NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 2390 OF 2018

(Against the Order dated 22/05/2018 in Appeal No. 82/2017 of the State Commission Jharkhand)

1. MAYA SHARMA & 2 ORS.
WD/O. LT. SH. KRISHNA SHARMA, R/O. ANAND MAAI MAA ASHRAM, KATCHI BUILDING MAIN ROAD,
RANCHI
JHARKHAND
2. MAMTA SHARMA,
W/O. SAILESH BHARADWAJ, R/O. MURLI PARA SCHEME
JAIPUR
RAJASTHAN.
3. RAKESH SHARMA
S/O. LT. SH. KRISHNA SHARMA, R/O. ANAND MAAI MAA ASHRAM, KATCHI BUILDING MAIN ROAD,
RANCHI
JHARKHAND .....Petitioner(s)

Versus

1. RAJ HOSPITAL & 3 ORS.
MAIN ROAD,
RANCHI
JHARKHAND
2. SH. YOGESH GAMBHIR
S/O. LT. SH. KISHEN GOPAL GAMBHIR, DIRECTOR RAJ HOSPITAL MAIN ROAD,
RANCHI
JHARKHAND
3. DR. D. MOHAN,
S/O. RAJENDRA BIHARI SHARMA, RAJ HOSPITAL ,MAIN ROAD
RANCHI
JHARKHAND
4. DR. S. MIDHA,
S/O. SH. A.K. MIDHA, R/O. SH. KISHAN NAGAR, P.O. AND P.S. SUKHDEO NAGAR,
DISTRICT-RANCHI
JHARKHAND .....Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH,PRESIDING MEMBER

FOR THE PETITIONER : MS. JHUMA BOSE, ADVOCATE
MOHD. ANIS UR REHMAN, ADVOCATE

FOR THE RESPONDENT : MR. SUNIL VERMA, ADVOCATE

Dated : 15 November 2023

ORDER

1. The present Revision Petition (RP) has been filed by the Petitioner(s) against Respondent(s) as detailed above, under section 21(b) of Consumer Protection Act 1986, against the order dated 22.05.2018 of the State Consumer Disputes Redressal Commission, Jharkhand, Ranchi, (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 82/2017 in which order dated 28.11.2016 of District Consumer Disputes Redressal Forum, Ranchi (hereinafter referred to as District Forum) in Consumer Complaint (CC) no185/2003 was challenged, inter alia praying to set aside the order passed by the State Commission.

2. While the Revision Petitioner(s) (hereinafter also referred to as complainants) were Respondents and the Respondent(s) (hereinafter also referred to as OPs) were Appellants in the said FA/82/2017 before the State Commission, the Revision Petitioner(s) were complainants and Respondent(s) were OPs before the District Forum in the CC no.185/2003

3. Notice was issued to the Respondent(s). Parties filed Written Arguments/Synopsis on 13.03.2020 (Respondents/OPs) and 19.10.2020 (Petitioners/complainants) respectively.

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

On 06.03.2003, the son of the complainant-1/petitioner-1 was admitted to the hospital of the respondent-1/OP-1 due to abdominal pain and vomiting. The patient was initially treated by Dr. J. Nath on the advice of Dr. D. Mohan, who prescribed medications over the phone. Despite taking the prescribed medicines, the patient's condition did not improve. Requests were made to the hospital staff to call Dr. D. Mohan to examine the patient, but he did not visit. The following day, a junior doctor examined the patient during a routine check at about 9:30 am. Dr. D. Mohan, for the first time, examined the patient at 11:30 am and advised an ultrasound test and x-ray. However, Dr. D. Mohan seemingly ignored a crucial part of the ultrasound report indicating "Ascites minimal plural effusion is present (Right)," which confirmed that the patient had Pancreatitis. Despite this diagnosis, no treatment for Pancreatitis was administered. At 9:25 pm, the patient was shifted to the ICCU due to acute pain, but life-saving medication was still not provided. The patient passed away at 9:45 pm, with the death certificate citing Acute Pancreatitis as the cause.

5. Vide Order dated 28.11.2016, in the CC no. 185/2003 the District Forum has allowed the complaint.

6. Aggrieved by the said Order dated 28.11.2016 of District Commission, Respondent(s) appealed in State Commission and the State Commission vide order dated 22.05.2018 in FA No. 82/2017 has set aside the order passed by the District Forum and allowed the appeal.

7. Petitioner(s) have challenged the said Order dated 22.05.2018 of the State Commission mainly on following grounds:

i. The State Commission failed to fully appreciate the pleadings, documents, and evidence presented by the Complainants before the District Forum and issued an erroneous order. The State Commission did not acknowledge that the OPs admitted in their written statement that the patient/deceased was admitted to their hospital on 06.03.2003 at 10:45 pm with complaints of acute abdominal pain and vomiting, and he remained admitted until 9:45 pm on 07.03.2003 when he passed away. The patient was experiencing acute abdominal pain, and medical reports indicated the presence of multiple large stones in the urinary bladder and one large stone at the lower end of the left ureter. The ultrasound report also suggested that the patient had acute Pancreatitis, yet no treatment or medication was provided by the OPs to address this ailment.

(ii) That Dr. D. Mohan, the attending doctor, did not visit the patient

at the time of admission or in the morning hours. It was only at 11:30 am on 07.03.2003 that he first examined the patient and advised an ultrasound test and x-ray. Dr. D. Mohan relied solely on the first part of the ultrasound report, which mentioned "Mild dialysis in left kidney," while completely disregarding the second part of the report, which indicated "ascites minimal plural effusion is present in the right." This oversight led to a misdiagnosis of the patient's condition and even after diagnosing the patient with Pancreatitis, no medication was administered to treat this ailment during the patient's hospital stay. Furthermore, the patient was transferred to ICCU at 8:25 pm, yet no life-saving medicine was provided, and he ultimately died at 9:45 pm due to cardiac arrest.

(iii) That Dr. D. Mohan prescribed medication over the phone without physically examining the patient, even though the patient was in an extremely critical condition, experiencing pain and abdominal distension. The failure to physically examine the patient reflects negligence and a deficiency in providing medical services when the patient was admitted to the hospital. It took 13 hours after the patient's admission for Dr. D. Mohan to advise an ultrasound test and ultrasonography of the kidney. The ultrasound report, which revealed mild

dialysis in the left kidney and multiple stones in the urinary bladder, was reviewed at 3:30 pm. Despite these findings, no life-saving medication or treatment was provided. The serum amylase blood test, which was crucial for diagnosing pancreatitis, was conducted after 18 hours of the patient's hospitalization, at 5 pm on 07.03.2003. The hospital records do not indicate when the test results were reviewed by the doctors and despite the patient's death at 9:45 pm, no reports were reviewed or treatment was advised for over four and a half hours. Furthermore, no senior doctor attended to the patient after his transfer to ICCU; only junior doctors administered care.

