

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 1340 OF 2015

1. MAN MOHAN VARMA & ANR.

S/o. Late Govardhan Das Varma, All Resident of 4F Ashok
Nagar, Dhansar, P.O. Dhansar, P.S. Bankmore,
DHANBAD - 828 106.

.....Complainant(s)

Versus

1. DR. SURENDRA UGALE & 4 ORS.

Bariatric Surgeon, Belle Vue Clinic, 9Dr. U.N. Brahmachari
Street, (Formerly Louden Street), P.S. Shakespeare Sarani,
KOLKATA - 700 017

2. DR. UTPAL NARESH PATEL,

General Medicine, Belle Vue Clinic, 9 Dr. U.N. Brahmachari
Street, (Formerly Louden Street), P.S. Shakespeare Sarani,
KOLKATA - 700 017.

3. DR. TAPAS CHAKRABORTY

Consultant Anaesthetist, Belle Vue Clinic, 9 Dr. U.N
Brahmachari Street, (Formerly Louden Street), P.S. Shakespeare
Sarani,
KOLKATA - 700 017.

4. DR. YOGESH BAVISHI,

General Surgeon, Belle Vue Clinic, 9 Dr. U.N. Brahmachari
Street, (Formerly Louden Street), P.S. Shakespeare Sarani,
KOLKATA - 700 017.

5. BELLE VUE CLINIC,

9 Dr. U.N. Brahmachari Street, (Formerly Louden Street), P.S.
Shakespeare Sarani,
KOLKATA - 700 017.

6. THE MEDICAL SUPERINTENDENT, TATA MAIN
HOSPITAL,

C Road West, Northern Town, Bistupur, P.S. Bistupur,
Jamshedpur,
JHARKHAND - 831 001.

7. DR. SHANKAR PRASAD BHATTACHARYA

.....Opp.Party(s)

BEFORE:

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

FOR THE COMPLAINANT :

Dated : 10 May 2024

ORDER

- 1.** Heard Mr. Sanjoy Kumar Ghosh, Advocate, for the complainants, Mr. P.S. Datta, Sr. Advocate, assisted by Ms. Anwasha Saha, Advocate, for opposite parties-1 and 3, Mr. Rabin Majumder, Advocate, for opposite parties-2 and 5, Mr. Srijan Nayak, Advocate, for opposite parties-4 and 6 and Mr. Rohan Thawani, Advocate, for opposite party-7. One Dr. Yogesh Bavisi, General Surgeon, Belle Vue Clinic was also arrayed as opposite party-4 in the complaint but he died during pendency of the complaint and his name has been deleted.
- 2.** Man Mohan Verma and his wife Saroj Verma have filed above complaint for directing the Belle Vue Clinic (OP-4) to (i) produce the original treatment record of the deceased Aakash Verma; (ii) take appropriate action against the OPs for the negligence on their part in treating the deceased Aakash Verma; (iii) direct the OPs jointly and severally to pay Rs.43341755/- as the compensation; (iv) declare that OP-1 has recklessly and negligently taken decision to perform Bariatric Surgery of Aakash Verma in order to make financial gain; (v) declare that OP-4 has acted in most negligent manner, in treating Aakash Verma; (vi) declare that all the opposite parties have acted negligently in treating the deceased Aakash Verma, which untimely resulted in his death; and (vii) any further order which deems fit and proper in the facts of the case.
- 3.** The complainants stated as follows:-
 - (a)** Aakash Verma (the deceased), aged about 45 years, was their youngest son. Manish Verma, their elder son, was residing in Delhi with his family. The complainants, the deceased, his wife and son were jointly residing in Dhanbad and they were fully dependents of the deceased. The deceased completed his higher education in Australia and was posted as the Director, in Pre-Stressed Udyog (India) Private, Limited, a company, manufacturing sleepers for the Indian Railways. Apart from it, the deceased, an enthusiastic entrepreneur, had also started his own business of manufacturing electrical poles under the name of Pre-Stressed Udyog. At the time of his death, annual income of the deceased was about Rs.14/- lacs. Due to medical negligence committed by the OPs, Aakash Verma died on 27.01.2015, leaving behind him his elderly parents, widow Tithi Verma and minor son Arth Verma (aged about 7 years).
 - (b)** The deceased had ailments, like diabetes for two and half years, hypertension, hyperlipidaemia and obesity. The deceased met with Dr. Surendra Ugale (OP-1) for the first time at a common friend's place, who explained the benefits of bariatric surgery and how this surgery would help him to lead a normal life and devoid of such common ailment. Allured by such misguiding and misrepresenting facts, the deceased again met OP-1 who advised him to undergo sleeve gastrectomy, in the form of bariatric surgery. OP-1 did not inform, even for once, about possible complications and risks involved in such type of surgery. When the complainants expressed their unwillingness, OP-1 made all sincere efforts to convince them and the deceased to go ahead with such bariatric surgery, by saying that the surgery was very simple procedure sans side effects and it would help to reduce weight loss of the deceased.
 - (c)** Dr. Tapas Chakraborty (OP-3) clinically examined the deceased on 20.12.2014 and advised for several pathological tests. All pathological tests as advised, were conducted during 20.12.2014 to 08.01.2015. Dr. Utpal Naresh Patel (OP-2) examined test reports and also clinically examined the deceased on 08.01.2015 and asked him to get admitted in Belle Vue Clinic (OP-4) on 09.01.2015, for bariatric surgery. The deceased was admitted in the

hospital (OP-4) on 09.01.2015, where his sleeve gastrectomy was performed on 10.01.2015 by the team of the doctors namely Dr. Surendra Ugale, Bariatric Surgeon, Dr. Utpal Naresh Patel, General Physician and Dr. Surendra Ugale, Anaesthetist. He was discharged on 13.01.2015. There was complete suppression of the events, the requisite follow up and post-surgery observation. The deceased left for his house in Jamshedpur on 14.01.2015.

(d) When the deceased was at his house in Jamshedpur, he felt excruciating pain in his abdomen in the night of 22.01.2015. He was immediately admitted in Tata Main Hospital, Jamshedpur (OP-7) on 23.01.2015 around 2:30 hours. Dr. S. Pradhan, Senior Surgeon at OP-7 examined the deceased and after pathological test, diagnosed that cause of pain as infection due to post-procedural acute peritonitis and advised for immediate operation. The complainants contacted OP-1 on telephone, who was attending a conference in Mumbai at that time. OP-1 therefore advised to contact with OP-2 & 3. When the complainants talked with OP-2, he advised to get the surgery conducted in Tata Main Hospital OP-7 itself while OP-3 advised to bring the patient to their hospital OP-4 in Kolkata immediately and assured that full team of the doctors would be ready to attend the patient. The complainants again tried to talk with OP-1 but could not connect. Then the complainants shifted the patient to Kolkata from Jamshedpur on 23.01.2015 by a chartered plane by spending Rs.350000/- and got the patients admitted at OP-4 at 19:20 hours.

