

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 1722 OF 2016**

(Against the Order dated 04/11/2016 in Complaint No. 18/2012 of the State Commission  
Andhra Pradesh)

1. M/S. GLOBAL HOSPITAL

(A UNIT OF RAVINDRANATH GE MEDICAL ASSOCIATES  
PVT LTD.), THROUGH MR. N.S. ANAND VIJAY, ITS  
CORPORATE LEGAL ADVISOR & AUTHORISED  
REPRESENTATIVE, HAVING ITS CORPORATE OFFICE  
AND ONE OF ITS HOSPITAL AT:

6-1-1070/1 TO 4 LAKDI KA PUL,  
HYDERABAD-500004

.....Appellant(s)

Versus

1. P. MANJULA & 3 ORS.

W/O. KATE MR. P. UMA MAHESHWAR RAO, R/O. H NO.  
40-4-6, MANGALAVARAPETA, RAJAJMUNDRY,  
EAST GPODAVARI DISTRICT

2. DINESH SRI RAM,

S/O. LATE P. UMA MAHESHWAR RAO, R/O. H NO. 40-4-6,  
MANGALAVARAPETA, RAJAHMUNDRY,  
EAST GPODAVARI DISTRICT

3. LALITH KIRAN S/O. LATE P. UMA MAHESHWAR RAO,  
R/O. H NO. 40-4-6, MANGALAVARAPETA,  
RAJAHMUNDRY,  
EAST GPODAVARI DISTRICT

4. DR. ALLA GOPALA KRISHNA GOKHALE  
APOLLO HOSPITALS, JUBLIEE HILLS,  
HYDERABAD

.....Respondent(s)

**FIRST APPEAL NO. 1657 OF 2017**

(Against the Order dated 04/11/2016 in Complaint No. 18/2012 of the State Commission  
Andhra Pradesh)

1. P. MANJULA & 2 ORS.

W/O. LATE P. UMA MAHESHWAR RAO. HOUSE NO.40-4-  
6, MANGALAVARAPETA, RAJAHMUNDRY, EAST  
GODAVARI.

TELANGANA

2. DINESH SRI RAM.

S/O. LATE P. UMA MAHESHWAR RAO. HOUSE NO.40-4-6,  
MANGALAVARAPETA, RAJAHMUNDRY, EAST  
GODAVARI.

TELANGANA.

3. LALITH KIRAN

S/O. LATE P. UMA MAHESHWAR RAO. HOUSE NO.40-4-6,  
MANGALAVARAPETA, RAJAHMUNDRY, EAST  
GODAVARI.

TELANGANA

.....Appellant(s)

## Versus

1. M/S. GLOBAL HOSPITAL  
 REPRESENTED BY ITS MANAGING DIRECTOR. # 6-1-  
 1070/1 TO 4, LAKDIKAPPOOL.  
 HYDERABAD.

.....Respondent(s)

**BEFORE:****HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER**

FOR THE APPELLANT :	FOR M/S GLOBAL HOSPITAL : MR. SHWETAN K. SAILAKWAL, ADVOCATE
FOR THE RESPONDENT :	FOR P. MANJULA & ORS. : MR. P.K. MULLICK, ADVOCATE WITH MS. SOMA MULLICK, ADVOCATE WITH MR. SYED N. SHAKEEL & MR. S.K. DEURIA, ADVOCATES NEMO FOR R-4 IN FA/1722/2016

**Dated : 05 July 2023**

**ORDER**

1. These two First Appeals (FAs) have been filed under section 19 of Consumer Protection Act 1986, against the order dated 04.11.2016 of the State Consumer Disputes Redressal Commission, Telangana, Hyderabad, (hereinafter referred to as the 'State Commission'), in Consumer Complaint (CC) No. 18 of 2012. FA 1722 of 2016 has been filed by the Appellant, who was OP-1 before the State Commission in the said CC 18 of 2012, inter alia praying for setting aside the order dated 04.11.2016 of the State Commission. FA 1657 of 2017 has been filed by the Appellants, who were the Complainants in the said CC 18 of 2012, inter alia praying for enhancement of compensation granted by State Commission from Rs.18,00,000/- to Rs.40,10,000/- alongwith interest @18% p.a. from date of filing of complaint till the date of actual payment by Respondents. As both the Appeals have been filed against the same order of the State Commission, parties involved are the same, and issues for consideration/determination are related, these are being taken up together under this order. However, for the sake of convenience, First Appeal (FA) No. 1722 of 2016 is treated as the lead case and facts enumerated herein under are taken from FA 1722 of 2016. Notice was issued to the Respondent(s) in both the FAs on 15.05.2017 for (FA/1722/2016) and on 01.09.2017 for (FA/1657/2017) respectively. Both parties filed Written Arguments/Synopsis on 11.05.2023 and 19.05.2023 respectively.

