

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 2379 OF 2023**

(Against the Order dated 17/03/2023 in Appeal No. A/1508/2017 of the State Commission  
Haryana)

1. PARAS HOSPITAL

C1, SUSHANT LOK, PHASE-I, SECTOR 43, GURGAON

GURUGRAM

HARYANA

.....Petitioner(s)

Versus

1. RISHI KUMAR JAIN & ORS.

H.NO. 146 A, ADARSH NAGAR, GURGAON NEAR GATE

NO-3

GURUGRAM

HARYANA-122001

2. DR. SANJEEV CHAUDHARY

PARAS HOSPITAL, SUSHANT LOK, PHASE-I, SECTOR 43,

GURGAON

GURUGRAM

HARYANA

3. DR. M.K. SINGH

PARAS HOSPITAL, SUSHANT LOK, PHASE-I, SECTOR 43,

GURGAON

GURUGRAM

HARYANA

4. ST. JUDE MEDICAL

1-11-250A, MATA RANI SENSATION BUILDING LANE,

BEGUMPET, HYDERABAD

HYDERABAD

TELANGANA

5. M/S UNITED INDIA INSURANCE COMPANY

DIVISIONAL OFFICE, 344/2, CHURCH ROAD, BHOGAL,

NEW DELHI - 110011

SOUTH EAST

DELHI

.....Respondent(s)

**BEFORE:**

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING  
MEMBER**

FOR THE PETITIONER :

FOR THE PETITIONER : MR. GANDHARV GARG, ADVOCATE

MR. ABHISHEK DAS, ADVOCATE

FOR THE RESPONDENT :

FOR RESPONDENTS : MR. RISHI KUMAR JAIN, IN PERSON

**Dated : 11 June 2024**

**ORDER**

1. The present Revision Petition has been filed under Section 58(1)(b) of the Consumer Protection Act, 2019 (the “Act”) against impugned order dated 17.03.2023, passed by the State Consumer Disputes Redressal Commission, Haryana (‘State Commission’) in First Appeal No. 1508/2017. In this, the Petitioner/ OP-1 appeal was dismissed, thereby affirming the Order dated 24.10.2017 of the District Consumer Disputes Redressal, Gurgaon (“District Forum”) in CC No.238 of 2013, wherein the Complaint filed by the Complainant (Respondent No. 1 herein) was allowed.
2. There was 54 days delay in filing the Revision Petition. For the reason stated in IA being No. 12839 of 2013, the same is condoned.
3. For convenience, the parties in the present matter are denoted as per their positions in the Consumer Complaint before the District Forum. Rishi Kumar Jain is the Complainant (Respondent No.1 herein). Paras Hospitals is OP-1 (Petitioner herein), Dr. Sanjeev Chaudhary MD (Medicine) is OP-2 (Respondent No.2 herein); Dr. M.K. Singh - Consultant Internal Medicine is OP-3 (Respondent No. 3 herein); St. Jude Medical, Cardiac Rhythm, Management Division Ltd. is OP-4 (Respondent No. 4 herein); and M/s. United India Insurance Company Ltd. is OP-5 (Respondent No. 5) in the matter.
4. In brief, on 04.03.2013, the Complainant’s wife was admitted to Paras Hospital (OP-1) due to chest congestion, severe coughing, difficulty breathing, uneasiness, and swelling in both legs. Under the supervision of OP-2, she was diagnosed with acute left ventricular (LV) failure, dilated cardiomyopathy, non-critical coronary artery disease, LV dysfunction with an ejection fraction of 20%, hypothyroidism, and lower respiratory tract infection (LRTI). Despite her severe infection and high TLC counts, which persisted until her death on 25.03.2013, OP-1 discharged her on 08.03.2013. OP-2 discharged her with incomplete treatment and advised implantation of a pacemaker device instead of providing necessary medical care. After discharge, the patient lost sensation of urine and was readmitted on 11.03.2013. An MRI test was attempted but could not be completed due to her weakness. She suffered cardiac arrest but was revived, placed on a ventilator, and received oxygen support in the CCU, yet continued to suffer from a severe infection affecting her right lung. Following OP-2's advice, consent was given for a bi-ventricular pacemaker implantation, but the device was not shown to the complainant. On 13.03.2013, a CRT-D device was implanted despite the patient's poor condition and infection, which was done by OP-2 with an ulterior motive. The patient was then transferred to OP-3 for further care. The Complainant’s request to transfer her to another hospital was denied. The pacemaker was unnecessary, provided no improvement in the patient's heart function and her condition worsened. On 25.03.2013, Madhur Jain (the deceased) passed away. The pacemaker was removed post-mortem and handed over to the Complainant after sterilization, but no bill for the device was provided. The doctors discussed implanting a CRT-D but instead used an ICD, which is different, ineffective, and possibly expired and infected. The Complainant asserts that the pacemaker caused the death due to medical negligence. He was wrongfully charged Rs. 35,500 as doctor fees, Rs.7,32,698/- for the pacemaker and Rs. 54,350 for installation. Consequently, he filed

