NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 54 OF 2007

1. KM. SHRISHTI PURI
Through its Natural Guardian Dr. Someshwar Puri, R/o. B-2M/37, SBI Colony, Sitapur Road Extension Plan,
Aliganj,
Lucknow
2. Dr. Someshwar Puri,
Son of Late Gopi Nath Kameshwar Puri. B-2M/37, SBI Colony, Sitapur Road Extension Plan,
Aliganj,
Lucknow. .....Complainant(s)

Versus

1. ALL INDIA INSTITUTE OF MEDICAL SCIENCES & ORS.
Through Director
NEW DELHI
2. Prof. Arvind Jaiswal,
Presently Posted as head of Department, Kyphosis & Scoliosys Unit, All India Institute of Medical Sciences,
New Delhi
3. Dr. Shashank Shekhar Kale,
Neo Surgery Department, All India Institute of Medical Science, (AIIMS),
New Delhi
4. Dr. B.D. Choudhary
Kyphosis Seolisis Department AIIMS,
New Delhi .....Opp.Party(s)

BEFORE:
HON'BLE DR. S.M. KANTIKAR,PRESIDING MEMBER
HON'BLE MR. DINESH SINGH,MEMBER

For the Complainant :
For the Opp.Party :

Dated : 09 Feb 2021

ORDER

APPEARED AT THE TIME OF ARGUMENTS

For Complainants	:	Mr. Anand S. Asthana, Advocate Mr. Pankaj Singh, Advocate Dr. Someshwar Puri (complainant - 2)
For Opposite Parties	:	Mr. Vikrant N. Vasudeva, Advocate Mr. Parv Ahluwalia, Advocate Mr. Sarthak Chiller, Advocate Dr. Arvind Jaiswal (OP-2) Dr. Shashank Shekhar Kale (OP-3)

Pronounced on: 09 th February 2021

ORDER

PER DR. S. M. KANTIKAR, PRESIDING MEMBER

1. This Complaint was filed by the Complainants against four Opposite Parties: Opposite Party No. 1 – AIIMS, New Delhi; Opposite Party No. 2 – Professor Dr. Arvind Jaiswal; Opposite Party No. 3 – Dr. Shashank Shekhar Kale; Opposite Party No. 4 – Dr. B. D. Chaudhary.

Arguments were heard in part on 12.12.2019.

Vide the Order dated 12.12.2019, for reasons recorded, the Opposite Party No. 4 – Dr. B. D. Chaudhary was deleted from the array of the parties. This was in accordance with the submissions made by the learned Counsel for the Complainants, confirmed by the Complainant No. 2 in person.

The said Order of 12.12.2019 was not put to review or challenge.

2. Arguments were then heard and concluded on 13.12.2019.

Learned Counsel for the Complainants and for the Opposite Parties No. 1 to No. 3 were also afforded opportunity to file their respective written synopsis (which they filed).

3. The entire material on record has been perused.

COMPLAINT:

4. The Complainant No. 1, Kum. Shrishti Puri (hereinafter referred to as 'the patient') was suffering from congenital spinal deformity. On 20.05.2003 her father Dr. Someshwar Puri (Complainant no. 2) consulted Dr. Rajendra Prasad at Apollo Hospital, New Delhi and advised Complainant no. 2 to contact Dr. Arvind Jaiswal (hereinafter referred to as the Opposite Party No. 2), the Head of Congenital Kyphosis Department at All India Institute of Medical Sciences (AIIMS) (hereinafter referred to as the Opposite Party No. 1). The patient was taken to the Opposite Party No. 1 who examined the patient and advised urgent surgery and the delay, otherwise, will aggravate the disease.

5. Accordingly, on 03.05.2004, the patient was admitted in AIIMS under the unit head Dr. Arvind Jaiswal and on 05.05.2004 she was operated. It was alleged that operation took long time, the patient was taken to operation theatre (OT) at 9 a.m. and operation completed at 5 p.m. After the operation one junior doctor came from OT and informed the complainant no. 2 that operation was successful. The patient's father went to see his daughter in the recovery room, but she was in semi-conscious state & crying. At 5.30 p.m., he noticed no movements in her legs and same was informed the duty doctors. The CT scan of the operated area was done and after examining CT report, the Opposite Party No. 2 expressed with sorry figure to the Complainant No. 2 and his elder brother, Dr. Sarveshwar Puri that one screw was pressing the spinal cord and as a result thereof the reoperation was necessary for removal of the said screw. It was further alleged that the C-arm was not used during the operation as it was not functioning properly and it was not disclosed by the Opposite Party No. 2. It was further alleged that during any spinal surgery, presence of Neurosurgeon was must, but in the present case, the operation was performed under the supervision of the Opposite Party No. 2 only, who was just an orthopaedic surgeon. After the operation on the insistence of the Complainant No. 2, then only from Neurosurgery Department Dr. S. S. Kale the Neurosurgeon (the Opposite Party No. 3) was called. Thereafter 2 nd operation was conducted at 7.30 pm in the presence of the Neurosurgeon Dr. S. S. Kale. The operation ended at 9.00 pm. The patient remained in ICU for 10 days, but no recovery in movements of the lower part of the body.

