

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

NEW DELHI

REVISION PETITION NO. NC/RP/1523/2014

(Against the Order dated 20th December 2013 in Appeal 4768/2010 of the State Consumer
Disputes Redressal Commission Karnataka)

COLACO HOSPITAL

PRESENT ADDRESS - REP. BY ITS MANAGING TRUSTEE, BENDURWELL, KARNATAKA,
KANKANADY, MANGALORE, BAGALKOTE, KARNATAKA.

.....Petitioner(s)

Versus

ARVIN KOTIAN & 5 ORS.

PRESENT ADDRESS - S/O MR. ESHWAR KOTIAN, R/AT PRASAD APARTMENT, 1ST FLOOR,
FLAT NO.14, , MANGALORE, BENDURWELL, KARNATAKA, BAGALKOTE, KARNATAKA.

DR. ARJUN SHJETTY

PRESENT ADDRESS - NEUJRO SURGEON, COLACO HOSPITAL, BENDURWELL, ,
MANGALORE, KANKANADY, KARNATAKA, BAGALKOTE, KARNATAKA.

DR SHANKAR NEUROLOGIST

PRESENT ADDRESS - COLACO HOSPITAL, BENDURWELL, , MANGALORE,
KANKANADY, KARNATAKA, BAGALKOTE, KARNATAKA.

DR. DEPAK BOLAOR

PRESENT ADDRESS - COLACO HOSPITAL, BENDURWELL, KANKANADY, MANGAORE,
KARNATAKA, BAGALKOTE, KARNATAKA.

Deleted vide order dated 02.08.2016

PRESENT ADDRESS - - , - , - ,

M/s. United India Insurance Co. Ltd.

PRESENT ADDRESS - No.24, 1st Floor, Classic Building, Richmond Road, Bangalore,
Karnataka,

.....Respondent(s)

BEFORE:

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

HON'BLE MR. BHARATKUMAR PANDYA, MEMBER

FOR THE PETITIONER:

MR MANISH TIWARI, ADV MR RANJIT KOHAN, ADV

FOR THE RESPONDENT:

MR ANANTHA NARAYAN M G, ADV FOR R-1 NONE FOR R-2 TO 4 MR MAIBAM N
SINGH, ADV FOR R-5

DATED: 12/09/2025

ORDER

Heard Mr. Manish Tiwari, learned counsel for the petitioner hospital; Mr. Anantha Narayana M.G., learned counsel for the complainant/respondent no.1; and Mr. Maibam N. Singh, learned counsel for the respondent no.5. No one has appeared for the respondents no. 2 to 4.

A spinal surgery was performed on 14.06.2007 at the petitioner hospital by the respondent no.2 Dr. Arjun Shetty, who is a Neurosurgeon. The Consultant Neurologist was the respondent no.3. While performing the surgery a metallic screw was utilized and a minute fragment of the said screw seems to have scraped during the performance of the surgery that got lodged somewhere around the area of surgery. The fact that such a metallic object was left behind, and was a result of the process during the surgery, came to be discovered later on by the complainant/respondent no.1 when he had some complications and, on having enquired into the matter and having obtained some details, filed Complaint Case No. 19 of 2009 before the Dakshina Kannada District Consumer Disputes Redressal Commission, Mangalore, Karnataka (hereinafter referred to as the District Commission).

The petitioner hospital was arrayed as opposite party no.1 in the complaint. The surgeon Dr. Arjun Shetty was arrayed as opposite party no.2 and the other doctors as opposite parties no. 3, 4 and 5 and the United India Insurance Company Limited (hereinafter referred to as the Insurance Company) as opposite party no.6.

The District Commission through an elaborate order dated 29.10.2010 held the surgeon to be liable for negligence on a clear finding that the piece of metal that was left behind during the process of surgery was an act of gross negligence and accordingly allowed the complaint against the surgeon directing that the surgeon would be liable to pay a sum of Rs.15.00 Lakhs together with interest @ 9% from the date of the complaint till the date of payment. Since the surgeon was covered by an insurance risk coverage by the Insurance Company under a policy, the indemnification was allowed accordingly calling upon the Insurance Company to make the payment. A litigation cost of Rs.2000/- was also imposed. The other doctors arrayed were absolved and the complaint was dismissed against them.

However, while allowing the complaint, the petitioner hospital was also held liable for having not intimated the complainant/respondent no.1 about the said lapse in the procedure and it was further held by the District Commission that the hospital had issued a discharge summary cryptically without mentioning the aforesaid lapse which stood admitted in view of the evidence on record and the admissions made by the doctors themselves. It was also held that the operation notes had not been provided and that the complainant/respondent no.1 had to file applications under the Right to Information Act and it was much later on that when the complainant/respondent no.1 went to his work in Dubai, he experienced pain, where-after he got himself examined and the radiological reports confirmed the lodging of the splinter metal in his body that was deliberately not informed by the hospital. Accordingly, the hospital was also held liable and was directed to pay a sum of Rs.5.00 Lakhs together with interest as indicated therein.