(e) Although OP-3 assured for immediate medical attention and surgery of the patient, but on arrival, OP-3 admitted the patient in the hospital and kept him on “wait and watch” conservative approach for 48 hours, in spite of the fact that the senior surgeon at OP-7 had advised for immediate surgery. It is only on 25.01.2015, CT scan was conducted and Dr. Utpal Naresh Patel, Dr. Tapas Chakraborty, Dr. Yogesh Bavishi (General Surgeon) (now died) and Dr. Manoj Agrawal, diagnosed cause of pain as Mesenteric Vein Thrombosis. At that time, the CT scan report was not supplied to the complainants. Thereafter, a team of the doctors namely Dr. Yogesh Bavishi, Dr. Sankar Prasad Bhattacharya (OP-6) and Dr. Tapas Chakraborty conducted the surgery on 25.01.2015 around 22:30 hours. Although in the operation notes, the name of Dr. Surendra Ugale (OP-1) is also mentioned but he was not present at the time of surgery and came from Mumbai after the surgery. Dr. Surendra Ugale (OP-1) also assured the complainants that a famous doctor from Brazil, namely Dr. Aureo De Paula would also come with him to attend the patient but OP-1 came alone from Mumbai. In surgery, 3 ft. out of 25 ft. intestine was found to be gangrenous and had been resected. The condition of the patient was critical post-surgery and he was kept on ventilator. But the condition did not improve and he died on 27.01.2015 at 12:35 PM.

(f) The sleeve gastrectomy is a surgical weight loss procedure, in which, stomach is reduced about 25% of its original size by surgical removal of a large portion of the stomach along with greater curvature. The result is a sleeve or tube like structure. The procedure permanently reduces the size of stomach, although there could be some dilatation of stomach later on in life. The procedure is generally performed laparoscopically and irreversible. Pre-operative test reports did not indicate that the patient was fit for bariatric surgery but OPs-1 to 3 conducted the surgery in order to make financial gain. OP-3 is an Anaesthetist and he could not advise for bariatric surgery. Before bariatric surgery, blank consent form was got signed by OPs-1 to 4 without disclosing anything about the risk of surgery. This was also done while taking the consent for anaesthesia. The ‘operation notes’ for conducting the surgery dated 10.01.2015 are undated. Discharge Summary dated 13.01.2015 did not mention

any post-operative advice nor any prescription of medication for the patient. It was the duty of the doctors to prescribe proper medication in the discharge summary. Dr. S. Pradhan, a Senior Surgeon of OP-7 examined the deceased and on 23.01.2015 after pathological test, diagnosed that cause of pain as infection due to post-procedural acute peritonitis and advised for immediate operation. First surgery was done by OP-1 as such, the complainants contacted OP-1, for his advice. OP-1 was attending a conference in Bombay on 23.01.2015 and he advised to talk with OPs-2 and 3. OP-3 told to shift the patient to OP-4 and assured for immediate medical attention and surgery of the patient. Then the complainants shifted the patients to Kolkata from Jamshedpur on 23.01.2015 by a chartered plane by spending Rs.350000/- and got the patients admitted at OP-4 at 19:20 hours, but on arrival, OP-3 admitted the patient in the hospital and kept him on “wait and watch” for 48 hours. During this long period, gangrene developed for 3 feet of the intestine. When second surgery was conducted on 25.01.2015, in the consent form OPs-2 to 6 had written the name of the patient as if he himself is giving the consent while he was unable to give his consent. Similarly, consent form for anaesthesia for conducting the second surgery is undated. The treating doctors on their own noted that the patient had taken some medicine, which induced diarrhoea. The contemporaneous medical literature on *Peritonis & Abdominal Sepsis* reveals that “peritonitis” is most often caused by introduction of an infection into the otherwise sterile peritoneal environment through organ perforation but it may also result from other irritants, such as foreign bodies, bile from a perforated gall bladder or a lacerated liver or gastric acid from a perforated ulcer. One of the most common post-surgery complications is staple line leaks, wherein 2.1% patients on an average experience such staple line leaks. Therefore, more aggressive intensive care and earlier diagnosis and therapy with combination of operative and per-cutaneous techniques have led to a significant reduction in morbidity and mortality related to intra-abdominal sepsis. While admitting the patient in the hospital OP-4 on 23.01.2015, the doctors, not only ignored the diagnosis of OP-7 but also committed negligence in diagnosing possible aspects of post-sleeve gastrostomy and undertake aggressive intensive care through operative therapy. There was gross negligence on the part of OPs-2 to 6. There was no proper co-ordination between the treating doctors during hospitalisation of patient from 203.01.2015 to 27.01.2015.

(g) Amidst all this the complainants repeatedly contacted OP-1, who had done earlier surgery but every time he had expressed his inability to do anything. When he decided to come Belle Vue Clinic, he assured the complainants that a famous doctor from Brazil, namely Dr. Aureo De Paula would also come with him to attend the patient but OP-1 came alone from Mumbai. Belle Vue Clinic (OP-4) on its website advertised as “Bariatric & Metabolism, as one of its specialities, while in the absence of OP-1, there is no other bariatric surgeon in this hospital. Due to this reason, although OP-3 admitted the patient on 23.01.2015 but could not arrange surgery till 25.01.2015. OPs-3 and 4 did not care for autopsy and have been completely lackadaisical and never bothered for quality service despite huge billing.

(h) The cause of death is shown as “septicaemia in a case of superior mesenteric vein thrombosis where exploratory laparotomy was done in a post-operation case of intestinal gangrene due to diabetes mellitus”. This finding has been recorded by Dr. Tapas Chakraborty, who is an Anaesthetist and not competent to record the cause of death when the patient was treated by a surgeon. In order to ascertain the cause of death, an autopsy should have been

done which was intentionally avoided by the OPs and they themselves ascertained the cause of death.

(i) At the time of death, his age was 45 years and he left behind his parents, wife and a child of 7 years. He was working as Director in Pre-Stressed Udyog (I) Ltd. He also started his own business of manufacturing electricity poles in the name of Pre-Stressed Udyog and was earning about Rs.14 lacs per annum. The complainants incurred an amount of Rs.1274630/- on the treatment of Aakash Verma. Due to untimely death of Aakash Verma, the family has suffered loss of Rs.35566125/-. After his death, complainant-1 requested OP-3 and 4 to supply entire treatment record, vide letters dated 02.05.2015 and 09.05.2015 but they did not supply. When complainant-1 sent notice of this complaint, OP-4 supplied some papers relating to the treatment, which included a joint prescription of Doctor Surendra Ugale and Dr. Tapas Chakraborty. Joint prescription of two doctors is an unfair trade practice. In the treatment record, it is mentioned that the patient on his own volition had taken medicine to induce diarrhoea. Then, the complainants filed the present complaint on 04.11.2015.

