**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**
**NEW DELHI**

**CONSUMER CASE NO. 47 OF 2005**

1. ATANU DUTTA

HUSBAND OF DECEASED DR. (MRS.) RUPA DUTTA, SENIOR MANAGER, NTPC LTD., R/O. 32-B, PKT. - C, SIDHARTHA EXTN.,

NEW DELHI - 110 014.

2. ANURUPA DUTTA

THROUGH HER FATHER, NATURAL GUARDIAN, SHRI ATANU DUTTA, D/O. DECEASED DR. (MRS.) RUPA DUTTA & SH. ATANU DUTTA, R/O. 32-B, PKT- C, SIDHARTHA EXTN.,

NEW DELHI - 110 014.

3. SMT. A.K. DUTTA,

GATHER - IN- LAW OF DECEASED DR. (MRS.) RUPA DUTTA., R/O. 32-B, PKT-C SIDHARTHA EXTN,

NEW DELHI - 110 014.

4. SMT. J DUTTA,

MOTHER-IN-LAW OF DECEASED DR. (MRS.) RUPA DUTTA, R/O. 32-B, PKT.- C, SIDHARTHA EXTN,

NEW DELHI - 110 014. .....Complainant(s)

Versus

1. SHRI MOOL CHAND KHAIRATI RAM HOSPITAL & AYURVEDIC RESEARCH INSTITUTE, .....Opp.Party(s)

THROUGH IT'S MEDICAL SUPERINTENDENT, LAJPAT NAGAR - III,

NEW DELHI

2. DR. (MRS.) RAJ BOKARIA, M.S. (OBS. & GYNAE),

R/O. B-6, VIVEK VIHAR, PHASE- II,

DELHI - 110 095.

3. DR. ALKA GUJRAL. M.S. (OBS. & GYNE.),

C/O. SHRI MOOL CHAND KHAIRATI RAM HOSPITAL & AYURVEDIC RESEARCH INSTITUTE, LAJPAT NAGAR-III,

NEW DELHI

4. DR. VEENA BHATT. M.S. (OBS. & GYNAE.),

C/O. SHRI MOOL CHAND KHAIRATI RAM HOSPITAL & AYURVEDIC RESEARCH INSTITUTE, LAJPAT NAGAR - III,

NEW DELHI

5. DR. VIJAY LANGER, ANAESTHETIST

C/O. SHRI MOOL CHAND KHAIRATI RAM HOSPITAL & AYURVEDIC RESEARCH INSTITUTE, LAJPAT NAGAR - III,

NEW DELHI

6. DR. N.K. RASTOGI, ANAESTHETIST

C/O. SHRI MOOL CHAND KHAIRATI RAM HOSPITAL &
AYURVEDIC RESEARCH INSTITUTE, LAJPAT NAGAR - III,
NEW DELHI

7. RESIDENT DOCTOR
C/O. SHRI MOOL CHAND KHAIRATI RAM HOSPITAL &
AYURVEDIC RESEARCH INSTITUTE, LAJPAT NAGAR - III,
NEW DELHI

8. NEW INDIA ASSURANCE CO. LTD.
-

**BEFORE:**

**HON'BLE DR. S.M. KANTIKAR,PRESIDING MEMBER**
**HON'BLE MR. DINESH SINGH,MEMBER**

**For the Complainant :**
**For the Opp.Party :**

**Dated : 18 Aug 2022**

**ORDER**

*Appeared at the time of arguments:*

| | |
|---|---|
| For the Complainant | : Mr. K. G. Sharma, Advocate |
| For the Opposite Party No.-1, 5-6 | : Mr. Biraja Mahapatra, Advocate |
| For the Opposite Party No.-2 | : Mr. Ravindra Narayan, Advocate alongwith OP-2 In-person |
| For the Opposite Party No.-3 | : Mr. Sandeep Kapoor, Advocate |
| For the Opposite Party No.-4 | : Nemo |
| For the Opposite Party No.-7 | : Ex-parte |
| For New India Assurance Co. Ltd. | : Dr. Sushil Kumar Gupta, Advocate |

**Pronounced on: 18th August 2022**

**ORDER**

**DR. S. M. KANTIKAR, PRESIDING MEMBER**

**Complaint:**

The facts of the case are:

Dr. Rupa Dutta (hereinafter referred to as the 'patient'), during her 2nd pregnancy, was under Ante Natal Care (ANC) of Dr. Raj Bokaria, a Gynaecologist, (hereinafter referred to as the 'Opposite Party No. 2') in Shri Mool Chand Khairati Ram Hospital and Ayurvedic Research Institute (hereinafter referred to as the 'Moolchand Hospital / Opposite Party No. 1'). She was healthy, except for some history of Asthma and was under treatment of Dr. S. K. Jain, Chest Physician at Moolchand Hospital itself. On 02.07.2003 at the 14th week of pregnancy, Dr. Ashok Khurana, a Radiologist, performed USG and reported it as normal. Thereafter, as advised by the Opposite Party No. 2, Foetal Echo-Cardiography (ECHO) was performed by Dr. Ashok Khurana at 24th week on 12.09.2003. It revealed obliterated umbilical artery, but there was no developmental anomaly and no signs of intra-uterine growth retardation (IUGR) of the foetus. On 14.09.2003, after going through the ECHO report, the Opposite Party No. 2 advised foetal chromosomal test from Sir Ganga Ram Hospital. It was performed without delay and its report was available after two weeks. Thereafter, on 30.09.2003 at 26th week, 3rd USG was performed by Dr. Ashok Khurana and it reported as:

> "the umbilical cord shows a single umbilical artery, no Dysmorphic Development anomaly delineated and parameters correspond to a mean gestational age of 26 weeks and 2 days +_3 days".

It was alleged that the Opposite Party No. 2 directly jumped to the conclusion that finding of chromosome 22ps+ in fetus and Single Umbilical Artery with foetal IUGR warranted drastic measure of immediate termination of pregnancy. Thereafter, the patient was admitted to Moolchand Hospital at 11 a.m. on 06.10.2003 for preterm induction of delivery. The induction was started with Tab. Misoprost/Cerviprime gel/Syntocinon IV drip and on 08.10.2003, at 9.25 a.m., she aborted spontaneously. The placenta was not expelled out, therefore, for Manual Removal of Placenta (MRP), she was shifted to Operation Theatre (OT), but before induction of anesthesia, she suffered severe bronchospasm with copious vomiting and aspiration. Immediately, the resuscitative measures started, but the patient could not survive and expired on 09.10.2003 at 6:56 p.m.

2. The deceased - Dr. Rupa was a Specialist doctor with Government of NCT of Delhi working as a senior resident till October 2003 in LBS Hospital. The Complainants lost two lives i.e. mother at young age of 32 years and the new born. Both died due to alleged illegal abortion and lack of care and expertise of treating doctors at the Opposite Party No. 1 Hospital. Being aggrieved by the death of Dr. Rupa, her husband Atanu Dutta an employee of NTPC, his minor daughter Anuprupa and in-laws of the deceased (parents of husband) filed the Consumer Complaint before this Commission. The Complainants prayed for total compensation of Rs. 3 Crore. Separately, they also filed Complaint before Delhi Medical Council (DMC) in 2004 and Appeal before Medical Council of India (MCI). An FIR No. 126 of 2012 was lodged against the treating doctors under Section 304A/34 IPC at P.S. Lajpat Nagar, New Delhi.

**The Defense:**

3. The Opposite Parties filed their respective written versions and denied any negligence during treatment. The preliminary objection of maintainability was raised contending that as the patient was a professional colleague, no charges were collected. Thus, she was not a Consumer. They also filed their respective evidence by way of affidavits.

**Evidence of Dr. Raj Bokaria - Opposite Party No. 2**

4. Dr. Raj Bokaria - Opposite Party No. 2 submitted that the Complainants are guilty of *suppresio veri* and *suggestion falsi*. The patient – Dr. Rupa did not follow the advice given by the doctors inasmuch as she did not go for Karyotyping test. She was irregular in ANC follow-up. As per the chromosomal analysis (Amniocentesis) and USG findings, the couple was explained about the risks and complications associated with the desired discontinuation of pregnancy at 26th week. The couple was further advised to undergo their Karyotyping from blood to confirm the inheritance pattern about any foetal abnormality, Dr. Rupa herself being a Gynecologist was well aware of the same. The couple was adamant and bent upon for discontinuation of the pregnancy, as they came to know about the high chances of child being abnormal with physical and / or mental