(iv) The State Commission did not acknowledge that the expert medical opinions obtained by the OPs were not based on the facts and the medical records/reports maintained by the hospital. These reports by Dr. Ravi Shankar Das and Dr. A.K. Agarwal omitted any information about the treatment given by the OPs after they became aware of the patient's acute pancreatitis. The reports did not address the actions taken by the doctors between 3:30 pm and 9:45 pm on 07.03.2003 when the acute pancreatitis diagnosis was revealed through reports. The State Commission failed to appreciate that the reports of Dr. G.S. Vats and Dr. Samir Rai, obtained by the Complainants, were based on a thorough review of the medical records maintained by the hospital. Dr. G.S. Vats stated that the patient's diagnosis was incorrect and noted that the doctors did not record any diagnosis while the patient was alive. The cause of death stated in the death certificate, "CR Failure," was deemed completely inaccurate. Dr. Samir Rai's report also suggested that the patient was not properly diagnosed or treated for the severity of his illness, despite the ultrasound report indicating acute pancreatitis.

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

i. The counsel representing the petitioners/complainants has argued that Dr. Jitender Nath, a qualified medical professional, admitted the deceased for the treatment of abdominal pain. However, it is evident from the progress sheet that no physical examination was conducted; only medications were prescribed, and the recommended tests were significantly delayed, taking over 13 hours post-admission. Despite advising and eventually reporting normal results for tests such as Random Sample Urine, Blood Urea, and Serum Creatinine, there was no clear indication of an emergency. Additionally, the tie-up with Ms. J. Saran Path Lab did not ensure the timely availability of reports to specialist doctors, raising concerns about internal communication within

the hospital. Mr. Jagesh Gambhir, the hospital proprietor, confirmed the details of admission and medication, emphasizing the gravity of the situation. Notably, he suggested a diagnosis of Acute Pancreatitis, although this diagnosis was not explicitly stated in the progress sheets. Dr. D. Mohan, the treating doctor and Medical In-charge, admitted the patient without recording any initial medical history. Essential tests were recommended only after a considerable delay, which occurred as the patient's condition worsened. Furthermore, Dr. S. Middha, another treating doctor, visited the patient twice, but provided conflicting accounts regarding the number of visits. Notably, the Ultra Sonography Report was not thoroughly reviewed, leaving questions about its accurate assessment.

(ii) The counsel for complainants emphasized on the two expert opinions, one by Dr. G.S. Vats and another by Dr. Samir Rai. Several critical deficiencies in the medical documentation have been highlighted by Dr. Vats. These include the absence of a detailed patient history and a lack of notes at the time of admission, which represents a substantial shortcoming in the medical care provided. Furthermore, Dr. Vats points out a delay in conducting a thorough clinical examination of the patient, with the first medical note recorded about one and a half hours after hospitalization. This delay is a concerning aspect of the case, indicating a lapse in the delivery of proper medical care. Dr. Vats also criticizes the inclusion of "Chronic Renal Failure" in the death certificate when there was no supporting evidence for such a condition. Additionally, the doctors failed to recognize the severity of the patient's pain and distension, which should have immediately raised suspicion of acute peritonitis associated with acute pancreatitis. Crucially, the doctors neglected to order vital tests, such as Serum Calcium level estimation and a CT Scan, which could have led to a more accurate diagnosis. Although a Serum Calcium test was ordered, it was not conducted, representing a significant lapse in diagnostic measures. The negligence extended to the interpretation of an ultrasound report. Dr. Vats noted that the ultrasound report was illegible, and the doctors failed to act promptly to obtain a proper report. Moreover, the findings from the report, including the presence of Ascites and Minimal Pleural Effusion, were not incorporated into the patient's progress notes. This omission is regarded as a clear case of negligence in treatment.

(iii) Dr. Samir Rai, an expert in urology, reinforces the argument of medical negligence by highlighting the failure to diagnose acute pancreatitis despite significant clinical indicators. Dr. Rai emphasizes the importance of a high serum amylase value, which is considered diagnostic of pancreatitis. He also underscores the ultrasound findings that indicated the presence of Ascites and Pleural Effusion, which are known to be associated with acute pancreatitis. These findings should have raised concerns within the medical team and led to the consideration of pancreatitis as the underlying condition, a consideration that was overlooked. Dr. Rai further emphasizes the missed tests that could have

provided a more accurate assessment and monitoring of the patient's condition. These tests include Serum Calcium level estimation, a CT Scan, and Serum Electrolytes Measurement. Notably, while a Serum Calcium test was ordered, it was not conducted, and the others were not ordered at all. Dr. Rai disputes the cause of death mentioned in the death certificate, which listed Chronic Renal Failure. He asserts that there was no concrete evidence supporting this diagnosis. Additionally, he points out that the patient's Serum Creatinine level was normal, with a slightly higher reading likely due to impending acute renal failure, a consequence of pancreatitis.

(iv) In conclusion, the expert opinions of both Dr. G.S. Vats and Dr. Samir Rai strongly support the argument that the OPs' medical treatment was deficient and negligent. The lack of proper documentation, timely tests, and monitoring were pivotal shortcomings in the care provided to Mr. Navin Kumar Sharma, leading to a missed diagnosis of acute pancreatitis and ultimately contributing to the patient's tragic demise.

(v) The counsel for Respondents/OPs argued that OP-1 employs qualified MBBS doctors round the clock to address emergencies instantly. These doctors often handle most emergencies, and in cases requiring specialist consultation, senior consultants are called in, albeit incurring additional costs to the patient. In Mr. Navin Sharma's case, the attending medical officer promptly examined him in the emergency ward. A diagnosis of ureteric colic was made, and necessary treatment was initiated. The patient was eventually admitted after stabilization. The treatment plan involved frequent monitoring by medical officers, including routine examinations and medication administration. Nursing staff played a crucial role in executing these instructions, and a record-keeping system was in place to ensure the treatment's consistency.

(vi) The patient's diagnosis of acute pancreatitis came after comprehensive tests and examinations. The medical staff acted promptly upon identifying this condition, confirming it with additional tests. Throughout the patient's stay, the medical team regularly monitored vital parameters and administered treatments as required. Unfortunately, despite life-saving efforts, the patient's condition deteriorated, ultimately leading to his demise. The cause of death, as indicated in the medical certificate, was acute pancreatitis, a severe and often life-threatening condition. The OPs emphasize that this disease carries significant mortality, and despite their best efforts, they were unable to save the patient. The OPs assert that there was no negligence in treating Mr. Navin Sharma. The medical records and expert opinions do not indicate any departure from professional standards or a misalignment in the treatment plan. The counsel for OPs contends that the State Commission's order, based on the evidence

presented, found no deficiency or negligence on the part of OPs and is not subject to interference. The counsel further argues that the burden of proving negligence primarily lies with the party asserting it, and in this case, the complainants have failed to demonstrate any deficiency or negligence.