This finding of fact on the basis of evidence by the District Commission was challenged in appeals by the petitioner hospital, by the concerned Neurosurgeon as well as by the Insurance Company before the SCDRC Karnataka (hereinafter referred to as the State Commission) in First Appeals No.4768 of 2010, First Appeal No. 5084 of 2010 and First Appeal No.1066 of 2011. All the three appeals were taken up together by the State Commission and after having considered the submissions raised it was held that the negligence was clearly established on the basis of evidence on record and consequently the order of the District Commission did not require any interference, where-upon the appeals were accordingly dismissed and the order passed by the District Commission was confirmed.

Thereafter neither the Insurance Company nor the Neurosurgeon have preferred any revision petition and it is only the petitioner hospital which has come up assailing the said order of the District Commission, affirmed in appeals vide order dated 20.12.2013.

An interim order was passed at the stage of admission to the following effect on 29.04.2014:

“As per report of the Registry, no cross revision has been filed in this case by respondents no.2 and 6.

Heard.

Subject to petitioner's remitting a sum of Rs.10,000/- (Rupees Ten Thousand only) by way of demand draft to respondent no.1/complainant, since he is a resident of Mangalore (Karnataka), being traveling and allied expenses, issue notice of the main petition as well as stay application to all the respondents for 3.12.2014.

In the meanwhile, operation of the impugned order passed against qua the petitioner only shall remain stayed subject to the petitioner's depositing Rs.2.5 lakh with the District Forum. On receipt of the same, District Forum shall invest the same in a Nationalized Bank in a Fixed Deposit initially for a period of one year and will be renewed from time to time until the matter is finally disposed of.

In case petitioner fails to comply the above directions within the specified period, the ex parte stay granted in favour of the petitioner shall stand vacated automatically without any further orders.

Dasti.”

The revision petition was finally heard on 29.03.2017 and orders were reserved but on 17.05.2017 this Commission directed the production of the operative notes as also the records of the lower Fora. The case could not be taken up and came to be adjourned whereafter the Covid intervened. Accordingly, the case stood adjourned thereafter. The case was deferred on several occasions for various reasons, including adjournments sought by the learned counsel, and ultimately it was dismissed for non-prosecution on 09.05.2024. Miscellaneous Application No. 388 of 2024 praying for restoration was filed on which notices were issued and it was finally allowed on 05.11.2024, where-upon the matter has been listed for final hearing once again.

As noted above, we have heard learned counsel for the parties at length, except the respondents no. 2 to 4, who for all obvious reasons have not appeared as there is no liability against them.

The contention of Mr. Tiwari, learned counsel for the petitioner hospital, is that the hospital is a charitable institution and therefore was not liable for any deficiency, inasmuch as the services offered by the hospital were to the doctors with no other facility on the part of the hospital. It is also submitted that the District Commission has already recorded a finding that even the surgical

instruments that were utilized by the doctor during the surgery were not supplied by the hospital and belonged to the doctor alone. Thus, any negligence by the doctor while performing the surgery cannot be saddled as a deficiency against the hospital.

He further submits that all documents have been provided to the complainant/respondent no.1 and in fact there is no evidence so as to draw any inference of deficiency against the hospital. The contention is that the District Commission committed an error by holding the hospital to be liable and its confirmance by the State Commission is also unjustified.

Learned counsel for the complainant/respondent no.1 however urged that the deficiency regarding non-supply of the documents as also a deficit discharge summary without mentioning the negligence of the doctors is by itself a deficiency in service. It is therefore urged that this finding of fact cannot be reversed in the exercise of revisional jurisdiction in the absence of any perversity or non-consideration of relevant evidence.

We have gone through the order of the District Commission extensively as also the findings recorded by it and we find that the fact that the information regarding the presence of a metallic object that was left behind during surgery was not mentioned in the discharge summary that was admittedly issued by the petitioner hospital. The discharge summary is cryptic and without any indication of the fact of the presence of the metallic object which stood admitted and was left inside the body of the patient. The hospital had the custody of the operation notes and there can be no two opinion that the said notes did indicate the presence of a cut-piece surgical instrument inside the body. Not only this, the patient had been taken inside the operation theatre for the second time and it was the evidence of the doctor before the District Commission that he had informed the complainant/respondent no.1 about the presence of the metal inside the body immediately after the operation with an assurance that it will not have any side effect. It is therefore evident that the fact of the presence of the metallic object stood admitted by the surgeon being present in the body of the complainant/respondent no.1 and its mention in the operation notes which were in the custody of the petitioner/hospital. The petitioner hospital has been unable

to give any explanation as to why the said fact was omitted from being mentioned in the discharge summary of the hospital.

