

**District Consumer Disputes Redressal Forum
Ladowali Road, District Administrative Complex,
2nd Floor, Room No - 217
JALANDHAR
(PUNJAB)**

**Complaint Case No. CC/95/2018
(Date of Filing : 09 Mar 2018)**

1. Rajinder Kaur

W/o Surinder Singh R/o HNO.92, Narain Nagar, New
Ashok Nagar, Present 176, Nijatam Nagar

Jalandhar

Punjab

.....Complainant(s)

Versus

1. Director/authorized representative of Bone & Joint
Replacement Hospital,

Accident & trauma Care Centre, Ganga Ortho Care
Centre, Football Chowk, Adjoining Canara Bank

Jalandhar

Punjab

2. Dr. Peeyush

MS(Ortho) Bone & Joint Replacement Hospital, Accident
& Trauma Care Centre, Ganga Ortho Care Centre,
Football Chowk, Adjoining Canara bank,

Jalandhar

Punjab

.....Opp.Party(s)

BEFORE:

**Kuljit Singh PRESIDENT
Jyotsna MEMBER**

PRESENT: Sh.Darshan Singh, Adv Counsel for the
complainant.

.....for the Complainant

Sh.Balram Shakti, Adv. Counsel for OPs.

.....for the Opp. Party

Dated : 09 Feb 2021

Final Order / Judgement

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
JALANDHAR**

Complaint No.95/2018

Date of Instt. 09.03.2018

Date of Decision: 09.02.2021

Rajinder Kaur, aged about 52 years, w/o Surinder Singh, r/o House No. 92, Narain Nagar, Now Ashok Nagar, Jalandhar at present 176, Nijatam Nagar, Jalandhar.

.....Complainant

Versus

1. Director/authorized representative of Bone & Joint Replacement Hospital, Accident & Trauma Care Centre, Ganga, Ortho Care Centre, Fooball Chowk, Adjoining Canara Bank, Jalandhar.

2. Dr. Peeyush Sharma, MS (Ortho) Bone & Joint Replacement Hospital, Accident & Trauma Care Centre, Ganga Ortho Care Centre, Football Chowk, Adjoining Canara Bank, Jalandhar.

.....Opposite Parties

Complaint Under the Consumer Protection Act.

Before: Sh. Kuljit Singh (President)

Smt. Jyotsna (Member)

Present: Sh.Darshan Singh, Adv Counsel for the complainant.

Order

Kuljit Singh (President)

1. The instant complaint has been filed by the complainant, wherein alleged that he was going from Tehsil Complex Jalandhar to her above said house on dated 19.12.2017, when he reached near Nakodar Chowk at 6.30 PM before crossing the red line, truck unknown number struck the complainant's sunny bearing no.PB08-5025 with the result, she fell down and left arm of the complainant was not working. She went to her house and felt pain. On 20.12.2017, she approached Punjab System Corporation, Civil Hospital Jalandhar got x-rays and medicines but staff of hospital was very busy, who did not attend the complainant. Resultantly, she went to OP no.1 and on 21.12.2017 doctor checked the complainant and stated that bone of left arm has displaced/broken and need some surgery. The husband of the complainant brought the medicines for operation and supplied to treating doctor in the operation hall. She astonished to know that doctor did not performed the operation but doctor put plaster on the left arm of complainant. The complainant objected the conduct of doctor, not to perform the operation as consent was given for surgery of left arm by husband of the complainant After second day, the complainant again informed the doctor that her pain was very severe and unbearable. The treating doctor i.e. OP no.2 Dr. Peeyush Sharma MS (Ortho) changed some medicine but effect of this medicine was not effecting, resultantly pain did not decrease. The line of treatment adopted by the OP no.2 treating doctor Peeyush Sharma MS (Ortho) was wrong. Firstly, treating doctor OP no.2 did not perform the operation as per consent of the husband of the complainant, secondly medicine and bandage was not responding positively but intensity of pain increased from 21.12.2017 to 18.01.2018 and condition of patient due to pain was deteriorating day by day. Further, she has shift to another hospital namely Dang Nursing Hospital Link Road, Jalandhar and treating Dr. Dang after examining all the treatment record advice for surgery as per the consent of the complainant, surgery was done and operation was successful. The main grievance of the complainant is that Dr. Peeyush Sharma MS (Ortho) of Ganga Hospital did not acted as per the consent of the complainant and did not perform the operation but only covered the left arm of the complainant with plaster. There is negligence and deficiency in service which may arise because contractual liability stand when treating doctor failed to exercise with reasonable care and reasonable skill. Due to act and conduct of the OPs, the complainant filed the present complaint and prayed that OPs be directed to pay Rs.20,000/- deposited on treatment of left arm, Rs.50,000/- as compensation for mental harassment and Rs.10,000/- as cost of litigation.

