

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 1882 OF 2018**

(Against the Order dated 06/09/2018 in Complaint No. 299/2010 of the State Commission  
Delhi)

1. SRI BALAJI ACTION MEDICAL INSTITUTE  
(A UNIT OF LALA MUNNI LAL MANGE RAM  
CHARITABLE TRUST) FC-34, A-4, PASCHIM VIHAR  
NEW DELHI 110063

.....Appellant(s)

Versus

1. TILAK @ TILAK RAJ SIKRI  
S/O. SH. MADAN LAL , R/O. H NO 933, NEW HOUSING  
BOARD COLONY  
PANIPAT  
HARYANA

.....Respondent(s)

**FIRST APPEAL NO. 1938 OF 2018**

(Against the Order dated 06/09/2018 in Complaint No. 299/2010 of the State Commission  
Delhi)

1. TILAK@TILAK RAJ SIKRI  
S/O. SHRI MADAN LAL, R/O. H NO 933, NEW HOUSING  
BOARD COLONY  
PANIPAT  
HARYANA

.....Appellant(s)

Versus

1. BALAJI ACTION MEDICAL INSTITUTE  
THROUGH ITS MEDICAL SUPRINTENDENT, FC-34, A-4,  
PACHIM VIHAR  
NEW DELHI

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA,PRESIDING  
MEMBER  
HON'BLE BHARATKUMAR PANDYA,MEMBER**

FOR THE APPELLANT :

FOR SRI BALAJI ACTION MEDICAL INSTITUTE : MR. R.P.  
PAHWA, ADVOCATE

FOR THE RESPONDENT :

FOR TILAK @ TILAK RAJ SIKRI : MR. B.S. SHARMA,  
ADVOCATE  
: MS. DEEPINDER KAUR, ADVOCATE

**Dated : 12 July 2024**

**ORDER**

1. Heard Mr. R.P. Pahwa, Advocate, for Sri Balaji Action Medical Institute and Mr. B.S. Sharma, Advocate, for Tilak @ Tilak Raj Sikri.
2. Above appeals have been filed against the order of State Consumer Disputes Redressal Commission dated 06.09.2018, allowing CC/299/2010 and directing Sri Balaji Action Medical Institute to pay Rs.3500000/- as compensation for loss of eyesight and medical expenses to the complainant.
3. The office has reported that FA/1882/2018 is 2 days time barred. No application for condonation of delay has been filed in FA/1938/2018. In view of cross appeal, we condone delay in filing the appeal. The office has reported that FA/1938/2018 is 19 days time barred. IA/5754/2019 has been filed for condonation of delay, stating that 'Free Certified Copy' of the impugned order was dispatched on 10.09.2018 and received on 26.09.2018. The appeal has been filed on 29.10.2018. The appellant is a blind man as such few days delay has been caused in arranging everything for filing the appeal. Cause shown is sufficient and delay in filing FA/1938/2018 is condoned.
4. Tilak @ Tilak Raj Sikri filed CC/299/2010, for directing Sri Balaji Action Medical Institute to pay (i) Rs.80/- lacs (i.e. Rs.50/- lacs, as compensation for loss of eyesight, Rs.25/- lacs as compensation for physical pain and mental agony and Rs.5/- lacs, as the medical expenses) with interest @18% per annum from the date of loss of eyesight till the date of payment. The complainant stated that he had suffered from high grade fever on 04.10.2008 and visited to Ahuja Hospital, Sanoli Road, Panipat. After check-up, the doctor immediately referred for higher centre in Delhi. The complainant then visited to Sri Balaji Action Medical Institute (the hospital) on 04.10.2008 at 14:00 hours. On diagnosis, the doctor informed that he was suffering from 'dengue' and was admitted in 'Intensive Care Unit' of the hospital, where various tests were conducted. Test report showed "Dengue NS-1 Antigen" as negative. Due to negligent treatment in ICU, his 'Platelet Count' started falling and his visibility of the eyesight of both the eyes became very low. The complainant informed the attending doctors and nurses about his low visibility on 05.10.2008 but they ignored it. In intervening night of 05/06.10.2008, his condition had become very critical. In morning on 06.10.2008, when senior doctor came, he advised for MRI and referred to Krystal MRI Scan & Diagnostic Centre-I, Paschim Enclave, Main Road, Neer Peera Garhi Chowk, New Delhi. MRI report showed "Subcutaneous edema in the bilateral eyelids with pathological of wall of optic globes". On 06.10.2008 at 16:45 hours, his 'Platelets Count' was 50 and on 07.10.2008 at 5:50 hours his 'Platelet Count' was 128. The doctors, however, failed to control infection in eyes of the complainant. The complainant lost visibility on 07.10.2008, then at late hours, the doctors referred for 'All India Institute of Medical Sciences, New Delhi (AIIMS), informing the father of the complainant that he was unable to diagnose the reason of loss of visibility. Due to heavy rush in AIIMS, the complainant could not be admitted on 07.10.2008 and he was admitted on 08.10.2008 in AIIMS, where his treatment of the eyes was started. On 09.10.2008, he was admitted in 'Dr. Rajendra Prasad Centre For Ophthalmic' of AIIMS, where he remained admitted till 24.10.2008. The complainant could not get any effective result. After discharge from AIIMS on 24.10.2008, the complainant took treatment in Shroff Eye Centre, Kailash Colony, New Delhi on 24.10.2004, who prescribed medicines. After continuously taking medicines, the complainant went to Patanjali Yopeeth, Haridwar on 01.11.2008 and 17.11.2008 and again to Shroff Eye Centre on 18.11.2008 and 19.01.2009. Mohan Eye Institute, Daljeet Singh Eye Hospital and Dr. RR Rama Raja Gopal from Sankara