4. Dr. Surendra Ugale and Dr. Tapas Chakraborty (OP-1 & 3) filed joint written reply stating that Dr. Surendra Ugale was a Bariatric Surgeon and Dr. Tapas Chakraborty was a consultant Anaesthesiologist at Belle Vue Clinic. Dr. Jayesh Shah, resident of Jamshedpur was brother-in-law of Dr. Utpal Naresh Patel (OP-2). Dr. Surendra Ugale successfully conducted bariatric surgery of Dr. Jayesh Shah in Belle Vue Clinic. Aakash Verma (the patient) was known to Dr. Jayesh Shah, who advised the patient for bariatric surgery and recommended to approach OP-1. The patient along with his wife approached OP-1 for bariatric surgery. Before surgery, all necessary tests and investigations were done. The patient was suffering from un-controlled diabetes with organ involvement. He had history of Diabetes T2 for last two and half years with Metabolic syndrome with systematic involvement with oral drugs for hypertension, hyperlipidemia, sleeve apnoea, leg pain, recurrent skin ulcers, 105 kg weight and 5'8" height. The patient was morbid obese (BMI-36). OP-1 explained everything about the effect of the operation and post-operative complications to the patient. The patient was admitted at OP-4 on 09.01.2015 where his operation was conducted successfully on 10.01.2015. Without any post-operative complications and he was discharged on 13.01.2015. All relevant discharge papers were also supplied to the complainants. The patient undertook a long journey of 400 KM from Kolkata to Jamshedpur, after discharge. Follow up calls were also exchanged with the team of doctors. The patient was recovering very well and started going back to his work. OP-1 and 3 have no knowledge as to why excruciating pain occurred in the abdomen of the patient or Dr. S. Pradhan, having clinically examined the patient with diagnosis of the cause of pain as alleged infection to the "post-procedural acute peritonitis" or advised for immediate surgery. It is denied that OP-2 and 3 gave different opinions. OP-2 was informed that PO-7 had advised immediate operation. Then OP-2 told that if it was so, then in that case, he be admitted there. OP-3 asked to bring the patient to Kolkata for further management and treatment. The patient was brought to Kolkata on 23.01.2015, in evening. He was having pain in abdomen and was fully conscious though dehydrated. His vitals were stable. His abdomen was tender. There was no distension and his bowel sounds were normally present. Immediately after admission, He was taken for urgent CT scan if the abdomen and contrast. Several investigations and examinations were conducted. OP-2 to 6 did not see any evidence

of suture line leakage as alleged by the complainants. On 23.01.2015, Dr. Yogesh Bavishi, Senior Laparoscopic Surgeon, who had taken training with Dr. Surendra Ugale, was called to give his expert opinion. After clinically examining, he also endorsed that conservative treatment should be given. Therefore, it was decided to put him on conservative treatment consisting of pain management, IV fluids, test to intestines and appropriate antibiotics. Dr. Manoj Agarwal, Senior Gastroenterologist and his team also saw the patient on 24.01.2015 and observed that it was likely an intra-abdominal infection and the patient should be treated conservatively. The patient was monitored round the clock on 24.01.2015 and the treating doctors opined that since just 24 hours had elapsed and the abdomen was soft with present bowel sounds, conservative treatment was continued. For 2 days the patient was kept on conservative management under guidance of Dr. U.N. Patel, Dr. Yogesh Bavishi and Dr. Manoj Agrawal. On 25.01.2015, when the patient felt pain in his abdomen, Dr. Manoj Agarwal advised for triphasic CT scan. In the report of triphasic CT scan it was found that the patient was suffering from Superior Mesenteric Vessel Thrombosis which was not detected in the CT scan dated 23.01.2025. Superior Mesenteric Vessel Thrombosis is a rare disease and has no connection with sleeve gastrectomy earlier conducted on the patient. This disease is seen in the patients who are obese, diabetic and hypercoagulable state. When the doctors found that definitive peritoneal signs had set in and may be a large portion of intestine had lost its viability, a non-laparoscopic, conventional laparotomy was carried out by Dr. Yogesh Bavishi. All through out Dr. Surendra Ugale, who was attending a conference in Mumbai was also consulted and informed of the diagnosis of Superior Mesenteric Vessel Thrombosis. He was in the way to airport in Mumbai and may take time in arriving to the hospital, he told to perform surgery by Dr. Yogesh Bavishi. On 25.01.2015, surgery was conducted and 3 ft. of intestine was removed. The patient had a torrid and critical post-operative condition and he was kept on mechanical ventilation but unfortunately he could not be saved and expired on 27.01.2015. All the time the family was kept informed. OP-3 is an Anaesthetist and gave anaesthesia before surgery. The allegation of the complainants that OP-2 to 6 had not conducted the surgery on time due to which the patient could not improve, have been denied. Father of the patient had given wrong information about the health condition of the patient. The deceased was a morbid obese (BMI-36) and was also suffering from diabetes, hypertension, hyperlipidaemia, leg pain and recurrent skin ulcers as mentioned in his history sheet and doctor's prescription. It is denied that OPs-1 and 3 allured and misguided about the weight reduction surgery. OPs-1 and 3 did not refer the patient for any pathological test at Jamshedpur between 20.12.2014 to 08.01.2015. The complainants contacted OP-3 who advised them to shift the patient to Kolkata, if possible, for better management or follow the advice of doctors at Tata Main Hospital. In the discharge summary issued by Tata Main Hospital it is nowhere mentioned that the patient required exploration/operation of abdomen immediately. It is also denied that the patient was put on wait and watch for 48 hours in spite of the fact that Tata Main Hospital had advised immediate surgery. When it was found in the CT scan report dated 23.01.2015 that there was no sign of leakage from previous operation as alleged by the complainants, conservative management was followed for 48 hours. It is denied that the CT scan report was not supplied to the complainants or the names of the doctors who were present with Dr. Yogesh Bavishi was not disclosed. Dr. Manoj Agarwal, Gastroenterologist, reviewed the patient and he too opined that relook laparoscopy was needed and advised for laparoscopy, triphasic C.T. scan of the abdomen, which was done on 25.01.2015, wherein it was found that the reason for the patient's current problem was a Very Large Superior Mesenteric Vein Thrombosis (MVT),

which seems to be totally different disease, which is extremely rarely seen in the patient of obese, diabetic hypercoaguable status. Malignancy and cirrhosis of the liver in the patient was also seen. All the teams of the doctors (including Dr. Surendra Ugale, who was consulted on telephone) opined that definitive peritoneal signs had set in and may be a large portion of the intestine had lost its viability. Then a non-laparoscopic conventional laparotomy was carried by Dr. Sankar Bhattacharya (OP-5) along with Dr. Yogesh Bavishi on 25.01.2015, in which, the intestine about 3 feet was found to be non-viable and gangrenous, was resected and thorough peritoneal lavage was given and ileostomies put in place. Dr. Surendra Ugale also joined later on. The patient had very torrid and critical posts-operative period and all throughout he was kept on medical ventilation. The opposite parties did everything best to their knowledge and experience and there was no deficiency on their part.