2. Upon notice, OPs appeared and filed written reply and contested the complaint of the complainant by raising preliminary objections that there is no relationship of service provider and the complainant. The complaint is nothing but an abuse of the process of law. On merits, it was averred that OP checked and treated the complainant. The opinion of the Dr. Naveen Jain Anesthetist who is to assist in the surgery was also of the view that the patient was not in a fit stage to undergo surgery. It was also advised by the Anesthetist to the complainant that after the treatment of POP the wounds would stabilize after six weeks and then it will be ascertained whether she needs surgery or not and she was asked to come for the follow up action. Rest of the averments of the complainant was denied and they prayed for dismissal of the complaint.

3. The complainant has tendered in evidence Ex.C-A affidavit of the complainant along with copies of documents Ex.C-1 to Ex.C-13 and closed the evidence. On the other hand, OPs tendered in evidence affidavit of Dr. Peeyush Sharma as Ex.OP-A, affidavit of Dr. Naveen Jain MD Anesthesia as Ex.OP-B. affidavit of Shiv Raj Parmar as Ex.OP-C along with copies of documents Ex.OP-1 to Ex.OP-2 and closed the evidence.

4. We have heard learned counsel for the parties and have gone through the record of the case very minutely.

5. The complainant has tendered in evidence her affidavit Ex.CA on the record in support of her case. She alleged deficiency in service on the part of OPs. The complainant stated that bone of left arm has displaced/broken and need some surgery. Secondly, when the treated doctor did not perform the duty as per the consent. Ex.C-1 is copy of Aadhar card of the complainant. Ex.C-3 to Ex.C-5 are doctor slips. Ex.C-6 is affidavit of Surinder Singh husband of the complainant. Ex.C-7 is copy of prescription slip of the doctor. Ex.C-7-D is doctor card prepared in the name of the complainant. Ex.C-8 and Ex.C-9 are doctors slips. Ex.C-10 is copy of legal notice served upon OPs. Ex.C-11 is copy of application on the record.

6. To refute this evidence of the complainant, the OPs tendered in affidavit of Dr. Peeyush Sharma as Ex.OP-A on the record. This witness denied any deficiency in service on the part of OPs. Ex.OP-B is copy of affidavit of Dr. Naveen Jain MD Anesthesia on the record. This witness stated that complainant was more than 60 years of age and was overweight and her physical condition was not conducive to undergo a surgery. The complainant had fracture for which the doctor treating her earlier have opined for POP and condition in which she was POP treatment was the best option as the surgery could have risked her life. Ex.OP-C is copy of affidavit of Shiv Raj Parmar on the record. Ex.OP-1 and Ex.OP-2 are copies of doctor slips.

