

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 948 OF 2015

(Against the Order dated 28/10/2015 in Complaint No. 28/2014 of the State Commission
Chhattisgarh)

1. DR. VARTIKA MISHRA

DR. SMT. VARTIKA MISHRA M.D.
GYNECOLOGIST AND LAPAROSCOPE SURGEON,
CITY HOSPITAL AND RESEARCH CENTRE, GEETA
NAGAR, CHAUBHEY COLONY,,
RAIPUR
CHHATTISGARH

.....Appellant(s)

Versus

1. RACHANA AGRAWAL

W/O. SHRI TARUN AGARWAL, GOLDEN HOMES,
V.I.P. COLONY, SHANKAR NAGAR,
RAIPUR
CHHATTISGARH

.....Respondent(s)

BEFORE:

**HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT
HON'BLE DR. S.M. KANTIKAR, MEMBER**

For the Appellant : Appeared at the time of arguments through Video Conferencing
For the Appellant : Mr. Vaibhav Agnihotri, Advocate
Mr. Dhruv Chawla, Advocate

For the Respondent : Appeared at the time of arguments through Video Conferencing
For the Respondents : Mr. Mohammad Sajid, Advocate

Dated : 25 Feb 2022

ORDER

Pronounced on: 25th February 2022

ORDER

DR. S. M. KANTIKAR, MEMBER

1. The instant Appeal is preferred by the Opposite Party under section 19 of the Consumer Protection Act 1986 against the impugned Order dated 28.10.2015, passed by the Chhattisgarh State Consumer Disputes Redressal Commission, Pandri, Raipur (hereinafter referred to as the 'State Commission'), whereby the State Commission held the Opposite Party liable for medical negligence and partly allowed the Complaint.

Brief Facts:

2. The Complainant, Rachna Agrawal (hereinafter referred to as the patient), during her pregnancy, since 28.09.2012 was under Antenatal care of Dr. Vartika Mishra (hereinafter referred to as the 'Opposite Party'). It was alleged that on 23.05.2013, the Opposite Party conducted her forceps delivery, which resulted in to 4th degree tear in the perineum (the area between vaginal canal and anus). It was further alleged that the Opposite Party stitched the skin only, without muscle repairs, therefore the patient lost her control over passing the urine and stool. The Opposite Party did not treat the complications properly. Thereafter, the Complainant consulted Dr. Lalit Nihal at Raipur, who performed Sigmoidoscopy and diagnosed 'poor tone' and 'very poor anal squeeze'. Later on, Dr. Rajesh Sainani, the Gastroenterologist at Jaslok Hospital, Mumbai carried out ano-rectal Manometry, which confirmed 'weak squeeze' of anus. MRI was performed there, it showed thinning of the internal and external anal sphincter, therefore there was loss of control on bowel movements. Thereafter the patient took opinion of Colorectal Surgeons Dr. Prajesh Bhuta and Dr. Parwez Shaikh at Mumbai advised to undergo repair surgery. On 30.12.2013, she got operated by Dr. M. G. Norayani and Dr. S. K. Desai at Bombay Hospital for Perineorrhaphy with repair of sphincters and was discharged on 04.01.2014. However, the patient did not get complete recovery. It was alleged that she was deprived of marital happiness for 2 years and lost her the chance for normal delivery in future. It was further alleged that the Opposite Party gave only Discharge summary without treatment details. Complete medical record was not issued. Being aggrieved, she filed a Consumer Complaint before the State Commission and claimed Rs. 35 lakhs as compensation.

3. The Opposite Party filed the written version and denied negligence during the delivery on 23.05.2013. It was submitted that outlet forceps were applied and before applying forceps, episiotomy (a small cut at vaginal opening) was made to facilitate the extraction of the baby along with forceps and prevent stretching of vagina and perineal tear. There was no perineal tear after the delivery and the episiotomy wound was sutured and the patient was discharged in stable condition on 26.05.2013. During follow-up examination on 29.06.2013 and 27.07.2013, the episiotomy wound was healthy. Thereafter, till November, 2013 on several occasions, the patient visited the Opposite Party and Dr. Abha Singh but any time she never complained about incontinence (loss of control on passage of stool and urine) and there was no perineal tear. At 1st time after 6 months, the patient complained about the incontinence; therefore it was impossible to sustain pain for 6 months without any treatment, if 3rd or 4th degree tear was present.