CC No. 238 of 2013 before the District Forum, seeking Rs.13,00,000 compensation towards cost of the pacemaker, installation, and doctor fees. Top of Form

5. In reply before the learned District Forum, OP-1 alleged that the Complainant was already compensated by the insurance company. She received the best possible treatment. All allegations against the treating doctors are false and frivolous. The patient was transferred to another doctor for further care, indicating no negligence on the part of OP-1. In reply, OP-2 contended that the patient was suffering severe left ventricular dysfunction with history of repeated hospitalizations for congestive heart failure and pedal edema. She received decongestive therapy with dobutamine infusion and intravenous diuretics, resulting in improvement. Cardiac resynchronization therapy with a combo (CRT-D) pacemaker was recommended. Angiography was performed on 04.03.2013 and the decision to implant CRT-D was taken after consultation and explaining the treatment to the Complainant. She underwent thorough investigation, including a neurology consultation that recommended an MRI of spine. While awaiting MRI, the patient suffered arrhythmia and cardiac arrest on 12.03.2013. After the device was implanted, she was extubated and transferred to the ICU. She was then referred to Dr. MK Singh for her chest issues. By 12.03.2013, her condition was stable. The device was purchased by the hospital, and OP-2 & 3 provided care according to standard medical norms. Unfortunately, she passed away on 25.03.2013. OP-2 maintained that the treating doctors were skilled professionals, and there was no negligence whatsoever. In reply, OP-3 contended that that no medical tests were conducted on the patient and she was transferred to OP-3 on 18.03.2013 for further investigation and care. After reviewing the test reports, including the presence of pleural fluid on USG chest and CECT chest showing fibrocavitary lesions, multiple lymph nodes and tuberculosis was considered and anti-tuberculosis treatment (ATT) commenced in consultation with a pulmonologist and the ICU team. Broad-spectrum antibiotics and supportive care were also given. Despite these efforts, her TLC remained persistently high, and her condition deteriorated. Antifungal medication was given, and a bone marrow test was conducted to rule out hematological disorders, both of which were negative. OP-3 asserted that all necessary tests were conducted, and there was no negligence. They had no liability as regards the implanted device by the concerned doctors/hospital. The decision on device depended on her condition. The device was sold before its expiry date, with the CRT-D implanted on 13.03.2013 and its expiry date was 30.04.2013. OP-4 asserted no negligence.

6. The District Forum in its Order dated 24.10.2017, partly allowed the complaint and held the OP-1 deficient in service and found no medical negligence against OPs No. 2 to 4 with the following order:

***“9..... Therefore, it seems that Op No.1 has provided the device for implantation which was infected, and which has caused infection in the body of the patient who was already having deteriorated condition and the said device has further deteriorated the health of the patient which resulted into her death on 25.03.2013. Therefore, we are inclined to hold that on account of providing of infective device by OP No.1 the deficiency can be said to have been taken place on the part of OP NO.1 as OP No.1***

***has supplied the said device to OP No.2 for implantation. Therefore, we direct the OP No.1 to refund the cost of CRT-D machine along with interest at the rate of 9% per annum from the date of filing of complaint till its realization and further to pay Rs.25,000/- as compensation for mental agony, harassment as well as litigation expenses.***

***11.... There is no expert report that OP No.2 to 4 were in any way negligent. Thus, there was no medical negligence on the part of the opposite parties No. 2 to 4 and as such we are inclined to hold that neither any deficiency in service nor medical negligence on the part of OPs No.2 to 4 can be said to be proved and as such the complaint deserves dismissal against OPs No. 2 to 4 and we dismiss the present complaint against OPs No. 2 to 4....”***

7. Being aggrieved by the District Forum Order, OP-1 filed Appeal No. 1508/2017 and the Complainant filed cross appeal No. 51/2018 and the learned State Commission vide order dated 17.03.2023 dismissed both the Appeals with the following order:-

***“12. Resultantly, the contentions raised on behalf of the present appellants stands rejected as rendered no assistance and found to be untenable and the order passed by the learned District Commission does not suffer from any illegality or perversity and is well reasoned and accordingly stands maintained for all intents and purposes. Hence, appeals bearing No. 51 of 2018 and F.A. No.1508 of 2017 stands dismissed on merits.”***

8. Being dissatisfied by the Impugned Order dated 17.03.2023 passed by the learned State Commission, the Petitioner/OP-1 filed the instant Revision Petition No. 2379 of 2023.

