

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 3223 OF 2015**

(Against the Order dated 29/10/2015 in Appeal No. 879/2013 of the State Commission West Bengal)

1. DR. BHASKAR DAS & ANR.

GOPALBAG, CHANDANNAGAR, P.S. CHANDANNAGAR,  
DIST.

HOOGLY-712123

WEST BENGAL

2. BAGBAZAR NURSING HOME

BAGBAZAR P.O. & P.S. CHANDANNAGAR, DIST.

HOOGLY-712123

WEST BENGAL

.....Petitioner(s)

Versus

1. ANJALI MANNA & 3 ORS.

WIDOW OF LATE KANTA KRISHNA MANNA,  
LABUTALA, BABUGANJ, RATHTALA, P.O. HOOGLY, P.S.  
CHINSURAH DIST.

HOOGLY

WEST BENGAL

2. ARGHA PRATIM MANNA

S/O LATE KANTA KRISHNA MANNA, LABUTALA,  
BABUGANJ, RATHTALA, P.O. HOOGLY, P.S. CHINSURAH  
DIST.

HOOGLY

WEST BENGAL

3. PRATIM MANNA,

S/O LATE KANTA KRISHNA MANNA, LABUTALA,  
BABUGANJ, RATHTALA, P.O. HOOGLY, P.S. CHINSURAH  
DIST.

HOOGLY

WEST BENGAL

4. DASGUPTA VALOREM CLINIC,

55 BANDEL STATION ROAD, P.S. CHINSURAH DIST.

HOOGLY-712123

WEST BENGAL

.....Respondent(s)

**REVISION PETITION NO. 354 OF 2016**

(Against the Order dated 29/10/2015 in Appeal No. 879/2013 of the State Commission West Bengal)

1. DASGUPTA VALOREM CLINIC

55, BANDEL STATION ROAD, P.S. CHINSURAH, DIST.

HOOGLY-712123

WEST BENGAL

.....Petitioner(s)

Versus

1. ANJALI MANNA & 4 ORS.

W/O LATE KANTA KRISHNA MANNA, LABUTALA,  
BABUGANJ RATHTALA, P.O. HOOGLY, P.S.

.....Respondent(s)

CHINSURAH,DIST.

HOOGLY

WEST BENGAL

2. ARGHA PRATIM MANNA, S/O LATE KANTA KRISHNA  
MANNA,

LABUTALA, BABUGANJ RATHTALA, P.O. HOOGLY, P.S.  
CHINSURAH, DISTT.

HOOGLY

WEST BENGAL

3. PRATIM MANNA,

S/O LATE KANTA KRISHNA MANNA, LABUTALA,  
BABUGANJ RATHTALA, P.O. HOOGLY, P.S. CHINSURAH,  
DISTT.

HOOGLY

WEST BENGAL

4. DR. BHASKAR DAS,

GOPALBAG, CHANDANNAGAR, DIST.

HOOGLY-712136

WEST BENGAL

5. BAGBAZAR NURSING HOME,

BAGBAZAR, P.O. & P.S. CHANDANNAGAR,DIST.

HOOGLY-712123

WEST BENGAL

6. .

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7. RAUF RAHIM & POULAMI DAS

22, LAWYERS CHMABR OF INDIA

NEW DELHI - 110001

**BEFORE:**

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

**For the Petitioner :**

**For the Respondent :**

**Dated : 23 Feb 2023**

**ORDER**

*Appeared at the time of arguments*

For Dr. Bhaskar Das and

Bagbazar Nursing Home : Mr. Sanjoy Kumar Ghosh, Advocate

Ms. Binota Roy, Advocate

Ms. Rupali S. Ghosh, Advocate

For Dasgupta Valorem Clinic : Mr. Naginder Benipal, Advocate

Mr. Harithi Kambiri, Advocate

Ms. Arpita Rawat, Advocate

For the Respondent Nos.1 to 3/

Complainants : None

**Pronounced on: 23<sup>rd</sup> February, 2023**

## **ORDER**

1. This Order shall decide both the Revision Petitions filed against the Order dated 29.10.2015 passed by the West Bengal State Consumer Disputes Redressal Commission (hereinafter referred to as the 'State Commission'), whereby the Appeal filed by the Petitioners was dismissed and the Order of the District Consumer Disputes Redressal Forum, Hooghly (hereinafter referred to as the 'District Forum'), which allowed the Complaint, was affirmed.

2. For the convenience, the facts are drawn from RP No. 3223 of 2015 and the Parties are being referred to as in the Original Complaint before the District Forum.

3. The District Forum held negligence against the OPs and allowed the Complaint. It directed the OPs to pay Rs. 17,91,000/- to the Complainants along with Rs. 50,000/- towards cost of litigation.

