IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI

NC/FA/56/2008

(Against the order dated 20.12.2007 in CC/163/2001 of the State Consumer Disputes Redressal Commission, Uttar Pradesh)

WITH

NC/IA/12046/2024

(RELEASE OF AMOUNT)

Heritage Hospital Ltd. & Anr. ... Appellants

versus

Parvati Devi & Ors. ... Respondents

NC/FA/533/2008

(Against the order dated 20.12.2007 in CC/163/2001 of the State Consumer Disputes Redressal Commission, Uttar Pradesh)

Parvati Devi & Anr. ... Appellants

versus

M/s Ghanshyam Binani Institute & Ors. ... Respondents

BEFORE:
HON'BLE MR. JUSTICE A.P. SAHI, PRESIDENT
HON'BLE MR. BHARATKUMAR PANDYA, MEMBER

For the Complainants : Mr. Maneesh Kumar Singh, Advocate

For Heritage Hospital Ltd. : Mr. Arup Banerjee, Advocate
Mr. Shiv Pratap Singh, Advocate

For M/s Ghanshyam Binani Institute : Mr. Sanchit Aeron, Advocate

PRONOUNCED ON: 18.08.2025

ORDER

1. These two appeals arise out of a common judgment dated 20.12.2007 delivered by the SCDRC, Uttar Pradesh, Lucknow in CC/163/2001 alleging medical negligence relating to the treatment of late Udai Kumar who was in the service of the Canara Bank at Mirzapur as a Clerk, and was simultaneously attending classes as a student of Master of Business Administration in

Ghanshyam Binani Institute of Mangement Science, Mirzapur. The complainants are the parents of the deceased. Udai Kumar received cut injuries in his thighs and face on 09.11.2000 and was treated by the respondent No.4 Dr. S.D. Mishra, the emergency Medical Officer at the Government Joint Hospital, Mirzapur. He was then referred to the Heritage Hospital at Varanasi where he was treated by Dr. J. Tapadar and other Doctors. The treat was for a cut lacerated injury in the left thigh of the deceased and some injury on his face according to the complainants by dashing against a glass door that was improperly and loosely fixed at the Institute while on his way to attend classes.

2. According to the complainants the deceased was immediately rushed to the Joint Hospital at Mirzapur where Dr. S.D. Mishra attempted to treat him and bandaged the injury and then referred him to a Speciality Hospital at Varanasi. The injury was suffered at about 9.30 am and Dr. Mishra attended on him but could not stop the bleeding as a result whereof the deceased was helped by the students and teachers who took him to the Heritage Hospital at Varanasi where he was admitted at 2.15 pm.

3. There was a lapse of almost 4½ hours between the accident and the patient having reached Heritage Hospital by which time he had lost a lot of blood.

4. The complainants alleged that they were charged a sum of Rs.72,035/- at the hospital and after the performance of the surgery the patient collapsed about which allegations of negligence were made and the complaint was instituted before the State Commission, Lucknow.

5. Notices were issued and since the institution where this incident happened was also made a party, they appeared and filed their response. However, the Heritage Hospital and Dr. Tappadar who were arrayed as opposite parties 3 & 4 stated that they had engaged Lawyers but no one on their behalf either attended the case or filed any response. Thus, the Heritage Hospital and Dr. Tappadar went unrepresented before the State Commission.

6. The complaint was instituted in the year 2001 and was then allowed finally on 20th December, 2007 holding the Heritage Hospital and Dr. Tappadar to be liable for medical negligence. However, the institution where the accident had happened was absolved of any accusation and liability alongwith Dr. S.D. Mishra.

7. The findings were recorded in favour of Dr. S.D. Mishra having regard to the discussions made in the order the State Commission that was of the view that he was not guilty of any medical negligence.

8. So far as the institution is concerned it was held that there was no evidence which could establish any negligence on the part of the institute regarding the allegation about the fixing of the glass pane loosely. The

Commission found that there was no ocular testimony indicating or supporting the alleged occurrence of the incident due to any visible lapse and therefore it was an accident as the deceased appeared to have been attempting to negotiate the gate in a hurry and he appears to have bumped against a permanently fixed glass pane between the two exit/entrance doors at the gate of the institute.

