

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 195 OF 2010

1. OM PARKASH SIKKA & ANR.

S/o Sh. Chaman Lal, R/o 313, New Ashiyana Appartments, Plot
No. 10, Sector-6, Dwarka
New Delhi - 110 075

2. MADHU SIKKA

W/o Om Parkash Sikka, R/o 313, New Ashiyana Appartments,
Plot No. 10, Sector - 6, Dwarka
New Delhi - 110 075

.....Complainant(s)

Versus

1. IVY HOSPITAL & ORS.

Through its Chief Executive Officer, Sh. Gurtej Singh, Sector 70
Mohali
Punjab

2. DR. DEEPAK TYAGI

Neuro Surgeon, IVY Hospital, Sector 70
Mohali
Punjab

3. DR. CHETAN GOEL

ICU Consultant, IVY Hospital, Sector 70
Mohali
Punjab

4. DR. VIKAS RAGHOVE

IVY Hospital, Sector 70
Mohali
Punjab

5. DR. RAJEEV DHUNNA

ICU Incharge, IVY Hospital, Sector 70
Mohali
Punjab

.....Opp.Party(s)

BEFORE:

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

For the Complainant :

For the Opp.Party :

Dated : 01 Dec 2022

ORDER

Appeared at the time of arguments

For the Complainants : Ms. Tanya Agarwal, Advocate with

Complainants in person

For the Opp. Parties : NEMO for OP-1
(Mr. Pradeep Sharma, Advocate already
concluded his arguments on 02.03.2022)
Mr. Uttam Datt, Advocate with
Ms. Sonakshi Singh and Mr. Nitnem Singh,
Advocates for OP-2 to 5 alongwith
Opposite Parties 3 & 5 in person

Pronounced on: 01st December 2022

ORDER

DR. S.M. KANTIKAR, PRESIDING MEMBER

1. The present Complaint has been filed under section 21 of the Consumer Protection Act, 1986 (for short “the Act”) by (1) Sh. Om Prakash Sikka & (2) Smt. Madhu Sikka against IVY Hospital, Sector-70, Mohali, Punjab & its 4 Doctors, seeking compensation of Rs. 4,00,00,000/- for act of medical negligence on the part of Opposite Parties, which resulted in the death of the Complainants son, Rajat Sikka (hereinafter referred to as the ‘deceased’ or ‘patient’).

Facts:

2. Brief facts leading to the present Complaint are that on 11.10.2008, Mr. Rajat Sikka, the son of the Complainants (hereinafter referred to as the ‘patient’), about 26 years, got injured in a car accident. He sustained serious head injury - Traumatic Brain Injury (TBI). He was immediately taken to PGI Chandigarh by the local Police. Emergency CT scan and X-Ray were done. The doctors labeled it as GSC score 9. There was no history of seizures (convulsions) and the patient was moving all limbs and was reacting to light, the bilateral lung air entry was equal, oxygen saturation was 100% and BP was 120/80mm of Hg. Thereafter, for further treatment, the Complainants shifted their son to IVY Hospital (OP-1). There, he was treated by the OPs-2 to 5 doctors, but unfortunately, he expired on 21.10.2008.

3. The Complainants alleged that in PGI, one person approached the patient’s mother and allured her to shift her son to the IVY Hospital under the care of Neurosurgeon, Dr. Deepak Tyagi (OP-2). The OP-2 assured the patient’s mother that under his care, more personal treatment shall be given. Therefore, on 11.10.2008, she shifted her injured son to the ICU of OP-1 Hospital at 00.45 A.M. The GCS score was E1, V3, M5. The pupils were equally reacting to light, pulse 60/min and B.P. was 210/110. The respiration was spontaneous and Oxygen saturation was 99%. It was alleged that without any clinical or neurological assessment, the OP-2 ordered for ‘electively ventilate’ and within 7-8 minutes, he left the ICU. He gave assurance to the family about good condition of the patient. It was alleged that intubation was done without consent from the patient’s mother. The hospital had no regular Neuro-Surgeon. The OP-2, General Surgeon, as per his own convenience, used to visit the hospital. As per standards, if the GCS score is above 7, the patient should not be put on ventilator. It was further alleged that the ICU Services were outsourced by the hospital to a third party (OP-5).

