NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

FIRST APPEAL NO. 737 OF 2016

(Against the Order dated 12/05/2016 in Complaint No. 39/2014 of the State Commission Chhattisgarh)

1. JAWAHAR LAL NEHRU HOSPITAL AND RESEARCH CENTRE & ANR.
THROUGH ITS DIRECTOR, SECTOR-9, BHILAI, DISTRICT-DURG,
CHATTISGARH
2. DR. A.K. GARG
JAWAHAR LAL NEHRU HOSPITAL AND RESEARCH CENTRE, BHILAI SECTOR-9, BHILAI
DURG
CHATTISGARH .....Appellant(s)

Versus

1. SHRADHANJALI MANIYA & 3 ORS.
W/O. LATE MR. SURENDER KUMAR MANIYA QUARTER NO.-3B, ROAD-18, SECTOR 1, BHAILAI
DURG
CHATTISGARH
2. MS. TWINKLE MANIYA,
D/O LATE MR. SURENDER KUMAR MANIYA THROUGH MOTHER SHRADHANJALI MANIYA W/O LATE SH. SURENDER KUMAR MANIYA, QUARTER NO.-3B, ROAD-18, SECTOR 1, BHAILAI
3. MS. MANASHVI MANIYA
D/O SH.LATE SH. SURENDER KUMAR MANIYA THROUGH MOTHER SHRADHANJALI MANIYA W/O LATE MR. SURENDER KUMAR MANIYA QUARTER NO.-3B, ROAD-18, SECTOR 1, BHAILAI
4. BHILAI ISPAT PLANT
THROUGH ITS CHIEF EXECUTIVE OFFICER BHILAI,
DURG
CHATTISGARH .....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA,PRESIDING MEMBER
HON'BLE BHARATKUMAR PANDYA,MEMBER

FOR THE APPELLANT :	MS. RENU GUPTA, ADVOCATE
FOR THE RESPONDENT :	FOR THE RESPONDENTS 1 TO 3 : MR. ANAND SHANKAR JHA, ADVOCATE FOR THE RESPONDENT NO.4 : EX-PARTE VIDE ORDER DATED 30.11.2016

Dated : 11 September 2023

ORDER

PER MR. JUSTICE RAM SURAT RAM (MAURYA), PRESIDING MEMBER

1. Heard Ms. Renu Gupta, Advocate, for the appellants and Mr. Anand Shankar Jha, Advocate, for respondents-1 to 3.

2. Above appeal has been filed against the order of Chhattisgarh State Consumer Disputes Redressal Commission, Raipur, dated 12.05.2016, passed in CC/14/39, partly allowing the complaint and directing the appellants to pay Rs.1500000/- as the compensation and Rs.5000/- as litigation cost.

3. Mrs. Shradhanjali Maniya, Ms. Tinkle Maniya and Ms. Manashvi Maniya (respondents-1 to 3) filed CC/39/2014, for directing the opposite parties jointly and severally to pay (i) Rs.2025000/-, as compensation for monetary loss; (ii) Rs.1012500/-, for future monetary loss; (iii) Rs.200000/-, for mental agony and pain; (iv) Rs.20000/-, as litigation costs; and (v) Any other relief, which is deemed fit and proper in the facts and circumstances of the case.

4. The complainants stated that Surendra Kumar Maniya (husband of complainant-1 and father of complainants-2 and 3) passed High School in 1990, Intermediate in 1992, ITI (Mechanical) in 1995, B.A. in 2000, M.A. in 2002 and Diploma in Management, Computer Application, Material Testing and Inspection Services (Ultrasonic, Radiography and Liquid Penetrator) and was employed in Bhilai Iron Company, Bhilai. Jawahar Lal Nehru Hospital and Research Centre, Bhilai (the hospital) was established by Bhilai Steel Plant and Dr. A.K. Garg was posted as a doctor there at the relevant time. Surendra Kumar Maniya (the patient) went to the hospital on 15.05.2014 for his treatment of ‘pain in throat’, ‘odynophagia’ and ‘change in voice’. On local examination, swelling in right side tonsil was diagnosed. The doctor advised some medicines and tests and admitted him at 14:00 hours. Test Reports were obtained and examined at 18:00 hours, in which, everything was found normal. The doctor advised to continue same medicines. On 16.05.2014 at 8:00 hours, the doctor examined him in the hospital and found his condition as improving. Some more medicines were added. On 16.05.2014, at 19:00 hours, the patient was examined. On 17.05.2014, at 8:30 hours, the patient was examined by visitor Dr. R.R. Barle and found normal. The patient was sent to OPD at 10:00 hours on 17.05.2014, where he was attended by Dr. A.K. Garg at 10:15 hours. Dr. A.K. Garg, without taking any precaution, did incision in the right side tonsil to drain out pus from it. Pus started forthcoming and choked larynx and breathing tube and entered into lungs. Due to which, the patient had become unconscious. The patient was immediately taken to ICU and kept on ventilator and died. In order to conceal negligence of Dr. A.K. Garg, the other doctor of ICU fabricated papers and declared the patient as ‘dead’ at 15:45 hours. At the time of death, age of the patient was 36 years and he was earning Rs.15000/- per month. There was every chance of his promotion and increase of income in future. The patient was only earning member in the family. At the time of death of the patient, age of Mrs. Shradhanjali Maniya was 29 years, Ms. Tinkle Maniya was 3 years and Ms. Manashvi Maniya was 7 months. They were deprived from love and affection of their husband/father, for their whole life. Thereafter the complaint was filed on 17.12.2014.

