

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**CONSUMER CASE NO. 1074 OF 2016**

1. BABY PALAK KHAN & 2 ORS.

(THROUGH HER FATHER MR. AFTAB KHAN) 1418,  
BHANDA PATI, NEAR JAMA MASJID HAPUR, TEHSIL  
AND DISTRICT- HAPUR,  
U.P.-245101

.....Complainant(s)

Versus

1. DR. AMIT UPADHYAY & 2 ORS.

HEAD OF THE DEPARTMENT PEDIATRICS LALA LAJPAT  
RAI MEMORIAL MEDICAL COLLEGE,  
MEERUT, U.P.

2. DR. KAPIL, ASSITANT DEDIATRIC

LALA LAJPAT RAI MEMORIAL MEDICAL COLLEGE,  
MEERUT,

U.P.

3. LALA LAJPAT RAI MEMORIAL MEDICAL COLLEGE,

(THROUGH ITS PRINCIPLE)

MEERUT,U.P.

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.....Opp.Party(s)

**BEFORE:**

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

**HON'BLE DR. SADHNA SHANKER,MEMBER**

FOR THE COMPLAINANT : MR. AMIT WADHWA, ADVOCATE  
MR. AFTAB, IN PERSON

FOR THE OPP. PARTY : FOR THE OPPOSITE PARTY NO.1 : MR. ANOOP KAUSHAL,  
ADVOCATE  
DR. AMIT UPADHYAY, IN-PERSON  
FOR THE OPPOSITE PARTY NO.2 & 3: MR. RAVI GOPAL,  
ADVOCATE

**Dated : 25 September 2023**

**ORDER**

**JUSTICE A.P. SAHI, PRESIDENT**

The violation of the Hippocratic oath, allegations of gross negligence and omission to take ordinary routine care of a new-born child are the issues raised in this complaint by the child Palak, through her parents Aftab Khan (father) and Mrs. Nazrana (since deceased). The grievance is that immediately upon her birth on 3.7.2015 at Tarachand Hospital Hapur, which was a premature delivery, the child having certain respiratory distress was shifted to Lala

Lajpat Rai Memorial College Hospital, Meerut Uttar Pradesh. She was treated at the Neonatal unit of the Paediatric Department which according to the complainants was negligent care as a result whereof she ultimately lost her eyesight.

2. Complaints were filed and the matter was contested at several Forums alleging that the Opposite Parties herein more particularly the Respondent No.1 and his assistant Respondent No.2 were responsible for gross negligence at the initial stage of the treatment and subsequently, the third Respondent also did not provide the requisite treatment and care that ultimately resulted in the loss of sight of the baby girl. Consequently, a claim based on negligence and deficiency in service for Rs.1.50 crores as compensation to the child and Rs.40 lakhs to the parents with an additional sum of expenses to the tune of Rs.2.5 lakhs coupled with Rs.2 lakhs towards litigation expenses has been raised.

3. The background of the litigation commences with allegations about the negligent attitude more particularly of the Respondent No.1 Dr. Amit Upadhyay who is stated to have nowhere taken any care for referring the child for Retinopathy or premature screening which is a mandatory test to be conducted within the first 3 weeks of the birth of a premature child. It is alleged that neither any effort was made to observe the minimum protocol that is needed in such cases nor were the Complainants informed of any such complication in the child at the opportune moment. The negligence is alleged to be about proper medical advice and taking due care for managing the aforesaid deficiency that could have been located at the initial stage had the Opposite Party No.1 and his team as well as the LLRM Hospital been vigilant.

4. The birth of the child took place on 3.7.2015 from where she was shifted to the LLR Medical College at Meerut and after spending almost 19 days, she was discharged on 21.07.2015. A discharge slip was issued on 22.07.2015.

5. Almost a month thereafter the child developed fever, vomiting and symptoms of loose motion when she was again admitted on 21.08.2015 in the Pediatrics Department and was discharged on 31.08.2015.

