

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1125-1126 OF 2021

(Against the Order dated 18/11/2021 in Appeal No. 666/2019 of the State Commission
Rajasthan)

1. RAVIPetitioner(s)

Versus

1. DR. RAM SINGH SURGICAL HOSPITAL & ORS.Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

FOR THE PETITIONER : MS. ANJANA JHA, ADVOCATE

FOR THE RESPONDENT : NEMO

Dated : 23 June 2023

ORDER

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondents as detailed above, under section 58(1)(b) of Consumer Protection Act 2019, against the order dated 18.11.2021 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur, (hereinafter referred to as the 'State Commission'), in First Appeal (FA) 663 of 2019 & FA 666 of 2019 in which order dated 11.06.2019 of District Consumer Disputes Redressal Commission, Sawai Madhopur (hereinafter referred to as District Commission) in Consumer Complaint (CC) no 378 of 2016 was challenged, inter alia praying for setting aside the said order dated 18.11.2021 of the State Commission and reinstating the said order of the District Commission dated 11.06.2019.

2. Revision Petitioner herein was Respondent No.1 in FA 666/2019 and FA 663/2019 and complainant in CC 378/2016 (hereinafter also referred to as the complainant). Respondent No.1 herein was Appellant in FA 666/2019, Respondent No. 2 in FA 663/2019 and OP-1 in CC 378/2016 (hereinafter also referred to as the Respondent Hospital). Respondent No.2 herein was Appellant in FA 663/2019, Respondent No. 2 in FA 666/2019 and OP-2 in CC 378/2016 (hereinafter also referred to as Respondent Insurance Company. Notice was issued to the Respondents herein on 16.07.2022. Petitioner herein filed Written Arguments/Synopsis on 20.03.2023. Respondent Hospital and Respondent Insurance Company did not file Written Arguments/Synopsis.

3. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Commission and other case records are as follows: -

(i) The issue involves an alleged case of medical negligence. The Complainant brought his minor son (referred to as the Patient) to Respondent Hospital on 06.05.2016 for stomach pain. Following an examination, including a sonography on 12.05.2016, it was revealed that the Patient had stones in the gall bladder and kidney. The Respondent Hospital advised surgery for the removal of stones only in the gall bladder. On 13.05.16, the operation was performed with the complainant's consent. However, it was alleged that during the surgery, an extra excision occurred in the gall bladder, resulting in the collection of blood and the formation of pus, which worsened the Patient's condition. The Patient was discharged from Respondent Hospital on 15.05.2016 but was readmitted on 20.05.2016 due to a deteriorating condition. Tests conducted during the readmission revealed the absence of stones in the gall bladder but the presence of stones in the kidney. The Respondent Hospital doctor prescribed medicines and advised rest at home. However, on 27.05.2016, the Patient was taken to Sawai Madhopur General Hospital due to a serious health condition and was hospitalized for three days. The Patient was subsequently referred to Mahatma Gandhi Hospital in Jaipur, where intensive medical treatment was provided. A sonography conducted on 30.05.2016 revealed that the gall bladder had been removed. It was alleged that during the previous surgery at Respondent Hospital, the doctor mistakenly removed the gall bladder instead of removing the stones. As a result, the Patient had to undergo treatment at various hospitals for the removal of kidney stones and other related issues.

(ii) Complainant filed a CC 378 of 2016 before the District Commission on 24.08.2016 praying for reimbursement of Rs. 4,50,000/- from OP for medical expenses incurred and for compensation towards mental agony and cost of litigation. Vide Order dated 11.06.2019, in the said CC the District Commission has allowed the complaint and ordered OP(s) (Respondent Hospital & Respondent Insurance Company) to pay complainant Rs. 3,00,000/- as compensation and Rs. 10,000/- for mental agony and litigation cost.

(iii) Aggrieved by the said Order dated 11.06.2019 of District Commission, OP(s) (Respondent Hospital & Respondent Insurance Company) filed separate appeal before the State Commission and the State Commission vide order dated 18.11.2021 in FA/666/2019 & FA/663/2019 has set aside the order of District Commission and accepted the Appeal of OP-1 (Hospital) and OP-2 (Insurance Company).