5. Dr. Utpal Naresh Patel (OP-2) filed his written version stating that the patient knew OP-2 through Dr. Jayesh Shah, brother-in-law of OP-2 and came to know about the bariatric surgery from Dr. Jayesh Shah, who happened to be his friend. The patient was aged about 45 years with morbid obese (MBI-36). He was suffering from un-controlled diabetes, hypertension, hyperlipidemia, sleeve apnoea, leg aches, frequent skin ulcers. The patient along with his wife approached OP-1 for bariatric surgery. The patient chose to get admitted under OPs-1 & 2. After necessary pre-operative investigations as advised by OP-1 and 3 and being cleared for the same, OP-1 successfully performed sleeve gastrectomy on 10.01.2015 and the patient was discharged on 13.01.2015 and in Discharge slip necessary instructions were given. After discharge, the patient recovered very well. Even he travelled from Kolkata to Jamshedpur (not Dhanbad as mentioned in the complaint) on 14.01.2015 without pain or any complaint. Discharge papers were also supplied to the complainants. A false note dated 12.01.2015, advising CT scan of abdomen with contrast has been recorded for a pain of abdomen. The patient complained abdomen pain on 22.01.2015 and was taken to Tata Main Hospital (OP-7). The wife of patient contacted OP-1 on telephone, who was in Mumbai in a conference at that time and told to talk with OP-2 and 3. The complainants telephonically informed OP-2 that Dr S. Pradhan, in Tata Main Hospital, examined the patient and felt that the pain was because of a leak in suture. When inquired whether a CT scan was done, the response was in negative. An X-ray was done but it did not show any air under the diaphragm, which is a mark of perforation. When OP-2 desired to have a talk with the surgeon but the complainants could not arrange. OP-2 felt that in such a situation, the patient should be treated at TMH Jamshedpur. In the meantime, the complainants talked with OP-3. It was decided that since there was no evidence of leakage from the stomach or intestine, the patient may be brought to Belle Vue Clinic, Kolkata, if the patient and his family members agree for it. The patient was brought to Belle Vue Clinic by chartered plane on their own choice on 23.01.2015 in evening. The patient was having pain in abdomen and was fully conscious though dehydrated. His vitals were stable, abdomen was tender but there was no distension and his bowel sounds were normally present. He was taken up for urgent CT scan of abdomen with contrast. In CT scan no evidence of suture leak was seen. Other pathological test were ordered. The patient was seen by OP-2 & 3 Doctors and there being no leakage it was decided to put him on conservative treatment. Dr. Surendra Ugale (OP-1) was also called to give his expert opinion who after examining the patient endorsed that treatment was appropriate. On 24.01.2024, the patient was examined by Dr. Manoj Agarwal (OP-6), an eminent gastroenterologist and his team, they too were of the opinion that with the available evidence, it is likely to be an infra-abdominal infection and the way to go conservatively was

proper. Round the clock, the patient was put on anticoagulation in the form of clexane injection on 24.01.2015 but no improvement was noticed. The treating team decided to continue the conservative treatment as 24 hours had passed and abdomen was soft with present bowel sounds. On 25.01.2015, Dr. Yogesh Bavishi (OP-4) examined the patient and opined that the condition of the patient has deteriorated and advised for relook laparoscopy by Dr. Surendra Ugale. Dr. Manoj Agarwal, Gastroenterologist, reviewed the patient and he too opined that relook laparoscopy was needed and advised for laparoscopy, triphasic C.T. Scan of the abdomen, which was also done on 25.01.2015, wherein it was found that the reason for the patient's current problem was a Very Large Superior Mesenteric Vein Thrombosis (MVT), which seems to be totally different disease, which is extremely rarely seen in the patient of obese, diabetic hypercoaguable status. The patient had taken some homeopathic medicine on his own to induce diarrhoea. Malignancy and cirrhosis of the liver in the patient was also seen. All the teams of the doctors (including Dr. Surendra Ugale, who was consulted on telephone) opined that definitive peritoneal signs had set in and may be a large portion of the intestine had lost its viability. Then a non-laparoscopic conventional laparotomy was carried by Dr. Sankar Bhattacharya (OP-5) along with Dr. Yogesh Bavishi on 25.01.2015, in which, the intestine about 3 feet was found to be non-viable and gangrenous, was resected and thorough peritoneal lavage was given and ileostomies put in place. Dr. Surendra Ugale also joined later on. The patient had very torrid and critical posts-operative period and all throughout he was kept on medical ventilation. The patient went into septic shock and in spite of all efforts and treatment, he expired on 27.01.2015. OP-2 did not perform the surgery either on 10.01.2015 or 25.01.2015, he was simply present in operation theatre as a physician on both the occasions as requested by the patient and his family. The patient was given best treatment and care and there is no deficiency in the part of OP-2 and the complaint deserves to be dismissed.

6. Dr. Yogesh Bavishi (now deceased and deleted from parties) filed his written reply stating that on the request from the consultant in Belle Vue Clinic, he had seen the patient for the first time on 23.01.2015 in the night and advised conservative treatment as per clinical findings and radiological investigation, suggesting no leakage from previous surgery. Dr. Manoj Agarwal, Gastroenterologist also advised conservative treatment. In the morning of 25.01.2015 the condition of the patient started deteriorating and he duly attended him. Dr. Manoj Agarwal advised for triphasic CT scan wherein big thrombus in superior mesenteric vein of two portal vein was shown, hence, immediate operation was advised. OP-1 also suggested for it. Dr. Tapas Chakraborty wrote on the same page (pg. 88 of the complaint). Treating doctors jointly planned for exploratory laparoscopy, where primary surgeon was Dr. Sankar Bhattacharya as per OT notes. In the discharge summary dated 13.01.2015, instructions were clearly written and contact numbers of OP-1 & 2 were also given for any emergency. The complainants admitted that the patient undertook a long travel by road from Kolkata to Jamshedpur on 14.01.2015 without any problem and he was not having any problem up to 22.01.2015. The patient took homeopathic medicine to induce diarrhoea without any medical consultation. The complainants made false allegation that Tata Main Hospital, Jamshedpur (OP-7) advised immediate surgery. In the discharge summary issued by OP-7 there is no mention regarding immediate surgery. The complainants alleged that peritonitis can happen due to leakage of stomach and intestine but the CT scan report dated 24.01.2015 did not indicate any leakage. Therefore, conservative management was advised. Superior mesenteric vein thrombosis was a new disease which had no connection with

bariatric surgery. Superior mesenteric vein thrombosis can happen to anyone even in de-novo state and thromboembolic phenomenon is mostly seen in diabetic patients. On 25.01.2015 OP-5 along with his surgical team had conducted surgery and 3 ft. gangrenous intestine was removed. After surgery, the patient developed septicaemia and he was kept on ventilator but ultimately died on 27.01.2015. OP-1 was attending international conference in Mumbai therefore could not come to Kolkata immediately and reached at the end of the operation but gave his consent for surgical management done. OP-3 telephonically informed to OP-1 and conveyed the diagnosis of Superior Mesenteric Vein Thrombosis. OP-1 also advised to proceed and start the surgery and OP-1 would join them as soon as he reaches to Kolkata. It is denied that the patient was kept on wait and watch for 48 hours. Several examinations and investigations were immediately started and on the basis of the examination and investigation reports, treatment was given to the patient. It is denied that C.T. Scan report was not supplied to the complainants. On the contrary, all the medical papers were handed over to the complainants. Dr. Subhadeep Ghosh being the assistant of Dr. Manoj Agarwal has prepared and signed the prescription on his instruction. Autopsy is done in the case of abnormal death only. In case of normal death autopsy is done only when the party demands and no such demand was made by the complainants. The patient was impressed by the bariatric surgery conducted on his friend with very good result and contacted Dr. Surendra Ugale. The complainants brought the patient from Jamshedpur to Kolkata by chartered plane on their own. OP-3 and 4 provided ambulance and paramedic support was also given at Kolkata airport. He was called to give his expert opinion. After clinically examining the patient, it was decided that conservative approach should be adopted. The patient was monitored round the clock on 24.01.2015 and immediate decisions were taken whenever required. Before surgery, the patient was suffering from uncontrolled diabetes with organ involvement having history of diabetes T2 for the last two years and a half with metabolic syndrome, systemic involvement with oral drugs for hypertension, hyperlipidaemia, sleep apnoea, leg pain, recurrent skin ulcers and 105 kg weight. He was also morbid obese (MBI-36) as mentioned in the history sheet and doctor's prescription. He was explained everything about the surgery, its effects and post-operative complications in detail. After discharge, the patient recovered very well and even he travelled a long distance from Kolkata to Jamshedpur without any problem. The opposite parties had no knowledge how he sustained excruciating pain in his abdomen. He has given the treatment to the best of his knowledge and experience and no unfair practice has been adopted by him. The complaint is liable to be dismissed. He also raised the preliminary objection that certain doctors have not been impleaded as opposite parties and that TMH Hospital, Jamshedpur has been impleaded as proforma party. The complaint is bad for non-joinder of necessary party and deserves to be dismissed.

