCN piece was left in her right kidney by the Respondent No. 4 Doctor when she again visited the OPD of Respondent Hospital on 06.06.2007 whereas while admitting OPD visit of Patient on 06.06.2007, the Respondent Hospital has denied the allegation of removal/change of PCN in Respondent Hospital on 06.06.2007 rather it has been alleged that PCN has been removed/changed at other Hospital. It has been pleaded by the Patient herself in the Complaint that after discharge from the Respondent Hospital on 21.04.2007, the Patient had remained under consultation of various Doctors and other Hospitals. The Appellants/Complainants failed to produce any cogent proof that the PCN Tube was changed / removed in Respondent Hospital on 06.06.2007. It is a settled law that the onus to prove medical negligence lies largely on the Complainant and that this onus can be discharged by leading cogent evidence. A mere averment in a Complaint by no stretch of imagination, be said to be evidence by which the case of the Complainant can be said to be proved. It is the obligation of the Complainant to provide hard evidence to prove the case of medical negligence against the Doctors / Hospitals. In my view the present the Consumer Complaint completely failed to provide any cogent evidence to prove the medical negligence on the part of the Respondents/Opposite Parties.

13. A reference can be made to the Judgment passed by the Hon'ble Supreme Court in “ ***Kusum Sharma Vs. Batra Hospital and Medical Research Centre***” (2010) 3 SCC 480”, in which the Hon'ble Supreme Court has observed as follows:-

"the normal human tendency is to pick fault whenever there is a death in the family for which the doctor cannot be made a scapegoat. It is a matter of common knowledge that after happening of some unfortunate event, there is a marked tendency to look for a

human factor to blame for an untoward event, a tendency which is closely linked with the desire to punish. Things have gone wrong and, therefore, somebody must be found to answer for it. Filing such complaints under the Consumer Protection Act against doctors on the rise and in many cases these being frivolous, the Hon'ble Supreme Court said "Courts have to be extremely careful to ensure that unnecessarily professionals are not harassed and (or else) they will not be able to carry out their professional duties without fear".

14. On the basis of foregoing discussion, I do not find any illegality or perversity in the well-reasoned Order passed by the State Commission. The Appeal is, therefore, dismissed.

.....J
R.K. AGRAWAL
PRESIDENT