4. In the reply filed before the District Forum, Respondent Hospital has admitted that the Complainant-Patient came to the hospital on 06.05.2016 with stomach pain and the sonography report dated 12.05.2012 showed that he had stone in the gall bladder and the kidney. The patient was operated upon on 13.05.2016 for gall bladder and the stone from the gall bladder was removed alongwith removal of gall bladder. Nothing was done to intestines. Further, it is admitted that there was a stone in the kidney also but patient had no difficulty due to this, hence that was not treated. Patient was discharged on 15.05.2016, he came again on 20.05.2016 with complaint of pain in the stomach, and was admitted on 20.05.2016. All investigations, including sonography was done, but no problems with respect to the operation was found. Appellant Hospital claims that on 25.05.2016, patient voluntarily left without telling the Hospital. Appellant Hospital further stated in their reply to the complaint that patient was admitted in Mahatma Gandhi Hospital, Jaipur from 30.05.2016 to 31.05.2016 and thereafter in S.M.S. Hospital Jaipur from 01.06.2016 to 26.06.2016. As per CECT Scan report whole abdomen dated 04.06.2016 of S.M.S. Hospital, it is recorded that STENT is seen CBT in the stomach of patient, which means patient while admitted in Mahatma Gandhi Hospital, Jaipur, was operated upon and STENT CBT was put in his stomach. Respondent Hospital denied any connection with the treatment done to the patient at other hospitals.

5. Respondent Insurance Company in its reply before the District Forum stated that patient has not given any information to them and no claim has been lodged. Under the policy Insurance Co. has issued a Indemnity (Medical Establishment) Policy: from 17.08.2015 to 16.08.2016 in favour of Respondent Hospital with certain conditions. It was contended that Respondent Insurance Company is not a necessary party in the complaint.

6. Complainant-Patient has contended before the District Forum that Respondent Hospital told that there is stone in gall bladder and kidney, for which operation will have to be done. Respondent Hospital took out stone from gall bladder by operation, but due to their carelessness, extra incision occurred to the gall bladder and intestine got cut resulting in collection of blood and formation of pus, which worsened patient's condition, leading to his taking treatment in different Hospitals. Patient had to face lot of difficulties due to carelessness of Respondent Hospital during the operation. Patient had spent a total of Rs.4.50 lakhs for the treatment, which is due to carelessness of Respondent Hospital, hence there was/is deficiency in service on the part of Respondent Hospital.

7. District Forum after perusal of records of Swai Madhopur Hospital, Mahatma Gandhi Hospital, Jaipur and Man Singh Hospital, Jaipur, came to a conclusion that Respondent Hospital was careless/negligent in operating the patient for gall bladder due to which the patient had to be admitted in these Hospitals, and hence deficiency in service on the part of Respondent Hospital is established. Accordingly, District Forum directed the OPs to pay a compensation of Rs.3.00 lakh to the complainant within 2 months, failing which, it would carry interest @9% p.a. In addition, District Forum awarded Rs.10,000/- towards mental

agony and legal costs. As regards liability of Respondent Insurance Company, the District Forum stated that because Respondent Company has issued an insurance policy in favour of Respondent Hospital, hence Respondent Insurance Company is liable to pay the claim under the said policy.

8. Before the State Commission, Respondent Hospital contended that District Forum in its order has not discussed as to how and what was medical negligence. Complainant has not been able to prove medical negligence. Complainant on the other hand had contended before the State Commission that due to medical negligence on the part of Respondent Hospital there were wounds in the intestines below the gall bladder and due to wrong operation by the doctor, complainant had to spend money on his treatment in the other hospital, which constitutes deficiency in service on the part of Respondent Hospital.

9. State Commission in its order has stated that from the medical records, it is seen that complainant had stones in gall bladder and kidney, respondent hospital has operated and removed the entire gall bladder, including stones. Respondent Hospital has not done any treatment regarding kidney stones. Complainant has not produced records relating to admission/discharge, and treatment summary in Mahatma Gandhi Hospital. Complainant has not clarified as to whether was the stent CBD inserted after operation as scan dated 04.06.2016 shows that there is a stent CBD in the stomach. If the complainant had produced treatment summary at Mahatma Gandhi Hospital, this fact could have become clear. No medical negligence got revealed from the medical records of Govt. Hospital Swai Madhopur and S.M.S. Hospital. Complainant has not produced any record to show that during the operation by Appellant Hospital the intestine was infected by a cut. Considering various aspects, State Commission came to a conclusion that complainant has failed to prove medical negligence on the part of Appellant Hospital and District Forum has not discussed as to how and what was the medical negligence on the part of Appellant Hospital, District Forum has only mentioned in the impugned order that negligence of Appellant Hospital is proved by perusal of medical documents of S.M.S. Hospital, Jaipur. Hence, the State Commission concluded that findings of District Forum are not based on facts and evidences. Hence, accepting the Appeals of Respondent Hospital and Respondent Insurance Company, the order dated 11.06.2019 of District Forum was set aside.

