

**IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
AT NEW DELHI**

NC/FA/254/2016

(From the Order dated 11.02.2016 in CC No. 25/2014 of the
Chhattisgarh State Consumer Disputes Redressal Commission)

Manish Baghel & Anr.

... Appellants

Versus

Sarvodaya Hospital & Ors.

... Respondents

BEFORE:

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

HON'BLE MR. BHARATKUMAR PANDYA, MEMBER

Appeared at the time of arguments:

For Appellants : Mohd. Anis Ur Rehman, Advocate

For Respondent – 1 : Mr. Harshit Kiran, Advocate

For Respondent – 2 : Ms. Meenakshi S. Devgan, Advocate
Mr. Anand Shankar Jha, Advocate

For Respondent – 3 : Mr. Ravi Bakshi, Advocate

Pronounced on : 07th July 2025

ORDER

JUSTICE A.P. SAHI, PRESIDENT

1. The Appeal arises out of a medical negligence complaint filed by the Appellant against the Respondents Nos. 1 and 2 regarding the treatment of Smt. Varsha Baghel, the wife of the Appellant No. 1 and the mother of the Appellant No. 2. The background of the dispute is that having pain in her abdomen, the patient came for treatment to Shubhkamna Hospital, where the problems in her ovary were detected and diagnosed as Ovary Torsion. She was advised surgery for removal of the growth. Accordingly to the

Respondent No. 1, she had been advised an open surgery, but she came to the Respondent No. 1 Hospital on her own choice for getting a laparoscopy conducted. This has been disputed on behalf of the Complainants - Appellants about which reference shall be made hereinafter.

2. Nonetheless, the patient was admitted on 14.10.2013 at Sarvodaya Hospital, the Respondent No. 1 herein and she was operated upon through laparoscopy by Dr. Sushma Verma and Dr. Dileep Verma. It is also the case of the Respondents that the patient Smt. Varsha Baghel was related to one Dr. Meera Baghel, who had recommended her to this hospital and was also present at the time of diagnosis and surgery.

3. Post surgery, the tissues were sent for biopsy that was conducted on 15.10.2013 and a detailed report was submitted by Dr. Renuka Gahine of M/s. Vibha Colour Sonography & Diagnostic Centre, the Respondent No. 2 herein. The opinion expressed was of an impression suggestive of mucinous cystadenoma. The report is extracted hereinunder:

"MICROSCOPIC FEATURES:

Sections from both the nodular masses show well circumscribed nodular mass composed of cysts lined by single layer of mucin secreting columnar epithelium isolated cells in the pool of mucin separated by scanty fibrocollagenous streama adjacent parenchyma show hemorrhage and inflammatory granulation tissue. There is no evidence of stromal invasion.

IMPRESSION: S/O MUCINOUS CYSTADENOMA."

4. The patient appears to have gone for a check-up on 27.10.2013 when she was called upon to come after 15 days for follow-up, whereafter she

went to the Respondent No. 1 Hospital on 19.01.2014. There seems to be an Ultrasonography conducted on 15.02.2014 and she approached the Respondent No. 1 Hospital once again with her complaints when she was examined on 16.03.2014 at the Respondent No. 1 Hospital and the following observations were made:

"OBSERVATIONS:

LIVER Size (P) Shape (P) Echotexture (P)

Any focal or Diffuse mass lesion: No mass No IHBRD

PV: MEASURES: (P) mm

GALL BLADDER:

Any Calculus/Mass lesion: No cal. No mass

CBD: MEASURES (P) mm

PANCREAS:

Size (P) Shape (P) Echotexture (P)

KIDNEYS: RIGHT KIDNEY MEASURES: 9.9 X 3.3 CM

LEFT KIDNEY MEASURES 8.7 X 4.3 CM

Cortico-Medullary Differentiation Maintained.

Any Calculus/Hydronephrosis: No Cal. No HDN.

URINARY BLADDER:

Wall Thickness Size (P)

SPLEEN : Size 7.7 cm Shape (P) Echotexture (P)

PROSTATE: Size Shape Echotexture

Post void residual urine.

PELVIS :

UTERUS : Anteverted/Retroverted.

Size: 8.5 X 3.3 X 5.3 CM

Echotexture (P)

RIGHT OVARY: Not seen Size CM

LEFT OVARY: _____ Size CM

Echotexture: A large septated cystic mass in the uterus

11.5 x 1.3 x 7.7 cm.

CUL DE SAC : _____ free fluid _____ +/- _____

Impression: A large mass above uterus most probably arising

From lt ovary s/o lt ovarian neoplasty

Advice - Clinical correlation & other finding

Post Rt. Oophorectomy Status."

5. Accordingly, she again underwent Ultrasonography on 18.03.2014 when malignancy came to be detected.

6. The patient then went to the Nanavati Hospital at Bombay. During her treatment there, a histopathological examination was also undertaken at S.L. Raheja Hospital, Mumbai on 27.03.2014 and it was discovered that the growth in the ovary was cancerous. The report is extracted hereinunder:

"Microscopic Description:

I & II) Right ovarian tumour & piece of left ovary:

Mucinous adenocarcinoma in the ovary.

Please rule out metastatic adenocarcinoma from colon, especially appendix, before considering this as an ovarian primary.

Section table 'C' shows benign ovarian tissue."

7. It was alleged by the Complainant that during the treatment of the patient at Nanavati Hospital the patient was informed that the administration of Nimesulide pain killer to the patient was incorrect as it was a prohibited drug. After return from Bombay, the complaint giving rise to the present controversy was filed on 25.09.2014. The complaint was contested by the Respondents / Opposite Parties denying the allegations of any medical negligence or deficiency and during the pendency of the complaint, the patient died on 02.08.2015.