6. She is stated to again have developed certain complications and was admitted to the hospital a third time on 17.11.2015. During this period, the deficiency in the eyesight of the child was further diagnosed and was referred to Sardar Vallabh Bhai Eye Hospital under the treatment of one Dr. Jaishree Dwivedi. According to the contentions raised, the child was administered eye drops on her advice for 2-3 days where after she was examined by Dr. Sandeep Mittal of the Ophthalmology Department who on 30.11.2015 opined that ROP stage IV and III had developed. On this, the Complainants state that they rushed to the All India Institute of Medical Sciences where on 2.12.2015, they were informed that it will not be possible to retrieve the eyesight of the child. Having felt hopeless about the recovery of the child, her mother Smt. Nazrana, who was the Complainant No.3 originally in this complaint, gave a written complaint to the Principal of the College on 8.12.2015. A complaint was also made to the Medical Council on 4.1.2016 levelling allegations of gross negligence particularly against the first Respondent and also against the Hospital in general.

7. According to the Complainant on the complaint before the Principal, a Committee was constituted for investigation comprising of three Doctors who opined that the Pediatric

Department was negligent in treating the child for ROP and disciplinary action was recommended vide report dated 26.03.2016.

8. The 3<sup>rd</sup> Complainant, namely, Smt. Nazrana also lodged a First Information Report before the Police Station of the Medical College, Meerut levelling allegations so as to constitute an offence under Sections 326 & 336, IPC. This FIR was lodged mentioning about the report of the Medical Committee of the Medical College wherein an allegation was made against Opposite Party No.1 that he was responsible for negligent treatment as a result whereof her child lost her eyesight.

9. Questioning the correctness of the report dated 26.03.2016, the Opposite Party No.1 raised his concerns before the Director General Medical and Health Services Uttar Pradesh who constituted a 4 Member Committee on 25.4.2016. This committee was of medical experts from the King George Medical University Lucknow, S.N. Medical College, Agra and the Children Hospital at Noida. A detailed inquiry was conducted and a report was submitted before the Director General Medical and Health Services who vide his letter dated 16.8.2016 informed the Principal Secretary Medical and Health Govt. of Uttar Pradesh that the complaint and the proceedings recommended against the Opposite Party No.1 deserves to be dropped. Alongwith it the report of the Four Member Committee comprising of the doctors as mentioned aforesaid, was also tendered which categorically recorded that it was not on account of the negligence of the doctor but on account of the attendees to the patient who did not comply with the instructions given from time to time orally as well as in writing as a result whereof, this mishap occurred.

10. Thus, this report attached with the letter dated 16.08.2016 disagreed with the findings of the report dated 26.03.2016 which had been submitted before the Principal of the Medical College referred to above.

11. An investigation on the FIR lodged by the Complainant was engaging the attention of the Police referred to hereinabove. The Opposite Party No.1 challenged it in a writ petition before the Allahabad High Court and prayed for quashing of the FIR in Criminal Misc. Writ Petition No.12392 of 2016 where directions were issued on 27.5.2016 to constitute a Medical Board of Inquiry through the District Magistrate, Meerut. Accordingly, an Inquiry Committee was constituted by the District Magistrate comprising of the Joint Magistrate, Meerut and three Doctors who conducted a detailed inquiry and gave opportunity to the Complainants as well as to the Opposite Parties to respond in the said inquiry. This exhaustive report went through each and every material in detail very minutely and was submitted on 03.09.2016 relying whereupon the High Court allowed the Writ Petition vide judgement dated 22.5.2017 and quashed the FIR against the Opposite Party No.1. While quashing the FIR, the High Court relied on several pronouncements of the Apex Court including the applicability of the basic principles of Bolam test (**Mc Nair in Bolam Vs. Friern Hospital Management Committee (1957) 1 WLR 582**) relating to medical negligence to arrive at the conclusion that neither the criminal proceedings could continue nor any subsequent proceedings taken against the Opposite Party No.1 in pursuance thereof could continue and were accordingly quashed. The judgement of the Division Bench of the High Court records findings in this regard. In conclusion in paragraph 25, the High Court after perusing the Inquiry Report referred to above came to the following conclusion :-

*“In the present matter, very detailed inquiry report (in 20 pages) has been submitted by the medical board and as per final conclusion of the medical board, the medical board is of the view that the allegation of negligence against the petitioner is untrue.”*