2. Brief facts of the case, as emerged from the FAs, Order of the State Commission and other case records are that: -

(i) The complainants in this case are the wife and sons of the deceased (hereinafter also referred to as the Patient). On 03.06.2009, the deceased visited M/s Anusha Critical Care with a complaint of a heart stroke, where he was advised to undergo bypass surgery.

(ii) On 24.06.2009, the complainant underwent bypass surgery at the hospital of OP-1, performed by OP-2. However, during the surgery, there was irregular and improper supply of oxygen, resulting in blood clotting in the vessels that carry blood to the brain. As a consequence, the brain suffered dysfunction, and the deceased fell into unconsciousness/coma right in the operation theatre. To support his breathing, the deceased was put on a ventilator. Ultimately, the patient died on 30.07.2009.

3. Complainants filed consumer complaint before the State Commission alleging deficiency of service/medical negligence on the part of OPs and seeking compensation of Rs.40.00 lakhs. Vide Order dated 04.11.2016, the State Commission allowed the complaint and directed OP-1 Hospital to pay compensation of Rs.18,00,000/- to the complainants together with costs of Rs. 5,000/-. Complaint against OP-2 was dismissed.

4. Appellant in FA 1722/2016 (hereinafter referred to as the Hospital) have challenged the Order of the State Commission mainly on following grounds:

- i. The State Commission failed to acknowledge that the patient suffered a stroke, which is a well-known and inherent risk associated with bypass surgery. The risk of stroke was adequately explained to the patient and their family, and all necessary and medically feasible measures were taken by the OPs to prevent such an occurrence.
- ii. The occurrence of the stroke was a result of a clot formed due to the presence of plaque, fat material, or debris, leading to the blockage of blood vessels supplying the brain. It was not due to insufficient oxygen supply, as wrongly alleged by the complainant.
- iii. That the complainant did not present any expert testimony on the subject matter, nor did the State Commission seek the opinion of any expert to aid in reaching an accurate conclusion.

- iv. The State Commission failed to take into account the anaesthesia chart recorded during the surgery, which indicated sufficient oxygen levels in the patient's blood. Additionally, the MRI report revealed that there was only an infarct and no haemorrhage in the brain.
  
  - v. That the patient remained responsive until the fourth post-operative day, and it was only on the fifth day after surgery that the patient became unresponsive. This suggests that there was no deficit in the supply of oxygen during the surgery.
  
  - vi. The attendants of the patient decided to take the patient and leave against medical advice, thereby assuming the risk to the patient's life.
  
  - vii. The State Commission made an erroneous conclusion based on the evidence provided by DW-1 regarding the absence of oxygen supply. It should have taken into consideration that surgical procedures in Hyderabad are generally not video recorded unless there is a specific academic or research purpose.
  
  - viii. The medical records clearly indicate that the patient was conscious, oriented, and stable after regaining consciousness from the effects of anaesthesia. The patient remained in this condition until the fifth operative day. The ventilator was merely providing support for the functioning of the heart and lungs.
  - ix. The State Commission failed to consider the chief affidavit and the statement made during the cross-examination of DW-2, the treating surgeon. These pieces of evidence are further supported by the medical treatment papers.
5. Appellant(s) in FA 1657/2017 (hereinafter referred to as the complainants) have challenged the Order of the State Commission mainly on following grounds:-
- (i) The state commission correctly determined that there was a deficiency of service on the part of the respondents. However, it erred in considering the age, status, and income of the deceased. It is contended that the appellant is entitled

to a higher compensation. The portion of the impugned judgment related to the determination of compensation is in violation of the law.

(ii) The impugned order lacks any recorded reasons or calculations for arriving at the amount of Rs. 18,00,000/-. It is asserted that the order is completely arbitrary, unreasoned, devoid of any application of mind, and contrary to the principles of natural justice.

(iii) The State Commission did not adhere to the principle of restitution in integrum, which states that the aggrieved person should receive a sum of money that would place them in the same position as if they had not suffered the harm.

(iv) That the compensation awarded by the State Commission is insufficient. After deducting the amount paid to the hospitals and other forms of compensation, the actual awarded amount of Rs. 12,70,061/- is not in line with the age, income, or status of the deceased.