(vii) The complainants have not provided any specific details of negligence on the part of the respondents to substantiate the claim of medical negligence or any deficiencies in the medical services. However, during the presentation of evidence through an affidavit, the complainants have introduced new information, which was not part of the initial pleading. This expansion of testimony through an affidavit is considered to be beyond the scope of the original pleading, as per the decision of the Hon'ble Supreme Court of India in the case titled "**The National Textile Corporation Ltd vs. Naresh Kumar Badri Kumar Jagad & Ors.**" in Civil Appeal No. 7448 of 2011.

(viii) The counsel for OPs relied on several judgements;

(a) It has been held by Hon'ble Supreme Court in **Kusum Sharma & Ors Vs. Batra Hospital & Resarch Centre**" (2013 (3) SCC 480), relevant paras 49, 69, 70, 71, 72, 78, 82, 84 and 89; that a doctor is not a guilty of negligence, if he has acted in accordance with a practice accepted as proper by reasonable body skilled in that particular art.; relevant para 86, where a service has been rendered by medical practitioner free of charge the same do not fall within the ambit of service as define in section 2 (I) (o) of Consumer Protection Act.

(b) It has also been held by Hon'ble Supreme Court in "**Jacob Mathew Vs. State of Punjab & Ors.** (2005) 6 SCC 1, relevant paras 29 to 34, 37 to 41 and in **Vinod Jain Vs. Santokba Durlabhji Memorial Hospital & Ors.** MANU/SC/0267/2019**,** that a negligence has three meanings (i)a state of mind, in which it is opposed to intention; (i) careless conduct; and (ii) the breach of duty to take care that a is imposed by either common or statue law. In case the Claimant satisfied the court that the said three ingredients are made out the Defendant should be held liable in negligence. In the instant case it is evident from the progress report and medical chart that the deceased was being examined by various Doctors time to time, therefore there was no negligence on the part of the respondents.

(c) In "**Martine D'soza Vs. Mohd. Ishfaq** (AIR 2009 SC 2049)" relevant paras 48, 49, 112 to 115, it has been held that when a patient died or suffers from some mishap there is a tendency to blame the doctors. It has been further held that simply because a patient has not favorably responded to a treatment given by doctor or a surgery has failed, the doctor cannot be held straightway liable for medical negligence by applying the doctrine of res ipsa loquitur. No sensible professional would intentionally commit an act or omission which would result in harm or injury to the patient since the reputation of the professional on stake.

(d) **Ins Malhotra Vs. Dr.A.Kriplani & Ors**. Civil Appeal No. 1386 of 2001 -relevant paras 18 and 19. It has been held that a medical practitioner faced an emergency ordinarily tries his best to redeem the patient out of the suffering and he would not gain anything by acting with negligence or by omitting to do an act. It will be for the complainant to make out a case of negligence before a medical practitioner is charged/ blamed for negligence. It has been held that if there is not an iota evidence on record to prove the negligence or that the doctor had ever departed from the line of treatment being taken and adopted by doctors, the doctors cannot be held liable for medical negligence.

(e) III (2002) CPJ 242 **Dr. Maniit Singh Sandhu Vs Uday Kant Thakur** relevant para 9

9. Initially a CC/185/2003 was filed by the complainants before District Forum, which was dismissed vide order dated 06.05.2004. The Complainants filed FA/226/2004 before State Commission, which was allowed vide order dated 25.05.2005, directing the OPs to pay a sum of Rs. 10 Lacs as compensation. OPs filed RP/1771/2005 before National Commission which was disposed off on 16.07.2009, remanding the matter to State Commission for deciding the case afresh. State Commission, again by its order 19.04.2010 in FA/226/2004 ordered the OPs to pay Rs. 10 lacs after deducting the amounts already paid. This order was challenged before National Commission vide RP/2602/2010 and RP/2722/2011. These RPs by consent of parties, were disposed of on 16.02.2016, setting aside the impugned orders, remanding the same to the District Forum for deciding the complaint a fresh after giving opportunity to both the parties to examine experts. Thereafter, District Forum vide its order dated 28.11.2016 held that there was negligence and deficiency in service in providing treatment to the deceased Navin Kumar Sharma and accordingly the OPs were directed to pay compensation of Rs.10 Lacs.

10. Since the filing of complaint on 05.06.2003 this case has been dealt by district Forum twice, State Commission thrice and National Commission thrice, including the present RP.

Vide its first order dated 06.05.2004, the District Forum dismissed the complaint, vide its 1st two orders dated 25.05.2005 and 19.04.2010 in appeal, State Commission allowed the complaint, vide its second order dated 28.11.2016, District Forum allowed the complaint, but State Commission vide its order dated 22.05.2018 in appeal, dismissed the complaint. It is the order dated 22.05.2018 of State Commission which is now under challenge in the present RP. While dismissing the complaint as per order dated 06.05.2004, District Forum observed that complainant has not been able to prove that treating doctors had not reasonable degree and skill of knowledge and had not executed a reasonable degree of care. Vide its order dated 20.05.2005 in appeal against the order dated 06.05.2004 of District Forum, while allowing the complaint, The State Commission observed-

> *"I have perused the materials available on record, including various hospital documents and I am of the view that submissions of the learned counsel for the Appellants are well founded. The deficiency in rendering medical services as well as negligence on part of the Respondent hospital is writ large on the face of it. Had the responded doctor been vigilant during the period of hospitalisation of the patient, the life of the patient could have been saved. Accordingly, I am of the view that due to gross negligence and latches on the part of the respondent doctor, the patient who was very young, died during his hospitalisation in the hospital."*

11. The State Commission allowed a compensation of Rs.10 lacs, as against Rs.15 lacs prayed for in the complaint, considering this amount as just compensation in the given circumstances, OP-1 & OP-2 were jointly and severally directed to pay compensation. As this order of State Commission was ex parte quo OPs on account of their non appearance despite notice, it was set aside by National Commission vide order dated 16.07.2009 in RP and case was remanded back to State Commission for fresh decision after hearing both sides. State Commission, after considering the matter a fresh, after hearing the parties, vide its order dated 19.04.2010 again allowed the appeal and OP-1 and OP- were directed to pay compensation of Rs. 10 lacs. In this regard, extract of some of the important observations of State Commission in its order dated 19.04.2010 are reproduced below

> *"The learned District Forum having discussed the materials brought before it at length elaborately and minutely held that complainant has failed to prove any negligence in treatment and care by the OPs. Therefore the complaint was dismissed on 06.05.2004…. The Commission by its order dated 20.05.2005 held the respondents negligent and awarded the compensation of Rs. 10 lacs payable jointly and severely by both OP-1 & OP-2"*

"…In nutshell the Respondent Hospital and three doctors have stressed that late Naveen Sharma was admitted, treated for acute pain lower abdomen and detected to have multiple stones in ureter and kidney as well as pancreatitis to the best of their ability."