12. It is in this context and background that the Medical Council of Uttar Pradesh also examined the matter on the complaint made by the Complainants, where also the Complainants and the Opposite Party appeared, and vide letter dated 16.8.2017 the Ethics Committee opined that the Opposite Party No.1 Dr. Amit Upadhyay was not negligent in the discharge of his duties and therefore, no element of lapse or guilt was established towards the professional conduct of the Opposite Party No.1. Against this, the Complainants filed an appeal before the Medical Council of India which also met the same fate. The Ethics Committee of the Medical Council of India in its meeting held on 15<sup>th</sup> and 16<sup>th</sup> February, 2018 that is contained in the communication dated 25.04.2018 on record, upheld the decision of the Medical Council of Uttar Pradesh.

13. Thus from the narration of the facts aforesaid, except for the first report dated 26.3.2016 by the Committee constituted by the Principal LLRM Medical College, all the subsequent reports and decisions conclusively found favour with the Opposite Party No.1 including judgement of the High Court that quashed the criminal proceedings against him.

14. Advancing submissions for the Complainants, Learned Counsel submitted that the findings of the subsequent inquiry reports were erroneous inasmuch as the Discharge Slip which was issued to the Complainant on the first occasion on 22.7.2015, contained no advice for undergoing the ROP protocol nor were the Complainants ever advised to visit the Ophthalmology Department or its experts. The child was never treated or advised by the Ophthalmology Department for any such deficiency. The contention is that it was the primary duty of the Opposite Party No.1 who is the Head of Pediatrics Department to have appropriately taken care of guiding the parents for taking proper medical treatment and observing the ROP protocols. It is urged that he did not attend the child at all nor did he give any advice and the parents kept on running about in the hospital with no indication as to the aforesaid deficiency from which the child was suffering. It is urged that as soon as this was informed to the parents in November, 2015 they undertook all measures as advised when ultimately on 30.11.2015, they came to know about this gross negligence which had occurred during the previous four months resulting in the loss of the eyesight of the child which according to the opinion of All India Instituted of Medical Sciences could not be retrieved. Thereafter, the child was taken to a Hospital in Hyderabad for surgery but with no success. Thus the sum and substance of the complaint is that in the absence and total lack of proper medical advice which was mandatory on the part of the Opposite Party No.1 and his associates, as well as the other doctors of the Medical College, the sufferance of the child could not be prevented. It is urged that this is a case of gross medical negligence, hence deserved to be accordingly dealt with.

15. To substantiate the submissions, Learned Counsel repeatedly questioned the genuineness of the advice tendered by way of an endorsement regarding ROP in the Discharge Slip dated 22.07.2015 contending that they were never apprised about any such endorsement. It is urged that the said Discharge Slip even though was handed over to the Complainants on 22.07.2015, the same was taken back on 21.08.2015 when the child was readmitted in the hospital where after it was never returned and remained in the custody of

the Opposite Party No.1 / the Medical College Hospital. The Discharge Slip was not available to them at the time of making a complaint to the Principal of the Medical College or to the other Authorities. The said Discharge Slip containing the alleged endorsement of advice surfaced during the inquiry proceedings about which objections were taken. In other words, the very endorsement ROP follow up and its genuineness was questioned by the Complainants on the ground that it was never made known to them. It is urged that had that advice been endorsed or brought to the knowledge of the Complainants during discharge on 21.07.2015, they would have certainly undertaken all steps for ROP protocols. Thus, there was no slackness on the part of the Complainants in taking appropriate steps for treatment of their daughter. The investigation was delayed for almost four months which protocols ought to have been observed within 21 days of the date of delivery. It is this delay and negligent attitude, particularly of the Opposite Party No.1 who was the Head of the Pediatric Department and under whom the child was admitted at the first instance and also again thereafter that resulted in this calamity.