4. Based on the averments and evidence, the State Commission partly allowed the Complaint of the Complainant and directed the Opposite Party to pay a sum of Rs. 8,00,000/- to the Complainant as compensation with 9% interest within two months from the date of the order. Also awarded Rs. 10,000/- towards cost of the litigation.

5. Being aggrieved, the Opposite Party filed the instant First Appeal.

6. We have heard the learned Counsel for the parties. They reiterated the facts and evidence on record filed before the State Commission.
7. We gave our thoughtful consideration to the arguments from both sides and perused the material on record, *inter alia*, medical record of the Opposite Party and other doctors, who treated the patient.
8. The case of the Opposite Party is that on 23.05.2013 due to prolonged 2nd stage of labour, delivery by use of forceps was decided. Therefore to facilitate easy forceps delivery, episiotomy was performed and after delivery the episiotomy wound was sutured. The patient was discharged on 26.05.2013 with follow-up instructions. As per the prescription on record, complaining pain at the suture site. It was mentioned that 'no perineal tear and the episiotomy scar was healthy'. On 23.08.2013, the patient consulted Dr. Abha Singh, who recorded the increase in patient's weight and there was no complaint of incontinence. She advised "Multiload" and prescribed few medicines. The contention of the Opposite Party is that the State Commission has overlooked the importance of episiotomy and the affidavits (opinion) given by Dr. Malti Waghela and Dr. Palak Gowri.
9. We have perused the opinion of Dr. Malti Waghela, the retired senior Gynaecologist from M.P. State Medical Services. She opined as below:

“ there was no complaint of incontinence for 6 months after delivery. She has opined that the report of "Anorectal Manometry" that the 'Basal Sphincter Pressures were normal' indicates that the sphincters were intact. As regards MRI report showing 'weakness and thinning of anal sphincter', she has opined that it could be due to factors like persisting constipation, repeated trauma to the perineum, etc. For 6 months after delivery the complainant must have sustained repeated injury to the anal region which resulted in incontinence. Forceps delivery cannot be blamed for this condition. She has also opined in reply to question No. 12 that only thinning of the sphincters without tear and the intact levator ani muscles indicate that the muscles between vagina and anus were not injured in forceps delivery. The pain and burning sensation of the anal region which she complained of on 03-12-2013 could also be caused by repeated injury to the anal region. She has further opined that the inflammation in the ano-rectal junction as reported in MRI too could be caused by repeated trauma to this part. She has emphasized that all the reports of investigations point towards repeated trauma to anal region.”

Dr. Waghela, in her support, relied upon one review article “Complete anal sphincter complex disruption from intercourse: A case report and literature review [\[1\]](#) .

10. We have perused the opinion of Dr. Palak Gawri about the use of 'Multiload'. The Multiload is a contraceptive device like (CuT) applied to the patients who are free from infections involving cervix, vagina, uterus and adjacent organs. It should be avoided in the patients having any abnormal communication between rectum and vagina. According to her, the use of Multiload proves that the instant patient had no such perineal tear.
11. It is pertinent to note that on 22.07.2013 and 27.07.2013, the patient was complaining pain in suture site. The Per Speculum (PS) examination revealed defect at 12 O'clock position of external anal sphincter. However, the prescription of Dr. Abha Singh dated 23.08.2013 lacks details of patient's examination. Dr. Abha Singh referred the patient to Dr. Vijayalaxmi,

Devikripa Hospital. The reference letter (undated) establishes that the patient suffered perineal tear. It is reproduced as below:

“Date.....

Dr. Vijay Laxmi, Devikripa Hosp,

Please examine Rachna who c/o passing uncontrolled motion. She delivered 6 mths back at same **pvt Hosp. & had a bad perineal tear** .

Pl. inform me SOS.

(Lost all mobile no., otherwise have called you)”

12. At this stage, it is more relevant to go through Sigmoidoscopy & MRI reports and the clinical findings of Dr. Rajesh Bhuta.

(i) On 03.12.2013 Dr. Lalit Nihal at Narayana Hospital, Raipur performed **Sigmoidoscopy** . The report is reproduced as below:

PR tone - Poor

Squeeze - Nil

Ami Canal - **Complete perineal tear (Post Deliver)**

Rectum - Normal.