"9. .....Before we enter in to the details discussed by the learned forum regarding the course of treatment, efforts under taken by the doctors & staff for relief to late Naveen Kr. Sharma, we would like to mention here that the learned lower forum has misguided itself by observing in para 5 of the judgment that the complainant did not give details of any act of negligence or anything mentioned in the headings of the complaint petition in Col. 3(a) (1), 3 (c) 3(c) IV to prove either about the medical negligence or about any medical services."

"10.This has created apparent bias in the opinion of the lower forum which asked for clear and greater corresponding proof from the complaint in the light of the decision 2004 (C.T.J.) 331 (c) NC, The complaint form prescribed under the rules and the Act requires only conscised statement which further stand described in the complaint at length. Therefore the view taken in para 5 of the judgement cannot be held proper and tenable."

"24.In these admitted facts that death having occurred due to pain and cause was Acute Pancreatitis along with colic ureter pains, the progress report do not mention that it was finally diagnosed and any specific course was adopted for reducing the pain of the patient. What is awkwardly and prominently present manifestly in this chart that at no time during the hospitalization the doctors realized the gravity of the situation and tried to grapple with the problem. The consistent plea of the Respondents/Opposite parties that his vital parameters were nearly normal falls with their own findings that after twenty hours he was shifted to I.C.U. and within one and half hours declared dead."

"25.An young robust man aged about twenty six years succumbed to the writhing pains, after twenty hours in this hospital, and still we are persuaded to hold that there was no negligence on their part. The very purpose of hospitalization stood defeated when the consultant. Physical Dr./D. Mohan examined him after thirteen hours. It further appears that investigation reports produced at about 3:30 pm did not bear the signatures of the Pathologist doctor. Even the advice of further investigation by Dr. S. Mirdha at 5 pm was not complied with urgently to detect the cause of pain, Pancreatitis. The height of callous attitude till the patient was shifted to ICU and after wards can be assessed with no reasons being mentioned in the said report why he was shifted to I.C.U. and on whose advice to be declared

dead clinically at 9:40 pm. Through out this drama the respondents claimed that his vital parameters were normal."

"27.We have further gone through the impugned order dated 06.05.2004 which held the contesting respondents/Opposite parties not negligent in any manner cannot be sustained for the following reasons-

i. *The young robust Naveen Sharma died writhing in pain after hospitalization for nearly twenty four hours.*

ii. *That the learned District Forum laid stress on the experience and knowledge of the treating doctors instead of the course of treatment and care shown in attending the patient under their case.*

iii. *The learned lower forum having discussed the medical literatures in Para 9 of the judgement tried to ascertain the cause of the pain suffered. It is not our field of knowledge nor duty to diagnose the disease. We have to ascertain whether in the given facts the treating Physician took required precautions and care to minimize the pain suffering etc.*

iv. *And further what remedial measures were taken by the respondents. The learned lower forum rather relied on the statement of the respondent that the vital parameters were almost normal during this period. Therefore apparently no efforts were made to check the deteriorating condition of the patient before 8:25 pm and even in the ICU."*

"28. Accordingly we find and hold that the impugned order dated 06.05.2004 cannot be sustained. We further find and hold that the son of the complainant/Appellant died in Raj Hospital in the night of 7th March 2003 due to acute Pancreatitis because of lacking care and apparent negligence in his treatments. As such we hold that the respondents M/s Raj Hospital & Research Centers, Ranchi be held deficient in providing required medical services to the son of the complainant/appellant."

12. Again, vide order dated 16.02.2016 National Commission in RP, with the consent of both parties, this order of State Commission was set aside and matter was remanded back to District Forum for deciding the complaint afresh after permitting both the parties to examine experts in support of their respective cases. District Forum, vide its order dated 28.11.2016, allowed the complaint. Extract of important observations of District Forum in this order are reproduced below.

> *"13. We have carefully heard the submissions made on behalf of both the sides and have gone through all the materials available on record. We have very minutely gone through the opinions of experts produced on behalf of both the sides. It is an admitted position that the deceased patient Navin Kumar Sharma was admitted in O.P No.1 hospital on 06.03.03 at 10:45 p.m on the complain of pain in abdomen. On behalf of the O.Ps Xerox copy of death report of the deceased patient-has been filed on 27.09.16 at running Page No. 30 of the documents filed on that day. This death certificate was admittedly issued by O.P No. 1 hospital and it shows that the patient was suffering from acute pancreatitis and died of CR failure. Xerox copies of medical records with respect to treatment of the deceased patient were filed on behalf of the Complainant alongwith the Complaint petition. On behalf of the OPs also such documents were filed on 27.09.16 alongwith opinion of experts. We find that in none of these documents relating to medical record, there is any finding of the O.Ps that the patient was suffering from or had developed acute pancreatitis. The entries made in Sheet No. 3 of progress notes relating to the treatment of-the deceased patient show that after going through KUB X-Ray and ultrasonography report it was written down, in the progress notes that there were stones in urinary bladder and lower end of ureter and, USG showed mild dilation in left kidney. The copy of USG report has been filed on behalf of the Complainants on 11.07.16 and this document shows that there was a finding of ascites minimal pleural effusion also on the right side but this finding was not incorporated in the progress notes relating to the deceased patient. According to the expert opinion given by Dr. G.S.Vats examined on behalf of the Complainants finding of ascites and minimal pleural effusion on the right side was suggestive of the fact that acute pancreatitis had developed. In our considered opinion not taking notice of the finding of USG about ascites and minimal pleural effusion on the right side was a clear case of negligence in treatment on the part of O.Ps. The argument advanced on behalf of the O.Ps that initial treatment in ureteric colic and acute pancreatitis is the same cannot help the O.Ps in proving that there was no negligence on their part in providing treatment to the patient. Xerox copies of Sheet No.1 & Sheet No.2 of progress notes relating to the deceased patient Navin Kumar Sharma have been produced on behalf of the complainants and OPs both and as such these two documents can be said to be admitted ones. Sheet No.1 finds entry on 06.03.2003 at 11:15 PM and it indicates that line of treatment to be provided to the deceased patient was on the basis of telephonic advice given by OP No.3. Entries made in Sheet no.2 of progress notes on 07.03.2003 at 12:15 AM also indicate that telephonic advice was taken by the doctor on duty from OP No.3 as by that time the deceased patient had developed pain in penis and fullness in stomach. Further*

