

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 487 OF 2011

(Against the Order dated 18/10/2011 in Complaint No. 5/2009 of the State Commission
Chandigarh)

1. SUPERB MRI & C.T. SCAN

SCO No. 24-25, Sector 8-C, (through Dr. Tejinder Kaur)

CHANDIGARH-

.....Appellant(s)

Versus

1. KANAV CHOPRA (MINOR) & ANR.

S/o. Sh. Rajesh Chopra (through his father and natural
gurdian)R/o Street No. 1, Professor Colony Sihand,

DISTRICT- FATEHGARH SAHIB

2. THE NEW INDIAN ASSURANCE COMPANY LTD,

Branch Office, SCO No. 54-55, Sector-34-A,

CHJANDIGARH

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE A. P. SAHI, PRESIDENT

FOR THE APPELLANT : MR. P.S. KHURANA, ADVOCATE

FOR THE RESPONDENT : FOR KANAV CHOPRA : MR. ABHISHEK PURI, ADVOCATE
MS. SURBHI GUPTA, ADVOCATE
MR. SAHIL GREWAL, ADVOCATE

Dated : 27 February 2024

ORDER

1. The Appeal arises out of an Order of the SCDRC, UT Chandigarh dated 18.10.2011 whereby the learned State Commission has allowed the Complaint filed by the Respondent No.1 and has awarded compensation, expenses and litigation costs as against a claim of medical negligence. The negligence is precisely alleged against Dr. Tejinder Kaur who is running the Opposite Party No.1 Scanning centre contending that the report of imaging dated 13.01.2007 was a wrong report, contrary to the images that existed, and which were necessarily to be mentioned for a proper diagnosis. It is alleged that on account of this incorrect and wrong report, the future treatment of the Complainant could not be undertaken timely and was delayed, resulting in the loss of the eye-sight of the left-eye of the Complainant. The loss was on account of the optical nerve been infected with a malignant growth which was not depicted in the report dated 13.01.2007. The claim was, that had the correct radiological symptoms been recorded, the Complainant would have immediately undertaken the follow-up treatment which could not be accomplished due to this incorrect reporting by the Appellant. The State Commission after having examined the Evidence, the facts and the sequence of events came to the conclusion that there was a deficiency and a lapse amounting to negligence on the part of the Appellant by giving a wrong MRI report and consequently such a medical negligence on his part made him liable to compensate the Complainant on account of loss of vision of the left eye of the Complainant.

2. At the outset, certain facts need to be recorded namely that before the State Commission, an application had been filed on 04.08.2010 by the Complainant for seeking expert opinion, but the said application remained pending and was finally dismissed alongwith the main Complaint on 18.10.2011 recording that since there was enough material on record that was sufficient for the adjudication and just decision of the case, hence no further expert opinion was needed. The second aspect is that the impugned Order was subjected to a challenge in two Appeals, one being the present Appeal being F.A. No.487/2011 filed by the Scanning Centre through Dr. Tejinder Kaur. Another Appeal was filed being F.A. No.532/2011 by the Opposite Party No.2 Insurance Company as Dr. Tejinder Kaur had a professional indemnity insurance coverage from the said Insurance Company. Both these Appeals were listed on 21.08.2023 and on account of the absence of the learned Counsel, both the Appeals were dismissed for want of prosecution. M.A. No.544 /2023 is a Restoration Application that was filed by the present Appellant only and accordingly on 15.11.2023 the said Restoration Application was allowed restoring this Appeal. Thus, the Appeal filed by the Insurance Company being F.A. No.532/2011 as on date stands dismissed for want of prosecution.

3. Another fact which needs mention is that after the filing of the present Appeal, an interim Order was passed on 02.01.2012 granting stay against the impugned Order subject to a deposit of Rs. 10 lacs. The said amount of Rs.10 lacs was deposited and vide Order dated 16.01.2013, this Commission allowed the interim Order to continue and admitted the present Appeal subject to a further direction that the amount of Rs.10 lacs deposited under the interim Order dated 02.01.2012 shall stand released in favour of the Complainant.

4. It is in this background that the present Appeal was heard and Orders were reserved on 16.02.2024.

5. Learned Counsel for the Appellant advanced his submissions contending that the Complainant alongwith his guardian came to the appellant Clinic/Scanning centre on 13.01.2007 on their own without there being any prescription or medical advice from any medical practitioner and requested for an ordinary MRI Scan.