4. Later, the OP-2 visited the patient and suggested to the ICU doctor that as the patient was struggling on the ventilator, the same should be removed. However, OP-3 ignored the advice and did not remove the ventilator and left the patient struggling. It was alleged that the CT scan was done after a delay of 40 hours. It showed damage to brain hemorrhage due to increased intracranial pressure (ICP) and the patient was not properly sedated. Therefore, OP-2 confirmed about the need for surgery. As there was no option

to seek second opinion, the complainant gave the consent for surgery and the surgery was performed. After the surgery at 5:00 PM, the OP-2 told that it was a minor surgery to remove the skull cap and the blood automatically squirts out. It was told that the surgery was successful and the patient would be fully recovered soon. It was further alleged that the ventilator was removed on 13.10.2008 but the tube remained in the mouth and it was connected to oxygen bag. The patient was kept under sedation. The Neurosurgeon, OP-2, after assessing the neurological condition again advised for extubation but the ICU doctors did not care and delayed it unnecessarily despite good GCS score. There was a conflict between OP-2 and other doctors. Later, on 18.10.2008, the complainants came to know that brain death of the patient occurred immediately after cardiac arrest which was concealed by the ICU in charge. The patient was put on life support system and ultimately the patient was declared dead at 09.30 AM on 21.10.2008. It was also alleged that the Cardiologist was summoned by the hospital in the morning of 19.10.2008, after 13 hours of the cardiac arrest, who on enquiry assured that there was no damage to the heart.

5. The main allegations of the Complainants are that the OP-1 hospital was not at all equipped to handle head injury patient/patients requiring Neuro Surgery. The OP-1 did not even have a separate Neuro department. The patient was put on ventilator without the consent of the Complainants. GCS score of the patient was 9. As already stated, ventilation is only required if the GCS score reaches 7 or below 7. Despite directions by OP-2 to extubate the patient, the patient was not extubated. As per medical protocol, Opposite Parties were under a duty to ensure the Hemoglobin level is maintained at 12 or above. In this case, it went down to a shocking level from 16.7 to 6.6. Administering of overdose of 150 ml of Mannitol at a time when orders for stopping Mannitol had been given, resulted in the deterioration in the condition of the patient and the cardiac arrest leading to his death. The OP-2 attends Neuro Surgery calls from places as far, as Ropar, Nawanshahr, Anandpur Sahib and even Shimla and Mohali and go to Himachal Pradesh, which makes it virtually impossible to attend to critically ill patients at places such far. This contributes to medical negligence of OP-1. Further, the OP-1 relegated his responsibility to doctors not trained or qualified in the field of Neuro Surgery, being fully aware of the risk posed to the life of the patient, which eventually occurred. The hemoglobin drastically fell. In the patients with head injury, there is need to maintain Hb level above 12g% for adequate cerebral oxygen supply. In the instant case, the patient's Hb initially was 16.7 g%, which fell later. The medical records including the medical charts show the discrepancies, which cannot be reconciled and seemed to be tampered/destroyed with an ulterior motive. From the ICU records dated 11.10.2008, it is visible that there was over writing, not once, but at least 8 times. This over writing was in respect of a drug for sedation, though patient was not sedated.

6. Being aggrieved by the negligent and deficient medical services provided by OPs, the Complainant filed a complaint and prayed for compensation of Rs. 4,00,00,000/- .

Defense:-

7. The **OP-1 i.e. IVY Hospital** filed its written version and denied all the allegations of the Complainants. It was submitted that at PGIMER, Chandigarh, the patient was kept for about more than 5 hours, thus lost the precious Golden hour. The patient suffered a serious head injury, the condition was deteriorated and associated with Diffuse Brain Oedema and an Acute Sub Dural Hematoma(SDH), which was detected by them by a CT Scan. GCS was 10. The Complainants did not follow the advice of the PGIMER authorities and then took discharge as Left Against Medical Advice (LAMA) and on their own shifted to IVY Hospital. Therefore, either the PGIMER or the Complainants themselves were responsible for deterioration in the condition of patient. The OP-1 or other doctors, who attended to him at OP-1 were not responsible. The Ventilator Support Systems were removed from the patient as and when not required after medical assessment by the attending Intensivists and Neuro Surgeons. The OP-1 further submitted that the claim of Complainants of Rs. 4.00/- Crores, is highly exaggerated and without any basis.

8. **The OPs - 2 to 5** filed their reply and denied all the contentions and averments in the Complaint. The Medical Board was constituted by the PGIMER, Chandigarh, which opined that there was no negligence in the treatment of the OPs. It was further submitted that the Complainants have also made their complaint before Medical Council of India (MCI) and Punjab Medical Council (PMC).

9. They further also submitted that the condition of the patient was critical and the patient was taken out of PGI by the family against the advice (LAMA) of PGI doctors. The report of PGI reveals that the patient was admitted with loss of consciousness, since the time of injury and his CT scan showed contusions, SDH, Sub arachnoid hemorrhage (SAH) and DBE. The DBE leads to increase the Intra Cranial Pressure (ICP).