In our opinion, the District Commission was fully justified in drawing an adverse inference against the petitioner hospital on that count. The negligence of the petitioner hospital in providing a discharge summary which was clearly incomplete and which withheld a material fact affecting the health of the complainant/respondent no.1 was therefore a gross negligence. Not only this, the operation notes were also provided after an attempt was made under the Right to Information Act. This also, in our opinion, was a deficiency on which the District Commission has rightly arrived at a correct conclusion. The findings of the District Commission have been therefore appropriately confirmed in appeals and these findings of fact do not suffer from any perversity or non-consideration of relevant material.

On the aforesaid issue we find support from the pronouncement of this Commission in the case of Deepati v. Shori Hospital, 2020 SCC OnLine NCDRC 145, where the issue of non-supply of the documents was considered and it was held that the same also amounts to a deficiency and this Commission imposed a cost of Rs.1,00,000/- in that case. Paragraphs 17 to 21 of the said decision are extracted herein under:

“17. Before parting with this order, the another grouse of the Complainants that the OP-1 hospital did not supply the detailed discharge summary and medical record to enable the doctors at Fortis Hospital to treat the patient more effectively. We note from the pleadings of the OP-1 hospital that detailed in-patient record was not given. Only referral slip was given and held the oral conversations between the doctors. We have perused the discharge summary of OP-1 hospital issued on its letterhead. It contains all the details like diagnosis, investigations and surgical treatment. It is evident that the patient was referred to PGI; Chandigarh wherein the doctors after going through the details in referral note, further referred him to Fortis Hospital due to non-availability of ventilators. Thus in our view the instant detailed discharge note was sufficient for management of emergency at Fortis hospital. Moreover, in case of need the Doctor at referral hospital (in the instant case Fortis Hospital) shall call for treatment record from the previous hospital or Doctor.

18. It is pertinent to note that nearly for 2½ years the OP-1 hospital did not file the

medical record before the District Forum, till the evidence of Complainants' was completed including examination of Dr. S.M. Bose. The Complaint was filed in May 2003 and the medical record (Ex.R1) was produced at the time of OP's evidence in Aug/Sep 2005. The learned counsel for the Complainants relied upon the decisions of this Commission in RP/2605/2012 titled Dr. N.J. Karnavat v. Patel Ishwarlal Mangalal decided on 07.10.2014 and FA/387/2010 titled K. Kotaiah Iras v. Dr. T. Anjaiah which held the hospital liable for the non-issuance of medical record. In our considered view it was not sufficient that a referral slip was given or that there was oral conversation between the treating doctors of referring hospital and second hospital. It should be borne in mind that the referring hospital is duty bound to provide complete medical record to the second (referral) hospital. The OP-1 hospital failed to supply entire medical record despite request at the time of discharge and then after death of patient. It was the deficiency in service of OP-1 hospital which is also contrary to Art.1.3 & 7.2 of MCI Regulations/rules 2002. The Art 1.3.2 of the Regulation is reproduced below:

"If any request is made for medical records either by the patients/authorized attendant or legal authorities involved, the same may be duly acknowledged and documents shall be issued within the period of 72 hours."

19. The medical record is a vital document and property of patient. It is mandatory for hospital/doctor to issue it to the patient/attendant on request. Thus, non-issuance of medical record was deficiency in service, and the OP-1 hospital is liable to that extent only.

20. As discussed (*supra*) there was no medical negligence in the instant case, but non-issuance of medical record was deficiency in service of OP-1. In our view, the deficiency was not fatal and not attributed to the cause of death of critically ill patient. The patient was in OP-1 hospital for 1 ½ days and thereafter 12 days in Fortis Hospital. The doctors at both the hospitals made their all efforts, but patient could not survive. Merely because a patient has not favorably responded or surgery has failed, the doctor cannot be held straightway liable for medical negligence. Similar view had been taken by Hon'ble Supreme Court in a number of cases in which medical negligence by the treating doctors/hospitals have been alleged.

21. Based on the forgoing discussion in the given facts and the entire material on record before us, it is not feasible to attribute negligence on the OP-1 hospital and doctors OP-2 & 3. However, as discussed *supra* (para 13,14 and 15) the OPs are held liable for deficiency in service in not providing the Medical Record of the patient specifically when the attendants of patient had demanded it and the Regulations of Medical Council of India provide for it. Accordingly, the OP-hospital is directed to pay

lump sum of Rs. 100000/- to the Petitioners within six weeks from today, failing which the amount shall carry 10% interest till its realization. The Insurance Cos. shall comply the order promptly, if the OP Hospital availed the Insurance Cover.”

Consequently, keeping in view the nature of the revisional jurisdiction available to this Commission, we find no reason to exercise our jurisdiction under Section 21(b) of the Consumer Protection Act, 1986. The revision petition lacks merit and is accordingly dismissed.

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A. P. SAHI
PRESIDENT

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BHARATKUMAR PANDYA
MEMBER