16. Countering the said submissions, Learned Counsel for the Opposite Party No.1 & 2 and the Learned Counsel for the Medical College Opposite Party No.3 contended that so far as medical expertise is concerned, the same was duly administered promptly and the inquiry reports referred to above came to establish that the first inquiry conducted by the Committee of the Medical College was found to be incorrect through a proper enquiry of the Directorate of Health, Govt. of U.P. Not only this, the Ethics Committee of the Medical Council of Uttar Pradesh as well as the Medical Council of India examined the matter and found no negligence on the part of the Opposite Party No.1. Finally, the medical report dated 3.9.2016 which is of 20 pages by a Committee of four people, out of whom 3 were doctors, was accepted by the High Court of Allahabad and on the strength thereof as well as the findings recorded therein, the criminal proceedings were quashed. During the aforesaid developments, the Opposite Party No.1 suffered great harassment on the basis of an incorrect perception and misunderstanding of the Complainants. It is submitted that applying any of the tests of medical negligence and the decisions of this Forum or of the Hon'ble Apex Court, it leaves no room for doubt that negligence was never proved or even existed so as to warrant the Complainants to claim any compensation.

17. We have considered the submissions raised and the first intriguing question that troubles us, is about the contention on behalf of the Complainant regarding the endorsement made on the Discharge Slip, which is in handwriting indicating a written advise for following the ROP protocol. This Discharge Slip is dated 22.7.2015. A perusal of this crucial document demonstrates that in the column regarding taking of precautions on any visible sign or discomfort to the child, the same indicates an endorsement to the effect "**ROP Screening to be done on follow up in OPD No.10 on 24.7.2015.**" A perusal of the discharge slip indicates that the child was admitted on 3.7.2015 and after 19 days, she came to be discharged. On admission at the LLM Hospital, the recital in the Discharge Slip indicates that she was administered Phototherapy and since the baby was stable accepting oral feeds with normal symptoms, therefore she was being discharged on satisfactory condition. According to the Opposite Party No.1, the protocol of ROP had to be followed on expiry of 21 days and therefore the child was advised to visit OPD No.10 on 24.7.2015 i.e. on the 21<sup>st</sup> day after birth with a further prescription of two eye drops to be administered which was also endorsed on the Discharge Slip. The Opposite Parties also in their pleadings,

and which also finds mention in the Inquiry Report dated 3.9.2016 it was averred that this advice was endorsed by Dr. Ritu Mittal of the Paedriatic Department under whose care the child was being looked after. It is stated that Dr. Ritu Mittal was on leave from 3<sup>rd</sup> to 6<sup>th</sup> July after the child was admitted on 3.7.2015, but she had resumed her duties on the 7<sup>th</sup> of July, 2015 and was taking care of the child alongwith other Resident Doctors. It has been pointed out by the Learned Counsel that during the inquiry proceedings, it was categorically stated by Dr. Ritu Mittal that three doctors from the Pediatric Department, namely, Dr. Shivam Agrawal, Dr. Kapil Singh Verma and Dr. Jyoti Kandpal had attended to the treatment of the child and in their statement they have categorically stated that at the time of discharge of the baby on 22.7.2015, the Discharge Slip was handed over to the father, namely, Aftab Khan with a clear advice and information regarding ROP Screening. The statement of Dr. Ritu Mittal before the Inquiry Committee that submitted the report dated 03.09.2016 was clearly to the effect that she had signed the Discharge Slip which was handed over to Mr. Aftab Khan by her resident Dr. Shivam Agrawal in her presence. The endorsement of the ROP protocol on the said document was made by Dr. Shivam Agrawal on the directions of Dr. Ritu Mittal. Thus it is evident from this entire narration of facts that the Discharge Slip dated 22.07.2015 containing the said endorsement had been handed over to the Complainant Aftab Khan who was in possession of the same. He, however, disputes the continued possession by stating that it was taken back from him at the time of the second admission on 21.8.2015 and was thereafter never returned.

