

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 102 OF 2018

(Against the Order dated 13/09/2017 in Appeal No. 539/2016 of the State Commission Haryana)

1. MALHE RAM @ MALE RAM & ANR.

S/o. Sh. Banwari Lal, R/o. Chhotu Ram Nagar, Line Paar,
Railway Fatak No. 21, Bahadurgarh,

Jhajjar

Haryana

2. SHEELA

W/O. SH. MALHE RAM, R/O. Chhotu Ram Nagar, Line
Paar, Railway Fatak No. 21, Bahadurgarh,

DISTRICT-JHAJJAR

HARYANA

.....Petitioner(s)

Versus

1. JEEVAN JYOTI HOSPITAL & 5 ORS.

Through its Director Sh. Deepak Khattar, Delhi Road,
Bahadur Garh,

Jhajjar

Haryana

2. DR. DEEPAK SHARMA

S/O. SH. O.P. SHARMA, R/O. FLAT NO. 506, PKT.
C-8, SECTOR 8, ROHINI

DELHI-110085

3. DR. RITESH KUMAR,

R/O. H.NO. 35-B, PKT-1, SECTOR 10, DWARKA

NEW DELHI-110075

4. DR. MANISH PUAL,

R/O. FLAT NO. 61, PKT-6, SECTOR 23, ROHINI

DELHI-110085

5. UNITED INDIA INSURANCE CO. LTD.

THROUGH ITS PRINCIPAL OFFICER/INCHARGE,
54, JANPTAH CONNAUGHT PLACE,

NEW DELHI

6. THE NEW INDIA ASSURANCE CO.LTD.

SCINDIA HOUSE, 13/46, 2ND FLOOR, K.G. MARG,
NEW DELHI-110001

.....Respondent(s)

BEFORE:

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

HON'BLE DR. S.M. KANTIKAR, MEMBER
HON'BLE MR. BINOY KUMAR, MEMBER

For the Petitioner :

For the Respondent :

Dated : 13 Dec 2021

ORDER

Appeared at the time of arguments

For the Petitioners :Mr. Naresh Kumar Gupta, Advocate

For the Respondent No. 2 – 4 :Mr. Navin Kumar, Advocate

For the Respondent No.-5 :Mr. Anand Vardhan, Advocate

Pronounced on: 13th December 2021

ORDER

PER DR. S. M. KANTIKAR, MEMBER

1. The issue relates to whether non-referral of the patient to the Specialist or higher centre amounts to deficiency in service or medical negligence of the treating doctor/hospital.
2. The case of the Complainants is that their son Rahul (since deceased, hereinafter referred to as the “patient”) about 17 years of age hit by the train while crossing the railway track on 21.01.2011. Immediately at 2.50 pm, he was taken to Jeevan Jyoti Hospital (Respondent / Opposite Party No. 1). It was alleged that the doctors therein did not carefully attend the fatal head injuries. The Neurosurgeon was not available in the hospital and the patient was not referred to the higher centre. Ultimately, the patient died at 7.00 pm.
3. The Opposite Parties denied negligence during treatment and they have treated the patient with all precautions.
4. Being aggrieved by the alleged carelessness, deficiency in service and the medical negligence causing death of Rahul, the Complainants filed the Consumer Complaint before the District Forum, Jhajjar.
5. The District Forum allowed the Complaint and awarded a sum of Rs. 12 lakh to the Complainants, whereas the State Commission allowed the Appeal and dismissed the Complaint.
6. Being aggrieved by the Order passed by the State Commission, the instant Revision Petition has been filed by the Complainants.
7. We have heard the learned Counsel from both the sides, perused the material on record, inter-alia, the medical record, the Post-Mortem Report and the opinion of CMO.
8. It is apparent from the Record that the deceased sustained grievous injuries due to hit by the train. Immediately, he was taken to the Opposite Party No. 1 Hospital at 2.50 p.m. The patient was attended by three doctors – one Surgeon, one Orthopaedician and an Anesthetist. The patient was in the state of haemorrhagic shock and sustained multiple fractures and head injury. Immediately, after conducting relevant investigations and X-rays, he was shifted to ICU and was kept under observation. The patient was initially managed in casualty, the casualty findings are reproduced as below:

“Oxygen was given by mask 5 liter/Min.