abnormalities. Also the patient was under stress due to asthma and therefore, she was not willing to continue the treatment for IUGR foetus to endanger her life. The couple was not willing to waste 2-3 weeks' more time in the tests and by that time pregnancy would reach to 28th - 29th weeks with viable fetus. The Complainants have concealed that the ANC Card was given from the beginning of her check ups at the clinic of the Opposite Party No. 2. The patient herself requested the Opposite Party No. 2 to save her from such torture and the danger to her life due to abnormal fetus. The Opposite Party No. 2, looking at the mental status of Dr. Rupa, was constrained to admit her in Moolchand Hospital on 06.10.2003. She was advised prophylactic antibiotics and to continue her anti-asthmatic drugs. She was informed about adverse effects of asthma and danger to her life. However, the couple consented for the entire procedure. On 06.10.2003, Dr. S.K. Jain, a Sr. Lung Specialist, performed asthma evaluation and found her in stable condition. She was advised to continue the same treatment. Dr. S. K. Jain also instructed that in case the patient develops any bronchospasm, immediately they should start IV steroids.

5. After admission of the patient on 06.10.2003, for two days, she was in the stage of pre-labour. Induction was planned with Cerviprime / Misoprost /IV Syntocinon drip. On 08.10.2003, at about 9.00 a.m., the patient, all of a sudden, started getting good contractions i.e. 1st stage of labour and it was immediately informed to Dr. Raj Bokaria. The senior resident doctor(s) on duty and qualified experienced nurse(s) spontaneously delivered a gasping fetus at 9.25 a.m. in the room. The mother & fetus both were separated and the mother was immediately shifted to labour room for expulsion of placenta. The couple specifically instructed (rather insisted) the nursing staff not to save the gasping fetus, as the specific purpose was to discontinue unwanted pregnancy. The family members were also adamant, they were in favour not to resuscitate the fetus. But, even then immediately a Pediatrician - Dr. Afshan Salim was called by the on duty Gynec. Resident, who performed resuscitative measures to the fetus, but the fetus was below the age of viability, thus, could not be saved. Thereafter, as per the instructions of the Complainant No. 1, the fetus was kept in the labour room, and on the next day handed over to the Complainant No. 1. Normally, after the delivery of fetus, placenta is spontaneously expelled out within 15 minutes. However, in this case the placenta was retained and did not expel out for 35 minutes even with continued IV Syntocinon drip. In the labour room at about 10.00 a.m. Dr. Raj Bakoria saw the patient. Almost about after an hour since the delivery the placenta was not expelled. The patient Dr. Rupa Dutta was conscious and was aware of the fact and decisions taken for her treatment. Even her family members (including her husband) were outside the labour room and were fully apprised of her condition. The Opposite Party No. 2 submitted that she performed her duty as per accepted medical practice for discontinuation of pregnancy.

6. After the delivery of fetus, the non-expulsion of placenta for more than one hour was harmful, therefore the MRP was to be done under general anesthesia (GA). Accordingly, the patient was shifted to OT. The Senior Anesthetists - Dr. Vijay Langer and Dr. N. K. Rastogi with their team were called. They carried out preliminary checks-up (including her food intake). The patient did not disclose about the breakfast. Therefore, based on the condition of the patient, as standard precautionary measures, injections Rantac and Perinorm were given to facilitate fast emptying of stomach and also reduce vomiting. However, before induction of anesthesia, on the operation table, unfortunately the patient had an episode of severe bronchospasm. She was immediately given IV steroids and bronchodilators (Deriphyllin) as instructed by Dr. S.K. Jain on 06.10.2003. The patient was restless, therefore a mild sedative inj. Midazolam 1mg was given. But, the bronchospasm was so severe and persistent that the patient vomited in large quantity and she aspirated. Due to the expulsive force, the placenta was expelled out spontaneously. Immediately suction of oral cavity followed by laryngoscopy was performed. Endotracheal intubation with 7 mm cuffed Endotracheal tube (ETT) was done. Immediately to prevent the possible chemical pneumonitis due to acidic gastric contents, bronchial wash was given by Dr. Rajesh Sharma, a Bronchoscopy chest specialist. The medicines IV bronchodilators and steroids were continued. After the bronchoscopy lavage, the condition of the patient was stable. The patient was shifted from the OT to the post-op recovery room with a control mode of ventilation on Positive End Expiratory Pressure (PEEP). The blood pressure and pulse were maintained. Immediately calls were sent to Physicians-cum-Cardiologists - Dr. A.K. Gaur and Dr. V. Anand, and Chest Surgeons - Dr. S.K. Jain and Dr. R.C. Jain. The CVP line (Central Venus Pressure) was started by Dr.V.Anand by using right femoral vein to measure pressure of central veins. The CVP was normal. The patient was catheterized and monitored for hourly urine output.