7. It is an established fact that on 20.12.2017, she approached Punjab System Corporation, Civil Hospital Jalandhar got x-rays and medicines but staff of hospital was very busy, who did not attend the complainant. Resultantly, she went to OP no.1 and on 21.12.2017 doctor checked the complainant and stated that bone of left arm has displaced/broken and need some surgery. The husband of the complainant brought the medicines for operation and supplied to treating doctor in the operation hall. She astonished to know that doctor did not performed the operation but doctor put plaster on the left arm of complainant. The complainant objected the conduct of doctor, not to perform the operation as consent was given for surgery of left arm by husband of the complainant after second day, the complainant again informed the doctor that her pain was very severe and unbearable. The treating doctor i.e. OP no.2 Dr. Peeyush Sharma MS (Ortho) changed some medicine but effect of this medicine was not effecting, resultantly pain did not decrease. The line of treatment adopted by the OP no.2 treating doctor Peeyush Sharma MS (Ortho) was wrong.

8. On the other hand, OPs denied any deficiency on their part and they pleaded that the opinion of the Dr. Naveen Jain Anesthetist who is to assist in the surgery was also of the view that the patient was not in a fit stage to undergo surgery. It was also advised by the Anesthetist to the complainant that after the treatment of POP the wounds would stabilize after six weeks and then it will be ascertained whether she needs surgery or not and she was asked to come for the follow up action.

9. The main grouse of the complainant in the complaint is that her left arm has displaced/broken and need some surgery. Secondly when the treated doctor did not perform the duty as per the consent. We have considered the affidavit Ex.OP-A of Dr.Peeyush Sharma. This doctor stated that it was of his opinion that complainant needs treatment of POP as she is an old lady and was overweight and her physical condition was not to the extent that she can withstand the surgery. The opinion of Dr. Naveen Jain, Anesthetist who is to assist in the surgery was also of the view that the patient was not in a fit stage to undergo surgery. Affidavit of Dr. Naveen Jain M.D Anesthesia as Ex.OP-B on the record. This doctor also stated that he examined complainant for the purpose of suitability to undergo an operation and found that she was more than 60 years of age and was overweight and his physical condition was not conducive to undergo a surgery. She had the fracture for which doctors treating her earlier have opined for POP and condition in which she was POP treatment was best opinion as the surgery could have risked her life.

10. From considering that facts and circumstances of the case, we find that the main grouses of the complainant are that firstly, her left arm has displaced/broken and need some surgery. Secondly when the treated doctor did not perform the duty as per the consent. We think that the above grouses of the complainant are not authenticated because the surgery given to patient it depends upon doctor not on patient and doctor perform its duty as per his knowledge and caliber and he cannot depend upon consent of the patient because surgery or given proper treatments to the patient is regular routine work of the doctors as per their profession. There is simple oral evidence of the complainant, which is not sufficient in our opinion to charge the OPs with civil liability for compensation on account of their alleged medical negligence. Even Apex Court has also held in " **Kusum Sharma and others versus Batra Hospital & Medical Research Centre and others,**" reported in 2010(2) CLT that doctor who performed the operation had reasonable degree of skill and knowledge and hence no medical negligence is proved against him. The Apex Court has held in this authority has held that the Negligence is the breach of a duty exercised by omission to do something, which a reasonable man, guided by those considerations, which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. A medical practitioner would be liable only, where his conduct fell below that of the standards of a reasonably competent practitioner in his field. Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. It would not be conducive to the efficiency of the medical profession, if no doctor could administer medicine without a halter round his neck. There is nothing on the record that OPs were not qualified doctors or they have not followed the medical protocol, while prescribing the treatment of the complainant. In the absence of expert doctor's report, we are unable to rely upon the bald submissions of complainant in this regard, who is not a medical expert person in the medical science, attributing medical negligence to OPs.

11. As a result of our above discussion, we are unable to come across any substance on the file to prove medical negligence on the part of OPs. As such, we dismiss the complaint of the complainant with no order as to costs.

12. Copies of the order be sent to the parties, as permissible, under the rules.

13. File be indexed and consigned to the record room after its due compliance.

ANNOUNCED IN THE OPEN COMMISSION :

9th Day of February 2021

(Kuljit Singh)

President

(Jyotsna)

Member

**[Kuljit Singh]
PRESIDENT**

**[Jyotsna]
MEMBER**