6. According to the Appellant, the father of the Complainant was advised to seek a specialist's opinion for specifying the area and type of scan required to be done but the Complainant's father didn't adhere to this and insisted on Dr. Kaur to conduct a routine MRI of the brain without any injection of any medicine. It is in these circumstances that a plain MRI Scan was done and the father was advised to consult some specialist doctor for proper medical treatment.

7. Since the arguments on negligence rests primarily on the said report dated 13.01.2007 being incorrect, it would be appropriate to reproduce the same:

“PATIENT'S NAME: MST. KANNAV CHOPRA

AGE/SEX: 9 Y M

DATE 13.01.07

MRI SCAN OF BRAIN

PROTOCOLS-T1 SE/T1 TSE-FLAIR AXIAL, T2 _____ AND T2 TSE CORONAL IMAGING FOR BRAIN DONE ON 1.5 T SUPERCONDUCTING MR

MR scan reveals normal signal intensity of the cerebellum, brainstem structures including medulla, pons & mid brain without demonstrable granulomatous neoplastic pathology/ area of vascular insult or abnormal myelination. The 4th ventricle is normal.

The VII/ VIII nerve complex is well visualized in their _____-canalicular/CP angle cisternal regions and **do not reveal any abnormal T2WI hyperintensity asymmetry or mass lesion.**

Bilateral cerebral hemispheres / basal ganglionic regions show **normal signal intensity without demonstrable area of edema focal lesion of neoplastic or active granulomatous nature/significant area of vascular insult or haemorrhage. No demonstrable AVM is noted in present study. The myelination pattern in supratentorial regions is within normal limits.**

Supratentorial ventricular system is normal. No midline shift/ extracerebral collection is noted.

The corpus callosum and other commissural fibres are normal in development.

The sella, orbits and retroorbital spaces do not reveal any localizing lesion.

The circle of Willis structures/major venous _____ are normal.

VISUALIZED BILATERAL PARANASAL SINUSES _____

IMPRESSION:-

NORMAL MR STUDY OF BRAIN WITHOUT DEMONSTRABLE SIGNIFICANT NEUROLOGICAL LOCALIZING LESION IN PRESENT STUDY.

.TEJINDER KAUR”

A perusal of the said report indicates that no abnormality was found including the ‘SELLA’, orbits and retroorbital spaces. It has been categorically stated that the said region does not reveal any localizing lesion. The significant word to be noticed is ‘SELLA’ used in the said report about which, there is a controversy raised that subsequently a whitener was used on the report to eclipse the word ‘SELLA’ from the said report.

8. The Complainant, thereafter, appears to have been examined by an ophthalmologist at Grewal Eye Institute on 13.01.2007 itself where the vision of the right and the left eye was reported to be 6/5 and 6/6. According to the learned Counsel for the Appellant, there was absolutely no abnormality of vision as on the date when the eyes were examined at Grewal Eye Institute and hence, the imaging report did not suffer from any infirmity nor could it be suspected to be wrong. The document of Grewal Eye Institute is not disputed.

9. It is then submitted that not only this, the Complainant visited Prakriti Brain & Nerve Research Centre on 19.01.2007 and a provisional diagnosis at that stage indicated a suspicion about sharp decline in the vision but the same was suspected on diagnosis due to Mild Refractory Errors and therefore, advice was given for other clinical and medical examination. Learned Counsel for the Complainant contends that even these doctors could not locate any indication of a suspected malignant abnormal growth.

10. Learned Counsel then invited the attention of the Bench to the report of Dr. J.S. Chopra, an eminent neurologist who examined the Complainant on 21.01.2007 and the said report is also on record. While recording the symptoms, he indicated that the patient had a headache for the past two months and had reported loss of vision since last Tuesday and was also examined at Grewal Eye Institute. He also recorded that the patient could not see small things and reading was difficult. He also noted that the patient had been examined by another Dr. Walia as well. He provisionally diagnosed that there were no neuro defects and it was a possible headache or migraine and went to the extent of saying that the behaviour of the patient could be functional. It was also noted by him that Dr. Bansal had examined him and reported his vision to be 6/6 on both sides. Learned Counsel for the Appellant submits that even Dr. Chopra, who had examined the Complainant, didn't indicate any such complication after having independently examined the Complainant clinically.