7. The patient, despite intubation, continued to have respiratory distress and Oxygen saturation was also falling. Therefore, to improve her $O_2$ saturation, combined decision to perform Tracheostomy was taken. Dr. Chanchal Pal, an ENT Surgeon and Dr. R.C. Jain, a Chest Surgeon, after obtaining an Informed Consent, performed tracheostomy and the tube was connected to the ventilator with 100% oxygen supply and PEEP. In the evening at about 9.00 p.m., the patient was again seen by Dr. V. Anand. There were signs of severe infection like high Total Leucocyte Count (TLC) 40300/cmm and high grade fever (101$^{o}$F). Bed side X-ray of the chest showed infiltration, which was consistent with Aspiration Pneumonitis / Aspiration Syndrome due to acute chemical reaction known as 'Mendelson's Syndrome'. The patient was continuously monitored and ventilated all through the night. On the next day i.e. 09.10.2003, in the morning at about 9.25 a.m., the patient remained on advanced life supporting devices. The vital parameters were disturbed and high – Pulse 157/min, BP 106/60, $SPO_2$ 92%. The bronchoscopy was repeated through tracheostomy tube, thick secretions were suctioned from the right upper lobe of lung, and the lungs were lavage. The rest of the bronchial tree was normal. The patient was put on broad spectrum higher antibiotics Tazact to cover all possible infections. Further medicines Vanco, Metrogyl, Amikacin were also added. Subsequently, in the evening, she suffered a cardiac arrest. Immediately as per CPR protocol of V-Tech was given including repeated DC shocks. Despite all efforts, the patient could not be revived and died at 6:56 p.m. The relatives were informed about the unfortunate death and they were given an option for Post Mortem to know the exact cause of death and to confirm Mendelson's Syndrome, but in writing, patient's husband denied his willingness for Post Mortem, therefore, the dead body was handed over for further rituals. It was further stated that the patient, being a professional colleague, no fee was charged by any of the treating doctors.

**Evidence of Opposite Party No. 3 – Dr. Alka Gujral**

8. Dr. Alka Gujral submitted that she is qualified as MD (OBG) and practicing since 1981. The patient – Dr. Rupa was under treatment of Dr. Raj Bokaria. She was admitted on 06.10.2003 under RAV unit which consists of qualified and experienced doctors. She visited the patient at 12' noon on her routine round and applied Cerviprime gel as advised by the Opposite Party No. 2. She further narrated about retained placenta. She submitted that she was not in the team of doctors when the patient was shifted to the OT for further treatment and ventilation. Since the deceased Dr. Rupa was her colleague as Senior Resident at Moolchand Hospital in past, she visited the post recovery room to know about her condition as she came to know that Dr. Rupa was on ventilator and thereafter she came to know that Dr. Rupa's death occurred at 6.56 p.m. on 09.10.2003. She submitted that in front of her, the Complainant No. 1 Atanu Dutta- the husband of Dr. Rupa gave in writing that 'I am not willing to get my wife's post mortem' and therefore, she put a signature as a witness to the statement.

**Evidence of the Opposite Parties Nos. 1, 5 and 6 (Hospital and Anesthetist)**

9. The Opposite Party No. 1 submitted that the Opposite Parties Nos. 2 to 4, at the relevant point of time, were Consultants with the hospital. On account of Dr. Rupa Dutta's personal relationship with the Opposite Party No. 2, she wanted admission in the hospital for discontinuation of pregnancy. The hospital had no relationship with the patient. There was no employer -employee relationship between the Opposite Party No. 1 hospital and the Opposite Parties Nos. 2, 3 and 4. The hospital only provided facilities at the instance of the Opposite Party No. 2. The hospital has not charged any fees from the patient Dr. Rupa keeping in view the fact that Dr. Rupa had worked in Moolchand Hospital under the guidance of the Opposite Party No. 2. Thus, the Complainants are not consumers. The couple took a conscious decision with regard to admission to the hospital for discontinuation of the pregnancy, this was no way the concern of the Opposite Party No. 1 Hospital as the onus of the same was on the treating doctors – Opposite Parties Nos. 2, 3 & 4. The Opposite Party No. 1 submitted the chronology of events from 06.10.2003 till the discharge from the hospital. As per normal practice, the death summary of Dr. Rupa with complete medical records was given to the Complainant No. 1. Regarding the allegation of not doing the Post Mortem (PM), the Complainants and their relatives were present following the unfortunate death of Dr. Rupa and they were satisfied with the treatment. As the Complainant No. 1 did not want the PM to be undertaken, he voluntarily gave in writing about not conducting the PM. Therefore, there was also no question of the hospital to inform the police.