entries made in Sheet No. 2 on 07.03.2003 at 11:30 AM find the entry of abdomen distention and few bowel sound. The opinion of expert Dr. Samir Rai examined on behalf of the complainants indicates that such picture was strongly suggestive of acute pancreatitis but this possibility was not entertained and the diagnosis was missed. Dr. Ravi Shankar Das examined on behalf of the OPs has stated in Para 3 of his opinion that emergency treatment or initial treatment for ureteric colic and pancreatitis is exactly the same. This expert Mr. Das did not see any negligence in initial management of the patient. In Para 11 of his opinion Dr. Das has said that both the diseases were diagnosed within 24 hours which showed competency on the part of doctors. In Para 12 of his opinion, this doctor has said that pancreatitis comes which a very bad prognosis in medicine history and the deceased patient fell prey to that unfortunately. Another expert Dr. A.K. Agarwal examined on behalf of the OPs has stated in his opinion that the patient was suffering from ureteric colic and acute pancreatitis which was diagnosed in the shortest possible time. This expert has further said that there is no specific treatment for pancreatitis and that the treatment given to the patient in OP No. 1 hospital from the time of admission was on the right lines."

"14. We have carefully gone through the opinion of experts examined on behalf of both the sides and have given our anxious consideration to such opinions. Even if it is assumed for argument sake that the treatment which was given to the patient was to be the same in ureteric colic and pancreatitis both, there appears to be no justification for not mentioning pancreatitis in the progress notes. Not mentioning pancreatitis in the progress notes even after perusal of the ultrasonography report appears to be another instance if negligence on the part of OPs. It will appear from Sheet No.1 & Sheet No. 2 of the progress notes that the deceased patient was provided treatment on the basis of telephonic advice given by OP No.3 and this is yet another instance of negligence in treatment. The argument advanced on behalf of the OPs in this regard that Dr. J. Nath was a competent doctor cannot help the OPs mainly keeping in mind the fact that Dr. J. Nath simply followed the directions given by Dr. D. Mohan (OP No. 3) on telephone. Had OP No.3 personally examined the patient on 06.03.2003 itself, there could have been a possibility of earlier detection of the complication of pancreatitis. On the basis of discussions made above and findings given, we have come to a conclusion that there has been negligence and deficiency in service on the part of OPs in providing treatment to the deceased patient Navin Kumar Sharma. This issue accordingly stands in favour of the Complainants and against OPs".

13. The above order dated 28.11.2016 of District Forum was challenged before State Commission in appeal and State Commission vide order dated 22.05.2018 allowed the appeal and set aside the order dated 28.11.2016 of District Forum. Extract of important observations of State Commission in this order are reproduced below.

"(18) We are afraid, we cannot accept the submissions of the Respondents. It is true that Navin Kumar Sharma, aged about 26, years was admitted in the hospital with severe abdominal pain which was radiating from the umbilical region to the groin. Dr. J. Nath, a senior Doctor, who had treated him, prescribed antibiotics and pain killers. He had also mentioned that nothing should be administered orally and that is why he mentioned at Page 20. "Nil Orally". He advised injection Ciplox (antibiotic), Injection Metrogyl (Antibiotic), Injection Zinetac (Antacid), Injection Tramazac (Pain Killer) and Injection Stemetil (Anti vomiting). These facts find corroboration in the Expert Opinion of Dr. R S Das at page 39.

The same medicines were again prescribed by Dr. D. Mohan (Page 23). He had also prescribed certain tests to ascertain the reason for the pain."

(20) The 9th Edition of the Text Book of Medicine (photocopy of the relevant pages whereof have been brought on record vide Annexure-3) and the relevant portion is at page 37. The same reads as follows:- " Acute pancreatitis can be diagnosed by the presence of typical clinical features along with corroborative laboratory findings of elevated serum enzymes amylase/lipase) ." [SIC]. mentioned that "Acute pancreatitis (AP) is an acute inflammatory process of the pancreas with variable involvement of other regional tissues or remote organs. Mild acute pancreatitis consists of minimal or no organ dysfunction and an uneventful recovery. Severe pancreatitis manifests as organ failure and/or local complications such as necrosis, abscess, or pseudocyst (Table 1). Overall, about 20% of patients with acute pancreatitis have a severe course, and 0% to 30% of those with severe acute pancreatitis die". [SIC]

(22) According to us, the said literature (Annexure-3) is a pointer to the fact that 0% to 30% of patients suffering from acute pancreatitis die but, does it mean that all patients suffering from pancreatitis would die? The answer would be an emphatic "NO" because the condition is definitely curable and such a condition is not "the end of the road" for patients with pancreatitis.

In the instant case, what is therefore necessary to be found out is whether, in the facts of this case, sufficient steps were taken by the Appellants for the treatment of pancreatitis? The answer, would be in the affirmative because from the records, it is evident that sufficient steps were taken to firstly, tackle abdominal pain and then, as soon as there was a disclosure indicating pancreatitis, to deal with that situation also.

(23) The patient was brought into the hospital in a painful condition. He came to the hospital at 10:45 PM and was admitted under "Casualty Bedhead No. 5099" (Page-20). 10:45 PM, is a time, when all Doctors cannot be expected to be present at the hospital. What is expected however, is that there should be at least one Doctor entrusted with the responsibility attending to the patients and in the instant case, it was Dr. J. Nath who was doing the rounds on that day. Naturally therefore, he had to attend, and we do not find any irregularity in his action. In fact, Page 20 of the Memo of Appeal would support the contention that since there was only pain in the groin, Dr. J. Nath dutifully prescribed medicines and also prescribed some tests. These medicines are the same medicines which were advised by Dr. D. Mohan on telephone on the same date that is 06.03.2003 at 11:15 pm (page- 23). Therefore, proper care was taken, and neither Dr.J.Nath nor Dr. D. Mohan were negligent or insincere. Any suggestions to the contrary, cannot be accepted by us for more reasons than one as taken into consideration by as in the paragraphs following hereafter.

(24) It is evident that the patient was never left unattended because even at 12:50 AM of 07.03.03, when the patient was complaining of pain in the Penis and fullness in the stomach, Dr. J. Nath promptly sought telephonic advice of Dr. D. Mohan since the latter was the consultant-in-charge who prescribed some more medicines. Therefore, despite odd hours, both doctors were putting their conscious efforts and their "heads together" to attend to the patient and merely because Dr. D Mohan was not present on the site, does not mean that he did not render valuable assistance to Dr. J. Nath albeit via telephone.