18. There is another version of Smt. Nazrana which is found in the report dated 3.9.2016 about which there does not appear to be any explanation. Smt. Nazrana in her reply before the Inquiry Committee seems to have stated that she had the Discharge Slip in her hand at the time of the second admission and when she asked Dr. Amit Upadhyay about the status of her child and of the contents of the Discharge Slip, Dr. Upadhyay got infuriated and snatched the Discharge Slip and tore it. This version of Smt. Nazrana is in absolute and direct conflict with in contradiction to the stand taken in the complaint that the Discharge Slip had been taken from them and was never returned back at all. This statement appears to have been made to create an impression that since the Discharge Slip was in the continued custody of the Opposite Party, it is quite possible that the endorsement may have been introduced later on. Learned Counsel for the Complainants, however, could not elaborate on this perception or advance his submissions but the submissions were clearly intended to create this doubt as if the endorsement did not exist and seemed to be a tampering of the Discharge Slip. This perception cannot be accepted on any inferential surmise because the slip was received on 21.07.2015 and no objection to this effect was neither taken before any of the committees of enquiry or even in the FIR lodged by the Complainants.

19. This perception also which is only of a doubt and suspicion, not even a substantive argument, cannot be endorsed for the simple reason that the first complaint which was made to the Principal of the Medical College resulting into the report dated 26.3.2016 nowhere indicates any such allegation or description about the endorsement in the Discharge Slip or having been taken and thrown away. The explanation given by the Learned Counsel consistently was that since at the time of lodging of the said complaint, the Discharge Slip was not available, therefore, they did not know what endorsement was made on it. We cannot

believe this contention for the simple reason that the Complainant has nowhere been able to deny the fact that the Discharge Slip was available with the Complainant at least from 21.7.2015 till 21.8.2015 as it is an admitted case of the Complainant that the Discharge Slip had been handed over on 21.8.2015 at the time of the second admission where after it is alleged to have not been returned. The allegation that it was not returned or the contradictory statement of Smt. Nazrana that it was torn into pieces by Dr. Amit Upadhyay itself explains that the Complainant had been shifting stands in spite of the fact that they were having custody according to their own case of the Discharge Slip from 21.07.2015 to 21.08.2015. It is, therefore, safe to conclude that the endorsement did exist on the Discharge Slip and does not suffer from any subsequent interpolation or tempering. It was made on the date of discharge as substantiated by the statements of Dr. Ritu Mittal and Dr. Shivam Agarwal who had attended the child during her first admission at LLM Hospital. There is no good reason to suspect or cast any doubt the same.

20. It is next contended by the Learned Counsel for the Complainants that the first enquiry report dated 26.3.2016 clearly states that no information or written reference for ROP Screening of the baby Palak was made to the Ophthalmology Department. A perusal of the said report also indicates a recital of ROP Screening hand written endorsement but with no signature of any Resident Doctor which is generally done on each and every note. This argument of the Learned Counsel for the Complainant also cannot be accepted inasmuch as the said report which is of 26.3.2016 does indicate that there was a handwritten endorsement on the discharge slip as in the inquiry conducted by the District Magistrate alongwith 3 doctors on the direction of the High Court resulting in the report dated 3.9.2016, Dr. Ritu Mittal clearly deposed that the said endorsement was made by Dr. Shivam Agrawal the resident who made the endorsement under her directions. This stands corroborated by the statement of Dr. Shivam Agrawal before the first Inquiry Committee in the Medical College where he had made a statement to the same effect. No material to the contrary exists to dislodge the endorsement of the aforesaid advice of ROP on the discharge slip and to appear before a particular OPD on 24.7.2017. This date of 24.7.2017 is clearly within three weeks of the birth of the child. It, therefore, cannot be said that there was no advice or information to the Complainants regarding ROP.

21. It has been throughout the case of the Complainants that they were unaware about any such endorsement. This, as indicated above, is contradicted by the own stand of the Complainant coupled with the positive assertion on the part of the Opposite Party that the correct position has been indicated in the report dated 3.9.2016 where Smt. Nazrana had also appeared and had taken a conflicting stand of tearing of the Discharge Slip.