Dr. Vijay Langer (Opposite Party No. 5) and Dr. N. K. Rastogi (Opposite Party No. 6), both Anaesthetist, submitted that it was the decision of the Opposite Party No. 2 to perform an emergency MRP. They were fully aware about asthma of the patient. No anesthesia was given and there is no such evidence on record. Thus, they had no role and the allegations against them as Anesthetist were with mischievous motives. The placenta was not expelled out for more than an hour, therefore decision of MRP, under GA was perfectly correct. It was not done in haste. However, before administration of anesthesia, the patient vomited and aspirated the acidic vomitus. Therefore, no anesthesia of any nature was given as alleged. The allegations under reply are the *ipsi dixit* of the Complainants. The DMC confirmed that anesthesia had never been administered.

**Arguments:**

10. The learned counsel, on both the sides, made their arguments. They reiterated their submissions made in their pleadings and affidavits of evidence. The learned counsel for the Complainant filed medical records, various orders of DMC, MCI and the Hon'ble High Court of Delhi passed in this matter.

11. We have carefully perused the medical record and the chronology of treatment and the events at Moolchand Hospital during 06.10.2003 to 09.10.2003. We have also perused the Orders of DMC and Ethics Committee of MCI, the expert opinion of Dr. K.L. Sharma and the Orders of Hon'ble High Court.

**Reasons and Conclusion:**

12. This Complaint is peculiar and raises the question of Civil and Criminal liability of the doctors and the hospital. However, it is no longer *res integra* that civil liability can be independently fixed and compensation therefor awarded irrespective of whether or not criminal proceedings have been separately undertaken. Two main issues involved in the instant case are – first: whether the treating doctor(s) were negligent and failed in their duty of care causing death of the patient (young doctor) due to premature induction/ termination of pregnancy and second: whether the violation of the statute in that termination of pregnancy was undertaken at the $26^{th}$ week itself amounts to an act of 'commission' and as such 'negligence'.

13. On careful perusal of the record, it transpire that Dr. Rupa delivered her first child in Moolchand Hospital by the hands of Dr. R. Bokaria. She had worked as Sr. Resident in OBG under Dr. Raj Bokaria, thus she had good relations with the hospital and doctors therein. She was a known asthmatic, it was under control by the treatment of Dr. S. K. Jain. During her $2^{nd}$ pregnancy, after investigations (USG and Amniocentesis), it was revealed about single umbilical artery and abnormal short arm of Chromosome No. 22 (pq22+). Therefore, she, as a Gynecologist, had apprehension about chances of abnormal fetus and IUGR. Therefore, she with her husband approached Dr. Raj Bokaria (Opposite Party No. 2) for discontinuation / termination of pregnancy at $26^{th}$ week. The Opposite Party No. 2, in her affidavit, stated that she discussed the pros and cons, the risks and complications associated with mid trimester abortion, but the couple was adamant and not willing to continue the pregnancy. At that time, clinically she was $24^{th}$ -$26^{th}$ weeks and by date $27^{th}$ -$28^{th}$ weeks.