Sigmoid Colon - Normal.

IMP - Fecal incontinence with Complete perineal tear.

Adv -Anorectal manometry and endorectal ultrasound ."

(ii) The MRI Report dated 16.12.2013, from Jaslok Hospital & Research Centre, Mumbai, is reproduced as below:

"IMPRESSION –

K/c/o perineal tear –

Thinning of internal and external sphincter .

T2 hyper intensity anterior to the anorectal region is the result of inflammation ?
Secondary to tear .

No other significant diagnostic pathology is identified.

(iii) Dr. Rajesh Bhuta's examination is relevant. It is reproduced as below:

"Dr. Bhuta

Date: 17/12/2013

Smt. Rachna Agrawal was seen by me in clinic today she had a forceps delivery with forth degree tear. According to patient and attempt of repair was done but it failed. Subsequently the wound healed but patient has developed faecal and urinary incontinence.

On examination there is no muscle felt between vagina and rectum. There is very poor tone and very poor squeeze power. This is conf. with MRI + anorectal manometry.

There is complete sphincter damage most likely post forth degree tear. This will require surgery with sphincter reaper with muscle sling success rate 60-70% and the long term prognosis is guarded).

Therefore, on collective reading of the above paragraphs (i to iii), it establishes that there was unhealed perineal tear and anal sphincter injury.

13. We are rather surprised with the opinion of Dr. Malati Waghela about repeated anal trauma possibly due to anal intercourse. It is also not clear from the prescription of Dr. Abha Singh, dated 23.08.2013, whether "Multiload" was inserted in the uterus or not. Nothing is forthcoming about the details of clinical or gynaecological examination of the patient. It was the deficiency in service from Dr. Abha Singh.

Discussion:

14. Considering the entirety of this case, in our view, there was negligence during outlet forceps delivery. In addition, there was failure of duty of care during post-delivery (post-partum) period. The medical record/prescriptions of the Opposite Party including Dr. Abha Singh failed to convince us about proper post-partum care. It is evident that, the patient was complaining repeatedly about pain in the suture site but both the doctors have simply prescribed medicines, but ignored or not carefully examined the suture site for induration or infection, surprisingly advised to use 'coconut oil with kapoor' for about 6 months. The condition of the patient did not improve for a long period, therefore, she consulted several specialist doctors in Raipur and Mumbai viz Dr. Lalit Nihal, Dr. Rajesh Sainani, Dr. Rajesh Bhuta and Dr. Parwez Shaikh. She underwent several investigations like Signmidoscopy, Anal Manometry and MRI, which collectively affirms perineal tear. Finally, in Mumbai, on 30.12.2013, the patient underwent Perineorrhaphy repair of sphincters operation at Bombay Hospital. However, the recovery was 60-70% only.

15. The concept of duty of care has been discussed by the Hon'ble Supreme Court in the case of **Dr. Laxman Balkrishna Joshi vs. Dr. Trimbark Babu Godbole and Anr.** [2] and in the case of **A. S. Mittal vs. State of U.P.** [3] It was held that the doctor owes to his patient certain duties which are: (a) duty of care in deciding whether to undertake the case, (b) duty of care in deciding what treatment to give, and (c) duty of care in the administration of that treatment. A breach of any of the above duties may give a cause of action for negligence and the patient may on that basis recover damages from his doctor.

16. It is pertinent to note that the patient was a young woman and in primi gravida (first pregnancy). She, after delivery, for her sufferings ran from pillar to post to various hospitals in Raipur and Mumbai. In the present case, the patient developed 4th degree perineal tear after forceps delivery, which squarely attributed to the failure of duty of care, thus, medical negligence. Also, she did not get post-partum care as per accepted reasonable standards. Moreover, we cannot ignore sufferings of the patient, physical and mental trauma, in addition she lost her chance for normal (vaginal) delivery in future.

17. Based on the foregoing discussion, we affirm the Order of the State Commission, which does not require any interference. Accordingly, the First Appeal is dismissed.

[1] Int J SUrg Case Rep, 2012:3(11);565-568

[2] AIR 1969 SC 128

[3] AIR 1989 SC 1570,

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

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DR. S.M. KANTIKAR
MEMBER