

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 2798 OF 2017

(Against the Order dated 17/04/2017 in Appeal No. 746/2014 of the State Commission
Haryana)

1. DR. AJAY SHARDA

SHARDA NURSING HOME, 106, GURUDUAR ROAD,
MODEL TOWN,

HISAR

HARYANA

.....Petitioner(s)

Versus

1. RAKESH GULATI & 3 ORS.

R/O. 1161, URBAN ESTATE II,

HISAR

HARAYANA

2. DEEPAK GULATI

R/O. 1161, URBAN ESTATE II,

HISAR

HARYANA

3. REKHA GULATI

R/O. 1161, URBAN ESTATE II,

HISAR

HARYANA

4. UNITED INDIA INSURANCE CO. LTD.

CAPITAL CINEMA BUILDING, V S MARG,

LUCKNOW

U.P.

.....Respondent(s)

REVISION PETITION NO. 3409 OF 2017

(Against the Order dated 15/12/2016 in Appeal No. 746/2014 of the State Commission
Haryana)

1. UNITED INDIA INSURANCE CO. LTD.

THROUGH ITS AUTHORIZED SIGNATORY,
KANCHANJUNGA BUILDING 8TH FLOOR,
BARAKHAMBA ROAD,

NEW DELHI

.....Petitioner(s)

Versus

1. RAKESH GULATI & 5 ORS.

S/O. LT. SMT. RAJ KUMARI, R/O. HOUSE NO. 1161,
URBAN ESTATE II, HISSAR, TEHSIL AND

DISTRICT-HISSAR

HARYANA

2. DEEPAK GULATI

S/O. LT. SMT. RAJ KUMARI, R/O. HOUSE NO. 1161,
URBAN ESTATE II, HISSAR, TEHSIL AND

DISTRICT-HISSAR

.....Respondent(s)

HARYANA

3. REKHA GULATI

D/O. LT. SMT. RAJ KUMARI, R/O. HOUSE NO. 1161,
URBAN ESTATE II, HISSAR, TEHSIL AND
DISTRICT-HISSAR

HARYANA

4. DR. AJAY SHARDA,

C/O. SHARDA NURSING HOME, 106, GURUDUAR ROAD,
MODEL TOWN HISAR, TEHSIL AND
DISTRICT-HISSAR

HARYANA

5. DR. MONA DUA,

R/O. 953, SECTOR 13 PART, HISSAR, TEHSIL AND
DISTRICT-HISSAR

HARYANA

6. DR. ANJU YADAV

C/O. SHARDA NURSING HOME, 106, GURUDUAR ROAD,
MODEL TOWN, HISSAR, TEHSIL AND
DISTRICT-HISSAR

HARYANA

BEFORE:

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

FOR THE PETITIONER :

(IN RP/2798/2017)

FOR THE PETITIONER : MR. SANDEEP KAPOOR, ADVOCATE

(IN RP/3409/2017)

FOR THE PETITIONER : MS. NEERJA SACHDEVA, ADVOCATE

FOR THE RESPONDENT :

(IN RP/2798/2017)

FOR RESPONDENTS NO.1 TO 3 : MR. KARTIKEYA SINGH &
MR. S. VINOD, ADVOCATE

FOR RESPONDENT NO. 4 : MS. NEERJA SACHDEVA,
ADVOCATE

(IN RP/3409/2017)

FOR RESPONDENTS NO.1 TO 3 : MR. KARTIKEYA SINGH &
MR. S. VINOD, ADVOCATE

FOR RESPONDENT NO.4 : MR. SANDEEP KAPOOR,
ADVOCATE

FOR RESPONDENT NOS. 5 & 6 : EX-PARTE VIDE ORDER DT.
26.04.2018

Dated : 17 January 2024

ORDER

1. This order shall decide both the Revision Petitions filed by the Petitioners under Section 21(b) of the Consumer Protection Act, 1986 (the "Act") against impugned order dated 15.12.2016, passed by the State Consumer Disputes Redressal Commission, Haryana

(‘State Commission’) in First Appeal No. 746 of 2014, whereby the appeal filed by the Complainants (Respondent No. 1 to 3 herein) was allowed and setting aside the Order dated 18.07.2014, passed by the District Consumer Disputes Redressal Forum, Hisar (“District Forum”) in Consumer Complaint No. 372 of 2009.