9. Perused the pleadings and connected documents, including the concurrent findings of both the fora and thoughtfully considered the arguments advanced by the learned Counsels for both the parties.

10. It is a well settled position in law that revision under section 58(1)(b) of the Consumer Protection Act, 2019, (*which are pari materia to Section 21(b) the Consumer Protection Act, 1986*) confers very limited jurisdiction on this Commission. In the present case there are concurrent findings of the facts and the revisional jurisdiction of this Commission is limited.

11. In the present case, however, it is an undisputed position that the patient was brought to OP-1 Hospital in frail health condition with multiple medical complications. She was put through necessary diagnostic tests and other pathological examinations to ascertain the treatment to be administered her, with due regard to the situation she was under. Placing the ventricular Pacemaker CRT-D implant was also a planned action after due consultation of

medical specialists. Necessary explanation to the patient/ Complainant was done, consent was taken and the implant was placed on 13.03.2023. He alleged that even after the implant was placed she did not recover, her health further deteriorated, and she unfortunately died under trying conditions on 25.03.2013. The District Forum considered that there is deficiency in service with respect to OP-1 (Petitioner herein) as regards the implant and directed OP-1 to refund the cost of CRT-D Machine along with interest @9% per annum from the date of filing the complaint till its realization. The learned State Commission considered that this device being implanted was not shown to the Complainant and that there was a doubt whether the said device was the same sold by OP-4 on 13.03.2013. The learned District Forum also considered that OP-1 provided an infected implant which caused infection in the body of the patient. As she already had deteriorated condition, this infection further deteriorated her condition and resulted in death on 25.03.2013.

12. Hon'ble Supreme Court on medical negligence. In **Kusum Sharma v. Batra Hospital**, (2010) 3 SCC 480 it was observed that:

"It is a matter of common knowledge that after happening of some unfortunate event, there is a marked tendency to look for a human factor to blame for an untoward event, a tendency which is closely *linked* with the desire to punish. Things have gone wrong and, therefore, somebody must be found to answer for it. A professional deserves total protection. Here, removal of malignant abdominal tumor by surgical operation adopting an anterior approach in preference to posterior approach, though failed to save the life of the patient, was not held to be negligent."

13. The recent decisions of Hon'ble Supreme Court in the case **S. K. Jhunjhunwala vs. Dhanwanti Kaur and Another** (2019) 2 SCC 282, held that in every case where the treatment is not successful or the patient dies during surgery, it cannot be automatically assumed that the medical professional was negligent. Recently in the case of **Dr. (Mrs.) Chanda Rani Akhouri & Ors. vs Dr. MA Methusethupathi & Ors.** 2022 LiveLaw (SC) 391, it was observed that:

"It clearly emerges from the exposition of law that a medical practitioner is not to be held liable simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference to another."

14. Hon'ble Supreme Court in **Devarakonda Suryasesha Mani v Care Hospital, Institute of Medical Sciences IV** (2022) CPJ 7 (SC), it was held as below:

"..2. Unless the appellants are able to establish before this Court any specific course of conduct suggesting a lack of due medical attention and care, it would not be possible for the Court to second-guess the medical judgment of the doctors on the line of medical treatment which was administered to the spouse of the first appellant. In the absence of any such material disclosing medical negligence, we find no justification to form a view at variance with the view which was taken by the NCDRC. **Every death in an institutionalized environment of a hospital does not necessarily amount to medical negligence on a hypothetical assumption of lack of due medical care.**"

15. The Hon'ble Supreme Court in **Jacob Mathew v. State of Punjab**, (2005) SSC (Crl) 1369 which followed the Bolam's principles and observed that:-

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

"25.....At times, the professional is confronted with making a choice between the devil and the deep sea and he has to choose the lesser evil. The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Which course is more appropriate to follow, would depend on the facts and circumstances of a given case. The usual practice prevalent nowadays is to obtain the consent of the patient or of the person in-charge of the patient if the patient is not be in a position to give consent before adopting a given procedure. So long as it can be found that the procedure which was in fact adopted was one which was acceptable to medical science as on that date, the medical practitioner cannot be held negligent merely because he chose to follow one procedure and not another and the result was a failure."