Netralaya, Chennai but could not regain his visibility in any of the eye. Due to gross negligence committed by the doctors of the hospital, the complainant permanently became blind. If the hospital was not competent to handle the condition of the complainant, they would not have admitted him in the hospital on 04.10.2008. The complainant and his father approached the hospital and inquired from the treating doctor about the reason for loss of eyesight but no satisfactory reply was given. During treatment, the complainant incurred more than Rs.5/- lacs. The complainant was working as Production Manager in Raj Woolen Mills, G.T. Road, Panipat from last 10 years and getting salary of Rs.16000/- per month and Rs.7000/- per month for overtime. Due to loss of eyesight, he lost his job in the age of 34 years. The complainant is a married man and his wife, son about 6 years and daughter about one year are fully depended upon him. The complainant has no other source of income. During treatment and thereafter, the complainant suffered from lot of physical pain and mental agony. On these allegations, the complaint was filed in September, 2010.

5. Sri Balaji Action Medical Institute (the hospital) filed its written reply and stated that the patient was brought to the hospital on 04.10.2008 at 15:00 hours, in a critical condition with history of fever since five days with chills and with rigors, passing of blood in urine (haematurial), pain in abdomen since 3-4 days, an episode of hematemesis 2 days and ghabrahat on sitting 2 days. General condition of the patient was very poor. On examination, he was diagnosed to have acute febrile illness with sever thrombocytopenia with bleeding diathesis, bleeding gums. He also had purpuric spots on legs. He was immediately admitted to ICU and examined Senior Consultant & Unit Head of the hospital at 15:15 hours on 04.10.2008. Gastrointestinal bleeding was suspected. Blood test report showed platelets count nil. Keeping in view of symptomatology and the reports in the outbreak of dengue fever, 4 platelet concentrate and one unit of platelet apheresis were transfused to the patient. As there was bleeding from multiple sites, two units of FFP were also given along with IV fluids and other supportive therapy. His reports revealed severe life threatening thrombocytopenia, haemoconcentration, mildly deranged prothrombin time, positive dengue serology suggestive of secondary or tertiary dengue infection. He had polyserocytis (right pleural effusion), moderate ascites and gall bladder was edema. His clinical symptomatology and investigations were suggestive of dengue haemorrhage fever. During his admission in ICU, the patient was looked after by a qualified ICU Resident Doctor who was well versed with critical care and was constantly monitored and supervised by the treating consultants. In view of dengue outbreak, special care was given to the patient throughout his admission in the hospital. On the complaint of blurred vision, he was referred to Senior Consultant Ophthalmologist, whose impression was intraorbital/cerebral haemorrhage and advised CT Scan Head & Orbit axial + coronal cuts thin sections. CT scan was done and report came at 10:00 hours on 06.10.2008, which revealed focal hypo-densities left front parietal region near the convexity and no evidence of intra cranial haemorrhage was seen. Neurologist was consulted and the case was reviewed by Senior Consultant Ophthalmologist also, who suspected impression of acute optic neuritis, vitreous haemorrhage due to haze, no view was possible in fundus examination. He advised for MRI orbit to rule out vitreous haemorrhage and demyelinating? optic neuropathy. MRI was done on 06.10.2008, which revealed multiple micro-bleeds in the bilateral fronto parietal subcortical and periventricular white matter and basal ganglia. There was a subcutaneous edema in the bilateral eyelids with pathological thickening of wall of optic globes. The patient was bleeding in vital organs like eyes. His platelets were maintained at more than 50000/min by platelet transfusion and his prothembin

