

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 356 OF 2015**

(Against the Order dated 28/10/2014 in Appeal No. 843/2010 of the State Commission Uttar Pradesh)

1. AL - SHIFA HOSPITAL & 2 ORS.

MIRZA HADIPURA(BY PASS ROAD) MAU NATH  
BHAJAN, THROUGH THE SANCHALAK DR.SHRI  
NISAR A JAVED AND DR.SMT SHABANA JAMAL  
DISTRICT : MAU

U.P

2. DR.AMT.SHABANA JAMAL,  
MBBS,MD,DGO.,MFOGS, W/P DR.N.A JAVED,  
R/O AL-SHIFA HOSPITAL, MIRZA HADIPURA,  
(BY-PASS ROAD) MAU NATH BHAJAN,  
DISTRICT : MAU

U.P

3. DR.NISAR.A JAVED MD.PHYSICIAN, S/O SHRI  
ABDUL WAHEED KHAN,  
R/O AL-SHIFA HOSPITAL, MIRZA HADIPURA,  
(BY-PASS ROAD) MAU NATH BHAJAN,  
DISTRICT : MAU

U.P

.....Petitioner(s)

Versus

1. SHABNAM JAMILA  
W/O ANWAR HUSSAIN ANSARI, R/O MOHALLA  
CHITANPURA, (NATHU KI EMLI) QASBA,  
PARGANA AND TEHSIL MAU NATH BHAJAN,  
DISTRICT : MAU

U.P

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. PREM NARAIN,PRESIDING MEMBER**

**For the Petitioner :** For Al-Shifa Hospital : Mr Chandra Shekhar, Advocate &  
Mr Prashant Shekhar, Advocate

**For the Respondent :** For Shabnam Jamila : Mr Pawan Kumar Ray, Advocate

**Dated : 26 Aug 2020**

**ORDER**

**PER MR PREM NARAIN, PRESIDING MEMBER**

The complainant and the opposite parties both have challenged the order dated 28.10.2014 passed by the U.P. State Consumer Disputes Redressal Commission Lucknow in First Appeal Nos. 843 of 2010 and 921 of 2010 by way of the two revision petitions No. 1590 of 2015 and 356 of 2015.

2. Brief facts of the case are that the complainant who was pregnant got herself checked up in July 1995 in the hospital i.e. the OP under Dr. Sushma Tripathi. After October, the complainant got herself checked up by Dr. Shabana Jamal (OP no.1) and her associate (OP no.2) as Dr.Sushma had left the said hospital. The complainant was informed by the doctors that her pregnancy was normal and for the mild pain in the head, she was given pain-relieving tablets. On 15.12.1995 the complainant was admitted to the hospital by her family members and they have assured a normal delivery. After some time, the staff informed the family members that the complainant gave birth to a male child and some medicine will be required for the health of the child. On 16.12.1995, OP obtained the signatures of the guardian of the complainant on a blank paper and handed over the child saying that the dead child was born. The complainant's condition was serious and therefore, after getting discharged, she was taken to Krishna Hospital, which referred her to B.H.U. Hospital where she was treated from 17.12.1995 to 13.01.1996. The complainant through doctors of B.H.U. came to know that the doctor of the hospital (OP no.1) had removed her uterus and now she cannot give birth to a child. Aggrieved by the act of negligence by OPs, the complainant filed the complaint before the District Forum.

3. The District Consumer Disputes Redressal Forum, Mau ('the District Forum) vide its order dated 03.05.2010 had partly allowed the complaint and directed OPs to pay a sum of Rs.20,000/- the amount spent on treatment and Rs.20,000/- as compensation for mental harassment to the complainant.

4. The State Commission vide its order dated 28.10.2014 dismissed the appeal of OPs, however, allowed the appeal of the complainant. The State Commission ordered that the order of District Forum is modified to the extent that the OPs shall pay a sum of Rs.3,00,000/- to the complainant along with interest @ 6% per annum from the date of complaint.

5. Hence, OPs have filed the revision petition before this Commission.

6. Heard the learned counsel for both the parties and perused the record. The parties will be addressed as they are addressed in the order of the District Forum. The learned counsel for the opposite parties argued the following points:

1. The State Commission has committed jurisdictional error while passing the impugned judgment and thereby allowing the claim as prayed for by the respondent, without returning the finding as to whether the doctor failed to perform her duties well in exercise of ordinary degree of professional skill and competence while treating the respondent in peculiar facts of the case, particularly so when the doctors at BHU Medical College pursued the same course of treatment by taking up the thread where the revisionists had left off.
2. While appreciating the medical negligence, be it in respect of the diagnosis or in choosing the course of treatment, neither of the Fora below cared to take the expert's opinion as held

by the Hon'ble Supreme Court of India in *Malay Kumar Ganguly's* case reported in (2009) 9 SCC 221, underlining that the medical science is a complex subject and assistance of expert in appreciating the course of treatment is most warranted, per chance, without making any effort to have the expert's opinion, decided the case on the face of the ordinary evidence given by the witnesses, ignoring the revisionist's request.

