

**NATIONAL CONSUMER DISPUTES REDRESSAL
COMMISSION
NEW DELHI**

REVISION PETITION NO. 2328 OF 2024

(Against the Order dated 22/03/2024 in Appeal No. A/1680/2015 of the
State Commission Uttar Pradesh)

1. SANCHALAK PUSHPAY HOSPITAL & ATENDENT
PUSHPAY HOSPITAL GANDHI NAGAR AKABARPUR
KANPUR DEHAT
KANPUR DEHAT
UTTAR PRADESH

.....Petitioner(s)

Versus

1. ARUN KUMAR KUSHWAHA & ORS.
VILL. AND POST BADA GAON BHIKHI POLICE
STATION-DERAPUR DISTT. KANPUR DEHAT
KANPUR DEHAT
UTTAR PRADESH

2. GAURAV KUSHWAHA
S/O SHRI ARUN KUMAR KUSHWAHA VILLAGE.
AND POST- BADA GAON BHIKHI POLICE
STATION-DERAPUR DISTT. KANPUR DEHAT
KANPUR DEHAT
UTTAR PRADESH

3. ANIKET KUSHWAHA
S/O SHRI ARUN KUMAR KUSHWAHA VILLAGE.
AND POST- BADA GAON BHIKHI POLICE
STATION-DERAPUR DISTT. KANPUR DEHAT
KANPUR DEHAT
UTTAR PRADESH

4. KM. SHIVANGI MINOR
D/O SHRI ARUN KUSHWAHA VILLAGE AND POST-
BADA GAON BHIKHI POLICE STATION-DERAPUR
DISTT. KANPUR DEHAT
KANPUR DEHAT
UTTAR PRADESH

5. DR. ANIL SINGH
R/O THIRD FLOOR CIVIL LINES KANPUR NAGARRespondent(s)

KANPUR NAGAR
UTTAR PRADESH
6. DIRECTOR TULSI HOSPITAL LTD
R/O 14/116A CIVIL LINES KANPUR NAGAR
KANPUR NAGAR
UTTAR PRADESH

BEFORE:

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

FOR THE MR. SURJEET KESHARI, ADVOCATE
PETITIONER :

Dated : 30 September 2024

ORDER

1. Heard Mr. Surjeet Keshari, Advocate for the petitioner.
2. Above revision has been filed against the order of State Consumer Disputes Redressal Commission, Uttar Pradesh, Lucknow dated 22.03.2024, passed in FA/1680 & 1686/2015 (arising from the order of District Consumer Disputes Redressal Forum, Kanpur Dehat, dated 21.07.2015 passed in CC/159/2014), whereby District Forum has partly allowed the complaint and directed OPs 1 to 3 to pay compensation of Rs.one lac for physical and mental sufferings by the deceased; Rs.50000/- compensation for depriving minor children from maternal pleasure; Rs.50000/- compensation for expenses in the treatment of the deceased; Rs.5000/- for legal expenses, total to Rs.205000/- with interest @ 8% per annum from the date of the complaint till realization and State Commission has dismissed FA/1686/2015 and partly allowed FA/1680/2015 and enhanced the compensation to Rs.440000/- and interest @12% per annum.
3. The complainants stated that Mrs. Meera, wife of complainant-1 (hereinafter referred to as 'the patient') had abdominal pain. Complainant-1 took her to Pushpey Hospital as the same was close to their residence. Dr. Anil Singh, Surgeon (OP-1) told that there was stone in the gallbladder of the patient and advised for surgery. OP-1 to 3 stated that the facility of surgery is available in their hospital. The complainants got the patient admitted in the hospital. On 20.02.2003 surgery for gallbladder removal was conducted without there being any

facility for surgery, due to which the patient suffered septicaemia. When there was no relief in the abdominal pain of the patient despite surgery, OP-1 again conducted second surgery on 20.04.2003 on the pretext that there is something missing somewhere. During second surgery, the health of the patient became worst and critical. The patient was shifted to Tulsi Hospital. When the complainants and his relatives tried to know about the health condition of the patient, they were not allowed to meet the patient. The doctor also escaped from the hospital saying that the patient would take time to become conscious. The attendant of the hospital (OP-3) also left the hospital after administering oxygen to the patient. On 22.04.2003 at 5:00 am, the complainants were told that the patient had died. The patient died due to the negligence of the opposite parties and as no proper medical examination was conducted after first surgery. On 23.04.2003, post-mortem of the deceased was conducted at Tulsi Hospital after intervention of Senior Superintendent of Police, Kanpur. Tulsi Hospital conducted the post mortem only after an undertaking was taken by complainant-1 that 'I have no complaint against Tulsi Hospital and I shall not take any legal action against Tulsi Hospital.' In the post-mortem report the cause of death is mentioned to be 'septicaemia and shock'. Septicaemia had occurred after the first surgery on 28.02.2003 because there was no proper and hygienic operation theatre for major surgery. The surgery was conducted in an ordinary room mentioning as O.T. in the absence of anaesthetist and without adopting any precautionary measures. The cause of shock was due to absence of anaesthetist. Dr. Anil Singh (OP-1) instead of attending the patient after surgery, left the patient unattended. The death of the patient was caused due to the contributory negligence of the opposite parties. The deceased was an energetic, hardworking, progressive and ambitious young woman and was working in B.K. Poultry Farm, Adhukmalpur, Kanpur Dehat. She was getting salary of Rs.1500/- per month. Due to her death, the complainants have suffered huge financial loss. Alleging deficiency in service on the part of the opposite parties, the complainants have filed the above complaint.