7. Belle Vue Clinic (OP-4) filed its written version stating that it is a reputed nursing home for the last 48 years. In the entire complaint, there is no allegation of medical negligence on the part of OP-4. The patient was admitted in the clinic on 09.01.2015 and sleeve gastrectomy surgery was conducted on 10.01.2015. After successful surgery, he was discharged on 13.01.2015 and the treatment papers were also supplied with the discharge summary. In the discharge summary, post-operative management was mentioned but the patient did not follow the same. The complainants have wrongly alleged that the opposite parties advised for CT scan "without contrast" but there is no such mention in the history sheet. After discharge the complainant has recovered well and travelled a long distance by road from Kolkata to Jamshedpur. He has also resumed his work. The wife of the patient

contacted Dr. Surendra Ugale on 23.01.2015 who replied that he was busy in a conference in Mumbai and asked her to contact opposite parties 2 & 3. Then she contacted Dr. Utpal Naresh Patel (OP-2) and informed that the doctor at Tata Main Hospital opined that the pain was due to leakage in the suture line. When she was asked whether CT scan was done, she replied in negative. However, an x-ray was done which did not show any air under the diaphragm which is hall mark of perforation. Again on 23.01.2015 the patient was brought to OP-4 clinic with the complaint of pain in his abdomen and he was hydrated. He was taken for urgent CT scan of the abdomen with contrast. In the report there was no evidence of any suture line leak was found. Other relevant tests and investigations were also conducted.

When Dr. Manoj Agarwal reviewed the patient and he opined to conduct relook laparoscopy, he advised to do a triphasic CT scan of the abdomen. In the report it was found that there was big thrombus in the superior mesenteric vein up to portal and vein. On the basis of this report, Dr. Manoj Agarwal advised immediate operation. On 25.01.2015, surgery was done wherein it was found that a large part of intestine was non-viable and gangrenous and was resected. After surgery, the patient was in a critical condition and he was on mechanical ventilation throughout. He went into septic shock and despite all efforts, he could not be saved and expired on 27.01.2015. Mesenteric vein thrombosis is a rare disease with a mortality of 50%. There is no deficiency on the part of OP-4 in providing the medical facility. As the complainants did not ask for autopsy, it was not done. As there is no allegation of deficiency in service, the complaint qua OP-4 is not maintainable and is liable to be dismissed. OP-4 also raised a preliminary issue that the complaint is bad for non-joinder of necessary party as the wife and son of the deceased have not been impleaded in the complaint.

8. Dr. Sankar Prasad Bhattacharya (OP-5) filed his written version stating that the treatment of the patient was done as per medical protocol. In evening on 25.01.2015 he received a call from Dr. Tapas Chakraborty stating that after gastric sleeve resection by Dr. Surendra Ugale, the patient had developed some complications and needed urgent laparotomy. Since Dr. Ugale was attending an international conference at Mumbai, Dr. Yogesh Bavishi was looking after the patient for preceding two days, following readmission in OP-4 on 23.01.2015. Dr. Tapas Chakraborty requested him to assist Dr. Bavishi in the surgery. Due to his moral and ethical duty, he assisted Dr. Yogesh Bavishi in the laparotomy which came out to be intestinal gangrene due to mesenteric vein thrombosis and as a life saving measure, the affected intestine was resected and cut ends brought out on 25.01.2015. After surgery, Dr. Yogesh Bavishi wrote the O.T. note and wanted to endorse Dr. Sankar Prasad Bhattacharya's name before him as his senior to which he had consented. Thereafter, he left the hospital. OP-5 did not see the patient pre-operative or post-operative and his role is of assisting Dr. Yogesh Bavishi in the surgery. He has not prescribed any medicine nor suggested any treatment plan. The allegations against OP-5 have been levelled in order to defame him without adducing any evidence on fact, law as well as medical jurisprudence.

9. Dr. Manoj Agarwal (Opposite party-6) filed his written version stating that he was a Senior Gastroenterologist and was practicing at Belle Vue Clinic. He had done his MBBS, MD (General Medicine), DM (Gastroenterology) all from Christian Medical College, Vellore, DNB (Gastroenterology), DNB (Medicine) and MRCP from UK. He was referred for an opinion on the patient by Dr. U.N. Patel (OP-2) on 24.01.2015. The patient on his own has taken some homoeopathic medicines to induce diarrhoea following which he had

diarrhoea, lower abdominal pain and vomiting. He was passing urine. He was febrile, there was tenderness over the colon and bowel sounds were sluggish. WBC count and CRP were elevated, blood sugar was 282 mg% (increased), LFT was normal except for albumin 2.8 mg% (decreased), lipase and amylases normal and ABG revealed mild hypoxia. But pH was normal. Chest-X ray showed slightly congested lungs fields with blunting of CP angle on the right side. There was no air in diaphragm. CT scan had not revealed any clear cut pathology, like obstruction, leak or perforation. Clinical impression was intra-abdominal infection, likely of GI origin. The patient was suggested X-rays of abdomen erect and supine view and pro-calcitonin estimation. As the patient was already on antibiotics, was being hydrated and had been advised anticoagulation. He had already been assessed by a surgeon in this post-operative case and had been suggested conservative treatment. He also advised to keep the patient nil by mouth, control the blood sugars, analgesics for pain relief, IV fluids and upgrading the antibiotics. On 25.01.2015, there was no improvement in the condition of the patient. There was tachycardia and abdominal tenderness. Bowel sounds were not well heard. Though a rare diagnosis, he thought that bowel ischemia should be considered as a possibility and suggested discussion with the radiologist and performance of repeat CT scan (triphasic) and blood lactate level. The primary consultants and the surgeons had soon taken decision for surgical intervention. OP-6 visited the patient after surgery. The patient had undergone laparotomy and bowel resection due to superior mesenteric vein thrombosis. He was very unwell. The condition of the patient was critical and he was on ventilator and ionotropes. He explained the condition of the patient to the family of the patient. The patient did not recover thereafter and unfortunately expired on 27.01.2015. He gave sincere and best opinion based on clinical judgment and his experience. He advised triphasic CT scan of the abdomen to diagnose mesenteric vein thrombosis, a rare disease. His observations and suggestions were written by himself or dictated to be written by gastroenterology resident during evaluation. Many times it happens that the doctor answers to the query of the patient and his family members and some notes may be written by his resident doctors. The compensation claimed in the complaint is without any basis. There is no deficiency in service on his part and the complaint is liable to be dismissed.

