

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

NEW DELHI

REVISION PETITION NO. NC/RP/203/2017

(Against the Order dated 9th September 2016 in Appeal 330/2011 of the State Consumer Disputes Redressal Commission Bihar)

YOGENDRA VISHKARMA

PRESENT ADDRESS - S/O. JAGMOHAN MISTRY, R/O. VILLAGE RISAUD, , GAYA , BIHAR ,
.....Petitioner(s)

Versus

DR. OM PRAKASH

PRESENT ADDRESS - R/O. BHALUAHI KHAR KHURA(NEW COLONY) WEST OF RAILWAY STATION WEST OF WATER TANK, P.O. RAILWAY STATION PS DELHA, , GAYA , BIHAR ,
.....Respondent(s)

BEFORE:

**HON'BLE DR. INDER JIT SINGH , PRESIDING MEMBER
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN , MEMBER**

FOR THE PETITIONER:

FOR THE PETITIONER: SH. SEHEL KHAN, AMICUS CURIAE WITH PETITIONER IN PERSON

FOR THE RESPONDENT:

FOR THE RESPONDENT: SH. ZISHAAN ISKANDARI, ADVOCATE

DATED: 17/11/2025

ORDER

DR. SUDHIR KUMAR JAIN, J

1.The relevant facts of the case are that the petitioner/the complainant/Yogendra Vishkarma (hereinafter referred to as "**the petitioner**") was suffering from running nose and approached the respondent/the opposite party/Dr. Om Prakash (hereinafter referred to as "**the respondent**") for treatment on 04.12.2008. The petitioner was prescribed for several tests which were conducted at Prasad Diagnostic Centre. The respondent on basis of reports prescribed various medicines to the petitioner and informed the petitioner that the petitioner is suffering from a dangerous disease. The respondent recommended surgical operation with expenditure of Rs. 5,000/-. The petitioner after arranging money approached the

respondent and was operated on 19.12.2008. The petitioner after operation remained unconscious till 20.12.2008 and after regaining consciousness noticed swelling in his eye. The eyeball and eyelid were not moving. The petitioner remained under treatment of the respondent till 03.01.2009 but the condition of the petitioner continued to be deteriorating. The respondent referred the petitioner to Lucknow for further and better treatment and was admitted in casualty department of Gandhi Memorial Association Hospital on 03.01.2009 where C.T. Scan of the petitioner was conducted on 04.01.2009. The petitioner after C.T. Scan was informed by the doctors at Lucknow that "**operated case showing surgical bony defect in Antero-inferior and Superior wall of left maxillary sinus with air collection in posterior part of left orbit and in cheek with surrounding soft tissue inflammation with left maxillary sinusitis and rhinitis**". It was also informed to the petitioner that left eye was damaged due to operation and another eye was also affected which can be treated. The petitioner was treated at Lucknow for 10 days and after treatment the petitioner was informed that one of his eyes was completely damaged. The petitioner was discharged on 12.01.2009. The petitioner lost one of his eyes due to negligence of the respondent and as such petitioner was not able to sustain his family comprising seven dependent members. The petitioner was earning about Rs. 10,000/- per month. The respondent has committed deficiency in service. The petitioner being aggrieved filed present consumer complaint bearing no CC no. 24/09 titled as **Yogindra Vishwakarma V Dr. Om Prakash** before District Consumer Disputes Redressal Commission, Gaya (hereinafter referred to as "**the District Forum**"). The petitioner prayed that the respondent be directed to pay Rs.4,50,000/- as compensation besides award of Rs.50,000/- as expenses on the treatment.