2. For convenience, the parties are referred to as placed in the original Complaint. Mr. Rakesh Gulati, Deepak Gulati & Rekha Gulati are referred to as the Complainants (Respondent No. 1-3 herein). Dr. Ajay Sharda is referred to as the OP-1 (Petitioner in RP/2798/2017 & Respondent No. 4 in RP/3409/2017), Dr. Mona Dua & Dr. Anju Yadav are referred to as the OP No. 2 & 3 (Respondent no. 5 & 6 herein). United India Insurance Company Limited -Insurer to the doctors is referred to as the OP-4 (Petitioner in RP/3409/2017 & Respondent No.4 in RP/2798/2017).

3. The brief facts of the case, as pert the Complainant, are that the LRs of the deceased Smt. Raj Kumari, aged about 60 years (‘the patient’ or ‘the deceased’) who on 04.02.2009 experienced abdominal pain and sought consultation with Dr. Girdhar in Hisar, who prescribed medication. On the next day, 05.02.2009, Dr. Girdhar prescribed a Vovran injection suspecting a possible stone-related issue and advised consulting a surgeon. While the injection initially provided relief, the patient's continued pain led to consulting Dr. Ajay Sharda (OP-1) at Sharda Nursing Home in Hisar on 06.02.2009. Dr Sharda advised discontinuing previous medicines and prescribed his own prescription and suggested an ultrasound due to the patient's deteriorating condition. On 07.02.2009, Dr. Anju Yadav (OP-3) conducted the ultrasound. Upon reviewing the ultrasound report, OP-1 recommended continuing his prescribed treatment. However, the patient's condition worsened, leading to night-time vomiting and subsequent hospitalisation. At 11:00 AM the next day, OP-1 diagnosed intestinal swelling, suggesting medication from his earlier prescription would resolve it. Despite treatment, the vomiting persisted. On 09.02.2009, OP-1 called Dr. Rajesh Mehta, a physician, who prescribed additional medication, yet the vomiting persisted. OP-1 then advised the Complainants to consult Dr. Ajay Singh at Holy Help Hospital, Hisar. Accordingly, they took the patient to Dr. Ajay Singh, who recommended Laparoscopic Surgery after 48 hours, in coordination with OP-1. On 13.02.2009, OP-1 confirmed performing Laparoscopic Surgery on 14.02.2009, explaining a small incision near the 'Nabhi' to clear intestinal blockage, estimating 30 minutes procedure. On 14.02.2009 at 2.00 PM surgery was done and OP-1 reported her stable condition post-surgery. However, later, oxygen cylinders were seen being taken into the operating theatre due to a respiratory problem with the patient. Subsequently, the patient was shifted to Holy Help Hospital's ICCU on a ventilator upon Dr. Ajay Singh's advice, who indicated a 50-50 chance of survival.

4. Allegations arose during the patient's dressing sessions as OP-1 avoided showing the wound's size. However, during a dressing session by Holly Help Hospital's staff, the patient's maternal uncle witnessed profuse discharge from the wound, causing concern. Dr. Sandeep Suri was summoned, and OP-1 arrived, reassuring them it wasn't severe, claiming the wound

would heal in a day or two. At the Complainant's request on 23.2.2009, Dr. Grewal examined the patient at Holy Help Hospital, indicating a 100% risk factor and an urgent need for another operation due to Septicaemia, with bleak survival chances. Dr. Grewal performed the complex operation transparently, joined by a team of doctors on the critical and precarious patient.