9. The State Commission however then proceeded to assess the negligence regarding opposite party No.3 & 4. Believing the averments made in the complaint and in the absence of any version on the part of the Hospital and Dr. Tappadar the State Commission found that there was an omission on the part of the Hospital and Dr. Tappadar in having not furnished necessary information regarding the treatment, surgery and medicines and therefore they were guilty of medical negligence. The complaint was accordingly allowed for a sum of Rs.12,92,035/- plus litigation cost of Rs.10,000/- as against the hospital and Dr. Tapadar.

10. The Hospital and the Doctor have come up by filing FA/56/2008 assailing the impugned order and on 13th March, 2008 an interim order was passed staying the operation of the impugned order subject to deposit of 50% of the awarded amount. The order is extracted hereinunder: -

> *"Undisputedly the Counsel for the Appellants appeared before the State Commission on 2.07.04 and two months time was granted to file the written version. On 27.10.05, one month's further time was also granted for the purpose but written version was not filed. In such circumstances, the allegations made in the Complaint were required to*

be deemed to have been admitted. One could also not be oblivious to the provisions of Section 106 of the Evidence Act for everything was within the special knowledge of the Hospital Administration and in order to prove their bonafide, they should have filed reply as well as medical record It is unfortunate that the Hospital Administration took the State Commission for granted and ***now at this stage, it is submitted by the Ld. Counsel for the Appellant that he may be allowed to file the written version. We would consider this prayer on moving appropriate application*** *by him and four week's time is granted for the said purpose.*

Since the Ld. Counsel for the Caveator is appearing a copy of the application, if filed, also be given to him.

Adjourned to 05.05.08 for admission hearing.

Meantime, operation of the impugned order is stayed subject to the condition that the Appellant would deposit 50% of the awarded amount with the State Commission within a period of four weeks from today."

11. According to the aforesaid order the Bench observed that the prayer of the hospital for filing a written version and the relevant documents pertaining to the treatment of the deceased would be considered on moving an appropriate application for which time was granted.

12. They moved an application and filed necessary documents on 9th March, 2008 and the following order was passed on 5th May, 2008.

"Learned counsel submits that ***he has complied with our order and filed the necessary documents on 9.3.2008*** *but it has not been put on file. He may get in touch with the Registry and get them placed on record.*

Since ***a sum of Rs.6,46,018/- has been deposited,*** *admit. Issue notice to the respondent returnable on 21.8.2008.*

Operation of the impugned order shall remain stayed till next date. Dasti

A copy of the written version shall be sent to the respondent to enable them to either file reply to the application seeking

permission to file written version or to file rejoinder *and affidavit evidence subject to all just exceptions."*

13. On 21st August, 2008 replies were filed and an application was moved on behalf of the complainant through their counsel for release of the decretal amount. The appellants were also granted time to complete the record by filing copies of the pleadings and other documents accordingly.

14. On 30th September, 2008 the Bench passed the following order:-

"Vide our order dated 13.03.2008 we had permitted the appellant to move an application for taking the written version on record which he could not take before the State Commission. Our order dated 05.05.2008 records that this has been done and copy of the application along with written version shall be sent to the respondents to enable them to either file the reply to the application seeking permission or to file rejoinder and affidavits, evidence subject to all just exceptions. We see on record that while the application has been filed as also the affidavit by way of evidence has been filed, but other material is not on record. Learned counsel for the respondent no. 1 & 2 says that she has filed the objections to the application which we do not see on record. Registry is directed to place them on record and a copy of which be given to the learned counsel for the appellant. We would like to hear both the parties on this application as well as the objections filed by the respondent, on the next date of hearing. Copy of this application for filing written version be supplied to all the respondents.

In the meantime, ***the appellant shall also bring on record in typed form the medical record relating to the patient.*** *Wherever there are abbreviations, they should be shown in full form within brackets. A copy of which be supplied to all the respondents. On the next date of hearing, we shall also be addressing ourselves to the application filed by R-1 & 2 for release of the decretal amount already deposited by the appellant before the State Commission.*

Nobody appears for R-3. Issue fresh notice to respondent No.3, returnable on 28.11.2008."

