

**IN THE DELHI STATE CONSUMER DISPUTES**  
**REDRESSAL COMMISSION**

**Date of Institution: 18.04.2017**

**Date of hearing: 17.05.2023**

**Date of Decision: 22.09.2023**

**FIRST APPEAL NO.-206/2017**

**IN THE MATTER OF**

**MR. MANDEEP SINGH,**

S/o SH. MANJEET SINGH

R/o FLAT NO 152, SECTOR 4, POCKET-1

DDA SFS FLATS, HARMONY APARTMENTS,

DWARKA, NEW DELHI-110075

**(Through: Mr. Sanjay Kumar, Advocate)**

...Appellant

**VERSUS**

**1. MATA CHANAN DEVI HOSPITAL,**

C-1, JANAKPURI, NEW DELHI -110058

**( Through: Mr. S.C.Buttan, Advocate)**

**2. UNITED INDIA INSURANCE COMPANY LTD**

K-41, CONNAUGHT PLACE, OPPOSITE PLAZA CINEMA

FIRST FLOOR, NEW DELHI-110001

**(Through: Ms. Nandita Saxena, Advocate)**

...Respondents

**CORAM:**

HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, (PRESIDENT)

HON'BLE MS. PINKI, MEMBER (JUDICIAL)

HON'BLE MR. J.P. AGRAWAL, MEMBER (GENERAL)

Present: Mr. Manjeet Kaur, Counsel for the Appellant.

Mr. S.C. Buttan, counsel for Respondent No.1.

**PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL,**  
**(PRESIDENT)**

### **JUDGMENT**

1. The facts of the case as per the District Commission record are:

*“Mandeep Singh named above hereinafter referred as the complainant has filed the present complaint under Section 12 of the Consumer Protection Act against Mata Chanan Devi Hospital here in short referred as the opposite party and another for directions to the opposite party to pay a sum of Rs.4,00,000/- for deficiency in service on the part of the opposite party, Rs. 12,00,000/- as compensation on account of pain, agony, mental torture, Rs.2,00,000/- for compensation on account of expenses of treatment and medicines, Rs.1,00,000/- towards expenses on transportation and Rs.20,000/- on account of legal expenses, totaling Rs.19,20,000/- with interest @18% per annum from the date of cause of action till realization. The brief necessary facts for disposal of the present complaint as stated are that the complainant at 10.05 a.m. on 11.04.05 vide C.A.No.37434 with severe pain in abdomen was admitted in the opposite party. The complainant spent huge amount on tests and medicines as advised by doctors of the opposite party. The doctors of the opposite party declared B/L Renal Calculi and left URS and advised operation. That on 12.04.05 Lt URS Plus Stenting was done by the doctors of the opposite party and ESWL was done on next day. Whereas ESWL should be done on the day of the operation. He was discharged on 13.04.05. The DT stent placed at the time of*

*operation must be removed after some time. But was not removed by the doctors of the opposite party despite several visits of the complainant at the opposite party. That no Calculi (Stone) was given or shown to the complainant after operation. The doctors of the opposite party even did not give or show x- ray reports to the complainant or his family members. The complainant was feeling pain in abdomen from the very first day of the operation specially in left side operation.*

*That the complainant was Restaurant Manager in Nirula's Corner House Pvt. Ltd. He was drawing monthly salary of Rs.22,000/-. The complainant had to leave the job on account of pain on 27.04.05. The complainant on 14.05.06 felt severe pain in abdomen in left side and blood was passing with urine. Therefore, he visited Sanjeevani Diagnostic Centre for tests and urine examination report. On 19.05.06, he was examined by the doctors at AIIMS, New Delhi vide OPD card no.4034/06 dated 19.05.06. On the same day he was taken to casualty and admitted in emergency vide casualty card no.CS-63372-2006 dated 19.05.06. Where he was again seen by the doctors and several tests were advised by the doctors of AIIMS, New Delhi. The tests were conducted through Dr. Mukul's Diagnostic Clinic, Shivalik, New Delhi. Following was opined in the reports.*

*That the doctors of AIIMS, New Delhi told that the stent placed by the doctors of the opposite party were lying in the complainant which had become unworthy and caused harm to the complainant and for non removal of the stent and non removal of calculi (stone), the complainant was feeling continuous pain in abdomen. Therefore, there is medical negligence and deficiency in service on the part of the opposite party. Hence, the present complaint for directions to the opposite party to pay Rs.19,20,000/-.”*

2. The District Commission after taking into consideration the material available on record passed the following order dated 16.03.2017 whereby it held as under :

*“The case of the complainant is that after operation and discharge he visited the opposite party several times but they did not remove DT Stent. Whereas the case of the opposite party is that after 13.04.05 the complainant never visited the opposite party for follow up treatment and removal of DT stent despite advice.*