6. The patient was discharged from AIIMS on 19.05.2004 and as per the discharge summary one screw penetrated vertebral canal and caused Grade – III perforation in the spinal cord. The spinal cord was severely damaged and the patient became paralyzed for the rest of a life, with loss of bowel and urinary control. It was due to alleged negligence from the OP-2 during both the operations,

7. The paralysis of patient did not improve; the Complainant No. 2 took her to Mumbai on 21.09.2004 to consult Neurologist and Spinal Surgeon Dr. P. S. Ramani, Lilavati Hospital and at P D Hinduja Hospital, Mumbai. The patient took further treatment and physiotherapy from October 2004 to April 2007 for three years at K.K. Hospital, Lucknow under the supervision of Dr. D. K. Vatsal

8. Being aggrieved, the Complainants (1 & 2) filed the Consumer Compliant under section 21(a) (i) of the Consumer Protection Act, 1986 before this Commission against the AIIMS and the treating doctors for gross carelessness and deficiency in service causing complete paralysis of lower part of patient's body and further complications and damage to kidneys, urinary bladder, etc. The Complainants prayed for compensation to the extent of Rs. 1,08,50,000/- from the Opposite Parties along with interest and other relief.

DEFENCE:

9. The Opposite Parties filed their respective Written Versions and denied the allegations of medical negligence. It was stated that the Opposite Party No. 2 is an Orthopaedic-spine surgeon with rich experience in spinal deformity correction. He has been trained in spine surgery at AIIMS institute and abroad also. He examined Ms Shrishti Puri the patient and suggested surgery to avoid further spinal deformity which progresses with growth of the patient. It usually leads to Grotesque deformity with respiratory problems and neurological deficit. The patient's relatives were explained about the nature of the congenital spinal deformity (Congenital Kyphosis) and the treatment options available at the relevant time, as stated in the standard Textbook of Orthopaedics by Campbell, Rothman and Simon-textbook of Spinal Disorders, Techniques in spine surgery. The parents were clearly explained about the operative risks involved in the spinal surgery including the neurological and vascular complications. The patient's father is a doctor by profession and he was fully aware and understood the risks and complications involved in spinal surgery. After accepting all the discussion, the patient's father gave two informed /special consent in his own handwriting mentioning specifically about the complications. It was submitted that the spinal surgery was performed by the Opposite Party No. 2 and his team with the use of C-arm. After the surgery as soon as, the misplacement of screw was identified on the CT scan, decision for emergency surgery was taken in consultation with Dr. S. S. Kale, the Neurosurgeon from the Neurosurgery department. Dr. S. S. Kale examined the patient and in the same evening the 2nd surgery was performed in presence of Dr. S. S. Kale. The penetrating screw was carefully removed by doing a laminectomy and visualizing the dura directly, without causing any mechanical damage to the spinal cord. Thus, it would be wrong to allege that the screw was misplaced due to carelessness or ignorance of the surgeon. The doctors acted immediately once the accidental misplacement of screw was detected. The patient was discharged from AIIMS on 19.05.2004 with follow up advice, but the patient did not turn up.

ARGUMENTS:

10. The learned Counsel for the Complainants vehemently argued and reiterated the facts and the affidavit of evidence. The learned Counsel submitted that both the Complainant no. 2 and his brother being the doctors were quite aware of the fact that if one screw has wrongly been fixed and was pressing the spinal cord which damage the sensitive area and result in to no movement in the legs of the patient. The re-operation of the same will further aggravate the situation but being helpless, therefore, having left with no other option, he left everything on Dr. Arvind Jaiswal's faith. The Complainant No. 2 asked Dr. Jaiswal to take an urgent decision to avoid further damage

to the spinal cord and requested to call Neurosurgeon as when he came to know that Dr. Jaiswal was not a Neuro Surgeon. After four days, the second MRI was done and after one week, CT Scan was also performed. It was reported as spinal cord edema and there was no pressure on the spinal cord. The patient was discharged from AIIMS on 19.05.2004 and the discharge summary did not mention the details of Neuro Surgeon. The learned Counsel for the Complainant relied upon few decisions of Hon'ble Supreme Court viz:

(i) **Nizam's Institute of Medical Sciences vs. Prasanth S. Dhananka & Ors** (2009) 6 SCC 1

(ii) **Spring Meadows Hospital & Anr. Vs. Harjol Ahluwalia & Ors.** (1998) 4 SCC 39

(iii) **Maharaja Agrasen Hospital & Ors. Vs.Master Rishabh Sharma & Ors** . Civil Appeal No. 6619 of 2016

(iv) **AIIMS vs Ayesha Begum**

(v) **AIIMS vs Shri SC Mathur & Ors.**

11. During argument on 13.12.2019, the learned Counsel for the Opposite Parties, and the doctors Opposite Parties Nos. 2 and 3 were present. The learned Counsel argued that as a standard practice during every spinal surgery at AIIMS "C-arm" image intensifier (X-ray machine) to assess the placement of all screws and for the instant patient C-arm was used. He further argued that several studies have shown that in spite of taking all precautions including the use of 'C-arm image intensifier, a small percentage (5-15%) screw perforation / penetration into the spinal canal may occur in the hands of best of spine surgeons worldwide and the incidence increase when the spine is deformed and crooked.

12. As per standard neurosurgical practice, any mechanical compression of the cord is removed earliest, the changes are reversible. In the instant the 1 st operation ended at 5 PM and the paralysis was discovered at 5.30 pm, immediately the CT Scan was done to find out any mechanical cause. On finding one of the screws penetrating the spinal canal, the Opposite Party No. 2 personally had explained the patient's father about the necessity to remove the offending screw to give the best chance of recovery to the patient. Thus, the treating surgeon and his team did not hide any facts to the patient's parents. After the 2 nd operation, the patient was shifted in the post-operative recovery room, then to the ward and kept under observation. The postoperative CT and MRI scans did not show any compression. However, the spinal cord showed signal changes (evidence of oedema), the patient was put on medications including steroids in consultation with the neurosurgeon Dr. S. S. Kale. The patient was given Methylprednisolone to decrease the secondary injury to the Spinal cord and to aid in functional recovery. After two weeks, at the time of the discharge patient showed motor paralysis of both lower limbs but her sensations had returned up to L3 level (above knee). The patient was advised for follow-up and rehabilitation, but the patient did not come for follow-up at AIIMS. The learned Counsel brought our attention to the literatures on the subject –

"The procedure carried to avoid any further insult to the spinal cord. The Removal of Pedicle Screw Placed for Thoracolumbar Spine Fracture" Spine,1996, 21(21) 1, 2495-2498.

Learned Counsel for the Opposite Parties further submitted that on the contrary, prompt explanation of misplacement of the screw was given to the relatives and the 2 nd surgery was done immediately to remove the offending screw. It shows the bonafide action of the surgeon who accepted the complication and took proper steps promptly. At the time of discharge from the hospital, the patient had motor paralysis of both lower limbs but her sensations were returned to above knee i.e. up to L-3 level. The learned Counsel further argued that the Complainants have not suffered any loss or injury due to the act of Opposite Parties and there is no ground to demand any specific, speculative general damages which are highly exaggerated and without any basis. There was no evidence that the Opposite Party No. 2 and his surgical team acted carelessly during the surgery. The learned Counsel submitted that the Opposite Party No. 4 (since deleted) was an assisting surgeon who had assisted during the surgery and there was no negligence.

13. The learned Counsel for the Opposite Parties no. 1 to 3 (Opposite Party No. 4 deleted) has filed copies of following medical literature and the judgments:

(i) Medical literature titled "Rothman-Simeone and Herkowitz, The Spine"

(ii) Natural History of Congenital kyphosis and kyphoscoliosis

(iii) The Natural History of the Congenital Scoliosis and Kyphosis, Spine, Lippincott Williams & Willkins

(iv) The drawing of Pedicle screws misplacement complication

(v) Morbidity and mortality associated with spinal surgery in children: a review of the Scoliosis Research Society morbidity and mortality database [*J Neurosurg Pediatrics 7:37-41,2011]*

(vi) Neurological Outcome and Management of Pedicle Screws Misplaced Totally within the Spinal Canal.[*Spine Vole 38, Number 3, pp 229-237 ©2013, Lippincott Williams & Wilkins]*

(vii) The Removal of a Transdural Pedicle Screw Placed for Thoracolumbar Spine Fracture.[*Spine Volume 21, Number 21, pp 2495-2499 © 1996, Lippincott Raven Publisher]*

(viii) Neurosurgeon or Orthopedic Surgeon? Does it Matter? [*Written by Gerald E. Rodts, Jr., MD[1] and Lawrence G. Lenke, MD [2]*]

Judgment/s:

1. Martin F. D'Souza vs. Mohd. Ishfaq 2009 (3) SCC 1

OBSERVATIONS:

14. The medical record of AIIMS revealed the medical history of the patient Ms. Shrishti Puri, as her parents noticed that she was suffering from deformity in back for 2 ½ years. The spinal

anatomy was completely deformed cause of sufferings to the patient. It was diagnosed as Congenital Kyphoscoliosis (Congenital Deformity of spine) and progressive in nature.

