

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 48 OF 2013

(Against the Order dated 11/10/2012 in Appeal No. 761/2005 of the State Commission Delhi)

1. DR. INA JAIN & ANR.

D-106 Vivek Vihar, Phase-I (Near Vivekanad Mahila College)

DELHI - 110095

2. Paras Eye Centre,

D-106 Vivek Vihar, Phase-I (Near Vivekanad Mahila College)

DELHI - 110095

.....Petitioner(s)

Versus

1. PARO DEVI THROUGH LR.

C-97, Ramprastha P.O Chaander Nagar

GHAZIABAD

U.P

.....Respondent(s)

BEFORE:

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

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

For the Petitioner : Mr. Pradeep Kumar, Advocate

For the Respondent : Mr. G.L.N. Murthy, Advocate

Dated : 04 Jul 2022

ORDER

DR. S. M. KANTIKAR, MEMBER

1. This Revision Petition has been filed, under Section 21(b) of the Consumer Protection Act, 1986 against the Order dated 11.10.2012 passed by the State Consumer Disputes Redressal Commission, Delhi (hereinafter referred to as the 'State Commission') in First Appeal No. 761/2005, whereby the Appeal filed by the Petitioners was dismissed and the Order passed by the District Consumer Disputes Redressal Forum (East), Govt. of NCT of Delhi (hereinafter referred to as the 'District Forum') allowing the Complaint was confirmed.

2. The issue involved is post cataract Endophthalmitis whether it was due to alleged negligence during cataract surgery.

3. The District Forum partly allowed the complaint and directed the petitioner (Opposite Party) to pay Rs. 1,76,392/- along with interest @ 9% per annum from the date of filing.

4. The Opposite Party filed a First Appeal No.F-761/2005 before the State Commission, it was dismissed.

5. Being aggrieved the Opposite Party filed instant Revision Petition.

6. We have heard the learned Counsel for the parties and perused the medical record, *inter alia* the expert opinion from R.P. Centre at AIIMS, New Delhi.

7. The Complainant Smt. Paro Devi (patient) was suffering from cataract in her right eye with age related macular degeneration. On 22.3.2004, the Opposite Party No.1 performed right eye cataract surgery. It was

uneventful and on same day the patient was discharged with advice for follow up visit after 5 days. The Complainant did not come for follow up visits, but came on 29.3.2004 with a complaint of unclear vision. The Opposite Party No.1 examined her and noted inflammatory reaction and membrane in pupillary area. The appropriate antibiotics and other medicines were advised and called for follow up on the next day. The Opposite Party gave subconjunctival injection for next two days and her inflammation in right eye got controlled, condition became stable. She was referred to an expert Vitreo Retinal Surgeon at Navjyoti Eye Centre to assess any source of inflammation in the vitreous cavity. The doctors of Navjyoti Eye Centre had done a Vitreous tap and it revealed early signs of Endophthalmitis in the vitreous cavity. Therefore, as per the standard protocol intravitreal injection was given and she was kept under observation for 36 hours. There was no desirable response to the treatment; therefore, she was referred to Dr. Lalit Verma another Vitreo Retinal Expert for further management.

8. It is pertinent to note that the District forum did not seek any expert opinion and partly allowed the Complaint. However, the Opposite Party moved an application before the State Commission, for the opinion from the Medical Board for Experts with points of reference. The opinion is under:

(1) After proper pre-operation care and antibiotics, successful surgery was performed, and respondent was asked to come in 5 days, and earlier if any problem arose. She came on 8th day with a bound-down pupil papillary membrane. No other signs. Vn PR full. Cycloplegics and sub-conjunctival steroid antibiotic injections started, repeated every 12 hours.

(2) When no progress noted respondent was referred to Dr. Vivek Pal for 2nd opinion, Vitreous tap and intra-vitreous antibiotics were given there.

(3) The appellant waited for 24 hours for intravit injection but since there was no response, the appellant immediately sent the respondent/patient to Dr. Lalit Verma for vitrectomy.

(4) The appellant had followed the prescribed treatment protocol for such a patient.

9. The report dated 29.02.2012 from Dr. R.P. Centre for Ophthalmic Sciences, AIIMS, New Delhi, revealed as below:

From the records provided to us by Dr. Ina Jain vide their letter dated Oct. 30, 2009, it looks that the patient has suffered from Post-operative Endophthalmitis which is a known complication. When the case was diagnosed as Endophthalmitis, the case was appropriately managed and referred as per standard procedure.

10. The prescription of the Opposite Party revealed that the patient suffering from cataract along with the problem of age related macular degeneration. There was retinal degeneration; therefore, the restoration of vision was not important. However, cataract surgery is necessary to prevent complications of hyper mature cataract like complete blindness, severe pain in the eye, headache and vomiting etc. Therefore, the Opposite Party-1 correctly advised the surgery as per standard medical practice. It was also correct to control the intraocular infection (Endophthalmitis) vitrectomy is a proper treatment to save the eye. The State Commission erred to consider the expert medical opinion of AIIMS which was relevant for deciding the appeal.

11. Considering the entirety of the case, admittedly the Petitioner performed cataract surgery and thereafter, during follow-up the Petitioner immediately suspected post-cataract Endophthalmitis and had given initial intravitreal antibiotic injection as an important conservative management when the conservative management did not yield good response the patient was referred to the vitreo retinal surgeon to find out the source of infection. The patient was further examined by two vitreo retinal specialists who treated her, but there was no cure from Endophthalmitis. It is known from various literature and standard books on ophthalmology that post-operative Endophthalmitis is a known complication in 0.5% cases. Relying upon the opinion of the AIIMS Board of Experts and the treatment record of two vitreo retinal surgeons, in the instant case, we don't find any negligence in the cataract surgery performed by the Petitioner. The post cataract care is as per reasonable

standard of practice in the field of ophthalmology. Therefore, medical negligence cannot be attributed to the Petitioner Dr. Ina Jain.

12. Both the fora didn't consider the medical grounds and the evidence, erred to hold Petitioner liable for medical negligence. In our view, it is a material irregularity apparent on record.

13. The Hon'ble Supreme Court in **Jacob Mathew's case**[\[1\]](#) exhaustibly discussed about medical negligence. It was also observed that

“When a patient dies or suffers some mishap, there is a tendency to blame the doctor for this. Things have gone wrong and, therefore, somebody must be punished for it. However, it is well known that even the best professionals, what to say of the average professional, sometimes have failures. A lawyer cannot win every case in his professional career but surely he cannot be penalized for losing a case provided he appeared in it and made his submissions.”

14. Based on the foregoing discussion, the instant Revision Petition is allowed, the Orders of the fora below are set aside. Consequently, the Complaint is dismissed.

There shall be no Order as to costs.

[\[1\]](#) (2005) SSC (CrI) 1369

.....J
R.K. AGRAWAL
PRESIDENT

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DR. S.M. KANTIKAR
MEMBER