*The burden to prove that complainant visited the opposite parties as advised for removal of DT stent is heavily on the complainant. But except affidavit of the complainant, which is rebutted by the affidavit of Dr. 'Surender Kumar Bhateja, there is no document showing that the complainant after discharge on 13.04.05 visited the opposite party for follow up treatment and removal of DT Stent.*

*We have heard Ld. Counsel for the parties and have gone through the file carefully and thoroughly.*

*It is worthwhile mentioning here that on request of the complainant medical report was called from the Medical Superintendent, RML Hospital, New Delhi as to whether there is any medical negligence on the part of the doctors of the opposite party before, during and after operation of Lt URS plus Stenting. The Medical Superintendent, RML Hospital, New Delhi constituted a board of three expert doctors. The medical board gave opinion as under:-*

*"From the report of the medical board it is clear that there is no medical negligence on the part*

*of doctors of the opposite parties. Whereas the complainant himself did not act on the advice of the doctors. He did not visit the opposite parties for removal of DT Stent.”*

*Hence, the complainant failed to prove that there is any medical negligence on the part of the doctors of the opposite parties. Whereas the complainant himself is negligence in taking treatment as advised. Therefore, there is no merit in the complaint. So, the complaint is dismissed.*

3. Aggrieved by the aforesaid order of the District Commission, the Appellant has preferred the present Appeal contending that the District Commission failed to take note of the fact that the DT stent placed at the time of operation must be removed after some time but owing to the negligence of the treating doctors of the Respondent No.1, the stent was left in the body of the Appellant. It is further submitted that despite repeated visits to the Respondent No.1-Hospital after surgery, the treating doctors did not remove the DT stent. Secondly, it is submitted that the District Commission failed to appreciate that the treating doctors at Mukul Diagnostic Clinic at Shivalik New Delhi opined in their report that “*a stent was left in situ and there was significant Lt Hydronephrosis in the Appellant’s body.*” Thirdly, it is submitted that the treating doctors at AIIMS, New Delhi opined in their report that the stent placed by the treating doctors of Respondent No.1-Hospital was lying in the body of the Appellant and had become unworthy, causing harm and pain on account of the non-removal of the stent and the calculi. Fourthly, it is submitted that the Respondent No.1-Hospital did not show the calculi (stone) to the Appellant after the surgery nor any X-ray reports were handed over to the Appellant. Lastly, it is submitted that the Appellant was employed with

private concern and after his surgery, the Appellant was dismissed from his job on 27.04.2005 due to repeated absence on account of his worsened medical condition. Pressing the aforesaid contentions, the Appellant has prayed for setting aside the Impugned Order.

4. Respondent No.1 has filed its Reply to the Appeal and has stated therein that the Appellant failed to appear for follow-up treatment as suggested after 7 days and as such no negligence can be carved out on part of the Respondent No.1. Secondly, it is submitted that the Appellant has concocted a false story to illegally extort money from the Respondent No.1 as the Appellant did not turn up with any complaint of pain or discomfort to the Respondent No.1 for a period of 1 year. Pressing the aforesaid contentions, the Respondent No.1 has prayed that the present appeal be dismissed.
5. Respondent No.2-Insurance Company has filed its reply to the present appeal and has stated therein that the allegations levelled by the Appellant are not substantiated by any relevant documentary evidence and are baseless. It is further submitted that the Respondent No.2 is indemnified by a Professional Indemnity Insurance Policy issued by the Respondent No.3 and as such Respondent No.2 stands covered against liabilities arising out of the course of professional conduct. Pressing the aforesaid contentions, the Respondent No.3 has prayed that the appeal may be dismissed.
6. The Appellant has filed his rejoinder controverting the reply of Respondent No.1 and reiterating his stand taken in the Appeal.
7. We have perused the material available on record and have heard the counsels for the parties.
8. The *only question* that falls for our consideration is *whether the District Commission erred in dismissing the case of the Appellant.*

9. To resolve this issue we deem it appropriate to refer to pg-2 of the Discharge Slip (*annexed at pg-32 of the District Commission record*) issued by the Respondent No.1-Hospital reproduced hereunder as :

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Page No-4

DISCHARGE SLIP

Mr. Mandeep Singh 34 Yrs/M  
 Department Unit-Sugery-I Dr. Gulati, Dr. Bhatnagar  
 Ward-SB-I  
 CA No-37434  
 Date Of Admission-11/04/05, Date of Discharge-13/04/05  
 Diagnosis/Operation Procedure-left URS with B/L Renal Calculi + DJ Stenting  
 with ESWL

Case Summary-

A 34 years male patient a normotensive & non diabetic presented with c/o pain in Lt. Falnk of abdomen radiating to back, along with Burning Micturation & Haematuria. No H/o Fever or Vomitings. Patient was admitted investigated appropriately and treatment started. USG abdomen s/o B/L and calculi & left proximal urteteric calculus along with fatty liver & mild Hydrouretero Nephrosis left side. Left URS was planned and Lt. URS + DJ Stenting was done on 12/04. ESWL was done the next day. Patient responded well to the above treatment. Post op recovery was smooth and stay in ward uneventful. Patient had no major complain at time of discharge.