time was maintained by giving this Fresh Frozen Plasma. Ophthalmologist team reviewed the patient on 07.10.2008 and observed that the patient epithelial edema+epithelial deficit over cornea both eyes. The eyes also had chemosis. As there was no improvement in patient's vision, he was referred to AIIMS for further management on 07.10.2008. On 07.10.2008, patient's platelets had improved to 120000 and his haemoconcentration had improved to PCV 35.3 and the patient was in stable condition except his eyes. He was diagnosed as a case of 'Dengue haemorrhage fever with optic neuritis with severe corneal haemorrhage'. As the optic nerve is extremely sensitive to ischemia, this optic nerve pathology does not recover irrespective of treatment. He was treated according to standard protocol, with compassion, humane touch and was given best care. He was timely investigated and timely referred. No negligence was committed. There was no deficiency in service on the part of the hospital. It has been denied that the treating doctors, Resident doctor of ICU or medical staff were incompetent or committed any negligence. Exaggerated claim has been made without any basis. The complaint is liable to be dismissed.

6. State Commission sought for an expert opinion from Maulana Azad Medical College, New Delhi, who formed a Medical Board. The Medical Board examined the papers and submitted its report as forwarded vide letter dated 03.01.2014 stating that no medical negligence was committed at the hospital during treatment of the patient. The complainant also made a complaint against the hospital and the treating doctors before Delhi Medical Council, who had conducted an inquiry and after hearing the parties vide order dated 27.04.2012, found that the treatment as given to the patient in the hospital was per Standard Protocol and no negligence has been committed.

7. State Commission, after hearing the parties, vide judgment dated 06.09.2018, held that the patient reported blurring vision on 05.10.2008, at 22:30 hours while Dr. Raj Anand, Ophthalmologist attended the patient on 06.10.2008 at 7:00 hours and Steroid was given on 06.10.2008 at 7:00 hours. CT Scan report was received on 06.10.2008 at 12:13 hours and MRI report was received on 06.10.2008 at 20:00 hours. There was no reason for not attending the patient by the Ophthalmologist on 05.10.2008 and starting treatment of the eyes. Even after examining by Ophthalmologist unreasonable delay was cause in obtaining CT Scan report and MRI report. This was crucial period for the patient. The hospital has committed negligence in taking care of the eyes of the patient, which resulted in permanent damage. On these findings, the complaint was allowed and order as stated above was passed. Hence these appeals have been filed.