15. On 28th November, 2008 an order was passed releasing an amount of Rs.1,00,000/- in favour of the respondents/complainants out of the deposited

amount. Thereafter an application was also moved for withdrawal of the balance of the amount and in the meantime the complainants also filed FA/533/2008 questioning the findings of the State Commission for having absolved Dr. S.D. Mishra and the institution from any liability. The said appeal was also tagged alongwith FA/56/2008 and has proceeded simultaneously.

16. On 11th September, 2009 this Commission passed an order noting the request of the complainant for release of the balance of the deposited amount and a direction was passed to release a further sum of Rs.2,00,000/-. The order dated 11th September, 2009 is extracted hereinunder:-

> *"This is an application for release of the balance deposited amount of Rs.5,48,018/- along with cost of Rs.10,000/- assessed by the State Commission.*
>
> *Heard. It would appear that on an earlier application, the Commission vide order dated 28.11.08 had directed to release a sum of Rs.1 lakh out of the deposited amount of Rs.6,48,018/- to the respondents no. 1 & 2 8 (Complainants). Learned counsel for the respondents no.1 & 2/complainants submits that the respondents no. 1 & 2 are the aged parents of the deceased and they are suffering from certain ailment and are finding it difficult to maintain themselves. In these circumstances, we direct that a further sum of Rs.2 lakh be released to the respondents no. 1 & 2 on executing personal bond to the satisfaction of the State Commission. Miscellaneous Application stands disposed of.*
>
> *First Appeal No 533/08 filed by the complainants is admitted.*
> *Both the appeals to come up for arguments in due course."*

17. The hospital attempted to get the said order recalled which was rejected on 9th October, 2009. Notices were thereafter attempted to be served on the other respondents. A possibility of settlement was also indicated as recorded in the order dated 9th April, 2015. However, no settlement was

arrived at and the application moved by the respondents/complainants for release of the balance of the amount was rejected on 16th October, 2015. Thereafter the matter remained pending for service of notice and for listing the matter for final hearing. As is evident from the order sheets the matter could not proceed in spite of having been listed on several occasions. Thereafter the Covid intervened and written submissions were filed on record. Medical literature and Guidelines of the Medical Council of India were also filed but with the intervention of Covid the matter was adjourned and the case could not be taken for one reason or the other. Once again, the respondents/complainants filed IA/12046/2024 for release of the amount. On 10th December, 2024 it was noted that the second respondent, namely, the father of the deceased and the husband of respondent No.1 had expired. Since Parvati Devi, the mother of the deceased is the sole surviving respondent, the case has been pursued by her and the matter has been finally heard on 7th August, 2025 when Mr. Arup Banerjee concluded the arguments on behalf of the hospital and the doctor and Mr. Maneesh Kumar Singh for the complainant. Mr. Sanchit Aeron, Advocate has appeared for the Binani Institute and all the parties have led their submissions.

18. We have perused the impugned order of the State Commission and having heard Mr. Banerjee we are satisfied that the impugned order proceeds to record its conclusions on medical negligence without putting to test the evidence that was filed by the complainant in order to arrive at a finding

against the doctor and the hospital for medical negligence on the basis of the parameters laid down in **Bolam's test** as indicated in the judgment of the Apex Court in the case of **Jacob Mathew v. State of Punjab (2005) 6 SCC 1**.

19. However what is peculiar in this case is that even though the hospital and the doctor did not participate or file their response before the State Commission, this Commission in the present appeal allowed the filing of documents before this Commission as per the orders indicated above. It may be pointed out that the complainant filed a written objection supported by an affidavit dated 20th August, 2008 regarding the material brought forth before this Commission and also made allegations against the Institute arrayed also as respondent No.3 also as one of the main perpetrators of the negligence.

20. The objection also recites that the application moved on behalf of the hospital for accepting documents on record was not in accordance with the principles of Order 41 Rule 27 CPC. It was also alleged that three counsels had been engaged by the hospital and the doctor before the State Commission who did not appear and a copy of the Vakalatnama of the counsel has been filed on record.