2. The respondent filed written statement before the District Forum wherein stated that the present complaint is not filed with respect to any negligence, deficiency in service or unfair trade practice but is filed to tarnish image of the respondent. The complaint is based on false facts. The petitioner was suffering from chronic maxillary sinusitis for last seven years which caused tiredness, weakness, feverish, faintness and sometimes was not able to see surroundings. The petitioner brought these facts

to the notice of the respondent on 04.12.2008 and desired for operation as early as possible. The respondent prescribed certain medicines and investigations. The lymphocytes after investigation came to 53% which was indicative of chronic infection since long. The ESR was reported at 17mm which reflects chronic infection and tissue damage. The WBC (White Blood Cell) count also indicated chronic and prolonged infection. The respondent only charged Rs. 4,000/- and the petitioner before operation was explained risk and complication of the operation besides effects of anaesthesia. The written consent of the brother of the petitioner was also taken before operation and thereafter operation was done on the left side of maxillary chronic sinus infection on 19.12.2008 with proper medical care.

2.1 The petitioner was doing work of welding and post operation also started said work despite being advised to take proper rest. The sinus pack was also removed and the petitioner was alright. The petitioner was also advised for proper medical treatment at eye centre. The petitioner was himself negligent and responsible. The radiological report showed bony defects which might have been there before operation as the petitioner was dealing with welding work with iron rods and sticks. The respondent had conducted operation with lot of care and did nothing with eye and there is no connection between the surgical procedure and eye ailment of the petitioner. X-ray of the sinus showed haziness and granular mass opacity with erosion of maxillary walls on the left side while the right side maxillary sinus showed mild haziness. There was no medical negligence on the part of the respondent. The respondent has conducted only sinus operation after following prescribed procedure and protocol and did not conduct eye operation. The petitioner is not entitled for any relief and the complaint is liable to be dismissed. The respondent also denied other allegations of the petitioner as stated in the complaint.

3. The petitioner and the respondent led their respective evidence by way of affidavit before the District Forum.

4. The District Forum vide order dated 13.06.2011 held that due to surgical operation performed by the respondent on the nose portion of the petitioner on 19.12.2008, the petitioner lost his left eye and loss of such eye happened due to

medical negligence on the part of the respondent as is proved from the prescription of the treating doctor of G.M. & Associates Hospital, Lucknow. The District Forum held the respondent guilty for medical negligence and deficiency in service. The District Forum directed the respondent to pay compensation amounting to Rs. 1,50,000/- for complete loss of the left eye of the petitioner besides directing to pay Rs.40,000/- towards expenditure for medical treatment and Rs. 10,000/- for harassment and cost of litigation. The District Forum observed that the petitioner succeeded in proving medical negligence on the part of the respondent by adducing evidence and by producing medical report of the treating doctor of G.M. & Associates Hospital, Lucknow from 03.01.2009 to 12.01.2009 as well as CT scan of the paranasal sinuses from the Department of Radio Diagnosis of the aforementioned hospital in Lucknow.

5. The respondent being aggrieved from the order dated 13.06.2011 passed by the District Forum filed First Appeal bearing no FA/330/2011 titles as **Dr. Om Prakash V Yogendra Vishkarma** before State Consumer Disputes Redressal Commission, Bihar (hereinafter referred to as "**the State Commission**"). The State Commission vide order dated 09.09.16 (hereinafter referred to as "**the impugned order**") allowed the Appeal and set aside the order dated 13.06.2011 passed by the District Forum. The State Commission in impugned order considered the reliance of the District Forum on the CT scan report of the petitioner and report of the G.M. & Associates Hospital, Lucknow as well as final finding of the District Forum. The State Commission primarily observed that there was no medical evidence to establish faulty operation or the medical negligence on the part of the respondent which could have been explained by medical expert. It was also observed that it was for the petitioner the medical negligence by cogent evidence. The relevant portion of the impugned order is reproduced verbatim as under:

5. We have considered the rival case of the parties, materials on the record as also the impugned order. The District Forum held the doctor of medical negligence on the basis of the C.T. Scan report and the medical prescription of treatment of the complainant at Lucknow Hospital. As the operative finding of the report of the C.T. Scan begins with the word "Operated case showing surgical bony defect in Antero - inferior and Superior Wall of Left