8. We have considered the arguments of the parties and examined the record. Supreme Court in **Jacob Mathew v. State of Punjab (2005) 6 SCC 1**, held that negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: "duty", "breach" and "resulting damage". Negligence in the context of the medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from

one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. These principles were consistently applied in **Kusum Sharma Vs. Batra Hospital & Medical Reserch Centre, (2010) 3 SCC 480, Arun Kumar Manglik Vs. Chirau Health & Medicare Private Ltd., (2019) 7 SCC 401, Maharaja Agrasen Hospital Vs. Master Rishabh Sharma (2020) 6 SCC 501 and Harish Kumar Khurana Vs. Joginder Singh, (2021) 10 SCC 291.**

9. State Commission found that the patient complained blurred vision on 05.10.2008 at 22:30 hours, Dr. Raj Anand, Ophthalmologist attended the patient on 06.10.2008 at 7:00 hours and Steroid was given on 06.10.2008 at 7:00 hours. CT Scan report was received on 06.10.2008 at 12:13 hours and MRI report was received on 06.10.2008 at 20:00 hours. There was delay of about 12 hours in starting medicine, which resulted in loss of vision. Finding of State Commission, resulting damage appears to be casual. State Commission has failed to advert to the CT Scan & MRI reports and expert opinion. CT scan was done in the hospital and after going through it, Dr. Raj Anand, in the prescription slip dated 06.10.2008 at 10:00 hours noted that “no haemrrhage”, MRI brain + Evaluation of visual pathway”. Neurologist was consulted and the case was reviewed by Dr. Raj Anand at 11:30 hours, who suspected impression of acute optic neuritis, vitereous haemorrhage due to haze, no view was possible in fundus examination and he advised for MRI orbit to rule out vitreous haemorrhage and demyelinating? optic neuropathy. MRI was done at Krystal MRI Scan & Diagnostic Centre on 06.10.2008, which revealed multiple micro-bleeds in the bilateral fronto parietal subcortical and periventricular white matter and basal ganglia.

10. The patient was brought to the hospital on 04.10.2008 at 15:00 hours, in a critical condition with history of fever since five days with chills and with rigors, passing of blood in urine (haematurial), pain in abdomen since 3-4 days, an episode of hematemesis 2 days and ghabrahat on sitting 2 days. General condition of the patient was very poor. On examination, he was diagnosed to have acute febrile illness with sever thrombocytopenia with bleeding diathesis, bleeding gums. He also had purpuric spots on legs. In MRI report bleeding in brain i.e. in the bilateral fronto parietal subcortical and periventricular white matter and basal ganglia was found. The patient was bleeding in his brain due to acute dengue. This was not an eye disease rather it was an effect of dengue and falling the level of platelets, for which the treatment was already going on. Even if Ophthalmologist may have attended on 05.10.2008 at 22:30 hours, no other treatment except, which was going on was possible. The Medical Board of Maulana Azad Medical College, New Delhi examined the papers and in its report as forwarded vide letter dated 03.01.2014, stated that ophthalmologic complications like optic neuritis, which can lead to blindness are known to occur in dengue fever. Delhi

Medical Council also in its order dated 27.04.2012 held that dengue along with super infection subsequently leading to phthisis neuritis is a known complication of dengue. Medical literature shows that although spontaneous visual recovery is possible but optic neuropathy associated with dengue fever may result in severe permanent visual loss. State Commission has illegally ignored the MRI report, expert opinions and not considered the medical literature.

11. In the present case, the injury was caused to the patient due to dengue fever and not due to delay in attending by the ophthalmologist. Supreme Court in above cases held that negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: “duty”, “breach” and “resulting damage”. Negligence in the context of the medical profession necessarily calls for a treatment with a difference. As such not only negligence but resultant damage due to negligence give rise for an action against the doctor/hospital.

**ORDER**

In view of the aforesaid discussions, the order of State Commission is liable to be set aside. FA/1882/2018 succeeds and is allowed. The order of State Commission date 06.09.2018 passed in CC/299/2010 is set aside. FA/1938/2018 is dismissed. CC/299/2010 is dismissed. If Sri Balaji Action Medical Institute has deposited decretal amount in compliance of order dated 09.04.2019, it shall be released to it along with accrued interest within 2 weeks from the date of the judgment.

.....J  
**RAM SURAT RAM MAURYA**  
**PRESIDING MEMBER**

.....  
**BHARATKUMAR PANDYA**  
**MEMBER**