21. We have already quoted hereinabove the order dated 30th September, 2008 that the parties were called upon to address on these objections. Further, this Commission directed for release of the amount of Rs.3/- lacs in

favour of the respondent/complainant and it appears that the parties proceeded to advance their submissions on the basis of the documents that came to be filed as permitted by this Commission. We may point out that the documents which have been filed by the hospital alongwith the reply in the shape of a written statement have been brought and accepted on record vide diary No.1941 dated 19th March, 2008. The reply is also accompanied by medical literature as well as the treatment chart of the deceased, the consent given for the surgery at Heritage hospital, the operation notes and the post-operative treatment carried out at Heritage Hospital. In addition thereto, documents pertaining to the treatment chart as maintained in the Nurses notes, the laboratory test reports, the instructions of the doctors and the Physician's order and progress note from 9th to 12th November, 2000 have been brought on record on 21st November, 2008 which also includes the treatment given to the deceased on 10th November, 2000 as well.

22. Apart from the written arguments filed, Mr. Banerjee learned counsel for the hospital has also filed supplementary written arguments that have been filed through diary No.34793 dated 20th August, 2019.

23. Having perused the aforesaid documents, we may now proceed to record the submissions raised in support of the respective appeals. Mr. Banerjee contents that the conclusion about medical negligence against the hospital and the doctor is not based on any cogent material and from the records of the hospital which have now been permitted to be produced during

these proceedings in appeal, would leave no room for doubt that all possible steps were taken to secure the interest of the deceased and to treat him to the best of the abilities and skills possessed by the doctors who were attending on him. The names of all the doctors are referred to in the notes and he has particularly pointed out that the Anaesthetist was very much present during the surgery and had attended to the patient when he had a cardiac arrest. The cardiac arrest was controlled and the patient was revived and as such the allegation made by the complainant that there was no Cardiologist present for treatment is without any basis. He further points out that the treatment chart indicates the presence of Dr. G.P. Rai, Chest Specialist which is also recorded in the progress sheets of 10th November, 2000 and therefore to contend that there was no Cardiologist to attend the patient is incorrect.

24. He has further pointed out to the note sheets to urge that all symptoms were being diagnosed and all appropriate tests were carried out including the ECG of the deceased and a copy of the ECG chart has also been placed on record alongwith the additional documents. It is urged that immediately upon the arrival of the patient, blood was transfused and the surgery was carried out. The complainants had given their consent for surgery through the uncle of the deceased and in fact there is no deficiency alleged in the surgery which was carried out to rectify the injury. He submits that the blood loss was very heavy and this resulted in the medical deterioration of the deceased who

ultimately could not sustain himself in spite of all best efforts made to treat him. It is contended that no element of any negligence in diagnosis or treatment has been alleged except for alleging post-operative negligence.

25. It is urged that the allegation regarding the post-operative management of the patient has been met with the filing of the complete set of treatment documents of the hospital which are on record and therefore the allegations about negligence are unfounded.

26. Mr. Sanchit Aeron, learned counsel for the opposite party No.1 in FA/533/2008 has urged that the State Commission has appropriately recorded clear findings in so far as the Institute is concerned, holding that there was no testimony so as to establish negligence with regard to fixing and maintenance of the window panes at the Institute. He submits that it was the deceased who was rushing at the gate and accidently hit himself against the glass pane, as such there was no negligence, and even otherwise there was no consumer – service provider relationship between the Institute and the deceased who was merely a student attending classes of MBA at the Institute.

27. Refuting the submissions Mr. Singh learned counsel for the complainant has urged that even though there are no specific allegations regarding any deficiency in the performance of surgery but the allegations are clearly about the lack of due care thereafter, inasmuch as, had a Cardiologist been present either during or after the operation, it is quite possible that the deceased

could have been attended to by an expert. He has relied on certain decisions to urge that the absence of a Cardiologist can amount to negligence and consequently relying on the written arguments he urges that the finding of the State Commission cannot be disturbed on this count. He submits that the documents brought before this Commission do not explain any deficiency that was evident and the hospital and the concerned doctor failed to file any documents before the State Commission.