22. The complaint very neatly does not dispute the handing over of the Discharge Slip to Aftab Khan which has been stated by Dr. Ritu Mittal in the inquiry proceedings before the District Magistrate. This also clearly indicates that the Complainants without having been able to dislodge the endorsement on the Discharge Slip, which is the main bone of contention, kept on raising complaints and as a matter of fact any challenge to the endorsement does not appear to have been made in any of the complaints in spite of having knowledge of the same. This is also evident that the factum of the endorsement was stated in the report dated 26.3.2016 but the FIR lodged thereafter nowhere makes any allegation of the alleged manipulation of endorsement. Even before the second or the third Inquiry Committee

there was no such case set up by the Complainants so as to doubt the endorsement made on the Discharge Slip regarding ROP protocol.

23. Thus on an overall conspectus of the emerging facts the position that can be deduced is that no criminal negligence was established against Opposite Party No.1 and to the contrary in the proceedings before the Inquiry Committee as also before the Ethics Committee of the Medical Council of Uttar Pradesh as well as the Medical Council of India medical negligence could not be established on the part of Opposite Party No.1 either substantially or even remotely.

24. Applying the tests as has been enunciated by the Apex Court in various decisions rendered from time to time including the decision that have been cited at the Bar and the judgement in the case of **V. Krishna Kumar Vs. State of Tamil Nadu & Ors. [(2015) 9 SCC 388]** that has been relied upon by the Learned Counsel for the Complainant, the liability on the Opposite Party No.1 could not be established.

25. There are a few judgements cited at the Bar which needed to be mentioned as an argument has also been advanced on behalf of the Hospital that since the Hospital is discharging a sovereign function it cannot be saddled with any liability and neither can a doctor be held guilty of negligence unless there is a deviation from the settled principles of medical practice.

26. A doctor's negligence was discussed in the earliest of cases by the Apex Court in **Dr. Laxman Balkrishna Joshi Vs. Dr. Trimbak Babu Godbole & Anr. [AIR 1969 SC 128]**. The duties of a doctor towards his patient have been dealt with in paragraph 11 which is extracted herein under:

*“The duties which a doctor owes his patient are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties, viz., a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient. The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires: (cf. Halsbury's Laws of England, 3rd ed. vol. 26 p. 17). The doctor no doubt has a discretion in choosing treatment which he proposes to give to the patient and such discretion is relatively ampler in cases of emergency. But the question is not whether the judgment or discretion in choosing the treatment he exercised was right or wrong,....”*

27. On the parameters aforesaid in the present case there are a few facts which need to be mentioned a bit in detail. The first is that the Opposite Party No.1 Dr. Amit Upadhyay was the Head of the Department of Paedriatics when the child was admitted on 03.07.2015. Dr. Ritu Mittal and Dr. Navratan Gupta were the doctors as per the roster but Dr. Ritu Mittal was on leave from 3<sup>rd</sup> July to 6<sup>th</sup> July. She returned back on duty on 7<sup>th</sup> July and the child was under her treatment and not under Dr. Amit Upadhyay. The second time the child was

admitted on 21.08.2015 and was discharged on 31.08.2015 under Dr. Dharmveer Singh. None of these doctors have been made Opposite Parties. Thus, Dr. Amit Upadhyay was directly not attending to the child. She was admitted when the aforementioned doctors were on duty under whom she received care and treatment. It is only on the third occasion i.e. on 17.11.2015 that the child was admitted under Dr. Amit Upadhyay who diagnosed her of Retinopathy and was under his treatment till 30.11.2015. Thus, Opposite Party No.1 was not attending to the patient directly at the time of 1<sup>st</sup> admission and therefore the question of his task of exercising a reasonable degree of skill or care cannot be tested for the period he was not treating the child. By the time the child was admitted for the third time on 17.11.2015 the said diagnosis had been made of the stage of the Retinopathy and the child was referred to the Sardar Vallabh Bhai Eye Hospital and then later on was taken to AIIMS.

28. So far as Dr. Ritu Mittal and the other doctors are concerned, the said issue has been discussed in detail above, about the advice tendered within 28 to 30 days of the birth of the child which is the standard operating protocol for getting any such test carried out. The Retinopathy test had been advised at the time of the discharge on the first occasion which is evident from the discharge slip dated 22.07.2015 about which details have already been recorded hereinabove. Thus even applying the judgements cited by the Learned Counsel for the Complainant in the case of **V. Krishna Kumar** (supra), there is neither any negligence nor any deficiency in service that can be levelled against the Opposite Party No.1 or for that matter against Opposite Party No. 2.