15. Initially before approaching the AIIMS, the patient's parents consulted Dr. Rajender Prasad (Neuro-Surgeon, Apollo Hospital) and Dr. Gulati (Ortho –Surgeon). Dr. Prasad referred the patient to Dr. Jaiswal at AIIMS for further consultation and treatment. The prescription of Dr. Rajendra Prasad dated 20.05.2003 revealed as below:

> H/o – Dorso-lumbar Kyphosis with anterior wedging of D-11, D-12, L-1 and partial anterior fusion of these vertebras including intervertebral disc. No scoliosis o/e, no Neurological deficit MRI – no tethering of chord.
>
> review with Dr. Jaiswal at AIIMS.

16. The next question is the Complainant No. 2 alleged that the Opposite Party No. 2 was not a qualified Neurosurgeon and competent to perform spinal surgeries, but he was only Orthopedicain. In this context the report dated 29.11.2013 issued by the Board of Governor of MCI is relevant. It held that the Orthopedician may also provide spinal care including surgery to the patient. In the instant case the OP-2 though he was an Orthopaedic Surgeon had rich experience in spinal surgeries. In our considered view Complainant's allegation is not sustainable that the Opposite Party No. 2 concealed or never informed that he was not a Neurosurgeon. Worldwide commonly the corrective spinal surgeries are performed by the spine deformity surgeons who predominantly are Orthopaedic Surgeons. It is not mandatory or any convention that both the Ortho and the Neuro surgeons shall be present during surgery. However, the spinal surgeon depending upon the circumstances may take help of either the Neuro Surgeon or the Ortho Surgeon or the vice versa.

17. It is an admitted fact that the patient's father and one relative are doctors. They were aware about the congenital spinal defects and the available treatment options and its risks. The spinal deformity progresses with growth of person and usually leads to Grotesque deformity associated with respiratory problems and possible neurological deficit. The post-operative paralysis of the patient is a well-documented complication of spinal deformity due to anatomical mal positioning of the spine. It is pertinent to note that the patient's father gave two informed consents, in his own handwriting after accepting all these complications and as possible consequences of the surgery. Parents/relatives of the patient were duly explained more than once and consented for the surgery.

18. We further note that after the discharge from AIIMS, the patient did not attend for follow-up/ Physiotherapy at AIIMS. She took treatment at Lucknow under the care of Dr. D. K. Vatsal. The MRI was done on 10.06.2004 at SGPGI, Lucknow and reported as below:-

- No e/o extrinsic thecal sac compression at the site of surgery.
- Cord swelling seen at site of nailing seen on early post op scan has gone down .
- Small hyperintensity noted at D11 level on sagittal scans, axial scans show focal cord hyperintensivity at D10, these do not correspond to sagittal T2 WI may be due to artifacts. No e/o AVM.
- The intervertebral discs show normal signal intensity above & below the op site.

- Para vertebral soft tissues appear normal.

Impression:

FUC of scoliosis operated with metallic plate fixation shows susceptibility artifacts in region of plate & screws cord swelling seen at site of nailing on early post op scan has gone down .

Thus it is clear that there was no direct injury to the spinal cord and the swelling (edema) has reduced after the removal of screw.

CONCLUSION:

19. The patient was diagnosed as Congenital Kyphoscoliosis (Spinal deformity) initially consulted Dr. Prasad at Apollo Hospital and thereafter referred to the Opposite Party No. 2 Dr. Jaiswal at AIIMS. The Opposite Party No. 2 specifically ruled out the presence of any spinal cord anomalies with the help of investigations like CT and MRI of the whole spine. Thereafter, the Opposite Party No. 2 advised corrective bony deformity surgery for the patient. In our view it was reasonable and Standard of spinal surgical practice from the doctors at AIIMS.

20. As discussed *supra* the Opposite Party No. 2 used the C-arm as the conventional method which is being done at AIIMS. As per the evidence of the Opposite Parties, at the Department of Orthopaedics of AIIMS there are two C arm machines and both the machines were functional on the date of surgery of the patient. Thus we do not accept the Complainant's allegation that the spinal corrective surgeries were conducted without the help of the C-arm at AIIMS.