11. The submission of the learned Counsel for the Appellant is that there were no symptoms to possibly detect or suspect any other possibility at that moment. Learned Counsel for the Appellant then urged that the patient was taken to the Postgraduate Institute of Medical Education & Research (PIMER), Chandigarh, and was examined as an out-patient on 31.01.2007 with an advice to be checked for **Relative Afferent Pupillary Defect (RAPD)**.

12. The follow-up review was undertaken and on 05.02.2007, he was examined in the neurology department of PIMER. Dr. V. Lal having noticed the said symptoms suspected a possible growth on the left side and advised an MRI. Learned counsel for the appellant urged that this was the first clinical diagnosis by an expert of that field suspecting a growth.

13. The Complainant alongwith his father again came to the Appellant Scanning Centre and on 05.02.2007 a Contrast MRI was conducted on the said prescription. On this occasion, the contrast MRI according to the Appellant, disclosed a growth enclosing and superimposing the optic nerve of the left eye of the Complainant measuring 5.28 x 3.8 x 3.87 cms. The report also categorically stated that the said growth was causing bilateral optic nerve compression in the regions concerned. While reciting the impression it was also recorded that the growth was most likely an aggressive fungal infection (invasive aspergillosis).

14. It is at this stage that it needs to be clarified that the Complainant alleged that Dr. Kaur took the earlier report dated 13.01.2007 and applied a whitener over the word "SELLA" in that report. According to the Complainant, this was done intentionally, possibly to reflect as if no imaging had been done with regard to Sella region. This fact has been stated in Para-13 of the Complaint, but the same has been vehemently denied in Para-13 of the Written Statement to which there is no counter rebuttal as a Rejoinder does not appear to have been filed before the State Commission by the Complainant. Learned Counsel for the Appellant,

therefore, urges that this allegation of the application of a whitener later on is incorrect as the said report was in the custody of the guardian of the Complainant.

15. With the help of the written submissions on behalf of the Appellant, it is submitted that the Complainant undertook his treatment subsequently at Bombay and then at Rajiv Gandhi Cancer Institute in Delhi where he was given chemotherapy and other medicines that might have also created an adverse impact for which reliance has been placed on medical literature that has been filed alongwith the said written submissions.

16. Learned Counsel contends that the eye-sight of the Complainant had not suffered any loss of vision as on the date of the first ordinary MRI conducted on 13.01.2007. The MRI was conducted by the Appellant which did not cause any ailment leading to the complications later on. Thus, according to the learned Counsel, there was no contribution at all towards the ailment of the Complainant nor was the MRI conducted on 13.01.2007 a cause for the disease.

17. To substantiate this, he reiterated that the visit of the Complainant to the other doctors on 19.01.2007, 21.01.2007 and their assessment as noted above didn't disclose any such diagnosis that was expected to be noted by the Appellant in the report dated 13.01.2007.

18. It is also urged that no statement on oath regarding the treatment of the Complainant was recorded by the State Commission to establish that the loss of eye-sight was on account of any treatment or lack thereof on the part of the Complainant.

19. It has been emphasized that the first MRI conducted on 13.01.2007, was not on any prescription or advice of a medical practitioner suspecting any growth and was simply an ordinary MRI conducted on the voluntary request of the Complainant's father.

20. As against this, the subsequent MRI dated 05.02.2007 was conducted after the Complainant had visited and was examined at PIMER, Chandigarh, where he was advised to get a contrast MRI done. The contrast MRI was conducted after injecting the appropriate medicines that are required for a proper imaging in order to locate any growth or otherwise. Thus, the subsequent report was based on a contrast MRI which indicated the existence of the growth. It is urged that during this period from 13.01.2007 to 05.02.2007, it is quite possible that the growth may have become prominent enough that came to be detected only after a contrast MRI was conducted.

21. Thus, according to the learned Counsel for the Appellant, no neglect or deficiency can be alleged against the Complainant in respect of the report dated 13.01.2007 and hence, it is urged that the State Commission erroneously described the said report to be a wrong depiction of the images. It is submitted that this may possibly fall within an error of judgment but there is no evidence of malfeasance or any deliberate neglect.