16. The Hon'ble Supreme Court laid down certain duties of the doctor. In the case of **Dr. Laxman Balkrishan Joshi Vs. Dr. Trimbak Bapu Godbole and Anr.**, AIR 1969 SC 128 it was held that:

"The duties which a doctor owes to his patient are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties, viz., a duty of care in deciding whether to undertake the case, a duty of care in deciding whether treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient. The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged. In the light of the particular circumstances of each case is what the law requires.

17. Further in the case of **Achutrao Haribhau Khodwa v. State of Maharashtra (1996) 2 SCC 634** wherein the Hon'ble Supreme Court observed as:

“The skill of medical practitioners differs from doctor to doctor. The very nature of the profession is such that there may be more than one course of treatment which may be advisable for treating a patient. Courts would indeed be slow in attributing negligence

on the part of a doctor if he has performed his duties to the best of his ability and with due care and caution. Medical opinion may differ with regard to the course of action to be taken by a doctor treating a patient, but as long as a doctor acts in a manner which is acceptable to the medical profession, and the Court finds that he has attended on the patient with due care skill and diligence and if the patient still does not survive or suffers a permanent ailment, it would be difficult to hold the doctor to be guilty of negligence.”

18. While such conclusions in respect of the said Pacemaker CRT-D were made, there is no specific evidence or expert opinion on record with respect to the issue in question to challenge the decision to implant a pacemaker; procedure adopted for its implantation; whether the said pacemaker device implanted was infected; and whether such infection resulted in further deterioration of her condition, resulting in her death on 25.03.2013? It is a reasonable presumption that a medical professional would provide treatment that is necessary and in the interest of the patient unless it is established to the contrary. With due regard to her medical condition, including heart condition, the opinion of a specialist was obtained as regards implanting pacemaker CRT-D to the patient on 13.03.2013, after obtaining her consent. By then, she was under acute medical condition and had infections. There is nothing on record to indicate that the said device in question was defective. His allegation that the medical professionals of OP-1 Hospital implanted an infected Pacemaker is also uncorroborated.

19. The OP-1 Hospital contended that the decision to implant CRT-D was made after due consultation with specialist doctors. The process of treatment was explained to the Complainant and after consent was obtained the same was implanted. In fact, while awaiting the MRI and other reports, on 12.03.2013 she suffered arrhythmia and cardiac arrest. After implanting CRT-D she was exuberated and transferred to ICU for having chest issues she suffered. OP-4 has confirmed that the said device i.e. CRT-D Model No.CD-3235-40Q, Serial No.821253 was sold to the petitioner and it had the expiry date of 30.04.2013. Therefore, the allegation of ulterior motive with respect to the said pacemaker, it was defective or infected piece and caused further infection to the patient are unsubstantiated. However, at the same time, it is also undisputed that the said pacemaker which is of high value and was specially procured for the patient in question, ought to have been shown to the Complainant before the same was unwrapped and implanted as per the medical procedure. In this regard, on being queried, the learned counsel for the Petitioner had stated that there is no procedure or practice of such unwrapping or showing the implants or other such items to the patients or relatives before undertaking the implant procedures. That was the reason why OP-1 did not notify the same to the Complainant with respect to the implant in question. However, it is expected that such high value critical medical implants are shown to the affected parties before due process. The expectation of the Complainant who was in distress to that extent is fair and that the actions of OP-1 Hospital in not showing the said pacemaker to the Complainant constitute deficiency. At the same time, it cannot be said or concluded that implanting of the said CRT-D pacemaker itself was with ulterior motive or it was infected before it was implanted.

20. In view of the foregoing deliberations, I am of the considered view, that the orders of learned District Forum and State Commission need to be modified to that extent.

21. Considering the deficiency in service for which the OP Hospital is held culpable, the OP-1 Hospital is directed to pay the Complainant a lump sum compensation of Rs.2,00,000/- within a period one month from the date of this order. In the event of delay, the simple interest applicable thereon for such extended period shall be 12% per annum till the complete payment.

22. With this order, the Revision Petition No. 2379 of 2023 stands disposed of.

23. Keeping in view the facts and circumstances of the case, there shall be no order as to costs. All pending Applications, if any, also stand disposed of accordingly.

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**AVM J. RAJENDRA, AVSM VSM (Retd.)**  
**PRESIDING MEMBER**