14. It is well said that '***The person may lie but the "Documents" may not'.*** Dr. Raj Bokaria, in her prescription dated 01.10.2003, clearly recorded the diagnosis as **" IUGR c̄ Single UA c̄ amniocentesis abn permanent short arm Chr.of 22 c̄ Br.Asthama"**. The entire medical record (06.10.2003 to 09.10.2003) consists of relevant investigations, advices and procedures undertaken at the Opposite Party No. 1 Hospital. It is evident that GA (General anesthesia) was not given to the patient. For MRP, patient was taken to OT on 08.10.2003 and at around 10.25 a.m., before induction of anesthesia in the OT, the patient suffered severe bronchospasm and vomited, which caused aspiration of acidic gastric contents. As a sequel, it further progressed to chemical pneumonia- Acute Mendelson's Syndrome. The team of doctors in OT initiated prompt resuscitative measures. At intervals, the bronchoscopic lavage and suction was done. The $O_2$ saturation was maintained with ventilator and timely tracheostomy was performed. The patient's blood parameters showed rising values of SGOT, SGPT, PT and FDP, therefore, hypoxic liver damage was suspected with chemical pneumonitis leading to ARDS with DIC. Accordingly, four units of FPP were arranged and Vitamin K was given. On 09.10.2003, repeat bronchoscopy through tracheostomy tube was done and thick secretions were

aspirated from right upper lobe of lung. Bronchial lavage was given. She was febrile throughout (around 103$^{o}$F) therefore, to cover all possible infection antibiotics were changed.

15. At 5.45 p.m., bed side ECHO was performed. The heart rate was 182/min, she was given Xylocard. Subsequently, she suffered a cardiac arrest. Immediately CPR protocol was started with V-Tech including repeated DC shocks. Despite all efforts of the team of experts, the patient could not be revived and expired at 6:56 p.m. The relatives were informed about the unfortunate death and an option for post mortem was given to know the exact cause of death and to confirm Mendelson's Syndrome, but the patient's husband denied his willingness in writing, therefore, the dead body was handed over to them for further rituals.

We may note that the Opposite Party No. 1 hospital was dutybound to duly conduct the post-mortem and it cannot take a defence that the attendants or relations of the deceased wanted otherwise. Nor can there be any mitigation for not treating the death on the operation table as a medico-legal case and informing the local police, which it was dutybound to do irrespective of what may have been desired or not desired by the attendants or relations.

16. The patient's husband (the Complainant No. 1) filed a complaint before the DMC on 17.08.2004, it was dismissed with the observation that the pre-term induction of labour done on 21.02.2006, was in the interest of maternal health of the patient as fetus showed single umbilical artery and short arm of no. 22 chromosome (*22ps+)*. The Complainant No. 1 preferred an Appeal before the MCI. The Ethics Committee of the MCI, vide its Order dated 03.11.2010, allowed the Appeal and imposed punishment on the treating doctors.

17. Going through the MCI report, we find that its Ethics Committee discussed the following issues:

(a) Whether it was MTP or Pre-term termination?

(b) Whether informed consent was obtained in a proper format from the patient or hospital?

(c) Whether chromosomal abnormality of the patient warranted termination of pregnancy?

(d) Who are the doctors who are party to the decision of termination of pregnancy?

(e) Who administered Anaesthetist? What type anaesthesia has been given? Was it given empty stomach?

(f) Was PAC done?

(g) Was it an attack of bronchial asthma or aspirated pneumonia?

The Ethics Committee also took legal opinion from its Retainer Advocate Mr. J. S. Bhasin on the various provisions of the MTP Act, 1971, on the issue of "whether MTP/Induction of labour at 28 weeks of pregnancy is permissible under the law". After going through the statements of the Opposite Parties doctors and relying on the judgment of Hon'ble Supreme Court in the case of **Suchita Srivastava vs. Chandigarh Administration**[1], Mr. J. S. Bhasin concluded that:-

> "the MTP / Induction of Labour at 28 weeks of pregnancy is strictly prohibited and not permissible under the statutory conditions of the Act and the same is also not permissible under the law and is a punishable offence under Indian Penal Code (IPC)".

18. The Ethics Committee made its recommendations as below:

> "After examining the material and the opinion of the Retainer Advocate i.e. Mr. J. S. Bhasin and the expert consultant Prof. Alka Kriplani, Deptt. Of Obst. & Gynaecology, AIIMS, New Delhi, the Ethics Committee is of the considered opinion that Dr. Raj Bokaria should be punished and his name be removed from the India Medical Register for a period of 03 (three) months. Dr. Alka Gujaral and Dr.

> Veena Bhatt were a part of the team of Dr. Raj Bokaria which handled the patient. The Ethics Committee after examining the defence statement feels that they cannot be completely absolved of the professional mis-conduct as they were qualified Obst. & Gynaecologist. However, in view of the minor nature of role of these two doctors i.e. Dr. Alka Gujaral and Dr. Veena Bhatt, the Committee feels that the punishment of warning should be sufficient and hence recommended that a warning should be issued to both of them that they should be more careful in future while assisting someone."