**Clincial Finding:-**  
 GC-Fair  
 Afebrile  
 BP-120/80mmHg  
 PR-72/min  
 Chest-Clear  
 CVS-S1S2 (N)  
 P/A-Soft  
 CNS-NAD

**Investigations:-**  
 11/04  
 Hb-16.1

TLC-10700  
 DLC-P72L20E2M6  
 RBS-90  
 Urea-35  
 Creat-1.2  
 SGOT-37  
 LDH-23  
 HIV/HBsAg-NR  
 USG Whole abdomen s/o fatty liver renal calculi left proximal ureteric calculus with mild Hydrourtero Nephrosis left side.  
 IVP-Not reported.  
 CXR Linear opacity seen in left lower zone, plate atelectasis  
 X Ray abdomen E/S-Radio opaque shadow in left renal area ? calculus ? irregular radio opaque shadow s/o calculus seen in region of proximal ureter adj to L3 transverse process on left side.

**Treatment Given**

Inj. Taxim  
 Inj. Gentamycin  
 Inj. Voveran  
 IVF 5% Dextrose  
 Isolyte M  
 Inj. Aciloc

**Advice on Discharge**

Tab. Ragacin 400mg 1 OD  
 Tab. Sumo 1 BD  
 Cap. Ocid 20mg 1 BD  
 Cap. Vizylac 1 BD  
 Tab. Lasilcatone 1 OD  
 Follow up after 7 days.

10. A perusal of the aforesaid discharge slip clearly reflects that the Appellant was advised to show up for follow-up treatment after 7 days post surgery under the head “*Advice at Discharge*”. Here, it is to be noted that the onus to prove that the Appellant visited the Respondent No.1-Hospital lies heavily on the Appellant. However, on a perusal of the record, we are unable to find any cogent material to show that the Appellant, after discharge on 13.04.2005, visited the Respondent No.1-Hospital for follow up treatment and removal of DT stent.



11. Again, it may be mentioned here that the Appellant has led no evidence of experts to prove the alleged medical negligence except his own affidavit. The experts could have proved if any of the doctors in the Respondent No.1-hospital providing treatment to the Appellant were deficient or negligent in service. However, on the contrary the expert opinion from the Medical Superintendent, RML Hospital, New Delhi establishes that no negligence can be carved out on part of the treating doctors of Respondent No.1-Hospital hereunder as:

*"From the report of the medical board it is clear that there is no medical negligence on the part of doctors of the opposite parties. Whereas the complainant himself did not act on the advice of the doctors. He did not visit the opposite parties for removal of DT Stent."*

12. Here, we deem it pertinent to remark that in a catena of judgments, the Hon'ble National Commission and the Apex Court have held that a doctor is supposed to exercise reasonable care while providing treatment to the patient. Keeping in view the facts and circumstances of the present case, the Appellant cannot be allowed to pin his own careless conduct on the Respondent No.1-hospital. A doctor is only supposed to exercise reasonable care and if the patient doesn't visit the doctor for follow-up, by no stretch of imagination the liability for the patient's condition can be affixed on the treating doctor.
13. Therefore, we opine that no adverse inference can be drawn against the Respondent No.1-Hospital in the absence of any cogent material on record to establish medical negligence.
14. Another plea has been taken by the Appellant that the Respondent No.1-Hospital did not show the calculi (stone) to the Appellant after the surgery nor any X-ray reports were handed over to the Appellant.

15. Here it is to be noted that the Appellant was treated with Shock Wave Lithotripsy. From the reading of medical literature, it has come to our knowledge that Shock Wave Lithotripsy uses shock waves to break stones in the kidney and ureter into small fragments. Therefore, it is clear that the due to the modality of treatment adopted, the calculi could not be shown to the Appellant. Furthermore, it is to be noted that the Appellant has himself placed on record the X-ray report and in view of the same, it cannot be said that the Respondent No.1-hospital did not provide the X-ray reports to the Appellant.
16. Therefore, we are of the view that there exists no negligence on part of the Respondent No.1-Hospital and find no reason to interfere with the order dated 16.03.2017 passed by *the District Consumer Disputes Redressal Commission (West), 150-151, Community Centre, C-Block, Janakpuri, NewDelhi-110058. Consequently, the Appeal stands dismissed*, with no order as to costs.
17. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.
18. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
19. File be consigned to record room along with a copy of this Judgment.

**(JUSTICE SANGITA DHINGRA SEHGAL)**  
**PRESIDENT**

**(PINKI)**  
**MEMBER (JUDICIAL)**

**(J.P. AGRAWAL)**  
**MEMBER (GENERAL)**

**Pronounced On:**  
**22.09.2023**