(v) That the OPs harassed the complainants and their family, and also provided false hopes while the patient was already clinically dead but kept on a ventilator to accumulate medical bills for a full month. In light of these circumstances, it is argued that the OPs should have been subject to strict measures by the State Commission.

(vi) That the State Commission made an error in determining the amount of compensation owed to the complainant by the OPs.

6. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the FAs, based on their FAs/Replies, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

6.1 The Hospital has contended that they provided competent and appropriate treatment to the patient, the doctors and others did their duties of care to the Patient in a proper manner and they have not committed any breach of duty of care. Before conducting surgery, the Hospital explained to Patient and also attendant about his condition, complications and risks and conducted surgery after receiving consent by

them. The doctor who conducted surgery, discharged his duties in a proper manner by following the required procedures and the process of conducting surgery along with his associates. The Hospital informed the Patient and relatives daily in the morning and evening in the post operation period about the patient's condition. Sufficient and necessary treatment was given to the patient with the help of neurologist but he was not showing any signs and remained deeply comatose/in state of coma. Tracheostomy was done by ENT Surgeon after taking consents from his relatives. Before shifting to MRI Scan, hospital explained to relatives about the risk involved in shifting the patient with ventilator and inotropic support. The family members wanted to take the patient to their home town for further management of the patient and requested the hospital to discharge. On such request, the hospital discharged the patient by explaining the risk and prognosis. After shifting to the home town, the patient died. There is no negligence on the part of hospital. In support of their case/contentions, the hospital relied upon following judgments of Hon'ble Supreme Court and this Commission.

(i) **Sudipta Chakrobarty and Another v Ranaghat SD Hospital and Ors.** 2019 SCC OnLine NCDRC 1653.

(ii) **Tarlok Chand Mattu v M/s Vasal Hospital & Anr.** 2017 SCC Online NCDRC 399.

(iii) **Jacob Mathew vs State of Punjab & Anr.** III (2005) CP 9 (SC).

(iv) **Skarish Mathai & Others vs Mar Gregorious Memorial Muthoot Medical Centre and Others** 2013 SCC OnLine NCDRC 623.

(v) **Rajmal Singh (LR) & Others Vs Dr. Madhu Gupta & Others** 2014 SCC OnLine NCDRC 245.

(vi) **Martin F. D'Souza vs Mohd. Ishfaq** (2009) CPJ 32 (SC).

6.2 Complainants on the other hand contended that patient was conscious, coherent and without any clots at the pre-surgery stage. During surgery, on account of medical negligence, whether of the anesthetist or of others, there was hypoxia due to lack of oxygen supply to the brain, due to which the patient went to coma. The scanning

reports state that there was no proper supply of blood to the brain in Thalamic. It is the duty of anesthetist during the course of surgery to watch and ascertain proper supply of blood and oxygen to the brain. Adverse inference as to negligence during operation is required to be drawn due to non-supply of operation CD by the hospital. The gross material contradiction between pleadings of the hospital, contents of the medical record and statements made in cross examination by the hospital's own witnesses regarding condition of the patient clearly show that hospital was guilty of medical negligence. There is no explanation on part of hospital as to how clotting in brain took place despite administration of anti-coagulants. The hospital has failed to discharge the onus of explaining as to how the patient slipped into coma despite claims of successful surgery. There was gross negligence in post-operating care of patient. MRI scan was conducted 4 days later, manner of taking the comatose patient for MRI scan was not appropriate.

6.3 Complainants have contended that Carotid Doppler Test was not done despite it being a high risk category and despite Neurologist recommendation. EEG was not done at post-operative stage despite recommendation of Neurologist. Operation Notes do not show any monitoring of blood flow to the brain despite it being a high risk category operation, heart functioning level came down after the operation, there was no adequate surveillance by senior medical staff after operation. Pre-operative NTG Report showed significant residual visible myocardium, hence here was significant chance of recovery of patient.

6.4 It was the case of complainants before the State Commission that on account of callousness and gross negligence on the part of OP-2 in performing the operation and not taking care of the patient, the patient went unconscious resulting in his death and this happened in the process of performing surgery by OP-2. While the patient was taken with complaint of cardiac problem, he died due to brain hemorrhage. The failure of brain functions and the resultant death of the patient was due to negligence on the part of OP-2 and his associates who were expected to keep the supply of oxygen to the brain intact and show the vigil during the course of conducting the surgery. It was also the case of complainants that on persistent enquiries, the OP-2 hesitatingly revealed that during the course of conducting surgery, there must have been disruption in the supply of oxygen to the brain and for such non-supply or improper supply, there could be clotting of blood in the brain, for which the patient is in unconscious state and in coma. OPs did not furnish the CD recordings of surgery in the theatre.