Maxillary Sinus with Air collection in Posterior parts of left Orbit and in cheek with surroundings Soft Tissue Inflammation and Left Maxillary sinusitis and Rhinitis". The another finding in the C.T. scan that there is a Cramial nose paralyzed. The District Forum upon the above findings of the C.T. Scan concluded that all the above findings is due to the operation conducted on the complainant on 19.12.08 at Gaya. We fail to understand where is the medical evidence explaining the above findings that those are due to the faulty operation or the medical negligence of the appellant. The same could had been explained by equally competent doctor/medical expert. The complainant is not competent to pin point the fault, if any, in the operation. It is for the complainant to prove the medical negligence cogent evidence. Holding of medical negligence on the part of the doctor without cogent evidence could be of a far consequence as such the finding of medical negligence cannot be gathered from mere allegation or unexplained medical report. Moreover, it would appear that in the hospital at Lucknow there were no record relating to the operation performed by O.P as would be evident from the discharge ticket issued on 12.01.09. by the hospital where the result was noted as "improved".

6. The District Forum has not considered these important aspect of the matter in its correct perspective and pass the impugned order as such the same cannot be sustained in law. It is thus set aside

7.In the result, the appeal stand allowed

6. The petitioner being aggrieved filed the present Revision Petition bearing no 203 of 2017 titled as **Yogendra Vishkarma V Dr. Om Prakash under section 21(b) of the Consumer Protection Act, 1986 (hereinafter referred to as "**the Act**") to challenge the impugned order primarily on grounds that the impugned order was passed on conjecture and surmises. The State Commission has failed to appreciate entire case properly and failed to interpret C.T. Scan Report correctly which clearly demonstrate negligence on the part of the respondent. The respondent did not challenge the adverse comments of the treating doctors at Lucknow who held the respondent responsible for paralysis of the carnival nerves. The petitioner before operation was not having any vision problem. It was prayed that the impugned order be set aside.**

7. We have heard Sh. Sehel Khan, the Counsel/Amicus Curiae for the petitioner and Sh. Zishaan Iskandari, Counsel for the respondent. We have also considered the relevant records including the order passed by the District Forum and the impugned order passed by the State Commission. The written submissions submitted on behalf of the petitioner and the respondent are also perused.

8. The counsel for the petitioner besides referring the factual background of the case argued that the petitioner was operated on 19.12.2008 and after operation and after regaining consciousness noticed swelling in the left eye and further his eyeball and eyelid was not moving. The petitioner was referred to a hospital in Lucknow where on 03.01.2009 C. T. Scan was conducted. The doctors specifically stated that the damage to the eye was caused due to operation conducted by the respondent. It was further argued that the observation of the State Commission that the eye problem cannot be attributed to the negligence of the respondent cannot be sustained. The counsel for the petitioner also countered the arguments raised on behalf of the respondent that the petitioner was engaged in welding work which might have been caused for the development of bony defect in the eye of the petitioner and in support of this argument referred medical literature titled as "**Corneal Foreign Body: Prevention is the Key**" authored by **Dr. CDS Katoch, Executive Director, AIIMS, Rajkot** which prescribed that loss through welding occurs specifically when a foreign particle enters the eye, thereby demonstrating that the glaring light of welding alone does not lead to bony defects.

8.1 The counsel for the petitioner referred CT Scan Report dated 4.01.2009 which was done subsequent to the surgical operation conducted upon the petitioner on 19.12.2008. The petitioner submits that the nerve connected to the maxillary sinus and the eye is the infraorbital nerve which provides sensory feeling to the lower eyelid, upper lip, lateral side of the nose, incisor-canine-premolar-root of molar teeth, skin of the cheek, and the maxillary sinus. It was argued that the respondent negligently cut/damaged/ altered the infraorbital nerve which is connected to the maxillary nerve connecting them both to the eyes. It was also stated that Dr. Kaur at Lucknow stitched the eyelid of the petitioner as a corrective measure to prevent further damage and to prevent the eyelid from prolapsing or falling out of position.

