

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 2095 OF 2017

(Against the Order dated 24/04/2017 in Appeal No. 559/2015 of the State Commission West Bengal)

1. RAMA SANKAR JAISWAL

S/O. LT. PYARELAL JAISWAL, 18F, RAJA RAJBALLAV
STREET,
KOLKATA-700003
WEST BENGAL

.....Petitioner(s)

Versus

1. VASAN EYE CARE HOSPITAL & 2 ORS.

DD-30, SECTOR 1, SALT LAKE, P.S. BIDHANNAGAR
NORTH,
KOLKATA-64
WEST BENGAL

2. DR. SAMAR SENGUPTA

VASAN EYE CARE HOSPITAL SECTOR L, SALT LAKE, P.S.
BIDHANNAGAR NORTH,
KOLKATA-64
WEST BENGAL

3. DR. PROSENJIT MONDAL

VASAN EYE CARE HOSPITAL, DD-30, SECTOR 1, SALT
LAKE, P.S. BIDHANNAGAR NORTH,
KOLKATA-64
WEST BENGAL

.....Respondent(s)

REVISION PETITION NO. 2230 OF 2017

(Against the Order dated 24/04/2017 in Appeal No. 559/2015 of the State Commission West Bengal)

1. SAMAR SENGUPTA & ANR.

VASAN EYE CARE HOSPITAL DD-30, SECTOR I, SALT
LAKE, P.S. BIDANNAGAR NORTH,
KOLKATA-700064
WEST BENGAL

2. DR. PROSENJIT MONDAL

VASAN EYE CARE HOSPITAL DD-30, SECTOR I, SALT
LAKE, P.S. BIDANNAGAR NORTH,
KOLKATA-700064
WEST BENGAL

.....Petitioner(s)

Versus

1. RAMA SHANKAR JAISWAL & ANR.

18F, RAJA BALLAV STREET
KOLKATA-700003
WEST BENGAL

.....Respondent(s)

2. VASAN EYE CARE HOSPITAL

DD-30, SECTOR I, SALT LAKE, P.S. BIDANNAGAR NORTH,
KOLKATA-700064
WEST BENGAL

BEFORE:

**HON'BLE DR. S.M. KANTIKAR, PRESIDING MEMBER
HON'BLE MR. BINOY KUMAR, MEMBER**

For the Petitioner :

For the Respondent :

Dated : 10 Jun 2022

ORDER

Appeared at the time of arguments

For R.S. Jaiswal :Mr. Prasanta Banerjee, Advocate

For Vasan Eye Care Hospital :NEMO

For Dr. Samar Sengupta & Dr. Prosenjit Mondal :Mr. Sanjoy Kumar Ghosh, Advocate

Ms. Rupali S. Ghosh, Advocate

Pronounced on: 10th June 2022

ORDER

DR. S. M. KANTIKAR, PRESIDING MEMBER

1. This order shall decide both the Revision Petitions arising from the impugned order dated 24.04.2017 passed by the State Consumer Disputes Redressal Commission, West Bengal (hereinafter referred to as the 'State Commission') in Appeal No. A/559/2015. One Revision Petition No. 2230/2017 is filed by Dr. Samar Sen Gupta (OP-2) & Dr. Prosenjit Mondal (OP-3), whereas the Complainant - Sh. Rama Shankar Jaiswal filed the R.P. No. 2095/2017.
2. The issue involved is post-cataract alleged negligence caused loss of vision in the right eye of the Complainant.
3. The District Forum allowed the Complaint with following observations:

"Due to gross negligence committed by the OPs, the complainant lost vision of his right eye and for which the OP No-1 is to compensate the complainant by way of compensation. The third operation was at all not necessary and for that reason complainant lost the vision of his right eye. So, we are of the view that it is due to negligency of the OP No.-1. Complainant has suffered mental and pecuniary loss. Complainant is a 70 years old person and OP No.-1 is humanitarian ground should pay Rs.50,000/- as compensation for loss of his eye. The finding of Ld. Forum concerned as it appears from the body of the judgment was that the OPs/Respondents No. 2 & 3 being the agent of the OP No. 1 perform the

operational work and for that reason the OP No.1 was directed to pay a sum of Rs. 50,000/- as compensation for the loss of his eye".