4. Being aggrieved, both the OPs filed the First Appeal - FA/879/2013 before the State Commission, West Bengal. It was dismissed and the Order of the District Forum was affirmed.

5. Being aggrieved, the OPs filed the instant two Revision Petitions.

6. None appeared for the Respondents, despite notice as directed vide Order dated 05.09.2022. Perused the material on record, *inter-alia* Orders of District Forum and State Commission. Arguments were heard from the learned Counsel for the Petitioners.

7. The case of the Complainant that on 10.09.2005, her husband - Kanta Krishna Mondal (since deceased, hereinafter referred to as the 'patient') sustained fracture of right femur. He was operated on 14.09.2005 by Dr. Bhaskar Das (OP-1) at Bagbazar Nursing Home (OP-2) and discharged on 18.09.2005 with advice to review after six weeks. Thereafter, the patient had blood stained serous discharge from the operative site. Therefore, on 20.09.2005, the OP-1 was contacted over phone, who advised to take the patient to Das Gupta Valorem Clinic for dressing since the clinic was near to the Complainant's residence. Regular dressing was done from 20.09.2005 to 05.10.2005. Ball bandage was put, but the patient was continuously dislodging dressing. One unit of blood was transfused to correct anemia. On 12.10.2005, the patient telephonically informed OP-1 that there was sudden bleeding from the operated area, therefore, fresh dressing was done and the patient was again admitted to OP-3. On 13.10.2005 exploration of wound was done under general anesthesia and the patient was discharged on the same day. Thereafter, again there was bleeding from the wound on 15.10.2005, therefore, the patient was advised for admission in OP-2, wherein diagnosed as secondary hemorrhage. Two units of blood were transfused, however, again fresh bleeding was seen on 17.10.2005 from the operated area. Therefore, fresh sutures were put, and the OP-1 consulted Dr.

Indrajit Sardar, a senior Orthopedic Surgeon at Kolkata and decided to shift the patient to Kolkata. The patient was admitted in M.B. Nursing Home at Kolkata under Dr. Indrajit Sardar. He diagnosed it as a secondary hemorrhage and three units of blood were transfused and the OT was fixed for debridement on the next date (19.10.2005), however, the patient took discharge on his own by signing the Risk Bond from M.B. Nursing Home. Thereafter, on 23.10.2005, the patient was taken to CMC, Vellore for further management, but the patient during treatment, he expired on 30.11.2005. Being aggrieved by the alleged negligence during entire treatment from OPs, the Complainants (wife and minor children) filed the Complaint before District Forum.

8. During proceedings before the District Forum, Dr. Bhaskar Das -the OP-1 approached the West Bengal Orthopedic Association for seeking expert opinion. The Expert Committee was formed with four Senior Orthopedic Surgeons and gave their opinion dated 01.08.2009. It is reproduced as below:

“Sir Kanta Krishna Mitra aged 65years who had psychiatric problems sustained unstable trochanteric fracture of right femur after a fall on 10.9.05

Dr. Bhaskar Das was consulted & he admitted Sri Mitra to a Nursing Home where a Dimon osteotomy and fixation of the fracture with a six hole D.H.S. fixation was carried out under anaesthesia with pre and intraoperative blood transfusion.

Patient subsequently had bleeding from the operation wound which was not controlled with pressure handages. The wound was subsequently re-opened & explored but no active source of bleeding was found and the wound was closed.

Subsequently the case was referred to Dr. Indrajit Sardar, a reputed orthopaedic surgeon of Calcutta, who suggested angiogram of femoral artery and opinion of a vascular surgeon. However, the patient's party did follow his advice and took the patient to CMC Vellore. An angiogram was done at Vellore which revealed the rare condition of an aneurysm of profunda femoris artery. The aneurysm was excised & the bleeding was controlled. Unfortunately, the patient died.

In our opinion the development of an aneurysm of profunda femoris is an extremely rare occurrence. Naturally it does not come in the mind of a surgeon.

Dr. Bhaskar Das, in our opinion, took adequate care in treating this patient and there was no professional negligence on his part. In fact if the patient's party had followed the expert opinion of Dr. Indrajit Sardar, the aneurysm could have been detected earlier and treated properly by a vascular surgeon with fair chance of his survival.”

9. I have carefully perused the medical record of the OP-2 & OP-3. It is evident that on 14.09.2005 for fracture of right Trochanter (femur) the patient was operated under spinal anesthesia by ORIF with DHS. He was transfused two unit blood also and discharged on 18.09.2005. The patient was also suffering from anxiety disorder, who repeatedly dislodging the dressing. The patient suffered post-operative infection and the OP-1 kept the patient under his care in OP-3 from 20.09.2005 to 05.10.2015. The patient was transfused blood, advised elevation of limb, active toe movements. He was prescribed medicines including psychiatric drugs.