10. The OPs - 2 to 5 further submitted that intubation was done for proper Oxygen supply and to prevent aspiration pneumonia, a life threatening complication in the unconscious patient. Thus the attending doctors took all the precautions as per standard treatment protocol and the patient was under a constant observation in the ICU round the clock.

11. Both the sides have completed the pleadings and filed relevant medical literatures on the subject.

12. We have heard the learned counsel on both the sides. They made their submissions and reiterated their evidence. We have perused the entire medical record of PGIMER and the OP-1 - IVY Hospital.

13. Admittedly the patient was severely injured in the road accident. It was head injury, which, on investigation revealed subarachnoid and subdural hemorrhage image. Also there was cerebral edema, which further caused increased intracranial pressure. Based on the city scan investigations and clinical findings, the treating doctor OP-2 Neurosurgeon advised mannitol infusion incorrect doses. We don't find any deviation of practice from the OP-2.

14. It is pertinent to note that the Complainant's main allegations were that ET was unnecessarily kept though the Glasgow Coma score was good or above 7. In our view, the patient was under observation in the ICU and on ventilator, therefore, the treating doctor shall have to take the appropriate decision based on the condition of patient. Though, the ventilator was removed, the ET was kept to maintain the oxygen supply and to avoid aspiration.

15. We have gone through the post mortem report wherein the cause of death was given as "*head injury leading to cardio respiratory arrest which is possibly sufficient in normal course of life to cause death.*"

16. It is relevant to go through the opinion (report) dated 13.03.2010 of the Medical Board, PGIMER, which categorically held that the treatment and care given by the OPs was consistent. The report is reproduced as below:

- I. *The GCS score of 9 indicates moderate bordering on severe traumatic brain injury;*
- II. *Patients with traumatic brain injury (TBI) deteriorate over a period of time due to swelling or a fresh bleed or other causes. The state of the patient at the time of transfer from PGI does not rule out the possibility of later deterioration;*
- III. *The standard of clinical care of patients with moderate or severe TBI includes intubation and mechanical ventilation;*
- IV. *Sedatives and analgesics are given with periodic assessment of the patient;*
- V. *Follow up CT scans usually done at intervals of three days or so except in the cases of sudden deterioration of the patient's clinical condition;*
- VI. *The findings of GCS of 9, reduced heart rate 60/min and high blood pressure 210/110 indicates raised intracranial pressure;*
- VII. *From the record it is apparent that the patient was admitted to Ivy Hospital with a moderate-severe TBI and infective focus. The management consisting of intubation, ventilation and sedation is consistent with the clinical picture and the standard of care.*

17. With respect to consent, the grouse of Complainant was that the treating doctors did not take consent for invasive procedures like use of ventilator, for Central Venous line (CVL/IJV), Ryles tube insertion. The patient was in emergency and the initial consent is sufficient during emergency. The Counsel relied upon the decision of Hon'ble Supreme Court in the case of **Samira Kohli Vs. Dr. Prabha Manchanda & Anr.**[\[1\]](#)

18. In our view, the complainant raised vague allegations about the ICU services being outsourced to a third party, the OP-2 attends on call, visits once or twice a day for 5 minutes, "RT feed" i.e. he instructed for one more catheter from Nose through Food Pipe into Stomach, without any Informed Written Consent.

19. It is pertinent to note that the complainant has to prove his case of medical negligence with cogent evidences. In the instant case, the complainant raised vague allegations on conjuncture only without having medical knowledge. He has not filed any expert opinion to prove the negligence of OPs. As per medical record, the Intensivists and Neurosurgeon decide about the application of ventilator and its removal or keeping ETT. In our view, the treating doctors were competent and had treated the patient as per the accepted standards. We do not agree that absence of sedation and struggle on ventilator caused rise in Intracranial pressure. The Mannitol was administered in proper dose to reduce ICP. It would not have caused cardiac arrest and death.

20. It should be borne in mind that "No Cure is Not a Negligence". We would like to put reliance upon few decisions of Hon'ble Supreme Court viz. **Kusum Sharma and others Vs Batra Hospsital and Medical Research Centre and others**[\[2\]](#), **Jacob Mathew's Case**[\[3\]](#).

21. Based on the foregoing discussion, in our considered view, the doctors treated the patient with reasonable standard of care and there was no deficiency or negligence on their part. The Complainants failed to prove any negligence or any deficiency during treatment on the part of the doctors or the hospital.

The Complaint is dismissed. There shall be no Order as to costs.

[\[1\]](#) AIR(2008) SC 138

[\[2\]](#) (2010) 3 SCC 480

[\[3\]](#) (2005) 6 SCC 1

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DR. S.M. KANTIKAR
PRESIDING MEMBER

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BINOY KUMAR
MEMBER