6.5 With regard to their Appeal for enhancement of compensation, the complainants contended that at the time of death, patient was about 48 years of age, was working as Senior Assistant in Judicial Department and drawing salary of Rs.25,831/- p.m., had also been selected to the post of Category-II Superintendent and was temporarily

promoted as Superintendent. The amount paid to hospital was Rs.3.40 lakhs although the demand was for Rs.8.0 lakh, which was subsequently scaled down to Rs.6,12,990/-. Apart from this payment, the complainants also incurred subsequent hospitalization fee and other expenses. Out of Rs.18.00 lakh granted by State Commission, after taking care of various expenses, actual compensation comes only to Rs.12,70,061/- which is inadequate and not in consonance with either the age, income or status of the deceased. The complainants relied upon various judgments of Hon'ble Supreme Court and this Commission in support of their demand for higher compensation and contended that even if multiplied method prescribed for Motor Accident Cases in **Sarla Verma Vs. DTC** (2009) 6 SCC 121 is taken into account, the compensation would be about Rs.40 lakhs.

7. We have carefully gone through the impugned order. State Commission after considering the entire facts of the case and evidence before it has come to a finding that there is a negligence/deficiency in service on the part of OP-1 Hospital. As payments have been made to Hospital, there was an agreement of hiring of services of hospital, hence Hospital was held liable. There was no privity of contract about hiring of OP-2 doctor, hence OP-2 was not held liable. State Commission after considering the evidence of DW1 (Dr. K. Prashant, CPO of Hospital) has concluded that there was improper supply of oxygen to the patient, which amounts to negligence and deficiency in service on the part of Hospital authorities. State Commission has also observed that in the instant case due precautions and responsibilities for pre-operative and post-operative were not taken.

8. State Commission has also observed that OPs failed to give any explanation as regards clotting of blood in the brain. As the OPs failed to inform the resultant condition of the patient and as there was no progress in the physical condition of the patient, it is quite natural, the complainants took the patient out from OP Hospital. DW1 doctor in his evidence before the State Commission stated that in this case, there is no supply of oxygen along with blood to parts of brain. It is the duty of the anesthesiologist during the course of surgery to watch and ascertain proper supply of blood to the brain and the proper supply of oxygen to the brain. State Commission has also taken note of some discrepancies in the consent forms.

9. State Commission has further observed/concluded that it was imperative on the part of the doctor attending the patient to ensure proper supply of oxygen, which in the instant case, they failed to, which amount to negligence and deficiency in service. The relationship of OP-1 Hospital and OP-2 operating doctor being that of master and servant, for the acts of servant, master is equally liable under vicarious liability. The OPs failed to exercise reasonable care while treating the patient, which resulted in the death of patient. We are of the considered view that State Commission while coming to finding of negligence on the part of OPs have considered all the relevant facts, evidence produced before it and taken note of all the documents as well as rival contentions of the parties and case laws relied upon by

them. We find no error apparent or illegality or infirmity in the findings of State Commission calling for any interference by this Commission at Appeal stage. We endorse the findings of State Commission with respect to negligence on the part of the OPs as well as fixing of liability on the part of Hospital. As regards quantum of compensation also, considering the age, status and income of the deceased, the State Commission has fixed the compensation at Rs.18.0 Lakhs as against Rs.40.0 lakhs claimed by the complainants. We are in agreement with the quantum of compensation arrived at by the State Commission. However, as the time for compliance of State Commission's order was one month, we hold that compensation of Rs.18.00 lakh awarded by the State Commission shall be payable with simple interest @9% p.a. from 04.12.2016 (date of order of State Commission plus one month) till the date of actual payment by the Appellant Hospital herein. Further, the cost of Rs.5,000/- awarded by State Commission in favour of complainants is enhanced to Rs.30,000/-. The entire compensation of Rs.18.00 Lakhs as awarded by the State Commission, along with interest @9% p.a. w.e.f. 04.12.2016 and costs awarded as per this order shall be paid within one month of this order, failing which the total amount due as per this order, on the expiry of one month, shall carry simple interest @12% p.a. till the date of actual payment. Order of State Commission stand modified to that extent. Both the appeals stand disposed of accordingly.

10. The pending IAs, in any of the FAs, if any, also stand disposed off.

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**DR. INDER JIT SINGH**  
**PRESIDING MEMBER**