8.2 The counsel for petitioner relied on **M. Muniraja & others V Mallige Centre Hospital & others**, MANU/CF/0575/2024 decided on 25.07.2024; **Dr. Laxman Balkrishna Joshi V Dr. Trimbak Bapu Godbole & another**, (1969) 1 SCR 206; **Spring Meadows Hospital V Harjol Ahluwalia**, (1998) 4 SCC 39 and **Savita Garg V The Director, National Heart Institute**, (2004) 8 SCC 56. It was argued that the impugned order be set aside and the consumer complaint filed by the petitioner be allowed.

9. The counsel for the respondent defended the impugned order passed by the State Commission and argued that the medical negligence has to be proved through cogent evidence and cannot be inferred on basis of bald and unsustainable allegations. The petitioner could not establish medical negligence on the part of the respondent. It was argued that the petitioner was suffering from chronic maxillary sinusitis since long and the respondent has explained the risk involved in the operation and its consequences to the petitioner. The petitioner was suffering from ENT disorder and not any disorder in the eyes. The petitioner was indulged in welding work which might have been caused for eye problem of the petitioner. The counsel for the petitioner also attacked C.T. Scan report being a manipulated document. The post operation complication cannot be equated to medical negligence of the doctor. Medical negligence must be established through cogent and substantial evidence and cannot be concluded based merely on unsubstantiated allegations or bare assertions. The petitioner has failed to substantiate its allegations of negligence. It is a fundamental principle of medical jurisprudence that not every unsuccessful medical procedure or adverse outcome constitutes medical negligence. It was ultimately argued that the State Commission reached an appropriate and legally sound conclusion in the impugned order which contains no irregularities and is liable to be upheld. The revision petition be dismissed.

10. This Commission in **Dr. B. K. Choudhary V Barjhi Devi & others**, Revision Petition bearing no 459 of 2021 decided on 26.09.2025 discussed relevant law and literature and observed that the negligence can be normally explained as a breach of 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 actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or property. The definition involves three constituents of negligence which are i) a legal duty to exercise due care, ii) breach of the duty and iii) consequential damages. The medical negligence may be explained as a want of reasonable degree of care or skill or willful negligence on the part of the medical practitioner in the treatment of a patient with whom a relationship of professional attendant is established, so as to lead to bodily injury or to loss of life. The absence or lack of care that a reasonable person should have taken in the circumstance of the case is held to be negligent. The three ingredients of negligence are i) the defendant owes a duty of care to the plaintiff, ii) the defendant has breached a duty of care and iii) the plaintiff has suffered an injury due to breach. The basic principle relating to negligence by professionals is called as the **Bolam Rule** which was laid down in **Bolam V Friern Hospital Management Committee**, (1957) 1 WLR 582 as under:-

(W)here you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because he as not got this special skill. The test is the standard of the ordinary skilled man exercising and profession to have that special skill. A man need not possess the highest expert skill.....It is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art

10.1 The Supreme Court in an action for negligence in tort against a surgeon in **Laxman Balakrishna Joshi V Trimbak Bapu Godbole & another**, 1969 (1) SCR 206 held that the duties which a doctor owes to his patient are clear and 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. It was further held that such a person when consulted by a patient owes him certain duties which are 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 and a breach of any of those duties gives a right of action for negligence to the patient. It was also held that the practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. The relationship between a medical practitioner and a patient carries within it certain degree of mutual confidence and trust. The Supreme Court also observed that section 14 of the Act indicates that the reliefs that can be granted on a complaint filed under the Act in respect of deficiency in service and the compensation can be awarded for loss or injury suffered by the consumer due to the negligence of the opposite party including medical negligence. The Supreme Court in **Dr. C.P.Sreekumar V S. Ramanujam**, II (2009)CPJ 48 (SC) held that onus to prove medical negligence lies on the claimant and this onus can be discharged by leading cogent evidence. This Commission in **Nalini V Manipur Hospital & others**, IV (2011) CPJ 280 (NC) observed that appellant's case of alleged medical negligence cannot be accepted only on basis of affidavit without support of any expert opinion.