5. The opposite parties filed written version in the complaint and contested the case. The opposite parties stated that on 15.05.2014, the patient was diagnosed with swelling due to pus in right side tonsil and prescribed for ante-biotic medicines. On 16.05.2014, in the progress sheet of the patient 'Afebrile' has been noted and some additional medicines were also prescribed. Dr. R.R. Barle examined the patient on 17.05.2014 at 8:30 hours and found that there was no progress in the condition of the patient and advised for examination by Senior doctor of ENT. Therefore, the patient was taken to OPD, where he was examined by Dr. A.K. Garg, who found that swelling was increasing due to pus in right side tonsil. Dr. A.K. Garg decided to drain out the pus by incision. He explained the process and risk to the patient. E.N.T. OPD of the hospital was fully equipped with all the necessary lifesaving tools such as (i) zenon cold light source, (ii) vacuum suction, (iii) electric cautery, (iv) endoscopy attachment, (v) facility for larynx-scopy, endotracheal intubation with Ambu bag), (vi) Emergency drugs and (vii) hydraulic patient chair (with facility of angulation). Incision in the tonsil is used to be done in sitting and conscious condition of the patient, so that he can split the pus through mouth and there may not be any chance of going the pus into breathing tube. The process for draining the pus from tonsil is not a major surgery. Dr. A.K. Garg was a senior doctor and specialist in ENT. He performed incision by making opening in his abscess with full care and caution as per procedure prescribed in medical books. The larynx of the patient was more sensitive and got closed due to sudden contradiction in the muscles due to which laryngospasm occurred. As soon as it was noticed that the patient was suffering from laryngospasm, the process of intubation was started by the team of the doctors in OPD ENT but as there was so much spasm in the larynx muscles of the patient that Interracial Tube did not go into the breathing tube. Then within 3-4 minutes, the patient was taken to ICU, where the doctor immediately inserted Interracial Tube and connected with ventilator (cricothyroidotomy) by opening the upper part of breathing tube. The doctor found that heartbeat of the patient was decreasing and blood pressure was not recordable. They started process of cardiopulmonary resuscitation immediately and injunction of 'atropine' and 'adrenalin' were given. Chest compression was continuously done. After seven-eight minutes of tireless efforts, breathe and heartbeat of the patient were started. BP was recorded as 180/100MM HG and PR as 130 per minute. At about 13:20 hours on 17.05.2014, the patient again became unconscious. The doctor diagnosed that 'pink frothy secretion tracheotomy' was coming from the tube. That can happen due to having laryngospasm and pulmonary edema. The relative of the patient was immediately informed about the critical condition of the patient, who gave her consent for further treatment. It was found that water was filled in the lungs and frothy secretion was still happening and the doctor was providing special treatment for that. At 14:05 hours on 17.05.2014, the patient got sudden cardiac arrest. The ventilator support was continuously given and CPR and chest massage were given. Lifesaving drugs were provided. At 14:25 hours patient had second cardiac arrest. In spite of all efforts of the doctors and adopting all rescue techniques, the patient could not be saved and declared dead at 15:45 hours. Time recording in OPD document and ICU document of the patient was only due to different watches at these places and no tampering was done in this respect. The doctors have not committed any negligence in treatment of the patient and not liable to pay any compensation. The complaint was liable to be dismissed.

6. Before the State Commission, the complainants filed Affidavit of Evidence of Mrs. Shradhanjali Maniya and documentary evidence. The opposite party filed Affidavits of

Evidence of Dr. Hansa Banjara, Dr. A.K. Garg, Dr. Upendra Jain and documentary evidence. The complainants cross-examined the witnesses by serving interrogatories.