Therefore, vide order dated 03.11.2010 passed by MCI [No.MCI-211(2) (408)2007-Ethics / 37285, 88, 94], the treating doctors were held liable for medical negligence for the wrong line of treatment, illegally aborting 28 weeks of pregnancy in gross violations of the provisions of the MTP Act and for not giving any treatment to the newborn live baby, resulting into deaths of both the newly born baby as well as the patient (mother). Therefore, MCI ordered for removal of names of Dr. Raj Bokaria (Opposite Party No. 2) from the Medical Register for 3 months and issued warnings to Dr. Alka Gujral (Opposite Party No. 3) and Dr. Veena Bhat (Opposite Party No. 4).

19. The Dr. Raj Bokaria (Opposite Party No. 2) challenged the order of the MCI by filing a Writ Petition WP(C) No. 7905/2010 in the Hon'ble High Court of Delhi and the same was dismissed on 25.11.2011 and further the LPA No. 70/2011 before the Division Bench was also dismissed on 10.04.2013. Another Writ Petition W.P.(C) No. 1608/2011 filed by Dr. Alka Gujral (Opposite Party No. 3) was dismissed. At present her LPA is pending.

20. We cannot turn a blind eye to the expert opinion of Dr. Ashutosh Halder, Department of Reproductive Biology, AIIMS, New Delhi, which deserves the due attention. His opinion confirms the wrong diagnosis and wrong treatment from Opposite Party No. 2 Dr. Raj Bokaria. The opinion given by Dr. Halder reads as under:–

> "…Detailed scan at 26 weeks did not find any other detectable malformations, hence fetus was isolated case of single umbilical artery. There was no intra uterine growth restriction (IUGR) or amniotic fluid abnormality….The decision for termination at 26 weeks was taken on the basis of single umbilical artery, IUGR and prominent satellite of short arm of chromosome 22 (22ps+)……Isolated single umbilical artery case (i.e., finding of 22ps+ in fetus) does not warrant any drastic measures like termination as in this case…
>
> Three ultrasound scans (14, 24 & 26 weeks) did not detect any evidence for IUGR. Clinically size of uterus is subjective and less sensitive than ultrasound examination.
>
> …It seems that interpretation of karyotype result by the treating doctor was unclear. Should have consulted a geneticist including Dr. I.C. Verma from where test was carried out….
>
> Furthermore there was no record of terminated fetus. One should follow up their action so that in future they can correct/refine their actions or justify their actions…"

21. We have also perused one expert opinion given by Dr. K.L. Sharma in support of the Complainants. He has opined that it was the negligence of the OPs at various stages of the treatment. He has pointed out that in the instant case the record was silent on the details of treatment given to the newborn. The provisions of the MTP Act, 1971 were violated in that the mandatory consent (prescribed in "Form C") had not been obtained from the deceased. No PM was conducted though it was death in the OT as stated and was a medico-legal case. No specific consent of the attendants or relatives was required for the PM.

22. In respect to the defence of free treatment to a professional colleague, it is a settled position that in case a hospital is charging fee in the normal course to its patients at large, then even if (due to any reason) it provides free treatment to one particular patient this by itself does not extinguish the service provider – consumer relationship or absolve its liability regarding 'negligence' or 'deficiency'.

**Conclusion:**

23. We may mention that the findings of the Ethics Committee of the MCI (supra) have material relevance to establish negligence and deficiency. The Hon'ble High Court of Delhi decision of upholding negligence is also similarly material. Notwithstanding the afore, from the independent appreciation of the facts and evidence made by us herein, we decidedly find medical negligence and deficiency in this case. In our considered view, the breach in duty of care was decidedly on the Opposite Party No. 2 doctor who was the main Consultant and on the Opposite Party No. 1 hospital and as such we find them liable for medical negligence and deficiency under the Consumer Protection Act, 1986.

24. Even if the patient or her attendants or relations were insisting on medical termination of pregnancy, the hospital was bound by the provisions of the MTP Act, 1971 and ought not to have undertaken termination at the $26^{th}$ / $28^{th}$ weeks of pregnancy. The violation of the statute *per se* constitutes an act of 'commission' and as such 'negligence'. There are glaring lapses like not having followed the mandatory requirements of Section 5 (1) of the MTP Act, 1971 and of Rule 3 (1) of the MTP Regulations, 2003. Reasons for MTP were not recorded in Form 1, informed consent was not taken in the prescribed format and opinion of two gynecologists was not taken before MTP.