22. It is also submitted by the learned Counsel for the Appellant that once the report had been given after contrast MRI on 05.02.2007, the treatment itself commenced almost more than 15 days thereafter. This delay might have caused further complications which cannot be attributed to the Appellant.

23. Reliance has been placed on several judgments to contend that medical negligence cannot be attributed without their being any indication of deviation by the Appellant from the normal professional practice and reference has been made to the judgment of the Apex Court in the case of **Malay Kumar Ganguly vs. Dr. Sukumar Mukherjee & Ors. reported in 2009 Vol.9 SCC Page-221**. The same also refers to the earlier judgment in the case of Jacob Mathew as well as the judgment in the case of **Smt. Savita Garg vs. The Director, National Heart Institute reported in 2004 Vol.8 SCC Page-56**. It is urged that applying the principles laid down in the above mentioned cases, the Appellant had exercised a fair and reasonable degree of skill expected of her and therefore, no negligence can be attributed in respect of the MRI report dated 13.01.2007.

24. It is further submitted by the learned Counsel for the Appellant that the State Commission has abruptly concluded to award Rs.20 lacs as compensation on account of mental agony, physical harassment and loss of career without any discussion or applying any empirical method. It is urged that this abrupt conclusion is not in conformity with the parameters that have been laid down in the judgments referred to above, and the absence of any material to support the claim of Rs.20 lacs as compensation, the same could not have been allowed on a bald allegation made in Para-27 of the Complaint which had been vehemently denied in the Written Version of the Appellant and the Evidence led. It is also urged that there is no proper calculation of the actual medical expenses for which some bills were tendered and even otherwise there is no loss of career to the Complainant who after the treatment has been able to establish himself professionally as a lawyer which is a family profession of the Complainant. The submission, therefore, is that neither any negligence has been made out nor any justification existed for award of any compensation.

25. Countering the said submissions, learned Counsel for the Complainant has relied on the very same documents and has urged that the issue is not of any incorrect treatment being rendered by the Appellant, but the issue is of the incorrect imaging and reporting by the Appellant in the MRI Scan conducted on 13.01.2007. It is urged that the incident of applying whitener on the word 'SELLA' is apparent and even if the same has been denied, the report given is wrong, in as much as, the said report dated 13.01.2007 was examined by Rajiv Gandhi Cancer Institute and Research Centre on 09.12.2009 and a review report thereof indicates that the said imaging on 13.01.2007 indicated the growth and circling bilateral optic nerve. The said report is extracted hereunder:

“MRI REVIEW Report

Procedure Description:

Non contrast MRI study of head done elsewhere on 13 Jan 2007 and provided on films in respect of Kannav Chopra 9 Y/M, was reviewed. The following comments were offered:

Finding:

Heterogenous altered intensity lesion is seen in the sellar and suprasellar regions involving the sphenoid sinus and laterally bilateral cavernous sinuses partially encasing the cavernous carotids. The mass is also partially encasing bilateral optic nerves. Optic

chiasma however is free. **The mass is involving the posterior ethmoidal cells** with extradural soft tissue thickening in bilateral basifrontal regions. The pituitary gland is not discretely identified. The clivus appears unremarkable.

Soft tissue lesion of altered intensity seen in the nasopharynx effacing bilateral fossa of rosenmullar possibly adenoids.

Cerebral parenchyma shows normal signal intensity. No focal mass lesion is noted. Brainstem and cerebellum are free. Bilateral CP angles are unremarkable.

Impression:

Lesion in relation to sella & sphenoid shared with extensions as described. Suggest contrast MRI for further evaluation.

DR.SANGEETA:

ASSOCIATE CONSULTANT

DR.A.JENA:

CHIEF OF MRI"

26. However, this gets further confirmed by the report of the Grewal Eye Institute dated 28.12.2010. The same is extracted herein under:

“Master Kanav Chopra 14 M, S/O Mr. Rajesh Chopra, R/O Taraqi Mohalla, Villa Street No. 1, Professor Colony, Sirhind, Punjab, was examined at Grewal Eye Institute vide GEI No. 197503 on 15th Jan, 2007 with complaints of headache associated with nausea, his visual acuity recorded elsewhere was 6/5 in both the eyes on 13th Jan, 2007. He was again seen here on 19th Jan, 2007 with the best corrected visual acuity of 6/24 in the right eye and 6/36 in the left eye. Rest of ocular examination was within normal limits. He was advised visual evoked potential (VEP) as per records. He was asked to follow up.