7. State Commission, by its judgment dated 12.05.2016, found that the doctors of the hospital did not commit any negligence in treating the patient. The death of the patient occurred due to sudden contradiction in the muscles of the patient due to which laryngospasm occurred as usually "negative pressure pulmonary edema" used to be happen in such procedure of treatment. But the patient and his family members were not informed about the risk in treatment and their consent was not obtained before start of treatment. Death percentage of the patient is 11% to 40% due to laryngospasm which usually occur due to "negative pressure pulmonary edema" as such it was necessary for the doctor to inform the patient and his family member about the risk and after obtaining consent, start the process of treatment of incision by making opening in the abscess of the tonsil. The complainants have filed Income Certificate of the deceased as Rs.15000/- per month. At the time of his death, the age of the deceased was 36 years. By applying multiplier of 15 in annual income and deducting 25% towards personal expenses of the deceased, loss of Rs.1012500/- has been assessed. On these findings the complainant was allowed and order as stated above was passed. Hence this appeal has been filed by opposite parties-1 and 2.

8. We have considered the arguments of the counsel for the parties and examined the record. State Commission, in impugned judgment found that the doctors of the hospital had not committed any negligence in treating the patient. The death of the patient occurred due to sudden contradiction in the muscles of the patient due to which laryngospasm occurred as usually "negative pressure pulmonary edema" used to be happen in such procedure of treatment. The complainants have not filed cross appeal as such it will not be proper to re-examine the evidence in this respect and record any contradictory findings.

9. State Commission found that the patient and his family members were not informed about the risk in treatment and their consent was not obtained before start of treatment. Admittedly, the patient was admitted in the hospital on 15.05.2014, diagnosed with swelling due to pus in right side tonsil and prescribed for ante-biotic medicines. On 16.05.2014, in the progress sheet of the patient 'Afebrile' has been noted and some additional medicines were prescribed. Dr. R.R. Barle examined the patient on 17.05.2014 at 8:30 hours and found that there was no progress in the condition of the patient and advised for examination by senior doctor of ENT. Therefore, the patient was taken to OPD, where he was examined by Dr. A.K. Garg, who found that swelling was increasing due to pus in right side tonsil. Dr. A.K. Garg decided to drain out the pus by incision. Dr. A.K. Garg was a senior doctor and specialist in ENT. He performed incision by making opening in the abscess as per procedure prescribed in medical books. The larynx of the patient was more sensitive and got closed due to sudden contradiction in the muscles due to which laryngospasm occurred. As soon as it was noticed that the patient was suffering from laryngospasm, the process of intubation was started by the team of the doctors in OPD ENT but as there was so much spasm in the larynx muscles of the patient that Interracial Tube did not go into the breathing tube. Then within 3-4 minutes, the patient was taken to ICU, where in spite of all effort, the patient was declared dead at 15:45 hours on 17.05.2014.

10. Dr. A.K. Garg in his Affidavit of Evidence stated that on 17.05.2014 at 10:15 hours, I myself had seen the tonsil inside the throat of the patient and diagnosed on prescribed

method of medical science, in which, it has been found that swelling had increased, tonsil pushed medically and constant coming of pus was started. The process for removing the same was started by the doctors. The process for draining the pus is not a major surgery and it has always been done in sitting condition of the patient in the ENT OPD and the same is also done in ENT OPD of the medical colleges. In the process of draining the pus are drawing from the syringe for draining the abscess or the pus is removed by making incision. If it is not possible to drain the pus completely from syringe then the pus is removed by making a finely opening in the tonsil. This method is good than draining the pus by syringe, because the pus of the tonsil can be drained completely. In the present case, the pus of the patient was drained by making opening in his abscess. Some patients have larynx more sensitive and larynx get closed due to sudden contradiction in the muscles. In the present case opening was done to take out the pus without making the patient sedated. The larynx of the patient was more sensitive and got closed due to sudden contradiction in the muscles due to which laryngospasm occurred. As soon as it was noticed that the patient was suffering from laryngospasm, the process of intubation was started by the team of the doctors in OPD ENT but as there was so much spasm in the larynx muscles of the patient that Interracial Tube did not go into the breathing tube. Then within 3-4 minutes, the patient was taken to ICU.

In his answer of Interrogatory No.15, he stated that as a protocol for OPD procedure, written consent was not taken but procedure/risk was explained to the patient. In the Patient Progress Note & Doctors Instruction paper, on 17.05.2014 at 10:00 am, noted as “XST done (Neg). Procedure/risk explained to the patient”.