21. From medical literature from the Standard text books on Spinal Surgery it is apparent that any surgical procedure complications are inherent. Moreover, in spinal surgeries, the serious complications are seen due to proximity of nerves and spinal cord to the spine. The corrective surgery for the spinal deformity, involves placement of multiple screws (5-6mm) into the vertebra through a narrow window (pedicle). During surgery after fixing the rod through screws along the side of the affected area, the rod is manipulated to correct the deformity and straighten the spine. It is not uncommon that while putting the rod into a corrective position, at times the screws moves slightly from the original position, which can cause neurological or vascular problem in few patients.

22. As discussed above, because of the complicity of corrective spinal deformity surgery, the misplacement of the screws is accepted as complication world over. In the instant case as soon as noticing the neurological complication, the CT scan revealed one of the screws penetrating the spinal canal. Therefore, the decision to remove the said screw was taken forthwith in consultation with the parents of the child and the second procedure was carried out without loss of much time in presence of Neurosurgeon. Operatively no Dural injury was found. Therefore it was decided with consultation of Dr. S. S. Kale to place gelfoam surgical over the laceration in the Dura and the wound was closed. Methyl prednisolone was given as an established treatment protocol in acute spine cord injury and decongestants were given to prevent CSF leak. This cannot be construed as a short comings or medical negligence.

23. The mode of treatment/ skill differ from doctor to doctor and the doctor is not liable for negligence if he performs his duty with reasonableness and with due care. We find the Opposite

Party No. 2 and his team performed the spinal correction surgery as per the accepted standards. In this regard we would like to quote the decision of Hon'ble Supreme Court in the case **Achutrao Haribhau Khodwa and others versus State of Maharashtra and others,** (1996) 2 SCC 634, the Hon'ble Supreme Court held that:

> "The skill of medical practitioners differs from doctor to doctor. The very nature of the profession is such that there may be more than one course of treatment which may be advisable for treating a patient. Courts would indeed be slow in attributing negligence on the part of a doctor if he has performed his duties to the best of his ability and with due care and caution. Medical opinion may differ with regard to the course of action to be taken by a doctor treating a patient, but as long as a doctor acts in a manner which is acceptable to the medical profession, and the Court finds that he has attended on the patient with due care skill and diligence and if the patient still does not survive or suffers a permanent ailment, it would be difficult to hold the doctor to be guilty of negligence."

24. With respect to the duty of care, we would like to rely upon the decision of Hon'ble Supreme Court in the case of **Dr. Laxmn B. Joshi vs Dr. Trimbak B Godbole & Anr.,** AIR 1969 SC 128, which laid down certain duties of doctor that:

> (a) Duty of care in deciding whether to undertake the case (b) Duty of care in deciding what treatment to give, and (c) Duty of care in the administration of that treatment. A breach of any of the above duties may give a cause of action for negligence and the patient may on that basis recover damages from his doctor. The doctor owes certain duty towards the patient and the doctor can decide the method of treatment, which is more suitable for the patient. In the instant case we find the treating doctors at AIIMS failed in the duty of care towards the patient.

25. Based on the forgoing discussion, in the instant case, the medical negligence is not conclusively established against the Opposite Party No. 2 and his team, who have performed the spinal deformity surgery with reasonable duty of care.

26. The Complaint fails. It is dismissed.

27. We may add that we have sympathy with the patient for her Congenital Kyphoscoliosis deformity, however, sympathy cannot substitute for conclusive evidence of medical negligence. We are but happy to note that presently the patient (Complainant No. 1) is pursuing her MBBS at JIPMER, Pondicherry, and we wish her all success in life.

ADVICE:

28. AIIMS is a premier institute in India, renowned over the decades for its illustrious work. Its 'Scoliosis and Spine' Unit has been running since 1976, under 'Orthopaedics'. We may observe that 'Scoliosis and Spine' requires an integrated concomitant approach by both 'Orthopaedics' and 'Neurosurgery'. To take its Unit to the next level, as a systemic improvement, the Director, AIIMS may kindly consider enhanced integration of 'Orthopaedics' and 'Neurosurgery' in its said Unit, including by posting both 'Orthopaedics' and 'Neurosurgery' therein as well as working towards creating a speciality in its own right for 'Spinal Surgery', having knowledge in both 'Orthopaedics' and 'Neurosurgery'.

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DR. S.M. KANTIKAR
PRESIDING MEMBER

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DINESH SINGH
MEMBER