28. He further submits that from the documents on record otherwise it is apparent that there was lack of proper care after the operation and consequently the negligence is established.

29. He has admitted having received the amount of Rs.3,00,000/- that has been released by this Commission under the orders referred to above and he further submits that Appeal No.56/2008 deserves to be dismissed and the Appeal filed by the complainant being FA/533/2008 should be allowed and the Institute should also be held equally responsible alongwith Dr. S.D. Mishra. In the said appeal no one has appeared on behalf of Dr. S.D. Mishra but the Institute is represented by Mr. Aeron and written submissions on behalf of the Institute have been filed contending that the finding recorded by the State Commission in so far as absolving the Institute is concerned does not deserve any interference.

30. Having considered the aforesaid submissions and having perused the record, at the outset we may point out that this Commission has practically permitted the filing of the hospital records before this Commission in order to arrive at a just conclusion. We therefore approve of the said steps taken at the interim stage and the documents filed by the Hospital are accepted on record.

31. Coming to appeal No.533/2008, the complainants have alleged that the conclusion drawn by the State Commission calls for an interference whereby it has absolved the institute and Dr. S.D. Mishra. We have gone through the written submissions filed on behalf of the Institute and Dr. S.D. Mishra and we find that the conclusions drawn by the State Commission are clearly to the effect that there was no ocular testimony or otherwise any evidence to substantiate that the glass panes were loosely fixed that could be construed as deficiency or negligence on the part of the Institute. We accordingly confirm the appreciation of evidence on this count and the findings recorded by the State Commission. Apart from this, the argument on behalf of the Institute regarding the relationship of consumer and service provider also deserves consideration. The student namely the deceased who was pursuing the course of MBA accidently appears to have hit a glass pane near the entry/exit door. The institute cannot be held to be deficient merely on this count. Consequently, we find no merit in Appeal No.533/2008 questioning the correctness of the impugned order of the State Commission on that score.

The said appeal therefore deserves to be dismissed and is accordingly dismissed.

32. Coming to the contentions raised by the Hospital and the Doctor in FA/56/2008, we find that the patient was received in a bad shape and deteriorating condition. However, the patient was attended to and the hospital sheets and notes of 9th, 10th and 11th November, 2000 clearly indicate the diagnosis and the treatment being timely made by the doctors. Blood transfusion was started and the surgery was conducted. It is correct that the deceased did suffer a cardiac arrest but the deceased was attended to. An ECG was also conducted but at the same time the hospital was completely negligent in not contesting the matter by filing documents before the State Commission and failed to appropriately respond to the complaint before the State Commission.

33. Mr. Banerjee is however correct in his submission that once the doctors, including the Surgeon and the Anaesthetist were attending on the patient and had revived the patient from the cardiac arrest, the question of any absence of a Cardiologist does not in any way on the facts of the present case amount to an act of medical negligence. In spite of all care and medical attendance, as is evident from the Nurses and Doctors progress sheets, the patient appears to have not responded favourably.

34. One of the arguments advanced by Mr. Singh, learned counsel for the complainant is that there is a serious doubt with regard to the nature of the treatment conducted as the complainants or their any of the relatives were not allowed to meet the deceased patient through his stay at the hospital and they were not allowed to see him. Mr. Singh submits that this creates a serious doubt about the deteriorating status of the health of the deceased who seems to have died during the operation itself and was sought to be explained with the aid of documents by the hospital and the doctors as if the patient was surviving thereafter. To test this argument of Mr. Singh, we may refer to the documents and the hospital sheets dated 9th, 10th & 11th November, 2000 the typed copies whereof have been filed on record. A perusal thereof would indicate that all vitals were being checked and all medicines as per the diagnosis were being administered. It therefore cannot be said with the aforesaid documents on record that the treatment was not being carried out. These documents and their authenticity have not been challenged by the respondent/complainant except contending that they cannot be accepted before this Commission in appeal. The question of admitting the documents on record has already been indicated above that was permitted under the orders of this Commission, and the respondent/complainant had full opportunity to contest the same, but no material has been brought on record to dislodge the correctness of the hospital sheets of the three dates referred to above. There is no reason to

doubt the existence of such documents and the treatment having been carried out with the attendance of the doctors whose names are referred to in the said hospital sheets.