10. As there was repeated bleeding at the operated site, therefore OP-1 suspected it secondary hemorrhage and therefore, referred the patient to MB Nursing Home at Kolkota under care of Dr. Indrajit Sardar for further management. There pus swab culture and other blood parameters including thrombotic profile were found to be normal. Thereafter, the patient was taken to CMC Vellore on 23.10.2005, but expired on 30.11.2005 during treatment.

11. The medical record and death summary issued at CMC Vellore revealed that, Angiogram of the common femoral artery was performed at CMC. It showed pseudo-aneurysm (26 x 25 mm) arising from right Profunda Femoris artery with narrow neck. The patient was treated with embolization procedure. The complete occlusion of the pseudo aneurysm was achieved with 3 steel coils x proximal right Profunda Femoris followed by injection gelfoam. The wound debridement and the bedsores were also treated. Thereafter, the patient was transferred under plastic surgery for further care. However, on 30.11.2005 at 11.30 am, the patient suffered respiratory arrest, which could not be revived and he expired.

12. Now the question arises whether the act of OP-1 constitutes medical negligence. Firstly, the OP-1 performed ORIF with DHS for fracture of Rt trochanter. It was correct line of treatment, the operation was uneventful. I do not find any negligence or deviation from the standard of practice of the OP-1. It is evident that patient had anxiety disorder and repeatedly tampering with the dressing. The regular dressing of surgical wound was performed, but the bleeding from the wound was seen, therefore OP-1 referred the patient to Dr.Indrajit Sardar. In my view the referral was correct and made at appropriate time.

13. Adverting to the point that whether there was any nexus between the surgery performed by OP-1 and the aneurysm of right Profunda Femoris artery. I took reference from the standard book Campbell's Orthopedics and few articles on the subject which stated about very unusual and rare incidence of aneurysm of Profunda Femoris artery. In the article, '**The True Deep Femoral Artery Aneurysm: A Case Report**<sup>[1]</sup>', it was stated that:

"A true deep femoral artery aneurysm (DFAA) is extremely rare. It is difficult to find a true aneurysm of small size because of its anatomically deep location. The symptoms of an aneurysm could be a thigh pain, toe ischemia, leg swelling, or numbness derived from the mass effect of an aneurysm or rupture. A true DFAA grows slowly than a false aneurysm. There are several treatment options, such as ligation, resection of the aneurysm with or without a vascular reconstruction, and endovascular treatment."

14. In another article titled – "**Unusual presentation of a Profunda Femoris pseudoaneurysm following osteosynthesis of proximal femur fracture**<sup>[2]</sup>,"

Profunda femoris artery injury following osteosynthesis of the proximal femur fracture is a rare complication and is usually caused by iatrogenic trauma or rarely due to bony spikes. Presentation can be delayed because of nonspecific features such as pain, swelling, anemia, fever, and hematoma. We report a case of posttraumatic profunda femoris aneurysm which presented more than a year after surgery with near-complete resorption of proximal femur and failure of implant requiring evacuation of huge layered thrombus, ligation of profunda femoris, and reconstruction of proximal femur with tumor megaprosthesis. Literature has not described a similar case.

15. Based on the discussion the District Forum as well as the State Commission has failed to appreciate the facts and medical record. The opinion of expert committee and treatment done by OP-1 was as per the reasonable standard of Orthopedic Practice. The aneurysm of Profunda Femoris is rare and incidental finding revealed post operatively. It has no nexus with the act of OP-1. The CMC Vellore also did not give any findings or negligence caused by the OP-1 while operating the patient.

16. It should be borne in mind that "*No Cure is No Negligence*" The Hon'ble Supreme Court in catena of judgments discussed on the liability of medical professionals. In the case of **S. K. Jhunjhunwala vs. Dhanwanti Kaur and Another**<sup>[3]</sup> it was held that in every case where the treatment is not successful or the patient dies during surgery, it cannot be automatically assumed that the medical professional was negligent.

17. Based on the discussion above, there was neither failure of duty of care nor deficiency in service from the OPs. Thus no negligence is attributed upon the OPs. The Order of the State Commission is set aside and both the Revision Petitions are allowed. Consequently, the Consumer Complaint No. CDF No. 35 of 2006 filed before the District Forum, Hooghly stands dismissed.

If the Petitioners have deposited any amount before this Commission or fora below, the concerned registry is directed to return the amount with accrued interest, if any, to the respective Petitioners on due verification.

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[1] [Vasc Specialist Int.](#) 2017 Mar; 33(1): 40–42.

[2] [J Mar Med Soc](#) 2020;22:87-90

[3] (2019) 2 SCC 282

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