(25) The Bedhead Tickets would also show proper care by the doctors. In morning of 07.03.2003 at about 9:30 am, it was found that the patient had been vomiting in the night and abdominal pain had not subsided and stool had also not passed. Therefore, at 11:30 AM, when Dr. D. Mohan came to the hospital and examined the patient and mentioned "Abdomen Distention" and "Few Bowel Sounds" on the Progress Sheet (Bedhead Ticket), he (Dr. D. Mohan) felt that a Surgeon should be consulted and therefore, he sought further opinion and referred the patient to Dr. S. Midha, a Surgeon, who came to the hospital on the request of Dr. D. Mohan. Upon examination, he felt that USG of the kidney and of the urinary bladder should be undertaker together with Blood Sugar (Random) and tests for Serum Creatinine.

(26) The USG Report was placed before the Doctor around 3:30 PM showing multiple large sized stones in the urinary bladder as well as one the lower end of the ureter. It also showed mild dilatation in the left kidney. These are factors which would establish that what the USG showed at Page-25, was already assessed by Dr. J. Nath at the time of admission of the patient because he had put a question

mark and mentioned "?D Ureteric colic" (Page-20) and therefore, the Doctors cannot be held responsible negligence or lapses on their part.

(27) In fact, we are of the view that there was no negligence or discrepancy in the treatment of the patient at least till 07.03.2003 (3:30 PM). Since all other vital parameters of the patient were normal, there was no occasion to suspect the onset of Pancreatitis. Facts would amply establish that the Appellants had no hand in the death of the patient since he was brought in with a condition of severe pain and all indications at that point of time suggested stones or ureteric colic. He died subsequently, and Pancreatitis could be detected only much later but these Appellants cannot be held responsible. The facts disclose that at the time of admission and during the period of the ensuing treatment, there were no Reports which were suggestive of Pancreatitis. It was only after 5.00 PM of 07.03.2003 that Serum Amylase @ 247 U/L was detected and immediately thereafter, "all- out" efforts were made by the Doctors to deal with the same but at 9.40 PM, he died (i.e. within 4-1/2 hours after detection of Serum Amylase @ 247 u/l)

(31) Now, Page-48 of the Memo of Appeal contains the Report of one. G.S. Vats who, at page 48, opined under Heading "b-(ii)" that "the treating doctors did not keep in mind the obvious possibility of acute pancreatitis which is a very serious emergency condition. Had they considered this possibility, they would have immediately got done certain crucial tests such as serum calcium level estimation and a CT scan. This was not done. It may be mentioned that they thought of serum calcium only at 8.25 pm, about an hour before death. In any case, this test was apparently never done."

(32) We cannot appreciate the comments of Dr. Vats. sitting in the comfort and confines of his office, making disastrous comments and spinning "doomsday yarns" against Doctors who had struggled so hard without fully appreciating the status of the patient qua the efforts of the hospital and its Doctors, can at best, be termed as "most uncharitable" when the fact remained that Serum Calcium Level Estimation had already been requested by the doctors on 07.03.2003 at 8:25 PM itself. However, before those tests could actually be done, the condition of the patient deteriorated to the extent that he had to be shifted to the ICU. The entire scene that has unfolded before us, go to show that it was only when the Report of Serum Amylase came, that all "hell broke loose" and the Doctors, on their part, left no stones unturned in extending their whole-hearted support. Therefore, it cannot be said that the Doctors were not applying their minds on all aspects. Unfortunately, and as ill luck would have it, the patient passed away at 9:45 PM.

(33) We may, at this stage, once again advert to the Report of Vats. While criticizing the Appellants, at Page-48 in the matter pertaining to recording the cause of death in the Death Certificate as being "CR failure", we must say that this was also uncalled for because all deaths necessarily mean and involve a complete shut-down of the heart and of the lungs, which, in medical parlance, is oft referred to as Cardio Respiratory Failure (CR Failure).

(34) The other Expert, Dr. Samir Rai, while submitting his report committed one faux pas after another by firstly mentioning that "urinary stones are almost never associated with abdominal distention and faint or decreased bowel sounds. Such a picture is strongly suggestive of acute pancreatitis. It appears that this possibility was not entertained, and the diagnosis was missed" (Page-51).

(35) We are inclined to agree with the submissions of the Appellants that Dr. Samir Rai never said that "urinary stones are never associated....." . His remarks appear to be hypothetical when he said "Urinary stones are almost never associated....". In other words, there are always chances that urinary stones, in some cases can be associated with abdominal pain/distention and decreased bowel sounds.

(36) Dr. Samir Rai cannot be trusted because he has committed another faux pas at paragraph-4 where he has recorded something which is not even on the record of this case by mentioning that "it is surprising that the death certificate has mentioned chronic renal failure as the cause of death. There is no evidence that this patient had any chronic renal failure."

(37) The Death Certificate, at Page-35, shows that the cause of death was “CR failure” and therefore, there was no occasion for Dr. Samir Rai to veer off at a tangent to create a new case which was not the case of the parties and it was totally out of context.

(38) Contrary to Vats and Rai, Page 39 of the Memo of Appeal contains the Report of another expert, namely Dr. R.S. Das. This doctor, has categorically stated at Paragraph-2, that the manner in which the patient was treated was absolutely apposite and the doctors cannot be faulted. Pages-23 & 39 would establish that whatever was done at the level of the Appellants received the approval of Dr. RS Das in his Report which, incidentally, is also in line with the medical literature referred to above.

(39) It is at this stage that we must advert to the comments of Dr. Ravi Shankar Das once again. At Page-40, paras (5) to (11) clearly supports the actions taken qua the deceased patient by the Doctors and the hospital.

(40) Dr. A.K. Agarwal, another expert has also given a similar report supporting the action taken by the Doctors of this hospital.

(41)….Mr. Mukherjee appropriately pointed out that under the heading "Clinical Features," the literature indicates that a patient with pancreatitis may not initially appear acutely ill, and the pain may take time to intensify. The onset of abdominal pain, described as steady and ranging from moderate to very severe, varies in timing. Therefore, it is not reasonable to assert that all symptoms indicative of pancreatitis were present from the beginning, and yet, the doctors did not address the situation on 07.03.2003. Until then, there was no reason for the doctors to even remotely suspect pancreatitis. The turning point came when the Serum Amylase Report revealed a reading of 247 u/l at 5:00 PM. Prior to this, until 3:30 PM, the doctors were primarily focused on the X-ray and USG Reports, which highlighted stones in the urinary bladder and ureter, along with mild dilation in the left kidney. These indications cannot be stretched to implicate a doctor for not diagnosing pancreatitis without concrete supportive evidence, such as a serum amylase report. Clinical pathology is fundamentally crucial in diagnosing ailments, and while not an absolute rule, it undeniably forms the foundation of medicine. Given these considerations, we are content that there was no negligence on the part of the Doctors.