Patient again reported on 24th Oct, 2007. Medically, he was diagnosed to have burkitt's lymphoma and had received chemotherapy for the same. On ocular examination, his unaided visual acuity was 6/6 in the right eye and 6/36 mainly in temporal field in the left eye. Slit lamp examination revealed normal anterior segment structures. Fundus examination showed bilateral temporal disc pallor. Visual fields

examination revealed the presence of central in right eye and dense generalized scotoma in left eye

He was again seen here on 05th Mar, 2008. On examination, he had an unaided visual acuity of 6/6 in the right eye and hand movements (close to face) in the left eye. Visual fields examination revealed the presence of scotomatous areas. He was again seen here on 28th June, 2008. Best corrected visual acuity was same. Left eye revealed the presence of afferent papillary defect + in the left eye. Fundus examination showed the presence of optic atrophy in the left eye. Visually evoked potential examination revealed abnormal wave patterns with decreased amplitudes and increased latency in the left eye and also increased latency in right eye. Visual Field findings were same.

His next visit with us was on 27th Jan, 2009, visual acuity was 6/9 in the right eye and counting fingers in the left eye, visual fields examination (Full field 120-2) was not reliable due to high errors right eye showed prolonged latency with normal amplitude, Left eye VEP waves were markedly attenuated.

His next visit with us was on 06th Jan, 2010. Repeat visual fields and VEP were done on the same day. Visual fields and VEP showed no significant change from last visit

Patient's last follow up with us was on 27th Dec, 2010. His best corrected visual acuity was 6/6 in the right eye and counting fingers 3 feet in the left eye. There was presence of relative afferent pupillary defect (RAPD) in the left eye. Fundus showed mild temporal disc pallor in the right eye and gross disc pallor on the left side. Repeat visual field testing showed presence of a small central scotoma in the right eye and dense generalised scotoma in the left eye. The visual prognosis has been explained. The vision in the left eye is unlikely to improve further, because of presence of optic atrophy.

Patient has been advised regular follow up.”

27. The contention is that the said image was examined and it clearly indicated the symptoms that affected the optic nerve being compressed. The submission is even though these two reports have been given later on but they are in respect of the same MRI scan dated 13.01.2007. Consequently, the image itself was not correctly observed by the Appellant and a wrong report was tendered on 13.01.2007 which misled the diagnosis subsequent thereto. It is urged that had the imaging been reported correctly, it is quite possible that the disease would have been located earlier for a prompt treatment. The contention, therefore, is that this period from 13.01.2007 upto the second contrast MRI conducted on 05.02.2007 was the period when the disease aggravated and the result was obvious with the growth having assumed proportions thereby badly affecting and compressing the optic nerve of the left eye. The severity of this aggressive development was such that the Complainant virtually lost his left eye-sight due to this negligence. The act and omission of the Appellant, therefore, prevented an early and prompt diagnosis of the disease and the growth pressing the optic nerve which is evident from the facts narrated above. The submission is that even if the eye-sight was not lost on 13.01.2007, yet it declined sharply as has been noted in the reports dated 19.01.2007 at the Prakriti Brain & Nerve Research Centre and report of Dr. J.S. Chopra dated 21.01.2007 that has also recorded a decline in the vision of the Complainant.

28. It is, therefore, submitted that the onset of the loss of vision had already commenced and the same could have been prevented, had the Appellant given a correct report on 13.01.2017.