10. While arguing the Revision Petition before this Commission, the Petitioner (Complainant) has argued that he was not informed by the Respondent Hospital that Gall Bladder was also removed while discharging on 15.05.2016 and this material fact has been ignored by the State Commission. He further contended that State Commission has failed to appreciate the fact that when the Complainant got re-admitted in the same hospital, he was told that 'gall bladder me ghav lag gaya hai/cut lag gaya hai. Here again the Complainant was not told that while doing the endoscopic surgery not only stone but the gall bladder was also removed. The complainant is an uneducated person with modest financial background. He was made to understand that there is some 'ghav'(injury) in "AAT'(intestine). For

people of his background, intestines, ducts etc. are similar words representing the organs in the abdomen. Generally after successful and non-negligent endoscopic operations for stone removal, such extensive and major pain does not reappear. It was found in the sonography report of 23.05.2016 that urinary bladder was partially distended and on 31.05.2016 in Goyal Labs report it was intimated that gall bladder was removed. But the report could not be deciphered by complainant, who was made to understand that 'ghav lag gayi hai' (an injury has been caused). CECT Scan of the abdomen revealed that the gall bladder was not there and kidneys are normal, whereas the Respondent Hospital in its report dated 12.05.2016 said that there were stones in kidneys also to make it look more dangerous and serious. Complainant further contended that after readmission on 20.05.2016 with Respondent Hospital, he was not given any medical treatment for days together and as such the complainant would have died, thereafter on 25.05.2016, he had to remove himself from the care of Respondent Hospital and take urgent and immediate alternate medical care and opinion. After removing himself from the care and custody of Respondent Hospital, the complainant undertook marathon between hospitals from Swai Madhopur to Jaipur to save his life, all of which could have been avoided had the operation been carefully performed in the first place. The financial loss and mental agony was such that finally the Complainant landed at Swai Mansingh Hospital, Jaipur, which is a Government Hospital. The only point on which findings of District Forum is dismissed by the State Commission is 'Stent CBD was found', which was not mentioned in the complaint. To get relief from pain and to save the life and to cater to the injury caused by medical negligence of Respondent Hospital, this 'Stent CBD' was inserted. The observations of State Commission on this point is lopsided and less than convincing.

11. We have carefully gone through the orders of State Commission, District Forum, various medical records and all other relevant records. We find that Petitioner/Complainant has placed on record before the District Forum sufficient facts and evidence to establish medical negligence on the part of Respondent Hospital. This order of District Forum is sufficiently reasoned one to conclude medical negligence on the part of Respondent Hospital. The only thing which complainant was not able to explain fully was existence of 'Stent CBD'. Merely on this ground, State Commission was not justified in setting aside the orders of District Forum. The medical negligence on the part of Respondent Hospital is to be seen for the operation done by Respondent Hospital for removal of gall bladder/Stone from the gall bladder on 13.05.2016, which has resulted into subsequent complications. We tend to agree with the contentions of Complainant in this regard. It was held by Hon'ble Supreme Court in **Syed Akbar Vs. State of Karnataka** (1980) 1 SCC 30 and as retreated/quoted in **Jacob Mathew Vs. State of Punjab & Anr.** (2005) 6 SCC 1 that there is a marked difference as to the effect of evidence viz proof. In civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt. Degrees of negligence in criminal negligence and negligence under civil law are jurisprudentially different. It is only to fasten liability in criminal law that degree of negligence has to be gross or of higher degree. Negligence, which is neither gross or of higher degree may provide a ground for action in civil law. In **Savita Garg Vs. The Director, National Heart Institute** (AIR 2004 SC 5088) Hon'ble Supreme Court observed that :-

“10. The Consumer Forum is primarily meant to provide better protection in the interest of the consumers and not to short circuit the matter or to defeat the claim on technical grounds..... We cannot place such a heavy burden on the patient or the family members/relatives to implead all those doctors who have treated the patient or the nursing staff to be impleaded as party.....In fact, once a claim petition is filed and the claimant has successfully discharged the initial burden that the hospital was negligent, as a result of such negligence the patient died, then in that case the burden lies on the hospital and the concerned doctor who treated that patient that there was no negligence involved in the treatment. Since the burden is on the hospital and the concerned doctor who treated that patient that there no negligence involved in the treatment.....”

12. For the reasons stated hereinabove, and after giving a thoughtful consideration to the entire facts and circumstances of the case, various pleas raised by the learned Counsel for the Parties, the RP is allowed, orders of State Commission dated 18.11.2021 in FA/663/2019 and FA/666/2019 is set aside and order of District Forum dated 11.06.2019 in CC 378/2016 is restored. In addition, Petitioner/Complainant is allowed litigation cost of Rs.25,000/- to be paid by Respondent Hospital. Petitioner will be entitled to such interest @ 9% p.a. on all amounts payable under the orders of District Forum w.e.f. 11.08.2019 (two months from the date of order of District Forum) till the date of payment by the Respondent Hospital. Initial liability to pay all sums to the Petitioner/Complainant is on the Respondent Hospital. Respondent Hospital is free to make a claim from Respondent Insurance Company under the Policy held by it with respect to its liability under the order of District Forum read with the present order of this Commission.

13. The pending IAs, in any of the Revision Petition, if any, also stand disposed off.

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DR. INDER JIT SINGH
PRESIDING MEMBER