"(42) Given our satisfaction that the Appellants were not at fault, it's important to highlight, with reference to the Expert Opinions, that when two viewpoints are possible, attributing responsibility based on one is unwarranted. This is especially true when there is substantial evidence demonstrating that the treatments provided were in good faith. We firmly believe that the treatment administered was neither deficient nor marked by negligence on the part of the Appellants……"

(47) Dr. Ravi Shankar Das, in his Report/Medical Opinion at Page-39 has stated that emergency treatment or initial treatment for ureteric colic and pancreatitis is exactly the same. His opinion says that in such cases, the treatment should be (a) to keep the patient nil orally; (b) to administer antibiotics; (c) to administer IV Fluids; and (d) to subside pain by pain killers. This is exactly what Dr. J. Nath did at 11.15 PM of 06.03.2003 as would be evident from Page-23 of Sheet No.1. We

have sympathies for the family of Navin but how can we ignore these recorded events and hold the Appellants guilty?

14. In **Savita Garg v. Director, National Heart Institute**, (2004) 8 SCC 56, the Hon'ble Supreme Court has 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……."

15. In **Nizam Institute of Medical Science v. Prasanth S. Dhananka & Ors.** 2009(3) CPR 81 (SC), the Hon'ble Supreme Court has observed that-

"32. We are also cognizant of the fact that in a case involving medical negligence, once the initial burden has been discharged by the complainant by making out a case of negligence on the part of the hospital or the doctor concerned, the onus then shifts on to the hospital or to the attending doctors and it is for the hospital to satisfy the Court that there was no lack of care or diligence."

16. In **Jacob Mathew v. State Of Punjab & Anr.** (2005) 6 SCC, the Hon'ble Supreme Court has observed that-

"The essential components of negligence, as recognized, are three: "duty", "breach" and "resulting damage", that is to say:-

1. the existence of a duty to take care, which is owed by the defendant to the complainant;

2. the failure to attain that standard of care, prescribed by the law, thereby committing a breach of such duty; and

3. damage, which is both causally connected with such breach and recognized by the law, has been suffered by the complainant."

3. .....To fasten liability in Criminal Law, the degree of negligence has to be higher than that of negligence enough to fasten liability for damages in Civil Law……. Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment……. In civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the Court, as a reasonable man, beyond all reasonable doubt.

"48. (5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

(6) The word 'gross' has not been used in Section 304-A IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash or negligent act' as occurring in Section 304-A IPC has to be read as qualified by the word 'grossly'."

17. In **Maharaja Agrasen Hospital Vs. Rishabh Sharma** (2020) 6 SCC 501, it was held that:

"12.4.3. Medical negligence is the breach of a duty of care by an act of omission or commission by a medical professional of ordinary prudence. Actionable medical negligence is the neglect in exercising a reasonable degree of skill and knowledge to the patient, to whom he owes a duty of care, which has resulted in injury to such person. The standard to be applied for adjudging whether the medical professional charged has been negligent or not, in the performance of his duty, would be that of an ordinary competent person exercising ordinary skill in the profession. The law requires neither the very highest nor a very low degree of care and competence to adjudge whether the medical professional has been negligent in the treatment of the patient."

"12.4.21. It is well established that a hospital is vicariously liable for the acts of negligence committed by the doctors engaged or empanelled to provide medical care. [Savita Garg v. National Heart Institute, (2004) 8 SCC 56; Balram Prasad v. Kunal Saha, (2014) 1 SCC 384 : (2014) 1 SCC (Civ) 327; Achutrao Haribhau Khodwa v. State of Maharashtra, (1996) 2 SCC 634; V. Krishnakumar v. State of T.N., (2015) 9 SCC 388 : (2015) 4 SCC (Civ) 546] It is common experience that when a patient goes to a hospital, he/she goes there on account of the reputation of the hospital, and with the hope that due and proper care will be taken by the hospital authorities. [Savita Garg v. National Heart Institute, (2004) 8 SCC 56] If the hospital fails to discharge their duties through their doctors, being employed on job basis or employed on contract basis, it is the hospital which has to justify the acts of commission or omission on behalf of their doctors. [Savita Garg v. National Heart Institute, (2004) 8 SCC 56]"

18. In **V. Kishan Rao v. Nikhil Super Speciality Hospital,** (2010) 5 SCC 513, it was held by the Hon'ble Supreme Court that-

"58. In most of the cases the question whether a medical practitioner or the hospital is negligent or not is a mixed question of fact and law and the Fora is not bound in every case to accept the opinion of the expert witness."

19. In **Spring Meadows Hospital v. Harjol Ahluwalia**, (1998) 4 SCC 39, it was held by the Hon'ble Supreme Court that-

"9. ……Very often in a claim for compensation arising out of medical negligence a plea is taken that it is a case of bona fide mistake which under certain circumstances may be excusable, but a mistake which would tantamount to negligence cannot be pardoned……..

10. Gross medical mistake will always result in a finding of negligence. Use of wrong drug or wrong gas during the course of anaesthetic will frequently lead to the imposition of liability and in some situations even the principle of res ipsa loquitur can be applied. Even delegation of responsibility to another may amount to negligence in certain circumstances. A consultant could be negligent where he delegates the responsibility to his junior with the knowledge that the junior was incapable of performing of his duties properly."

20. In **P.B. Desai v. State of Maharashtra,** (2013) 15 SCC 481, the Hon'ble Supreme Court held that-

"39. Once it is found that there is "duty to treat" there would be a corresponding "duty to take care" upon the doctor qua his patient. In certain context, the duty acquires ethical character and in certain other situations, a legal character. Whenever the principle of "duty to take care" is founded on a contractual relationship, it acquires a legal character. Contextually speaking, legal "duty to treat" may arise in a contractual relationship or governmental hospital or hospital located in a public sector undertaking. The ethical "duty to treat" on the part of doctors is clearly covered by the Code of Medical Ethics, 1972. Clause 10 of this Code deals with "obligation to the sick" and Clause 13 casts obligation on the part of the doctors with the caption "Patient must not be neglected".