29. Learned Counsel, therefore, submits that the findings recorded by the State Commission did not suffer from any infirmity and the Order of the State Commission impugned herein deserves to be upheld. He further referred on the following judgments to substantiate his submissions:

- (a) Bombay Hospital & Medical Research Centre Vs. Sharifabai ismail Syed & Ors. 2008 (1) CPJ 432
- (b) Spring Meadows Hospital Vs. Harjol Ahaluwalia & Ors. 1994 (4) SCC 39
- (c) V. Krishnakumar Vs. State of Tamil Nadu & Ors. 2015 (9) SCC 388
- (d) V. Krishan Rao Vs. Nikhil Super Speciality Hospital 2010 (5) SCC 513
- (e) Marghesh K. Parikh (Minor) Vs. Dr. Mayur H. Mehta 2011 (1) SCC 31
- (f) A. Srimannarayanan Vs. Dasari Santakumari And Another 2013 (9) SCC 496
- (g) Savita Grag Vs. Director, National Heart Institute (2004) 8 SCC 56
- (h) Smt. Vudumula Leelakumari Vs. Dr. M. Ravindra 2004 (3) CPJ, 475

30. In particular, learned Counsel invited the attention the judgment in the case of **V. Krishnakumar Vs. State of Tamil Nadu & Ors. (supra)** to urge that this form of loss of sight/ blindness was assessed by the Apex Court and it was also held that in view of the nature of the loss, which was blindness in that case, the formula indicated in Para-26 of the said judgment should be adopted for enhancing the compensation. Learned Counsel submits that this can be done by this Forum while deciding this Appeal even though no separate Appeal has been filed by the Complainant for enhancement. The contention is that this counter request can be accepted and the relief granted by the State Commission can be modified in favour of the Complainant.

31. Having heard the learned Counsel for the parties and having perused the documents on record, it is correct that the first MRI report dated 13.01.2007 was a simple MRI conducted on the voluntary request of the father of the Complainant. The same was not on any prescription or provisional symptoms coupled with any diagnosis by any medical practitioner. It appears that the Complainant's father in precaution undertook this imaging test and there was no indication of any existence of any growth developing within the ocular region of the child. It is also evident that the child visited Grewal Eye Institute on the same date and his vision was found to be normal. There was some suspected loss of vision which is evident from the report of Prakriti Brain & Nerve Research Centre dated 19.01.2007, yet there is no indication or suspicion of any growth or suspected complication. The defect in

vision and headache was noticed by Dr. J.S. Chopra on 21.02.2007 who also did not give any indication or suspicion of a suspected growth. It is, however, also evident that these opinions were tendered, may be on a perusal of the said MRI ordinary scan dated 13.01.2007. It will therefore not be appropriate to conclude that the independent diagnosis of these subsequent doctors had altogether been influenced by the MRI report dated 13.01.2007, but it is quite possible that reliance was placed on the said report and consequently no analysis was made with regard to the existence of any possible growth over the optic nerve.

32. It is, thus, evident that this time gap from 13.01.2007 onwards was utilised by the Complainant's father keeping in view the ailments suffered by the Complainant by getting him investigated before an ophthalmologist as also a neurologist. Thus till 05.02.2007, no doctor had diagnosed any suspected growth.

33. It seems that the depth of the investigation further at PIMER, Chandigarh led to a suspicion by Dr. V. Lal who again advised for a proper Contrast MRI on 05.02.2007. Consequently, the contrast MRI after injecting medicine was conducted which obviously was a more secured, sophisticated and medically prescribed protocol for conducting imaging in order to find out such a complication. No other doctor who had examined the Complainant after 13.01.2007 had suggested a contrast MRI and which came to be prescribed only on 05.02.2007.

34. The second examination through a contrast MRI on 05.02.2007 confirmed the existence of a growth compressing the optical nerves. What is significant that the report of Rajiv Gandhi Cancer Institute and Research Centre dated 09.12.2009 and the report of Grewal Eye Institute dated 28.12.2010 regarding the correctness of the MRI report dated 13.01.2007 unequivocally indicate that the said image of first plain MRI did contain the images of growth even though at the initial stage. It is this growth which gained proportions and has been indicated in the contrast MRI dated 05.02.2007. Whether the Appellant had deliberately put a whitener or not, does not appear to be relevant in as much as the imaging on 13.01.2007 and on 05.02.2007 is in respect of the same area and location and it is also recorded in the report dated 05.02.2007 that the growth was seen in the images. The report dated 13.01.2007, therefore, as held by the State Commission to be an incorrect report gets fortified by the aforesaid documents, which was accepted by the State Commission. These two reports dated 09.12.2009 and 28.12.2010 were, therefore, sufficient evidence to indicate that the 13.01.2007 report was not correct and this error was not an error of judgment on the part of the Appellant but was sheer negligence. Had the report been correctly recorded or any doubt expressed about any growth, the same would have been a different story. But on a perusal of the report dated 13.01.2007, it is clear that the Appellant had clearly opined that there was no abnormality seen in the 'SELLA' region. This is contrary to what was confirmed later on 09.12.2009 by the Rajiv Gandhi Cancer Institute, even though the other doctors who had examined the Complainant between 13.01.2007 and 05.02.2007 had not been able to suspect the same. The report on imaging is exclusively a responsibility of the Appellant and therefore, in view of what has been said in the Reports dated 09.12.2009 of Rajiv Gandhi Cancer Institute and Research Centre and 28.12.2010 of the Grewal Eye Institute confirms that the report about the imaging as transcribed and recorded on 13.01.2007 was misleading. There is no evidence or plausible explanation contradicting the said reports by the appellant. This negligence, therefore, cannot be ruled out and the preponderance of probabilities given the circumstances aforesaid lead to the conclusion that