5. Subsequently, the patient remained on a ventilator in ICCU for 42 days and ultimately died on 06.04. 2009. The Complainants made the allegation against the OP-1 doctor that he conducted said surgery dated 14.02.2009, when Doctor Mona Dua OP-2 had administered local Anesthesia to the patient and Dr. Anju Yadav OP-3 had conducted her Ultrasound examination. However, it was not a Laparoscopy surgery but an open surgery. Therefore, all the three OPs are guilty of negligence and deficiency of service on their part. Being aggrieved due to the medical negligence and/or negligence on the part of OPs in their mother's treatment, the Complainants being LR's filed a consumer complaint bearing No. 372/2009 before the District Forum. They sought direction to the OPs to pay Rs.8 Lakhs along with interest, besides damage for harassment, mental agony and litigation expenses etc.

6. In their reply, the OPs contested the accusations primarily on analogous factual grounds. They contended that OP-1 is a qualified doctor with 16 years of surgery experience, did not exhibit any medical negligence in handling the case. On merits, OPs asserted that the patient, Smt. Raj Kumari, aged 60-65 years, arrived at the hospital on 06.02.2009, complaining abdominal pain and vomiting. Having previously consulted a medical practitioner, she underwent an abdominal ultrasound which revealed intestinal swelling. Further tests were conducted, and treatment commenced, including antibiotic medications. Due to an unclear diagnosis, an open surgery was deemed necessary. Both Dr. Rajesh Mehta, MD, and Dr. Ajay Singh, MD, from Holy Help Hospital Hisar, supported OP-1's recommendation for the surgery after discussions with the patient's attendants. The nature and risks of the surgery were explained, and written consent was obtained before the successful completion of the surgery on 14.02.2009, wherein a hole in the intestines was repaired. Due to the patient's respiratory difficulties post-surgery, ventilator support was initiated, and she was referred to Dr. Ajay Singh, MD, for further management. After this point, the OPs claimed no further involvement in the patient's medical treatment. The OPs also contended that the Complainants approached the forum without disclosing all relevant facts. The patient was under the care of OP-1 only from 07.02.2009 to 14.02.2009, and subsequently received treatment from other doctors, including Dr. Ajay Singh, Dr. Sandeep Suri, and Dr. Grewal, who were not included as parties in the complaint. The OPs argued that there was no deviation from the standard treatment protocol by OP-1. They criticized the Complaint's lack of specificity regarding alleged negligence, timing, or specific actions that the OPs failed to undertake. They asserted absence of cause of action and that the complaint is aimed to extort money.

7. OP-1 and OP-3 have also asserted they were covered by professional indemnity insurance with United India Insurance Company (OP-4). OP-2 claimed she only administered general anesthesia without any complications and was unjustly included in the complaint. Similarly, OP-3 contended she only conducted the ultrasound examination and had no further involvement in the patient's treatment. The United India Insurance Company

i.e., OP-4 filed separate reply and contested the case on similar lines and adopted the pleadings of OP-1, supporting the plea for dismissal of the case on the grounds of being baseless and untenable. Top of Form

8. The District Forum in its Order dated 18.7.2014, dismissed the complaint with the following order:

***“26. When we apply well settled principles enumerated above, in dealing with cases of medical negligence, the conclusion becomes irresistible that the complainants in their case in hand have totally and miserably failed to make out any case of medical negligence or any other negligence or any deficiency of service on the part of the opposite parties.*”**

Resultantly, this complaint is hereby dismissed, but with no order as to costs.”