10.2 The Supreme Court in **Jacob Mathew V State of Punjab**, (2005) 6 SCC 1 extensively discussed negligence by professionals including doctors. The Supreme Court observed as under:-

In the law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skill or skilled persons generally. Any task which is required to be performed with a special skill would generally be admitted or undertaken to be performed only if the person possesses the requisite skill for performing that task. Any reasonable man entering into a profession which requires a particular level of learning to be called a professional of that branch, impliedly assures the person dealing with him that the skill which he professes to possess shall be exercised and exercised with reasonable degree of care and caution. He does not assure his client of the result. A lawyer does not tell his client that the client shall win the case in all circumstances. A physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on.

The only assurance which such a professional can give or can be understood to have given by implication is that he is possessed of the requisite skill in that branch of profession which he is practising and while undertaking the performance of the task entrusted to him he would be exercising his skill with reasonable competence. This is all what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not necessary for every professional to possess the highest level of expertise in that branch which he practices.

10.3 The Supreme Court also referred **Bolam case** and stated that it is cited and dealt with in several judicial pronouncements. It was observed that the classical statement of law in Bolam's case has been widely accepted as decisive of the standard of care required both of professional men generally and medical practitioners in particular. It has been applied to as touchstone to test the pleas of medical negligence. It is enough for the defendant to show that the standard of care and the skill attained was that of the ordinary competent medical practitioner exercising an ordinary degree of professional skill. The fact that a defendant charged with negligence acted in accord with the general and approved practice is enough to clear him of the charge.

10.4 The Supreme Court further observed that a mere deviation from normal professional practice is not necessarily evidence of negligence. An error of judgment on the part of a professional is not negligence per se. 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. It was also observed that no sensible professional would intentionally commit an act or omission which would result in loss or injury to the patient as the professional reputation of the person is at stake. A single failure may cost him dear in his career.

10.5 The Supreme Court also discussed rule of *res ipsa loquitur* and stated that it is not of universal application and has to be applied with extreme care and caution to the cases of professional negligence and in particular that of the doctors otherwise it would be counter-productive. The doctor cannot be held liable by applying doctrine of *res ipsa loquitur* because a patient has not favourably responded to a treatment given by a physician or a surgery has failed. The Supreme Court has summed up the conclusions as under:-

(1) 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.....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'.

(2) Negligence in the context of 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. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.

(3) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

(4) The test for determining medical negligence as laid down in **Bolam's case [1957] 1 W.L.R. 582, 586** holds good in its applicability in India.

10.6 The Supreme Court in **Neeraj Sud & another V Jaswinder Singh (minor) & another**, Civil Appeal No 272 of 2012 decided on 25.01.2024 after referring **Bolam** case and **Jacob Mathews V State of Punjab** in context to medical negligence held as under:-

11. Deterioration of the condition of the patient post-surgery is not necessarily indicative or suggestive of the fact that the surgery performed or the treatment given to the patient was not proper or inappropriate or that there was some negligence in administering the same. In case of surgery or such treatment it is not necessary that in every case the condition of the patient would improve and the surgery is successful to the satisfaction of the patient. It is very much possible that in some rare cases complications of such nature arise but that by itself does not establish any actionable negligence on part of the medical expert.

14. It is well recognized that actionable negligence in context of medical profession involves three constituents (i) duty to exercise due care; (ii) breach of duty and (iii) consequential damage. However, a simple lack of care, an error of judgment or an accident is not sufficient proof of negligence on part of the medical professional so long as the doctor follows the acceptable practice of the medical profession in discharge of his duties. He cannot be held liable for negligence merely because a better alternative treatment or course of treatment was available or that more skilled doctors were there who could have administered better treatment.

15. A medical professional may be held liable for negligence only when he is not possessed with the requisite qualification or skill or when he fails to exercise reasonable skill which he possesses in giving the treatment. None of the above two essential conditions for establishing negligence stand satisfied in the case at hand as no evidence was brought on record to prove that Dr. Neeraj Sud had not exercised due diligence, care or skill which he possessed in operating the patient and giving treatment to him.