21. We have carefully gone through the impugned order of State Commission, as well as both the earlier orders of State Commission and orders dated 28.11.2016 and 06.05.2004 of District Forum, grounds for challenging the impugned order, other relevant records, judgements of Hon'ble Supreme Court cited, rival contentions of the parties and observe as follows:-

The patient, Naveen Sharma, experienced significant pain and ultimately succumbed during his hospitalization. The State Commission's focus was primarily on the experience and expertise of the treating doctors, rather than closely examining the course of treatment and care provided to the patient. It is not within our purview or expertise to make medical diagnoses. However, our duty is to assess whether the treating physician took the necessary precautions and provided appropriate care to alleviate the patient's pain and suffering. Furthermore, we must scrutinize the remedial measures taken by the OPs. The doctors appeared to have not made adequate efforts to monitor the patient's deteriorating condition before 8:25 pm, even when the patient was in the ICU. The USG report, submitted on 11.07.2016 (in District Forum) on behalf of the complainants, revealed findings of ascites and minimal pleural effusion on the right side. However, these findings were not

documented in the progress notes related to the deceased patient. Dr. G.S. Vats, who provided expert opinion on behalf of the complainants, expressed that the presence of ascites and minimal pleural effusion strongly indicated the development of acute pancreatitis. We consider the omission to acknowledge these findings as a clear instance of negligence in the patient's treatment on the part of the OPs. The argument presented by the OPs, suggesting that the initial treatment for ureteric colic and acute pancreatitis is the same, does not exonerate them from demonstrating the absence of negligence in their provision of treatment to the patient. Dr. Samir Rai, examined on behalf of the complainants, indicated that the medical presentation strongly suggested acute pancreatitis, yet this possibility was not considered, and the diagnosis was overlooked. Dr. G.S. Vats, in his evaluation, expressed the opinion that the treating doctors did not adequately consider the possibility of acute pancreatitis, which is a serious emergency condition. He noted that if they had considered this possibility, they should have promptly conducted crucial tests such as estimating the serum calcium level and a CT scan. Deplorably, these critical tests were not carried out. It is noteworthy that the idea of conducting a serum calcium test only arose at 8:25 PM, approximately an hour before the patient's demise. However, it appears that this test was ultimately not performed. Even if it is assumed that the treatment provided to the patient would have been the same for both ureteric colic and pancreatitis, there is no justification for omitting any mention of pancreatitis in the progress notes, particularly after reviewing the ultrasonography report. This omission appears to be another instance of negligence on the part of the OPs. The patient's treatment was based on telephonic advice from OP-3, which constitutes another instance of negligence in treatment. The argument made by the OPs, asserting that Dr. J. Nath was a competent doctor, does not absolve the OPs, especially considering that Dr. J. Nath simply followed the directions provided by Dr. D. Mohan (OP-3) over the phone. If OP-3 had personally examined the patient earlier, there might have been a possibility of early detection of the complication of pancreatitis. In light of the discussions and findings outlined above, we are of the considered view that there was negligence and a deficiency in service on the part of the OPs in providing treatment to the deceased patient, Navin Kumar Sharma.

22. 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, we are of the considered view that State Commission went wrong in concluding that there was no fault on the part of doctors, treatments given were all in good faith, was neither deficient nor there was any negligence on the part of OPs, there was no negligence or discrepancy in the treatment of the patient at least till 07.03.2003 (3:30 pm); since all other vital parameters of the patient were normal, there was no occasion to suspect the onset of pancreatitis. Pancreatitis could be detected only much later but OPs cannot be held responsible. We are not in agreement with these conclusions of the State Commission and are of the view that there was material irregularity in the order of the State Commission in this regard. The State Commission's order contains errors as it overlooked significant facts and circumstances in the case. These facts include the patient's experience of acute abdominal pain and medical reports indicating the presence of large stones in the urinary bladder and

ureter. The ultrasound report also hinted at acute pancreatitis, yet no treatment was administered for this ailment. Dr. D. Mohan, the attending doctor, did not initially examine the patient and only did so on 07.03.2003, at 11:30 am, relying on partial information from the ultrasound report, which led to a misdiagnosis. Even after identifying pancreatitis, no treatment was provided during the patient's hospitalization. The patient's transfer to the ICCU at 8:25 pm saw no life-saving measures taken, resulting in his demise at 9:45 pm. Key tests, including the serum amylase blood test crucial for diagnosing pancreatitis, were conducted with significant delays. Furthermore, senior doctors did not attend to the patient after the transfer to ICCU. The State Commission failed to recognize that expert medical opinions obtained by the OPs did not align with the facts and records maintained by the hospital. These reports omitted crucial information regarding treatment after the pancreatitis diagnosis and did not address actions taken between 3:30 pm and 9:45 pm on 07.03.2003. In contrast, reports from Dr. G.S. Vats and Dr. Samir Rai, obtained by the complainants, were meticulously based on thorough reviews of the hospital's medical records. These reports challenged the accuracy of the patient's diagnosis and criticized the lack of proper treatment for the severity of his condition, given the ultrasound findings.

23. We tend to agree with the findings of District Forum in its order dated 28.11.2016 that ultrasound report submitted by the complainant before the District Forum revealed ascites and minimal pleural effusion on the right side, which were crucial signs of acute pancreatitis. Regrettably, these findings were not recorded in the patient's progress notes, highlighting negligence on the part of the OPs. The OPs' argument that the initial treatment for both ureteric colic and acute pancreatitis is the same doesn't absolve them from negligence in care. Dr. Samir Rai, another expert for the Complainants, suggested that the patient's condition strongly indicated acute pancreatitis, but this possibility was overlooked, leading to a missed diagnosis. Even if the treatment for both conditions were the same, failing to note pancreatitis in the progress notes after reviewing the ultrasound report is another instance of OPs' negligence. The patient's treatment was based on telephonic advice from OP No.3, which further underscores negligence in care. The OPs' claim that Dr. J. Nath was competent doesn't absolve them from the responsibility, as he simply followed OP No.3's telephonic directions. Had OP No.3 personally examined the patient on March 6, 2003, early detection of pancreatitis might have been possible.

24. Accordingly, we have no hesitation in setting aside the impugned order of the State Commission dated 22.05.2018, and the same is hereby set aside. The order dated 28.11.2016 of the District Forum is restored. Revision Petition is allowed accordingly with directions that compensation of Rs.10 lacs (Rupees 10 lakhs) awarded by the District Forum, after adjusting the amount already received by the Complainants in pursuance to various orders of District Forum/State Commission/National Commission, shall be payable with simple Interest @ 9% p.a. w.e.f. 28.01.2017 (i.e. expiry of 60 days from the date of order of District Forum), along with litigation cost of Rs.35,000/- (including the litigation cost of Rs.15,000/- awarded by the District Forum). All amounts payable as per the order shall be paid by the OPs (Respondents herein) to the Complainants (Petitioners herein) within 2 months of date

of this order, failing which, it shall carry interest @12% p.a. Liability of all OPs/Respondents herein shall be joint and several.

25. The pending IAs in the case, if any, also stand disposed off.

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DR. INDER JIT SINGH
PRESIDING MEMBER