9. Being aggrieved by the District forum order, the Complainants filed an Appeal No. 746/2014 before the State Commission. The State Commission vide order dated 15.12.2016 allowed the Appeal, set aside the Order of the District Forum as follows: -

***“13. More so matter was referred to Civil Surgeon, Hisar about the opinion. Board of Directors gave report dated 14.10.2009 wherein it is clearly mentioned that it was a case of prima facie negligence on the part of respondent No.1. For ready reference the relevant portion of that letter is as under:-*”**

"With reference to your office order No.ST-2009/(8)2256- 58 dated 29.09.2009 and ST-09/2318-19 dated 09.10.2009, the panel of above doctors has studied, analyzed the documents sent by Hon'ble District Consumer Disputes Redressal Forum, Hisar through your good office (returned after duly signed by Panel of Doctors page 1 to 146) and in the opinion of the Panel, it appears that Prima Facie negligence on the part of Respondent No.1 cannot be ruled out and there is nothing in these documents to suggest a prima facie negligence on the part of Respondent Nos.2 and 3"

When board of doctors have also opined that there was negligence ' on the part of the O.P.No.1 he cannot escape from his liability. It cannot be expected from a layman to prove any case beyond shadow of doubt. One can only produce the relevant documents and can narrate all the developments. It is for the experts to look into the matter. As the experts have also found negligence on the part of O.P.No.1, he cannot escape from the liability. Learned District Forum failed to take into consideration this aspect. Due to negligence on the part of the O.P.No.1, complainants lost their mother. So, they are entitled for compensation from him. As per complainants they spent Rs. eight lacs on her treatment. Ex.C-5 shows Rs.7,90,334/- about medicine ICU prescription etc. They must have spent some more amount which is not regularly accounted. So, it can be safely presumed they spent Rs. eight lacs on her treatment. In

view of above discussion the complaint is allowed. The complainants are held entitled for compensation to the tune of Rs. Eight lacs for the treatment alongwith interest @ 09% per annum from the date of filing of the complaint till realization. The complainants are also granted compensation of Rs.50,000/- for mental agony and harassment. O.P.Nos.1 and 4 are held liable to pay the abovesaid amount jointly and severally because O.P.No.4 indemnified liability of O.P.No.1 vide insurance policy Ex.R-4.

10. Dissatisfied by the Impugned Order dated 15.12.2016 passed by the State Commission, the Petitioner/OP-1- Dr. Ajay Sharda has filed instant Revision Petition bearing No. 2798 of 2017 and Petitioner/ OP-4- United India Insurance Co. Ltd. has filed instant Revision Petition No. 3409 of 2017.

11. Upon issuance of notice to the respondents in both Revision Petitions, the learned Counsel for Respondents No. 1 to 3 appeared and acknowledged receipt of the. However, in Revision Petition No. 3409/2014, Respondents No. 5 & 6 have not appeared despite notice being served. Consequently, vide Order dated 26.04.2018, these Respondents were proceeded ex-parte.

12. In the Revision Petition No. **2798/2017**, the Petitioner-Dr. Ajay Sharda has mainly raised the following grounds:-

(a) The State Commission passed the impugned order without hearing the petitioner and considering facts and evidence.

(b) The advocate did not appear on 15.12.2016 for arguments because of wrong noting of date of hearing in her daily diary.

(c) Patient was treated by another doctor before approaching the petitioner and by several doctors for several days after she was referred to another hospital with the consent of her family. Death of patient by itself does not amount to negligence.

(d) The approach to the peritoneal cavity may be laparoscopic or conventional open method. For intestinal procedures, open method is generally preferred. He discussed both options with the patient and relatives and informed them that he exercise choice after she is anesthetized. He opted for standard open surgery approach as a prudent surgeon is expected to do.

(e) The petitioner hospital had only one ventilator, which was already engaged. Thus, it was decided to refer her to another hospital with ICU. In consultation with her family members, the patient was shifted on 14.02.2009 to Holy Hospital.

(f) The State Commission misinterpreted the Board of Directors opinion. They had said that prima facie negligence cannot be ruled out. For negligence to be proved, the complainant needed to submit more concrete evidence to prove his allegations.

13. In the Revision Petition No. **3409/2017**- the Petitioner-United India Insurance Co. Ltd., mainly raised the following grounds: -

(a) The State Commission erred in reversing the well-reasoned order of the District Forum categorically holding the absence of even an iota or pleading or evidence to allege or to prove any negligence or deficiency in service on the part of OP-2, OP-3 and were necessarily impleaded

(b) The State Commission totally erred in not appreciating the contentions of the Insurance Company and the terms and conditions of the policy.