35. However, the fact seems to be that the complainants were unable to meet the patient during this period. The hospital therefore seems to have been insensitive to that extent and was therefore negligent to that extent.

36. Looking to the facts of the case, this Commission had permitted the release of the amount of Rs.3,00,000/- out of the 50% deposited before this Commission. Mr. Banerjee, learned counsel for the hospital has urged that looking to the background of the case and the status of the complainant who is a widow and has lost her son, even though the hospital does not admit of any negligence yet the hospital is prepared to forego the amount already deposited by them before this Commission including the amount which has already been released to the respondent/complainant.

37. Having considered the submissions raised and the fact that it is a 25 year old matter it would not be appropriate to consider any remand of the case for re-appreciation of the evidence which has been brought on record before this Commission in this appeal. We have therefore assessed the same and have recorded the findings hereinabove. The fact remains that the finding of the State Commission about medical negligence has been arrived at without adverting to the tests that have been laid down by the Apex Court in

the case of **Jacob Mathew** (supra). The State Commission seems to have been influenced by the fact that since the doctor and the hospital had failed to take care to file a reply before the State Commission and furnish appropriate documents they were guilty of medical negligence which has been presumed on the basis of the allegations made in the complaint. This could not be an approach in a case of medical negligence inasmuch as the findings of medical negligence have to be based on any lack of due care in diagnosis and treatment as well as care to be taken including post-operative care. Allegations made in a complaint have to be considered but they cannot be accepted as an exact truthful version to construe medical negligence. As indicated above, the documents that have now been brought on record do indicate the treatment procedure in detail on all three days but we agree with the State Commission that the appellants ought to have filed such documents before the State Commission which they failed to do in spite of having engaged counsel who did not appear before the State Commission. This by itself also amounts to negligence and therefore the State Commission was left with no option except to draw an inference even though medical negligence could not have been presumed on account of such default.

38. Thus, on an overall view of the matter we find that the respondent/complainant has been compensated by directing the release of the amount that was deposited before this Commission. Mr. Banerjee, learned counsel for the appellant in FA/56/2008 has also conceded to this position

that the amount already deposited including the amount which has already been released by this Commission deserves to be released to the respondent/complainant - Parvati Devi.

39. We accordingly dispose of appeal No.56/2008 by observing that the finding against the hospital and the doctor regarding medical negligence cannot be sustained for the reasons given hereinabove, but at the same time we find it appropriate, in view of what has been submitted before us, to release the entire amount deposited before this Commission to the respondent/complainant - Parvati Devi. In the peculiar circumstances of the case where the Hospital failed to contest the matter before the State Commission and did not file the treatment documents before it, the complainant deserves to be adequately compensated with an additional sum suited to the background of this case.

40. We therefore further modify the amount awarded by the State Commission and set aside the compensation of Rs.12,92,035/- that has been awarded alongwith 9% interest from the date of the complaint till actual payment and substitute it by providing that the respondent/complainant - Parvati Devi would be entitled to receive a sum of Rs.5,00,000/- as a lumpsum amount in addition to the entire amount which has already been deposited before this Commission together with the interest accrued thereon. The balance amount which lies in deposit before this Commission shall be released to Parvati Devi together with all the interest accrued thereon within

15 days. An amount of Rs.5,00,000/- is awarded over and above the said amount that shall be paid by the appellant Heritage Hospital to Parvati Devi within a period of one month from today.

41. With the aforesaid modifications and directions appeal No.56/2008 stands disposed of and appeal No.533/2008 is dismissed. The costs awarded by the State Commission is upheld.

Sd/-

(A.P. SAHI, J.)
PRESIDENT

Sd/-

(BHARATKUMAR PANDYA)
MEMBER

Raj/VM/Court-1/15-16