16. When reasonable care, expected of the medical professional, is extended or rendered to the patient unless contrary is proved, it would not be a case for actionable negligence. In a celebrated and very often cited decision in *Bolam v. Friern Hospital Management Committee* (Queen's Bench Division)3, it was observed that a doctor is not negligent if he is acting in accordance with the acceptable norms of practice unless there is evidence of a medical body of skilled persons in the field opining that the accepted principles/procedure were not followed. The test so laid down popularly came to be known as Bolam's test and stands approved by the Supreme Court in *Jacob Mathews v. State of Punjab and Another*.

17. In [**Jacob Mathews**](#) (supra) this Court held that a professional may be held liable for negligence if he is not possessed of the requisite skill which he supposes to have or has failed to exercise the same with reasonable competence.

18. In other words, simply for the reason that the patient has not responded favourably to the surgery or the treatment administered by a doctor or that the surgery has failed, the doctor cannot be held liable for medical negligence straightway by applying the doctrine of *Res Ipsa Loquitor* unless it is established by evidence that the doctor failed to exercise the due skill possessed by him in discharging of his duties.

10.7 The Supreme Court in **Deep Nursing Home and another V Manpreet Singh Mattewal and others**, 2025 SCC OnLine SC1934 after referring **Jacob Mathew V State of Punjab** held as under:-

23. As pointed out in [**Jacob Mathew vs. State of Punjab**](#) and another, (2005) 6 SCC 1 simply because a patient did not favourably respond to the treatment given by a physician or if a surgery failed, the doctor cannot be held liable per se by applying the doctrine of *res ipsa loquitur*. This edict was reiterated in [**Martin F. D'Souza vs. Mohd. Ishfaq**](#), (2009) 5 SCC 337 wherein, it was pointed out that no sensible professional would

intentionally commit an act or omission which would result in harm or injury to a patient as the reputation of that professional would be at stake and a single failure may cost him or her dear in that lapse. It was also pointed out that sometimes, despite best efforts, the treatment by a doctor may fail but that does not mean that the doctor or surgeon must be held guilty of medical negligence, unless there is some strong evidence to suggest that he or she is. It was also pointed out that Courts and Consumer Fora are not experts in medical science and must not substitute their own views over that of specialists. While acknowledging that the medical profession had been commercialised to some extent and there were doctors who depart from their Hippocratic Oath for their selfish ends of making money, this Court held that the entire medical fraternity cannot be blamed or branded as lacking in integrity or competence just because of some bad apples.

24. On the same lines, in Devarakonda Surya Sesha Mani and others vs. Care Hospital, Institute of Medical Sciences and others, 2022 SCC OnLine SC 1608 it was held that unless a complainant is able to establish a specific course of conduct, suggesting a lack of due medical attention and care, it would not be possible for the Court to second-guess the medical judgment of the doctor on the line of treatment which was administered and, in the absence of such material disclosing medical negligence, the Court cannot form a view at variance, as every death in the institutionalised environment of a hospital does not necessarily amount to medical negligence on a hypothetical assumption of lack of due medical care.

11. It is reflecting from record that the petitioner was doing job of welding and was stated to be chronic patient of sinus and approached the respondent for medical treatment on 04.12.2008. The respondent being a doctor after examination prescribed several tests which were conducted on 04.12.2008 at Prasad Diagnostic Centre, Gaya. The petitioner after pathological examination was found to be having chronic infection. The respondent after examination of test reports prescribed several medicines and advised for operation as the petitioner reported to be suffering from serious ailments. The petitioner was operated on 19.12.2008 and written consent of the brother of the petitioner was also taken before operation. The petitioner regained consciousness on 20.12.2008 and noticed swelling in left eye and further there was no movement in the eyelid and eyeball. The petitioner

remained under treatment of the respondent till 30.12.2008. The petitioner as per medical documents submitted by him also underwent NCCT Brain & Orbit. The C.T. Orbit indicated that optic nerve of both eyes were normal. The respondent referred the petitioner to Lucknow due to medical condition. The petitioner was admitted in Gandhi Memorial & Associated Hospital, Lucknow on 03.01.2009. The C.T. Scan of the petitioner was conducted on 04.01.2009. The report of C.T. Scan indicated as under:-