(c) The State Commission ignored the well settled proposition of law established by the Apex Court in United India Insurance Company Ltd. v/s ***Harchand Rai Chandan Lai IV (2004) CPJ 15 (SC)***, that terms of the contract have to be strictly read and natural meaning be given to it. No outside aid should be sought unless the meaning is ambiguous.

14. In RP No.**2798/2017**, the learned Counsel for the Petitioner- Dr. Ajay Sharda reiterated the grounds of Revision Petition and asserted that the State Commission wrongly interpreted the opinion of the Board of Directors. They held that prima facie negligence cannot be ruled out. For negligence to be proved, the Complainant was required to submit more concrete evidence. The Board held that from the available evidence they could not say whether negligence was there or not. Unfortunately, the State Commission had mistaken it to be a case of negligence. It is an established principle of law that the burden of proving negligence is on the person alleging. The State Commission, on the other hand has that "it cannot be expected from a layman to prove any case beyond shadow of doubt. He relied upon the following judgements to support his arguments:-

A) N.T. Subramanyam (Dr) vs. Dr. B. Krishan Rao 2(1996) CPJ, 233.

b) Sh. Inderjeet Singh vs. Dr. P. K. Bhatia, 1998(1) CLT, 55.

c). Martiin FD Souza versus Mohd. Ishfaq - CA No. 3541/2002 1(2009) CPJ 32 (SC).

d) Kusum Sharma & Ors. vs. Batra Hospital & Medical Research- Civil Appeal No. 1385 of 2001.

e) Bombay Hospital & medical Research Centre vs. Asha Jaiswal & Ors- Civil Appeal No. 2332 of 2010.

f) Dr. Harkanwaljit Singh Vs. Gurbax Singh 2003 (1) CPR 256 (NC).

g) Sethuramasubramaniam Vs Triveni Nursing Home 1997(2)CPR 144

h) Dr Gurunathan (Dead) vs Vijaya Health Care 2003(1)CPR222 (NC)

15. The learned Counsel for Respondents No. 1-3/Complainants reiterated the facts of the case and affidavit of evidence filed before the learned State Commission. He asserted that the opinion of the penal of doctors could not be discarded primarily on the ground that the same did not mention / render a finding on the basis of which the Respondent No. 1 was guilty of medical negligence. The opinion had been rendered after duly considering all the relevant materials available record. Thus, this is a case of medical negligence. Therefore, the instant petition deserves to be dismissed.

16. In the Revision Petition No.3409/2017, the learned Counsel for the Petitioner- Insurer (Respondent No. 4 in RP/2798/2017) reiterated the grounds of Revision Petition and asserted that the learned State Commission did not appreciate that the complaint was not-maintainable against the Petitioner Company. In fact the Petitioner company was not a necessary party in this case. The insurance contract is between the Doctor, against whom the medical negligence. In fact the Complainant has no locus to file a complaint against the Insurance Company. The State Commission did not appreciate that the liability the Insurance Company would arise subject to the terms and conditions of the Insurance policy. However, this aspect has been ignored. That even the Respondent No. 4 herein has failed to comply with the terms and conditions of policy as enshrined therein, including informing the Petitioner Company, regarding any alleged action taken by the Complainant/ Respondents No. 1 to 3 herein and receipt of any summons etc. That the Petitioner Company takes all claims under the terms and conditions of the policy of Professional indemnity for doctors and Practitioners.

17. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by learned Counsels for both the parties.