8. The complaint was dismissed on 11.02.2016 holding that there was no error in the protocol that was followed for either conducting the histopathological test and its conclusion by the Respondent No. 2 and there was no deficiency in service in carrying out the surgery performed at the Respondent No. 1 Hospital.

9. The State Commission after having assessed the evidence and also the answers to the interrogatories issued to the Respondents Nos. 1 and 2 came to the conclusion that there was no deficiency in the line of treatment nor there was any default in the analysis made by the Respondent No. 2 and hence the complaint is liable to be dismissed.

10. Mr. Rehman, learned Counsel for the Appellant submits that the State Commission committed an error in as much as the histopathological report was incorrect in spite of the fact that all the elements of cancer were clearly traceable as per the subsequent histopathological report conducted at Bombay which confirmed the existence of cancer on the basis of the same slide that had been prepared from the biopsy conducted at the time of the surgery. He therefore submits that the histopathological report prepared by the Respondent No. 2 was a negligently drawn up report without taking due care of examining the tissues that were sent for biopsy. Thus a wrong report had resulted in an incorrect method of surgery and the Surgeon also did not take any steps for getting the said slides checked once again for a deeper probe once a doubt had been expressed in the report itself. The contention is that once the report dated 19.10.2013 had given the

impressions suggestive of a tumour then whether it was benign or malign, a further test ought to have been carried out. Thus, the opinion being incorrect and the Surgeon having failed to take appropriate steps to get a further probe into the morphology of the tissues, establishes medical negligence.

11. In this regard the State Commission has proceeded to further examine the final reports that were issued from Raheja Hospital, Bombay dated 27.03.2014 and has observed that the said report indicated that the cancer might have emerged from the Colon or the appendicitis. For this, the State Commission has also quoted the observations made in the discharge summary from the Nanavati Hospital in paragraph 28 of the impugned Order, which is extracted hereinunder:

28. In Discharge Summary of Dr. Balabhai Nanavati Hospital, Mumbai dated 07.04.2014, it is mentioned thus:-

"DIAGNOSIS:

Final/Provisional: Ca Colon

Metastasis to the ovary."

12. The reference is to the final diagnosis dated 07.04.2014 indicating that the cancer was initially located in the Colon and might have spread to the ovary. The State Commission therefore came to the conclusion that on 14.10.2013 when the surgery was conducted, the histopathological report dated 19.10.2013 that followed after the biopsy was suggestive of the tumour as noted above, but it was subject to further probe which the Opposite Party No. 2 had also explained in her reply contending that such tumour can be benign or malign. Thus, the report dated 19.10.2013 cannot

be said to be an incorrect or a wrong report or otherwise misleading in nature. There was no deception which could be gathered from the said report which made a suggestion and could have been confirmed later on.

13. The Respondent No. 2 has also in her statement that has been analyzed by the State Commission, states that given the impression as recorded in the report dated 19.10.2013 at that stage it was not found necessary to carry out any final marker tests.

14. From the facts that have been discussed by the State Commission and inferences drawn, it cannot be said that the conclusion drawn by the State Commission is either perverse or suffers from non-consideration of the relevant material.

15. Even otherwise there is no expert report adduced by the Complainant Appellant to counter the aforesaid stand taken by the Respondents that has been accepted by the State Commission.

16. Mr. Rehman then urged that the surgery which was conducted was without the consent of the patient or their attendants. We find this to be incorrect in as much as the surgery consent form records the signature of the mother-in-law of the deceased patient. Mr. Rehman then contends that the consent form does not mention laparoscopic surgery. We are unable to accept this contention as well in as much as the prescription at the time of admission categorically records the preparation proposing laparoscopic surgery. Thus the patient and the attendants were fully informed of the nature of the surgery which was to be performed. There is one more factor

to be noticed that has been indicated in the impugned Order of the State Commission, that the patient was brought by her relative Dr. Meera Baghel, who was also in consultation during the entire process. Thus it cannot be said that the patient or their attendants including the complainants were unaware about the laparoscopic surgery that was being undertaken. Even otherwise it was a clear case that the open surgery was being conducted at Shubh Kamna Hospital but it was the patient and attendants who chose the laparoscopic surgery to be conducted at the Respondent No. 1 Hospital. Consequently, the arguments that laparoscopy was performed without the knowledge of the patient or their attendants is incorrect.

17. Coming to the issue of an incorrect pain killer having been administered, no evidence has been adduced nor is it available so as to demonstrate that any complication had arisen on account of the administration of any medicine as alleged. The aforesaid contention also does not appear to be correct.

18. There is no evidence to demonstrate that there was any negligence on the part of the Surgeons during surgery. The surgery notes are very much on record and the State Commission has extensively dealt with all the issues raised in this regard. In effect, the impugned Order of the State Commission is so exhaustive and in detail that we do not find any error in the assessment of the evidence by the State Commission or conclusions drawn on the basis of the evidence on record.

19. Learned Counsel for the Appellant has therefore been unable to make out any case to question the correctness of the findings recorded by the State Commission which are hereby confirmed. There is no material to arrive at a different conclusion so as to construe medical negligence against the OPs. There being no deficiency, the complaint was rightly dismissed. The Appeal also lacks merit and is accordingly dismissed.

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(A.P. SAHI, J)
PRESIDENT

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(BHARATKUMAR PANDYA)
MEMBER

Pramod/Court-1/CAV