10. Tata Main Hospital (OP-7) which has been impleaded as a proforma party has also filed its written version stating that there is no allegation of medical negligence on its part and it is neither a necessary nor a proper party in the complaint, therefore, the complaint against OP-6 is not maintainable. The patient was brought to Tata Main Hospital with the complaint of acute abdomen pain on 23.01.2015 at 02:50 a.m. and was admitted in emergency ward. His vital parameters in terms of GCS (level of consciousness), pulse, blood pressure, respiratory rate, oxygen saturation at room air, pallor (anaemia), icterus (yellow discolouration of conjunctive as seen in jaundice) were found to be within normal range. He had past history of diabetes and hypertension and having undergone bariatric surgery (sleeve gastrectomy) on 10.01.2015 in another hospital (now disclosed as OP-4). As a case of acute abdomen pain under evaluation, he was given intravenous fluids (normal saline, ringer lactate), injectable antibiotic (Zosyn), injectable proton pump inhibitor (Pantaprazol- for relief of gastric irritation), injectable tramadol, Fortwin, Phenergan (for relief of pain), injectable insulin (Actrapid) on sliding scale (for control of diabetes). Dr. Manoj Kumar, Surgical Specialist examined the patient in early in morning and after finding evidence of peritonitis and informed the relatives of the patient that he would be requiring exploratory laparotomy. Relatives were unwilling for conducting abdominal operation even though

advised and expressed their desire to take the patient to the hospital at Kolkata (OP-4) where bariatric surgery had been done. By the time they could make arrangements for the transfer, they requested OP-7 to continue the conservative treatment. The patient was discharged from TMH on 23.01.2015 and taken away by the relatives. All the records relating to admission in TMH Hospital, discharge summary as well as test reports were provided to the complainants. The complainants have not sought any relief against OP-7. The acute illness of the patient may be a result of previous medical history and treatment and has nothing to do with OP-7.

11. The complainants filed rejoinders to the written replies filed by the respective opposite parties. The complainants filed Affidavits of Evidence of Man Mohan Verma and Saroj Verma and documentary evidence. Opposite Parties-1 & 3 filed the Affidavit of Evidence of Dr. Tapas Chakraborty and documentary evidence. Opposite party-2 filed the Affidavit of Evidence of Dr. Utpal Naresh Patel and documentary evidence. Dr. Yogesh Bavishi filed his Affidavit of Evidence. Opposite party-4 filed Affidavit of Evidence of Pradip Tandon, Chief Executive Officer and documentary evidence. Opposite party-5 filed Affidavit of Evidence of Dr. Sankar Prasad Bhattacharya. Opposite party-6 filed Affidavit of Evidence of Dr. Manoj Agarwal. Opposite party-7 filed Affidavit of Evidence of Chanakya Chaudhary, Group Director, Tata Steel Ltd. Opposite parties-1 & 3 filed the additional documents through IA/6882/2022. The complainants filed the interrogatories to be answered by OP-3. Opposite party-3 filed their reply to the interrogatories of the complainants. Opposite parties-1 & 3 filed interrogatories to be answered by the complainants. The complainants filed reply to the interrogatories of OP-1 & 3. All Parties also filed short synopsis of the arguments and argued at length.

12. We have considered the arguments of the parties and examined the record. The OPs raised preliminary objection of non-joinder of Smt. Tithi Verma and Arth Verma (minor), (widow and son respectively of the deceased) in the complaint. As Hindu Succession Act, 1956 is applicable on the deceased and the mother of the deceased Smt. Saroj Verma is a class-I heir as such she can maintain consumer complaint and it cannot be dismissed for non-joinder of necessary party. If the complaint is allowed, then its benefits can be extended to all the heirs of the deceased. The treating doctors in Tata Main Hospital are not necessary party. The documents relating to treatment have been produced.

13. The complainants alleged that Aakash Verma, aged about 45 years (the deceased) had ailments, like diabetes for two and half years, hypertension, hyperlipidaemia and obesity. The deceased met with Dr. Surendra Ugale (OP-1) for the first time at a common friend's place, who explained the benefits of bariatric surgery and how this surgery would help him to lead a normal life, devoid of such common ailment. Allured by misguiding and misrepresenting facts, the deceased again met OP-1 who advised him to undergo sleeve gastrectomy, in the form of bariatric surgery. OP-1 did not inform, even for once, about possible complications and risks involved in such type of surgery. When the complainants expressed their unwillingness, OP-1 made all sincere efforts to convince them and the deceased to go ahead with such bariatric surgery, by saying that the surgery was very simple procedure sans side effects and it would help to reduce weight loss of the deceased.

These allegations have been denied by OPs-1 to 3. They stated that the deceased was friend of Dr. Jayesh Shah, of whom Dr. Surendra Ugale had successfully performed bariatric surgery prior to the surgery of the deceased. The deceased knew OP-2 through Dr. Jayesh

Shah, who was brother-in-law of OP-2 and came to know about the bariatric surgery from him. The deceased was aged about 45 years with morbid obese (MBI-36). He was suffering from un-controlled diabetes, hypertension, hyperlipidemia, sleeve apnoea, leg aches, frequent skin ulcer. The deceased along with his wife approached OP-1 for bariatric surgery and chose to get admitted under OPs-1 & 2. After necessary pre-operative investigations as advised by OP-1 to 3 and being cleared for the same, OP-1 successfully performed sleeve gastrectomy on 10.01.2015 and the patient was discharged on 13.01.2015, after his condition became stable. In Discharge Summary necessary instructions were given. After discharge, the patient recovered very well. Even he travelled from Kolkata to Jamshedpur on 14.01.2015 without pain or any complaint.

The complainants relied upon prescription dated 20.12.2014 (Pg.31 of the complaint) and submitted that this prescription was written by Dr. Tapas Chakraborty, Anaesthetist and submitted that on the first date of meeting, he prescribed for operation sleeve gastrectomy without any clinical examination only with a view to make money. According to OPs-1 to 3, the deceased and his wife have decided for the operation sleeve gastrectomy and came to Belle Vue Clinic, Kolkata from Jamshedpur and as per their own decision, therefore, in the prescription slip, "for operation sleeve gastrectomy" was noted by OP-3.

14. It is not disputed that the deceased aged about 45 years, having weight of 105 Kg. (height 5' 8") and was suffering from diabetes for two and half years, hypertension, hyperlipidaemia and obesity. He came to Belle Vue Clinic, Kolkata from Jamshedpur for operation sleeve gastrectomy as informed by his friend Dr. Jayesh Patel. Dr. Surendra Ugale was a qualified bariatric surgeon. He successfully conducted sleeve gastrectomy on 10.01.2015, after necessary pre-operative investigations. The deceased recovered well at that time and was discharged on 13.01.2015. Thereafter, he travelled from Kolkata to Jamshedpur on 14.01.2015 and there was no complaint till 23.01.2015. In Discharge Summary dated 13.01.2015, post discharge medicines were prescribed. The patient was called for review after 5 days for skin clip removal. No allegation has been made in respect of negligence or lack of care during hospitalisation from 09.01.2015 to 13.01.2015. Alluring by OPs-1 and 3 for operation sleeve gastrectomy does not appear to be proved.