18. In both Revision Petitions No. 2798/2017 and No. 3409/2017, the primary issue revolves around allegations of medical negligence in respect of the death of the patient who is the mother of the Petitioners and the legal implications thereon. As regards allegations against Dr. Ajay Sharda that he acted negligently in treating Smt. Raj Kumari, leading to her deteriorating condition and subsequent transfer to another hospital where she died, he asserted that the surgical outcome should not be automatically construed as evidence of negligence. He defended his choice of a conventional open surgery method and argued against the interpretation of the Board of Directors opinion. In RP No. 3409/2017 (United India Insurance Co. Ltd.) the central issue is the liability of the insurance company in the context of alleged medical negligence by Dr. Mona Dua and Dr. Anju Yadav. The Insurance Company contended that the complaint against the insurer lacks merit and should be dismissed based on the terms and conditions of the insurance policy. Thus, both cases are

centred on determination of medical negligence and thereafter the liability of the treating doctor (Dr. Ajay Sharda) in the first case as well as liability of the insurance company (United India Insurance Co. Ltd.) in the second case.

19. The Hon'ble Supreme Court laid down certain duties of the doctor in **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.

20. The Hon'ble Supreme Court in **Jacob Mathew v. State of Punjab**, (2005) SSC (CrI) 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."

21. In the present case, the patient experienced abdominal pain on 04.02.2009 and consulted Dr. Girdhar. He prescribed medicines. The next day, suspecting some stone-related issue, he advised consulting a surgeon. On 06.04.2009, she consulted Dr Ajay Sharda (OP-1) at Sharda Nursing Home. OP-1 discontinued previous medicines, prescribed own medicines

and suggested an ultrasound as her condition was deteriorating. On 07.02.2009, Dr. Anju Yadav (OP-3) conducted an ultrasound. OP-1 reviewed the report and recommended continuing his prescribed treatment. However, her condition worsened, due to night-time vomiting and hospitalisation. At 11:00 AM the next day, OP-1 diagnosed intestinal swelling, suggested his prescription be continued. As the vomiting persisted on 09.02.2009, OP-1 called Dr Rajesh Mehta who prescribed additional medicines. Yet, the vomiting persisted. OP-1 then advised the Complainants to consult Dr. Ajay Singh at Holy Help Hospital. Dr. Ajay Singh recommended laparoscopic Surgery, in coordination with OP-1. On 13.02.2009, OP-1 performed Surgery on 14.02.2009, explaining a small incision near the 'Nabhi' to clear intestinal blockage. While she was initially stable, later, oxygen cylinders were seen being taken into the OT due to respiratory issues. Later, the patient was shifted to Holy Help Hospital's ICCU on a ventilator upon Dr. Ajay Singh's advice, who indicated a 50-50 chance of survival.

22. The main contentions and allegations emerged hereon. It was alleged that during the patient's dressing sessions, OP-1 avoided showing the size of the wound of the patient. However, during a dressing session at Holly Help Hospital's, the patient's family noticed profuse discharge from the wound, causing concern. When they summoned Dr. Sandeep Suri to explain the nature of surgery undertaken, OP-1 arrived and reassured them that it wasn't severe and that the wound would heal in a day or two. At the request of the Complainant on 23.2.2009, Dr. Grewal examined the patient at Holy Help Hospital, indicated a 100% risk factor and an urgent need for another operation due to Septicaemia, with bleak survival chances. While Dr. Grewal performed the complex surgery transparently, joined by a team of doctors, the patient remained on a ventilator in ICCU for 42 days and ultimately died on 06.04. 2009. The assertion of the Complainants against OP-1 is that he conducted the surgery on 14.02.2009 when OP-2 had administered local Anesthesia. The main contention is that what was conducted on the patient was not a laparoscopy surgery but an open surgery on 14.02.2009. No consent was taken for the same and the surgery had led to septicemia, critical condition, remaining on ventilator and died on 06.04.2009. Therefore, all the three OPs are guilty of negligence and deficiency of service on their part.