4. Director, Pushpey Hospital and the Attendant, Pushpey Hospital (OPs-2 & 3) filed their written reply stating that the patient was brought to the hospital with abdominal pain, therefore, ultrasound of abdomen was conducted. From the ultrasound report gallbladder stone was confirmed. With the consultation of the complainants, the doctor decided to conduct the surgery for removal of gallbladder. Before surgery, all possible risks were disclosed to the complainants. It is falsely alleged that there is no operation theatre available in Sanchalak Pushpey Hospital. There is well equipped and sterilized surgery room

(operation theatre) in the Sanchalak Pushpey Hospital where the surgery of the patient was conducted. All precautions were taken and the surgery was conducted by a trained specialist Dr. Anil Singh and Anaesthetist Dr. Naveen Singh (M.D.) and other trained staff of surgery in the hospital. Again on 20.04.2004, the patient was brought to the Hospital and again surgery was conducted by Dr. Anil Singh and Dr. Naveen Singh and other assistants. The husband of the patient requested in writing to take her wife to another hospital. On the request of the husband of the patient, the patient was sent to Tulsi Hospital, where she died on 22.04.2003. There is no deficiency in service on their part and the complaint is liable to be dismissed.

5. After hearing the counsel for the parties, the District Forum found that the opposite parties had committed negligence in conducting surgery of the patient on 28.02.2003 and on discharge on 06.03.2003, proper medicines were not prescribed, which resulted in serious infection and septicaemia and the patient died on 22.04.2003. On these findings the complaint was partly allowed and the opposite parties were directed as stated above.

6. Aggrieved by the order of the District Forum, OP-2 & 3 filed FA/1686/2015 and the complainants filed FA/1680/2015. The State Commission vide common order dated 22.03.2024 dismissed FA/1686/2015 filed by OP-2 & 3 and partly allowed the appeal filed by the complainants and modified the order of the District Forum to the effect that OP-1 to 3 were directed to pay Rs.440000/- to the complainants with simple interest @ 12% per annum from 22.04.2003 till realization within 30 days failing which they would pay interest @ 15% per annum from 22.04.2003 till the date of realization. Hence this revision has been filed by opposite parties-2 and 3.

7. We have heard the counsel for the petitioner and perused the record. Admittedly colostomy of the patient was done in the hospital of the petitioner on 28.02.2003 and she was discharged on 08.03.2003. When her condition had become serious, she was again admitted in the hospital of the petitioner on 20.04.2003 and again surgery was conducted on 20.04.2003. According to the complainant, during surgery, the patient went in coma then Dr. Anil Singh (OP-1), who conducted the surgery run away from the hospital and the patient was shifted to Tulsi Hospital, where she died on 22.04.2003. From post mortem report of the patient it is proved that she had died due to septicaemia. At the time of death age of the patient was about 26 years. Both District Forum and State Commission after discussing entire evidence on record

concurrently held that septicaemia was developed as the opposite parties had not taken proper care after first surgery. Finding of fact recorded in this respect does not suffer from any illegality. The judgments are based upon appreciation of evidence on record. Supreme Court in **Rubi (Chandra) Dutta Vs. United India Insurance Company Limited, (2011) 11 SCC 269, Lourdes Society Snehanjali Girls Hostel Vs. H & R Johson (India) Limited, (2016) 8 SCC 286** and **Karnataka Housing Board v. K.A. Nagamani, (2019) 6 SCC 424**, held that ordinarily, the power of revision can be exercised only when illegality, irrationality, or impropriety is found in the decision-making process of the fora below. National Commission has no jurisdiction to interfere with finding of fact.

ORDER

In view of aforesaid discussions, the revision petition has no merit and is dismissed.

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RAM SURAT RAM MAURYA
PRESIDING MEMBER

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BHARATKUMAR PANDYA
MEMBER