15. Second allegation is that when the deceased was at his house in Jamshedpur, he felt excruciating pain in his abdomen in the night of 22.01.2015. He was immediately admitted in Tata Main Hospital, Jamshedpur (OP-7) on 23.01.2015 around 2:30 hours. Dr. S. Pradhan, Senior Surgeon at OP-7 examined the deceased and after pathological test, diagnosed that cause of pain as infection due to post-procedural acute peritonitis and advised for immediate operation. The complainants contacted OP-1 on telephone, who was attending a conference in Mumbai at that time. OP-1 therefore advised to contact with OP-2 & 3. When the complainants talked with OP-2, he advised to get the surgery conducted in Tata Main Hospital OP-7 itself while OP-3 advised to bring the patient to their hospital OP-4 in Kolkata, immediately and assured that full team of the doctors would be ready to attend the patient. The complainants again tried to talk with OP-1 but could not connect. Then the complainants shifted the patient to Kolkata from Jamshedpur on 23.01.2015 by a chartered plane by spending Rs.350000/- and got the patient admitted at OP-4 at 19:20 hours. Although OP-3 assured for immediate medical attention and surgery of the patient, but on arrival, OPs-2 and 3 admitted the patient in the hospital and kept him on "wait and watch" conservative approach for 48 hours, in spite of the fact that the senior surgeon at OP-7 had advised for

immediate surgery. Due to delay, in proper treatment, gangrene developed and 3 ft. out of 25 ft. intestine had become gangrenous. Septicaemia spread and became uncontrolled which resulted in the death of Aakash Verma.

16. Chankya Chaudhary has filed his Affidavit of Evidence on behalf of Tata Main Hospital (OP-7), who has stated that the patient was brought to Tata Main Hospital with the complaint of acute abdomen pain on 23.01.2015 at 02:50 a.m. He was admitted in emergency ward. His vital parameters in terms of GCS (level of consciousness), pulse, blood pressure, respiratory rate, oxygen saturation at room air, pallor (anaemia), icterus (yellow discolouration of conjunctive as seen in jaundice) were found to be within normal range. He had past history of diabetes and hypertension and having undergone bariatric surgery (sleeve gastrectomy) on 10.01.2015 in another hospital (now disclosed as OP-4). As a case of acute abdomen pain under evaluation, he was given intravenous fluids (normal saline, ringer lactate), injectable antibiotic (Zosyn), injectable proton pump inhibitor (Pantaprazol- for relief of gastric irritation), injectable tramadol, Fortwin, Phenergan (for relief of pain), injectable insulin (Actrapid) on sliding scale (for control of diabetes). Dr. Manoj Kumar, Surgical Specialist examined the patient in early in morning and after finding evidence of peritonitis, informed the relatives of the patient that he would be requiring exploratory laparotomy. The same was reiterated by Dr. S. Pradhan to the relatives of the patient in morning round. The relatives were unwilling for conducting abdominal operation even though advised and expressed their desire to take the patient to the hospital at Kolkata (OP-4) where bariatric surgery had been done. By the time they could make arrangements for the transfer, they requested to continue the conservative treatment. In Discharge Summary of Tata Main Hospital dated 23.01.2015, final diagnosis has been mentioned as "Post Procedural Acute Peritonitis".

17. Dr. Utpal Naresh Patel (OP-2) admits that the complainants telephonically informed him that Dr S. Pradhan, in Tata Main Hospital, examined the patient and felt that the pain was because of a leak in suture. But stated that when he desired to have a talk with the surgeon, the complainants could not arrange. He felt that in such a situation, the patient should be treated at TMH Jamshedpur and informed them accordingly. Dr. Tapas Chakraborty (OP-3) also admits that the complainants informed him on telephone on 23.01.2015 that Dr S. Pradhan, in Tata Main Hospital, examined the patient and felt that the pain was because of a leak in suture. Then OP-3 asked to bring the patient to Kolkata for further management and treatment. The patient was brought to Kolkata on 23.01.2015, in evening. He was having pain in abdomen and was fully conscious though dehydrated. His vitals were stable. His abdomen was tender. There was no distension and his bowel sounds were normally present. Immediately after admission, He was taken for urgent CT scan of the abdomen and contrast. Several investigations and examinations were conducted. OP-2 to 6 did not see any evidence of suture line leakage as alleged by the complainants. On 23.01.2015, Dr. Yogesh Bavishi, Senior Laparoscopic Surgeon, who had taken training with Dr. Surendra Ugale, was called to give his expert opinion. After clinically examining, he also endorsed that conservative treatment should be given. Therefore, it was decided to put him on conservative treatment consisting of pain management, IV fluids, test to intestines and appropriate antibiotics.

18. The complainants stated that no CT scan was conducted on 23.01.2015, although in Discharge Summary of Tata Main Hospital dated 23.01.2015 final diagnosis was mentioned

as “Post Procedural Acute Peritonitis” as Dr. Surnedra Ugale was in Bombay at that time, they were waiting for him. Delay of 48 hours in diagnosing the disease and treating it resulted into death of the patient. Dr. Utpal Naresh Patel, Dr. Tapas Chakraborty and Dr. Yogesh Bavishi, in their Affidavit of Evidence have stated that in Discharge Summary of Tata Main Hospital, nowhere it was mentioned that exploration/operation of abdomen was immediately required. Dr. Tapas Chakraborty (OP-3) further stated that when the complainants contacted him on telephone on 23.01.2015, he asked to bring the patient immediately to Kolkata for further treatment and management. The patient was brought to OP-4 clinic on 23.01.2015 in evening with the complaint of pain in his abdomen, he was hydrated and was fully conscious. He was taken for an urgent CT scan of the abdomen with kontras. In the report, there was no evidence of any suture line leak was seen. Thereafter, several examinations and investigations were conducted as of necessity without which no medical expert would advised for unascertained surgery, as such, the time was spent for such investigation and pathological tests.

A perusal of medical records show that in prescription slip jointly prepared by Dr. U.N. Patel and Dr. Tapas Chakraborty on 23.01.2015 at 7:20 p.m., there was no reference for CT scan abdomen kontras. However, in Initial Clinical Assessment Form (Doctor), in bottom, it has been mentioned that in “CT scan with oral contrast-No evidence of suture leak present”. Dr. Tapas Chakraborty (OP-3) filed photo copies of CT scan dated 23.01.2015, along with IA/6882/2022, in which, time has been mentioned as 7:02:28 hours and referred by Dr. Tapas Chakraborty. Dr. Utpal Naresh Patel filed report of CT scan along with his written reply, in which Referred by- Dr. Utpal Naresh Patel, Reference date 24.01.2015 at 09:14:56 AM has been mentioned. Same report has been filed by Dr. Tapas Chakraborty, along with his Affidavit of Evidence. Although OPs-2 and 3 tried to say that the report was printed on 24.01.2015 as such, the date 24.01.2015 was mentioned but they cannot give any explanation in respect of date of reference as mentioned in the report and the name of the doctor, who made reference for CT scan. The patient was examined by the doctors in Belle Vue Clinic on 23.01.2015 at 7:20 P.M., the report filed along with IA/6882/2022, mentioned time as 7:02:28 PM.