CT SCAN PARANASAL SINUSES

History of operation showing surgical bony defect in antero-inferior and superior wall of left maxillary sinus is seen. Air collection is seen in anterior part of maxillary sinus extending into the left orbit, posterior to the left eye ball and inferiorly into the soft tissues overlying the maxillary sinus. Mild soft tissue swelling is seen within the medial part of orbit with streaking of Retrobulbar fat planes S/O retrobulbar inflammation.

Mild soft tissue swelling with mild inflammation is also noted within the soft tissue of cheek overlying the left maxillary sinus.

Soft tissue attenuation lesion is noted in posterior part of left maxillary sinus-sinusitis.

Hypertrophy of inferior and middle turbinates is seen on left side.

Mild DNS to left side is noted.

Ethmoid and frontal sinuses are normal.

Sphenoid sinus is normal.

DIAGNOSIS

“operated case showing surgical bony defect in Antero-inferior and Superior wall of left maxillary sinus with air collection in posterior part of left orbit and in cheek with surrounding soft tissue inflammation with left maxillary sinusitis and rhinitis”.

The left eye of the petitioner was reported to be completely damaged. The petitioner was treated at Lucknow for 10 days and was discharged on 12.01.2009.

The Discharge Ticket dated 12.01.2009 reflects that the petitioner did not provide record of operation stated to be conducted by the respondent. The petitioner was advised eye care and to attend ophthalmic OPD.

12. We have considered the contentions of the petitioner and arguments advanced by the counsel for the petitioner and the respondent. The main contention of the petitioner and also argued by the counsel for the petitioner is that the petitioner after operation on 19.12.2008 performed by the respondent noticed swelling in the left eye and there was no movement in his eyeball and eyelid. The C. T. Scan of the petitioner indicated that damage to the eye was caused due to operation conducted by the respondent. The counsel for the petitioner emphatically argued that the petitioner was engaged in welding work which cannot be caused for the development of bony defect in the eye of the petitioner and relied on medical literature titled as "**Corneal Foreign Body: Prevention is the Key**" authored by **Dr. CDS Katoch, Executive Director, AIIMS, Rajkot.** It was also contended on behalf of the petitioner and also submitted in written submissions that the nerve connected to the maxillary sinus and the eye is the infraorbital nerve which provides sensory feeling to the lower eyelid, upper lip, lateral side of the nose, incisor-canine-premolar-root of molar teeth, skin of the cheek, and the maxillary sinus and the respondent negligently cut/damaged/ altered the infraorbital nerve which is connected to the maxillary nerve connecting them both to the eyes. However said contention advanced on behalf of the petitioner is not supported by any cogent and convincing evidence and there is no evidence which can suggest that the respondent damaged or cut the infraorbital nerve due to negligence in the operation of the petitioner conducted on 19.12.2008. The contentions of the petitioner are supported and corroborated by necessary and requisite medical evidences. The counsel for the petitioner after relying on CT scan report argued that doctors of Gandhi Memorial & Associated Hospital, Lucknow opined that damage to the eye was caused due to operation performed by the respondent but said plea of the petitioner is again not supported by such opinion and said opinion is also not placed on record. The CT scan relied upon by the petitioner is not suggestive of any negligence or lack of care on part of the respondent while performing operation on

19.12.2008. There is nothing in the report of CT scan which can indicate any negligence on part of the respondent. We are not convinced with the contentions and arguments advanced on behalf of the petitioner. The petitioner also challenged the impugned order in present revision petition primarily on grounds that the State Commission has failed to appreciate entire case properly and failed to interpret C.T. Scan Report correctly which clearly demonstrate negligence on the part of the respondent but these grounds are not convincing to set aside the impugned order.