23. On the other hand, OPs asserted that the patient arrived at the hospital on 06.02.2009, complaining of abdominal pain and vomiting. As they consulted a doctor earlier, she underwent an abdominal ultrasound which revealed intestinal swelling. Further tests and treatment commenced, including antibiotics. Due to an unclear diagnosis, an open surgery was deemed necessary. Both Dr. Rajesh Mehta, MD, and Dr. Ajay Singh, MD, from Holy Help Hospital, supported recommendation of OP-1 for the surgery, after discussions with the patient's family. He explained the nature and risks and written consent was obtained before the surgery on 14.02.2009, wherein a hole in the intestines was repaired. Post surgery, due to the patient's respiratory difficulties, ventilator support was considered necessary. Thus, she was referred to Dr. Ajay Singh for further management. The patient was under the care of OP-1 only from 07.02.2009 to 14.02.2009, and subsequently received treatment from other doctors, including Dr. Ajay Singh, Dr. Sandeep Suri, and Dr. Grewal, who were not parties in the case. OP-1 asserted that there was no deviation from the standard treatment protocol. OP-1 and OP-3 notified of being covered by professional indemnity insurance with United India Insurance Company (OP-4). OP-4 contested the case on similar lines and asserted the plea for dismissal of the case for being baseless and untenable. Top of Form

24. It is undisputed position that OP-1 conducted the surgery on the patient on 14.02.2009 when OP-2 administered Anaesthesia. He informed the relative that laparoscopy surgery would be conducted. However, open surgery was performed on 14.02.2009. It is also undisputed that the surgery had led to septicaemia, critical condition of the patient and as a sequel she remained on ventilator and died on 06.04.2009. While the OP-1 had stated that consent for conventional surgery was obtained from the family, the same was not established. Notwithstanding the consent, if any, it is also undisputed that OP-1 performed an open surgery on the patient on 14.02.2009 and the surgery led to septicaemia, critical condition of the patient, she remained on the ventilator in a different Hospital and died on 06.04.2009. The learned State Commission had referred the case to a Board of Directors for Medical Opinion. The Board of Directors opined that:

"With reference to your office order No.ST-2009/(8)2256- 58 dated 29.09.2009 and ST-09/2318-19 dated 09.10.2009, the panel of above doctors has studied, analyzed the documents sent by Hon'ble District Consumer Disputes Redressal Forum, Hisar through your good office (returned after duly signed by Panel of Doctors page 1 to 146) and in the opinion of the Panel, it appears that Prima Facie negligence on the part of Respondent No.1 cannot be ruled out and there is nothing in these documents to suggest a prima facie negligence on the part of Respondent Nos.2 and 3"

25. It has also been held by the Hon'ble Supreme Court in the case of *DLF Homes Panchkula Pvt. Ltd. Vs. D.S. Dhanda*, in CA Nos. 4910-4941 of 2019 decided on 10.05.2019 that multiple compensations for singular deficiency is not justifiable. Therefore, the award of Compensations of Rs.50,000/- on account of mental agony and harassment is found to be not tenable.

26. With due consideration of the above deliberations and facts and circumstances of the case, I am of the considered view that the order of the learned State Commission in FA No. 746 of 2014 dated 15.12.2016 is based on facts and law and does not require any interference, except for grant of Rs.50,000/- as compensation over and above the interest element already granted. Therefore, the order of the learned State Commission in FA No. 746 of 2014 dated 15.12.2016 is modified as under:

ORDER

I. The Opposite Party No. 1 (Dr. Ajay Sharda) and Opposite Party No.4 (Insurer) are jointly and severally directed to pay the Complainants Rs.8,00,000, along with simple interest @ 9% per annum from the date of filing of the complaint till realization, within a period of one month from the date of this order. In the event of delay beyond one month, the interest rate applicable for such extended period will be @ 12% per annum.

II. The compensation of Rs.50,000/- awarded towards mental agony and harassment is set aside.

27. The Revision Petitions No. 2798 of 2017 and 3409 of 2017 are accordingly disposed of. There shall be no order as to costs.

28. All pending Applications, if any, stand disposed of accordingly.

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