11. Both the parties relied upon the judgment of Supreme Court in **Samira Kohli Vs. Dr. Prabha Manchanda, (2008) 2 SCC 1**, in which following principles have been provided for obtaining consent:-

> *“We may now summarize principles relating to consent as follows :*
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> *(i) A doctor has to seek and secure the consent of the patient before commencing a 'treatment' (the term 'treatment' includes surgery also). The consent so obtained should be real and valid, which means that : the patient should have the capacity and competence to consent; his consent should be voluntary; and his consent should be on the basis of adequate information concerning the nature of the treatment procedure, so that he knows what is consenting to.*
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> *(ii) The 'adequate information' to be furnished by the doctor (or a member of his team) who treats the patient, should enable the patient to make a balanced judgment as to whether he should submit himself to the particular treatment as to whether he should submit himself to the particular treatment or not. This means that the Doctor should disclose (a) nature and procedure of the treatment and its purpose, benefits and effect; (b) alternatives if any available; (c) an outline of the substantial risks; and (d) adverse consequences of refusing treatment. But there is no need to explain remote or theoretical risks involved, which may frighten or confuse a patient and result in refusal of consent for the necessary treatment. Similarly, there is no need to explain the remote or theoretical risks of refusal to take treatment which may persuade a patient to undergo a fanciful or unnecessary treatment. A balance should be achieved between the need for disclosing necessary and adequate information and at the same time avoid the*

possibility of the patient being deterred from agreeing to a necessary treatment or offering to undergo an unnecessary treatment.

(iii) Consent given only for a diagnostic procedure, cannot be considered as consent for therapeutic treatment. Consent given for a specific treatment procedure will not be valid for conducting some other treatment procedure. The fact that the unauthorized additional surgery is beneficial to the patient, or that it would save considerable time and expense to the patient, or would relieve the patient from pain and suffering in future, are not grounds of defence in an action in tort for negligence or assault and battery. The only exception to this rule is where the additional procedure though unauthorized, is necessary in order to save the life or preserve the health of the patient and it would be unreasonable to delay such unauthorized procedure until patient regains consciousness and takes a decision.

(iv) There can be a common consent for diagnostic and operative procedures where they are contemplated. There can also be a common consent for a particular surgical procedure and an additional or further procedure that may become necessary during the course of surgery.

(v) The nature and extent of information to be furnished by the doctor to the patient to secure the consent need not be of the stringent and high degree mentioned in Canterbury but should be of the extent which is accepted as normal and proper by a body of medical men skilled and experienced in the particular field. It will depend upon the physical and mental condition of the patient, the nature of treatment, and the risk and consequences attached to the treatment."

12. Dr. A.K. Garg admitted that written consent was not taken either from the patient or his family member. From medical literature it is proved that mortality rate was 11% to 40% due to laryngospasm which usually occur due to "negative pressure pulmonary edema" as such it was necessary for the doctor to inform the patient and his family member about the risk and after obtaining consent, start the process of treatment of incision by making opening in the abscess of the tonsil. Dr. A.K. Garg examined the patient on 17.05.2014 at 10:15 hours, in OPD ENT and decided to adopt the process for draining the pus. Noting in the Patient Progress Note & Doctors Instruction paper, on 17.05.2014 at 10:00 am, that "XST done (Neg). Procedure/risk explained to the patient" appears to be a subsequent endorsement as at 10:00 am, Dr. A.K. Garg, senior doctor of ENT had not decided for draining the pus. Findings of State Commission that the patient and his family members were not informed about the risk nor their consent was obtained, do not suffer from any illegality.

13. So far as the compensation awarded by State Commission, is concerned, in the written reply, the appellants have not disputed the qualifications, income and age of the patient at the time of his death as stated in the complaint. The income of the deceased was proved by filing Income Certificate. Annual income comes to Rs.180000/-. By applying multiplier of 15 in annual income and deducting 25% towards personal expenses of the deceased, loss come to Rs.2050000/-. Constitution Bench of Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi, (2017) 16 SCC 680**, held that the compensation would be just and fair. It has been further held that if the deceased was below 40 years of age and had fixed salary or in self-employment, then 40% would be added towards his future income. State

Commission has awarded compensation on lower side but in the absence of cross appeal we are unable to enhance the compensation.

O R D E R

In view of the aforesaid discussion, the appeal has no merit and is dismissed.

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RAM SURAT RAM MAURYA
PRESIDING MEMBER

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BHARATKUMAR PANDYA
MEMBER