29. The learned Counsel then advanced his submission that at least the Opposite Party No.3 i.e. the Hospital was also responsible for the negligence. It has been held by the Apex Court in the case of **Achutrao Haribhau Khodwa & Ors. Vs. State of Maharashtra & Ors. [(1996) 2 SCC 634]**, a 4 Members decision of this Commission in the case of **Smt. Rekha Gupta Vs. Bombay Hospital Trust & Anr. [II (2003) CPJ 160 (NC)]** and in the case of **Savita Garg Vs. Director, National Heart Institute [(2004) 8 SCC 56]**, that even if it is a government hospital or an institution or a private hospital, a liability of the hospital / institution can be located applying the principles of the English doctrines that have been discussed therein and also the judgements of the Apex Court. Even though it has been held that courts would be slow in attributing negligence on the part of a doctor if he has performed his duties to the best of his ability and with due care and caution, yet when examining this issue reference has been made to the **Indian Medical Association Vs. V.P. Shantha** case decided by the Apex Court and reported in **1995 (6) SCC 651**. It has been concluded that even if the doctors are rendering services free of charge to the patients in government hospitals, the provision of the Consumer Protection Act will apply since the expenses of running the hospitals are met by appropriation from the consolidated fund which is raised from the taxes paid by the taxpayers. In the case of **Spring Meadows Hospital & Anr. Vs. Harjol Ahluwalia & Anr. [(1998) 4 SCC 39]**, the Apex Court in paragraph 9 of the said reported judgement has observed that in recent days there has been increasing pressure on hospital facilities, failing standards of professional competence and in addition to all the ever increasing complexity of therapeutic and diagnostic methods, and all this together are responsible for medical negligence.

30. In the present case, none of the aforesaid ingredients have been established in order to construe any liability on the doctor or the institution even though the Apex Court in the case

of **Savita Garg** (supra) has held that the services rendered by government institutions or government hospitals are also responsible in the same way and an action in tort would be maintainable.

31. So far as the duty of the LLRM Hospital in the present case is concerned, we find that evidence by way of affidavit has been filed by Opposite Party No.1, Opposite Party No.2 as well as the Hospital Opposite Party No.3. The Opposite Party No.3 in its affidavit evidence dated 31.07.2019 sworn by Dr. Pradeep Kumar has clearly denied the allegations and also any negligence on the part of Opposite Party No.1 or Opposite Party No.2. It has also denied any negligence in general in so far as other doctors and the hospital are concerned. It has been categorically stated in the affidavit evidence of Opposite Party No.3 that all protocols with due diligence were followed and the Complainants were duly advised in writing at the appropriate stage about the follow up and treatment that was needed in order to investigate any such deficiency in the eyes of the child. It has also been stated that due care was taken and caution was advised to the parents at the time of discharge on 22.07.2015 which has been established on record and even through all the enquiries and other proceedings that were undertaken against the Opposite Party No.1. The said evidence could not be controverted nor it has been rebutted with cogent evidence to disbelieve the same.

32. It is in this background that none of the judgements that have been cited at the Bar in any way come to the aid of the Complainant so as to establish either the negligence of the Opposite Party No.1 or any liability tortious or vicarious on the part of the Opposite Party Nos.2 & 3. Thus, in the absence of any omission, rashness negligence much less gross negligence the allegation made against the Opposite Parties have not been established hence no relief is admissible.

33. Accordingly, the Complainants having failed to establish any negligence on the part of the Opposite Party No.1 on the standards and tests laid down by the Apex Court as well as on the strength of the jurisprudence in this regard, we see no reason to grant the reliefs as prayed for, even though it may be an unfortunate incident where the child may not have been able to recover her eyesight in spite of the treatment being given by the All India Institute of Medical Sciences and the surgery conducted at Hyderabad. The complaint is accordingly dismissed.

.....J  
**A. P. SAHI**  
**PRESIDENT**

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**DR. SADHNA SHANKER**  
**MEMBER**