- IV-fluid Hemaxil started

- Inj. T.T. given

- Inj. Monocef

- Inj. Epsolin

Advice for surgical / Neurosurgical opinion asked.

Dressing done and Pt. shifted to I.C.U. for further treatment and advised to patient relative to bring 2 unit of compatible blood.”

9. The deceased Post-Mortem was conducted at General Hospital Bahadurgarh and confirmed the cause of death as fatal head injury and hemorrhagic shock. It was further stated that such ante mortem injuries are sufficient to cause death of the person and moreover, those injuries were sustained due to railway accident.

10. We have perused the Medical Board's inquiry report. It was stated that as per the treatment record injured Rahul was in critical state with having hypotension (BP 70 systolic) and altered sensorium. He received first aid in casualty of the hospital. Within half an hour his X-rays and other investigations were carried out and as per the investigations there was skull # and multiple rib # and he was transferred to ICU but died at 7.25 PM on 21.01.2011.

The Committee concluded as below:

1. The specialist (Orthopaedic Surgeon, General Surgeon, Anaesthetist) the Doctors of the JJRH treated the patient as per their available facilities and their acumen.
2. The injured Rahul suffered massive multiple organ Trauma in rail accident and died because of it.
3. Such type of injured patient needs tertiary care facility treatment like CT Scan, blood transfusion and evaluation by Neurosurgeon. So, this patient should have been referred to higher institute after the initial management.

11. From the facts and circumstances of this case, in our considered view, the patient was evaluated by specialist doctors (Dr. Deepak Kumar Orthopaedic Surgeon, Dr. Ritesh Kumar Rao General Surgeon and Dr. Manishpal Anaesthetist) of the Jeevan Jyoti Hospital. He was treated as per their reasonable skills and standard of practice. We do not find any failure of duty of care or negligence from the Opposite Parties to refer the patient at higher centre, because it was a serious accident and the patient was in critical stage. It was the duty of the attending doctors to treat the emergency and stabilize the patient before referring to the higher centre for further management. We find the doctors took the required care as under standard of practice to deal with the emergency situation. We would like to quote the observation made by the Hon'ble Supreme Court in the case of Jacob Mathew v State of Punjab (2005) 6 SCC 1, the Hon'ble Supreme Court, observed that:-

A mere deviation from normal professional practice is not necessarily evidence of negligence. Let it also be noted that a mere accident is not evidence of negligence. So also an error of judgment on the part of a professional is not negligence per se. Higher the acuteness in emergency and higher the complication, more are the chances of error of judgment. At times, the professional is confronted with making a choice between the devil and the deep sea and he has to choose the lesser evil. The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Which course is more appropriate to follow, would depend on the facts and circumstances of a given case. The usual practice prevalent nowadays is to obtain the consent of the patient or of the person incharge of the patient if the patient is not be in a position to give consent before adopting a given procedure. So long as it can be found that the procedure which was in fact adopted was one which was acceptable to medical science as on that date, the medical practitioner cannot be held negligent merely because he chose to follow one procedure and not another and the result was a failure.

12. The patient was critical and unless his condition gets stabilized, shifting the patient to higher center was not advisable. We do not find there was deficiency in treatment, the treating doctors followed the reasonable standard of practice.

13. Based on the foregoing discussion, there is no merit in the instant Revision Petition. We concur with the Order of the State Commission. The Revision Petition is dismissed. There shall be no order as to costs.

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R.K. AGRAWAL
PRESIDENT

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DR. S.M. KANTIKAR
MEMBER

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BINOY KUMAR
MEMBER