12.1 There is force in the arguments advanced on behalf of the respondent that the medical negligence has to be proved through cogent evidence and cannot be inferred on basis of bald and unsustainable allegations and the petitioner could not establish medical negligence on the part of the respondent. It is equally true that the post operation complication if any cannot be equated to medical negligence of the doctor. We are in agreement with the contention of the respondent that the petitioner has failed to substantiate its allegations of negligence on the part of the respondent.

13. We also considered the order dated 13.06.2011 passed by the District Forum and the impugned order passed by the State Commission. The District Forum in order dated 13.06.2011 was not justified in holding that the petitioner lost his left eye due to surgical operation performed by the respondent on 19.12.2008 and loss of eye happened due to medical negligence of the respondent. The negligence on the part of the respondent is proved from the prescription of the treating doctor of G.M. & Associates Hospital, Lucknow as observed by the District Forum. The District Forum wrongly held the respondent guilty for medical negligence and deficiency in service and the petitioner succeeded in proving medical negligence on the part of the respondent by adducing evidence and by producing medical report of the treating doctor of G.M. & Associates Hospital, Lucknow from 03.01.2009 to 12.01.2009 as well as CT scan of the paranasal sinuses from the Department of Radio Diagnosis of the aforementioned hospital in Lucknow. The said observations of the District Forum are not supported and corroborated by necessary medical documents. The State Commission in impugned order rightly observed that there

was no medical evidence to establish faulty operation or the medical negligence on the part of the respondent which could have been explained by medical expert and it was for the petitioner the medical negligence by cogent evidence. The State Commission rightly held that the medical negligence on the part of the doctor cannot be establish without cogent evidence and cannot be gathered from mere allegation or unexplained medical report. We are in agreement with the observations and findings of the State Commission in impugned order.

14. The petitioner was suffering from chronic sinus. The petitioner consulted the respondent who after examination advised surgical operation which was conducted on 19.12.2008. The petitioner post operation complained swelling in left eye besides no movement in eyelid and eyeball. The petitioner alleged negligence in treatment of the petitioner and deficiency in service. However the petitioner except mentioning that the respondent was negligent in operation of the petitioner could not establish by suitable evidence that how the respondent was negligent in operation conducted on 19.12.2008. The respondent appeared to have conducted surgery as per established procedure and protocol. The respondent has acted like a reasonable man on considerations which ordinarily regulate the conduct of human affairs. There was no apparent or noticeable omission on the part of the respondent in performing surgical operation of the petitioner. The respondent has taken appropriate care in the operation of the complainant. The respondent as per **Bolam Rule** had exercised the ordinary skill of an ordinary competent man in the treatment of the respondent. The respondent while operating the petitioner was possessing appropriate skill and knowledge. The Supreme Court in **Jacob Mathew V State of Punjab** clearly observed that a surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial to the extent of 100% for the person operated on and the only assurance which can be given is that he is possessed of the requisite skill in that branch of profession which he is practicing. It is correct that the petitioner post operation developed complications in the left eye but deterioration of the condition of the patient post-surgery is not necessarily indicative or suggestive of the fact that the surgery performed or the treatment given to the patient was not proper or inappropriate or that there was some negligence in administering the same.

There is no evidence to prove that the respondent failed to exercise due diligence, care or skill while performing surgery. The respondent cannot be held liable for medical negligence due to mere fact that the petitioner developed complications in the left eye. The respondent conducted surgery in good faith for the benefit of the patient i.e. the respondent.

15. We in view of above discussion are of the opinion that the petitioner has failed to discharge the burden of establishing negligence or deficiency in service on the part of the respondent. The State Commission passed the impugned order on basis of convincing reasoning and after proper appreciation of material on record. There is no reason to interfere in the impugned order passed by the State Commission. The State Commission has not committed any illegality or material irregularity while passing the impugned order. The scope of revision petition before the National Commission is limited. The present revision petition is devoid of any merit and hence dismissed. The pending application if any also dismissed.

**DR. INDER JIT SINGH
PRESIDING MEMBER**

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**JUSTICE SUDHIR KUMAR JAIN
MEMBER**