Pertinently, from the evidence of the Opposite Party No. 2 doctor and from the expert opinion of Dr. Haldhar from AIIMS, it is clear that single umbilical artery and minor chromosomal abreaction (pq22+) does not warrant any drastic measures to terminate the pregnancy.

25. The patient's death on the Operation Table itself was unarguably a medico-legal case, but the police was not informed and the Post Mortem was not performed. It was the responsibility of hospital authorities, but they failed to do so. Denial of PM by the patient's attendants is not an acceptable defense. The PM would also have thrown light on the cause of death. Not doing PM in MLC case creates more doubts about the cause of death and the real happenings in the OT. The hospital authorities failed in their duty.

26. In addition, the instant case appears to be **Therapeutic Misadventure**, which can be defined as an injury or an adverse event caused by medical management rather than by an underlying disease. As per the MTP Act, it is mandatory to take opinion from one more specialists before performing MTP procedure beyond $20^{th}$ week that may have an adverse effect on the patient's condition. The Courts don't view such absence favourably, as this case shows. Sticking to standards is the best care. The new Medical Termination of Pregnancy (Amendment) Act 2021, is, now, a move towards safe and legal abortion services on therapeutic, eugenic, humanitarian and social grounds to ensure universal access to comprehensive care, which would also contribute towards ending preventable maternal mortality.

27. Adverting to the quantum compensation, human life is most precious. Therefore, it is difficult to decide on the quantum of compensation in the medical negligence cases, as the quantum is highly subjective in nature. Different methods are applied to determine compensation. The multiplier method which typically used in motor accident cases not often conclusive for 'just and adequate compensation'. The Hon'ble Supreme Court has held that there is no restriction that courts can award compensation only up to what is demanded by the complainant. We would like to rely upon the Sarla Verma's Case[2], wherein the Hon'ble Apex Court discussed "just compensation" with a lot of clarity and precision. It was observed:

> "Compensation awarded does not become 'just compensation' merely because the Tribunal considers it to be just…Just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit…Assessment of compensation though involving certain hypothetical considerations, should nevertheless be objective. Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision making process and the decisions"

28. A decision in the case of Spring Meadows Hospital & Anr. v. Harjol Ahluwalia & Anr.[3], their Lordships observed as below:

> "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."

In the instant case, the acts of the Opposite Parties No. 1 and No. 2 were not a case of bonafide mistake and are not excusable.

29. Medical negligence is conclusively attributable to the Opposite Parties Nos. 1 and 2. In the instant case, the medical negligence attributable to the Opposite Parties No. 1 and No. 2 is writ large. There is no straight jacket formula for award of compensation, but considering the facts and circumstances, to meet the ends of justice, lumpsum compensation of Rs. 1 Crore appears to be just and adequate. The Opposite Party No. 1 hospital, which permitted the act of performing medical termination of pregnancy in violation of the MTP Act, 1971, and which did not get the post-mortem conducted and did not inform the local police of the medico-legal case, is undoubtedly liable. The Opposite Party No. 2 doctor is also clearly liable. We deem it appropriate that the Opposite Party No. 1 hospital shall pay Rs. 90 lakh and the Opposite Party No. 2 doctor to pay Rs. 10 lakh to the Complainant No. 2 i.e. the daughter of the deceased Dr. Rupa within 6 weeks from today, failing which the amount shall carry interest at the rate of 9% per annum till its realisation. We may observe that the daughter of the deceased was a minor at the time of her mother's death, but due to efflux of time she has since become a major and as such the amount(s) shall be paid to her. Additionally, the Opposite Party No. 1 hospital shall pay Rs. 1 lakh towards cost of litigation to the Complainant No. 1 i.e. the husband of the deceased Dr. Rupa within 6 weeks from today, failing which the said amount shall also carry interest at the rate of 9% per annum till its realisation.

30. The Complaint is partly allowed.

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[1] (2009) 9 SCC 1

[2] 2009 (6) SCC 121

[3](1998) 4 SCC 39

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**DR. S.M. KANTIKAR**
**PRESIDING MEMBER**

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**DINESH SINGH**
**MEMBER**