the Appellant was negligent in discharging the professional duties that is expected of a medical practitioner of the field possessed of ordinary skills. Consequently, the conduct and omission of the Appellant Dr. Tejinder Kaur, clearly qualifies as a negligence on her part. Therefore, the State Commission has rightly proceeded to hold her liable.

35. The issue with regard to quantum of compensation is slightly troublesome in the sense that the learned Counsel for the Appellant is correct in his submission that the conclusion drawn is sudden and abrupt without any reason to support the award of Rs.20 lacs as compensation. There is no reason given nor any calculation made in spite of fact that it was known that the patient/Complainant was 9 years old when the Complaint was filed and he ultimately lost his left eye-sight. It is correct that it is not a case of blindness but the fact remains that this was not a simple case of loss of vision but it was the destruction of the optic nerve which is permanent in nature. Not only this, it was on account of a malignant growth which if detected at the earliest could have been obviated by a more prompt treatment. However, the treatment came to be delayed a bit even after the report was given by the Appellant on 05.02.2007.

36. It is not very easy to proportionately attribute negligence on account of such a delay as both sides have not filed adequate material or evidence to that effect. The claims and counter claims are, therefore, only based on assumptions and hence, the calculation of the compensation deserves to be made on some empirical basis, more particularly, when it relates to non-pecuniary damages. The expected age of the child even if taken to be 70 years, left him with vision in only one eye for the rest of his life. The Complainant has not filed any Appeal so as to apply the formula as suggested by the Apex Court in the case of **V. Krishnakumar (supra)**. Nonetheless, it has to be seen as to whether, the State Commission, even though has not given any reason, can the compensation of Rs.20 lacs awarded by it be upheld.

37. In my considered opinion, keeping in view the life-span of the child who may now have joined the legal profession as orally urged by the learned Counsel for the Appellant, has suffered a loss including physical harassment and of course will continue to be agonized throughout his life. It is, thus, not only the actual loss suffered by him but also the expected disadvantages which he is likely to suffer in future. With a vision of only one eye, he is bound to face disadvantages in his legal profession as well as his personal life. The prospects of a marriage and future employment would be marred by this handicap. Considering the age-span and the overall circumstances of the case and also the fact that no Appeal for enhancement has been filed by the Complainant, I see no reason to interfere with the amount of Rs.20 lacs awarded as compensation to the Complainant which appears to be just and reasonable.

38. So far as medical expenses are concerned, the original records do indicate the bills and vouchers that have been filed and which in fact have not been seriously disputed by the Appellant in the Written Statement filed before the State Commission. Thus, the expenses of Rs.10 lacs in the background that the Complainant had visited Bombay for his treatment and had also undertaken chemotherapy at the Rajiv Gandhi Cancer Institute and Research Centre coupled with the travel expenses, the sum of Rs.10 lacs has been rightly awarded. Litigation expenses is very minimal which is Rs.10,000/- and therefore, the same also does not call for any interference.

39. Consequently, for all the reasons herein above, this Appeal lacks merit and is accordingly dismissed.

40. The Complainant would be entitled to the entire amount as awarded by the State Commission subject to the adjustment of Rs.10 lacs which has already been released in terms of the Orders passed by this Commission referred to herein above.

.....J
A. P. SAHI
PRESIDENT