4. The Complainant appealed before the State Commission for enhancement of the compensation by filing the First Appeal No.559/2015. The State Commission partly allowed the appeal and modified the order of the District Forum and directed the OPs to pay Rs. 1 lakh each (Rs. 50,000/- as refund of expenditure and Rs. 50,000/- towards compensation) by the OP-1 and Rs. 1 lakh each by the OPs-2 & 3 for their medical negligence in treating the patient to be paid within one month from the date of the order, failing which the said amount would carry damages to the tune of Rs. 300/- per day payable to the appellant till its realisation.

5. Being aggrieved, the Complainant and the OPs-2 & 3 have filed the instant two Revision Petitions.

6. We have heard the learned Counsel for the parties, perused the medical record on file and inter-alia the Orders of both the fora below.

7. The learned Counsel on both the sides reiterated the facts and their evidence filed before the trial Commission.

8. The learned Counsel for Complainant vehemently argued that the Complainant lost his vision permanently, therefore, he deserves enhanced compensation as prayed in the Complaint.

9. The learned counsel for OPs- 2 & 3 (Petitioners doctors) brought our attention to the medical prescriptions issued by them. The Counsel further submitted the details of the treatment. 10. Let us go through chronology of events. The patient came to Vasan Eye Hospital and detected cataract, accordingly suggested the cataract surgery. The vision in right eye was 6/36 N18(P). The patient was explained in detail about the visual outcome and prognosis after the surgery because the patient also had corneal ailment. The right eye cataract extraction was done on 22.11.2012 by Manual phaco/SICS with Acrysof IQ Lens under Viscoat to protect the cornea. The surgery was uneventful. During follow up checkup it was noted right eye +3.25 N10 and left eye +3.00 N6.

10. On 17.12.2012, the patient was referred to Dr. Prosenjit Mondal, OP-3 for the complaints of floaters in the right eye and examination of retina. On examination by OP-3 noted that the Anterior Segment of Right Eye showing good Pseudo-phakia with well-placed IOL in the bag/No reaction in Anterior and Posterior Segment. The Left Eye showed immature Cataract. Fundus Examination of Right Eye revealed Retinal Detachment & Pale Optic Disc, accordingly, surgery under Guarded Visual Prognosis was advised. On 21.12.2012, the patient underwent Right Eye Sclera buckle with Pars Plana-Vitrectomy with Perfluoro-cabon liquid injection with Endo-laser with silicon oil. The Retina well attached with silicon oil filled eye. Post-operative period was uneventful. On 01.03.2013 patient underwent right eye silicon removal.

11. The patient was further referred to the senior vitreoretinal surgeon Dr. Tamal Kanti Roy Sarkar who, on 21.03.2013, performed Right Eye IOL Explantation with Endo-laser with silicon oil injection. On 10.06.2014 patient's best corrected visual acuity was 6/12 P in Right eye and 6/12 in left eye. As there was corneal pathology, and the patient was advised to use Contact Lens, but the patient did not follow the advice and insisted for implantation of Secondary Lens which was detrimental to the patient in view of corneal ailment with history of previous retinal detachment. Thereafter, on 04.07.2013, the patient underwent right eye silicon oil removal with Endo-laser.

12. Thus, in our view, the retinal detachment was properly treated by the OP-3 and further by senior vitreoretinal surgeon Dr. Tamal Kanti Roy Sarkar. We do not find deficiency or negligence on the part of the OP-3. The negligence cannot be attributed to him so long as he performed his duties to the best of his ability. We would like to rely upon the observations made by Hon'ble Supreme Court in the case of **Achutrao Haribhao Khodwa & Others V State of Maharashtra & others**[\[1\]](#), as:

“in the very nature of medical profession, skills differs from doctor to doctor and more than one alternative course of treatment are available, all admissible. Negligence cannot be attributed to a doctor so long as he is performing his duties to the best of his ability and with due care and caution. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.”

13. Based on the foregoing discussion, both the fora below erred to hold the OPs liable for medical negligence. It was an error that the District Forum awarded compensation of Rs. 50,000/- on humanitarian ground, whereas the State Commission enhanced it to Rs. 1 lakh each. In our view, both the fora have taken sympathetic view and awarded the compensation, however sympathy cannot substitute for conclusive evidence of medical negligence. In the instant case, the medical negligence could not be conclusively attributed against the hospital and the treating doctors.

Therefore, the Revision Petition No. 2095/2017, filed by the Complainant, is dismissed and the Revision Petition No. 2230/2017, filed by the OPs-2 & 3, is allowed. Consequently, the Consumer Complaint is dismissed.

[1](1996) 2 SCC 634

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DR. S.M. KANTIKAR
PRESIDING MEMBER

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BINOY KUMAR
MEMBER