Although Dr. Yogesh Bavishi in his Affidavit of Evidence, stated that on the request from the consultant at OP-4, he had examined the patient for the first time on 23.01.2015 in night and advised conservative treatment as per the clinical findings and radiological investigations suggesting no leakage from previous surgery but in the prescription slip dated 23.01.2015, Dr. Yogesh Bavishi noted that ‘lower abdomen mild rebound. Sedated at present, bowel sound + dehydrated’. In prescription slip, ‘radiological investigations suggesting no leakage from previous surgery’ has not been noted as such, affidavit contrary to the record is not liable to be believed. From the noting of Dr. Yogesh Bavishi, it is not proved that he had examined any CT scan report on 23.01.2015. Dr. Manoj Agarwal examined the patient on 24.01.2015. In prescription slip dated 24.01.2015, he noted the patient was advised abdominal X-ray (erect and supine). After examining X-ray report in bottom of the prescription dated 24.01.2015, he noted that the patient had small amount of periheptic fluid and fluid near the spleen and colon. The patient had no air under diaphragm, slightly congested. Nowhere, it is noted that CT scan had not revealed any clear cut pathology, like obstruction, leak or perforation. If CT scan had already been done on 23.01.2015, there would have no necessity of X-ray on 24.01.2015. As such, in view of various contradictions,

it is proved that CT scan was not done on 23.01.2015 and the reports, which are now being produced, are not reliable.

19. From above discussions it is proved that although the complainants informed Dr. Tapas Chakraborty on 23.01.2015 that Dr S. Pradhan, in Tata Main Hospital, had examined the patient and felt that the pain was because of a leak in suture, in Discharge Summary of Tata Main Hospital dated 23.01.2015 final diagnosis was mentioned as “Post Procedural Acute Peritonitis”, Dr. Tapas Chakraborty asked the complainants to bring the patient immediately to Kolkata for further treatment and management and the patient was brought to Belle Vue Clinic on 23.01.2015 at 7:20 PM but OPs-2 and 3 have not only ignored the discharge summary of Tata Main Hospital but also did not conduct CT scan immediately in order to diagnose Peritonitis as Dr. Suredra Ugale was in Bombay at that time, they were waiting for him. It is only when Dr. Manoj Agarwal advised for CT scan (triphasic) on 25.01.2015, then CT scan was done, in which, cause of pain was diagnosed as Mesenteric Vein Thrombosis. Thereafter, a team of the doctors namely Dr. Yogesh Bavishi, Dr. Sankar Prasad Bhattacharya (OP-6) and Dr. Tapas Chakraborty (OP-3) conducted the surgery on 25.01.2015 around 22:30 hours. In the operation notes, the name of Dr. Surendra Ugale (OP-1) is also mentioned but he was not present at the time of surgery and came from Mumbai after the surgery. Dr. Surendra Ugale (OP-1) also assured the complainants that a famous doctor from Brazil, namely Dr. Aureo De Paula would also come with him to attend the patient but OP-1 came alone from Mumbai. In surgery, 3 ft. ft. intestine was found to be gangrenous and had been resected. The condition of the patient was critical post-surgery and he was kept on ventilator. But the condition did not improve and the patient died on 27.01.2015 at 12:35 PM.

Dr. U.N. Patel and Dr. Tapas Chakraborty did not conduct CT scan for 48 hours although in the case of Peritonitis every hour delay is dangerous. Dr. Tapas Chakraborty asked the complainants to bring the patient in critical condition from a distance of about 400 KM, in order to make money. In order to conceal the negligence, Dr. Tapas Chakraborty has fabricated a CT scan report in back date. There is not only deficiency in service but also unfair trade practice on the part of OPs-2, 3 and 4.

20. Supreme Court in **Jacob Mathew v. State of Punjab (2005) 6 SCC 1**, held that negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: “duty”, “breach” and “resulting damage”. Negligence in the context of the medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure

of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. These principles were consistently applied in **Kusum Sharma Vs. Batra Hospital & Medical Reserch Centre, (2010) 3 SCC 480, Arun Kumar Manglik Vs. Chirau Health & Medicare Private Ltd., (2019) 7 SCC 401, Maharaja Agrasen Hospital Vs. Master Rishabh Sharma (2020) 6 SCC 501 and Harish Kumar Khurana Vs. Joginder Singh, (2021) 10 SCC 291.**

21. In CT scan report dated 25.01.2015, “extensive thrombosis involving superior mesenteric vein extending portal vein” has been noted. There are various causes of this disease out of which, abdominal surgery is also one of the cause. In CT scan report no abnormality in liver, pancreas or spleen was found. As such, it can be safely inferred that abdominal surgery performed on 10.01.2015 may be cause of this disease. Gangrene in intestine was developed due to more than 24 hours delay in its diagnosing and treating.

22. So far as expert report is concerned, it is not a substantive evidence to prove or disprove any fact. It is an expert opinion in respect of the evidence on record. It helps the court to form an opinion in respect of the evidence on record and relevant under Section 45 of Evidence Act, 1872 as held in **Maharaja Agrasen Hospital Vs. Master Rishabh Sharma, (2020) 6 SCC 501.** It is has been held that it is duty of the court to form its opinion on the basis of evidence on record and record its finding as held by in **Sunita Vs. Rajasthan SRTC, (2020) 13 SCC 486.** In **V. Kishan Rao Vs. Nikhil Super Speciality Hospital, (2010) 5 SCC 513,** it has been held that if a consumer is burdened with expert evidence in all the cases of medical negligence, then efficacy of the remedy as provided under Consumer Protection Act will become illusory.

23. Constitution Bench of Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi, (2017) 16 SCC 680,** held that the compensation would be just and fair. In **Maharaja Agrasen Hospital Vs. Master Rishabh Sharma (2020) 6 SCC 501,** it has been held that it is based on *restitutio in integrum* meaning thereby restoration of an injured party to the situation which would have been prevailed, had no injury been sustained. In **Sarla Verma Vs. Delhi Transport Corporation (2009) 6 SCC 121,** Supreme Court has adopted multiplier system for computing loss of income. As one-time payment would be capitalized value of income. Which is approved in **Pranay Sethi's** case.

24. The complainants have claimed Rs.1275630/- towards medical expenses, Rs.35566125/- towards loss of income due to untimely death of Aakash Verma, Rs.3500000/- as compensation for mental agony and harassment, Rs.2500000/- as punitive damages and Rs.500000/- as litigation costs. Medical expenses and other expenses have been proved from bills, vouchers and payment receipts. The complainants have filed Income Tax Return of the deceased showing that annual income of the deceased was Rs.1422645/-.

25. As the deceased had four dependants therefore as per formula given in above cases, $1/4^{\text{th}}$ income is liable to be deducted towards personal expenses of the deceased. For the age group of the deceased, multiplier of 14 is applicable. The deceased was self-employed

therefore, in his age group 25% of the income has to be included towards future income. Applying above formula capitalize value of loss of income would be Rs.18672202/-. Saroj Verma (complainant-2) is entitled for 1/3 share i.e. Rs.6224067.33 adding medical expenses of Rs.1275630/-. Total compensation payable is Rs.7499697.33. We round it to Rs.75/- lacs.

O R D E R

In view of the aforesaid discussions, the complaint is partly allowed with cost of Rs.2 lacs. Opposite parties 2 to 4 are jointly and severally directed to pay a compensation of Rs.75/- lacs with interest @ 6% per annum from the date of death till realization to complainant-2 including cost within a period of two months from the date of judgement.

.....J
RAM SURAT RAM MAURYA
PRESIDING MEMBER

.....
BHARATKUMAR PANDYA
MEMBER