3. Fora below totally ignored the factors which constitute negligence touching upon the person lacking the requisite skill which he/she professes to possess and secondly failure to exercise the reasonable competence and the skill possessed by such professional. There is no finding as to whether the revisionist no.2 lacked in any way in her professional competence which she professed to be as a Gynecologist and obstetrician. Further, there is no finding as to whether any complication constituting negligence arose because of the lack of exercise of such reasonable competence as a professional as required to do so. Hence, in absence of evidence and of finding about the non-performance of duty which a skilled professional of specific field is required to follow, no finding can be given in respect of negligence because negligence and duty are strictly co-relative and negligence arises only when there is breach of duty.
4. Both the fora below failed to appreciate that at the time when the consent of the respondent's father was taken, it was a situation of grave concern because the operation was to be conducted without any delay as the respondent carried a dead child in her womb and her life was in extreme danger. Therefore, in haste, the relative/ attendant whoever was present from her family was available at that time, was informed about the gravity of the situation and the required treatment in response and accordingly, the consent of her father was taken.
5. The revisionist right in the inception and well within the period of indemnification clause of the insurance, informed the District Forum while filling the written statement but neither the District Forum nor the State Commission cared to consider the same whereby the revisionists could have been indemnified, if at all there was any negligence, warranting award of damages.
7. Learned counsel also stated that the orders of fora below are not only illegal from the legal point of view, rather, they have also not taken facts correctly.
8. On the other hand, the learned counsel for the complainant stated that the complainant has lost her child as well as doctors at the opposite party hospital have also removed the uterus of the complainant in order to shield their mistake. In fact, the State Commission has rightly analyzed the deficiencies on the part of the opposite parties and has clearly observed that not only the uterus was removed without any consent of the complainant or of any of her relatives, the doctors also cut the iliac artery of the complainant which led to excessive bleeding and the hospital discharged the patient hurriedly. The complainant had to get her treatment at BHU hospital to save her life. In these circumstances, the compensation of Rs.3.00 lakh awarded by the State Commission is quite meager and the complainant has filed revision petition No. 1590 of 2015 for enhancement of the compensation.
9. I have carefully considered the arguments advanced by the learned counsel for both the parties and have examined the record. First of all, it is seen that both the fora below have given concurrent findings so far as the deficiencies on the part of the opposite parties are concerned. The

facts cannot be reassessed by this Commission in the revision petition as held by the Hon'ble Supreme Court in the case of “**Lourdes Society Snehanjali Girls Hostel and Ors. Vs. H&R Johnson (India) Ltd. and others, (2016) 8 Supreme Court Cases 286,**” wherein the Hon'ble Supreme Court has observed the following:

*“17. The National Commission has to exercise the jurisdiction vested in it only if the State Commission or the District Forum has either failed to exercise their jurisdiction or exercised when the same was not vested in them or exceeded their jurisdiction by acting illegally or with material irregularity. In the instant case, the National Commission has certainly exceeded its jurisdiction by setting aside the concurrent finding of fact recorded in the order passed by the State Commission which is based upon valid and cogent reasons.”*

**10.** It has been contended by the learned counsel for the opposite parties that both the fora below have given their findings and decision without seeking any report from any expert. In this regard, the following observations of the State Commission are worth noting:

*“After hearing both the parties and perusal of the impugned order, we have found that there is no error in the order passed by the District Consumer Forum with regard to the deficiency in service committed by the opposite parties in the treatment of the complainant. The facts are evidenced on record that the consent for removal of the uterus was neither taken from the complainant which was necessary, nor even from the father of the complainant. The alleged consent from the father of the complainant shows that it was taken merely for operation and later on in that consent letter, it has been added inserting thereby that he, i.e., the father of the complainant is inclined to get the uterus removed. These words in the alleged consent dated 16.12.1995 are apparently visible to have been added subsequently for which there is no hesitation to held that there was no consent of the complainant or even of her father to get the uterus removed. It is in our view a serious negligence on the part of the opposite parties and the appeal filed by the opposite party may only be dismissed on this ground too but we have found further negligence too on the part of the opposite parties which is evidenced from the record of BHU that the iliac artery was cut down by the opposite parties and cervical stump was left inside by the opposite parties and due to which the excess bleeding, i.e., uncontrolled bleeding started and the patient was hastily discharged by the opposite parties”.*

**11.** From the above observations of the State Commission, it is clear that the documentary evidence is very strong to prove the deficiency of the opposite parties and no separate expert evidence is required to prove the medical negligence. The deficiency on the part of the opposite parties in respect of getting the consent of the father for removal of uterus of the complainant is proved from the consent letter itself where the manipulation has been proved by the State Commission. Therefore, no expert evidence is required to prove the same. Similarly the evidence from the medical treatment papers of the BHU hospital is sufficient to prove that the iliac artery was cut due to negligence of the opposite parties. The documents of BHU hospital cannot be treated as something less than an expert report. Thus, no separate expert evidence is required to prove the deficiency of the opposite parties in respect of cutting of the iliac artery. Once these two

negligent acts are proved, the other arguments advanced by the learned counsel for the opposite parties such as professional qualification of the doctor etc. will have no salutary effect. Thus, I do not find any merit in the revision petition No. 356 of 2015 filed by the opposite parties.

**12.** Coming to the revision petition filed by the complainant for enhancement of the compensation, it is seen that the District Forum had awarded a compensation of Rs.40,000/- only which has been increased to Rs.3.00 lakh by the State Commission. The State Commission has realized the full gravity of the deficiency on the part of the opposite parties and that is why the compensation has been increased to Rs.3.00 lakh which seems to be reasonable in the facts and circumstances of the case.

**13.** Based on the above discussion, I do not find any illegality, material irregularity or jurisdictional error in the order dated 28.10.2014 of the State Commission passed in FA Nos. 843 of 2010 and 921 of 2010 which calls for any interference from this Commission and accordingly, both the revision petitions No. 356 of 2015 and No. 1590 of 2015 are hereby dismissed.

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**PREM NARAIN**  
**PRESIDING MEMBER**