

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 4711-4713 OF 2013

(Against the Order dated 30/04/2013 in Appeal No. 130/2007, 109/2007 & 126/2007 of the State
Commission Punjab)

1. DR. SANJAY GARG
IN-CHARGE, DELHI NURSING HOME, BIBIWALA
ROAD,
BATHINDA
PUNJAB

.....Petitioner(s)

Versus

1. HARJIT SINGH & 4 ORS.
S/O SH. KARNAIL SINGH, R/O HOUSE NO-D-11,
THERMAL COLONY,
BATHINDA
PUNJAB

2. DAYANAND MEDICAL COLLEGE & HOSPITAL
THROUGH THE MEDICAL SUPERINTENDENT,
LUDHIANA
PUNJAB

3. M/S DELHI HEART INSTITUTE & RESEARCH
CENTRE,
THROUGH IN-CHARGE, DR NARESH GOYAL,
BATHINDA
PUNJAB

4. NEW INDIA ASSURANCE COMPANY LTD.,
THROUGH THE REGIONAL MANAGER, REGIONAL
OFFICE,
CHANDIGARH

5. ORIENTAL INSURANCE COMPANY LTD.,
THROUGH , THE SR.DIVISIONAL MANAGER,
BATHINDA
PUNJAB

.....Respondent(s)

REVISION PETITION NO. 1057 OF 2014

(Against the Order dated 30/04/2013 in Appeal No. 130/2007 of the State Commission Punjab)

1. NEW INDIA ASSURANCE CO. LTD.
DELHI REGIONAL OFFICE-I JEEVAN BHARTI
BUILDING TOWER-II LEVEL-V, CONNAUGHT
CIRCUS,

NEW DELHI - 110001

.....Petitioner(s)

Versus

1. HARJIT SINGH & 4 ORS.

S/O SH.KARNAIL SINGH, R/O HOUSE NO-D-11,
THERMAL COLONY,

BATHINDA

PUNJAB

2. DR. SANJAY GARG

IN-CHARGE,DELHI NURSING HOME, BIBIWALA
ROAD,

BHATINDA

PUNJAB

3. DAYANAND MEDICAL COLLEGE & HOSPITAL

THROUGH THE MEDICAL SUPERINTENDENT,

BHATINDA

PUNJAB

4. ORIENTAL INSURANCE COMPANY LTD.,

THROUGH , THE SR.DIVISONAL MANAGER,

BATHINDA

PUNJAB

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE R.K. AGRAWAL,PRESIDENT

HON'BLE DR. S.M. KANTIKAR,MEMBER

For the Petitioner :

For the Respondent :

Dated : 05 Oct 2020

ORDER

Appeared at the time of arguments through Video Conferencing

RP/4711-4713/2013

For Petitioner : Mr. K. G. Sharma, Advocate

For Respondent No. 1 : Mr. Sameer Nandwani, Advocate

For Respondent No. 2 & 3 : Ex-parte vide Order dated 23.11.2015

For Respondent No. 4 : Dr. Sushil Kumar Gupta, Advocate

For Respondent No. 5 : Mr. Vedant Mishra, Advocate

RP/1057/2014

For Petitioner : Dr. Sushil Kumar Gupta, Advocate

For Respondent No. 1 : Mr. Sameer Nandwani, Advocate

For Respondent No. 2 : Mr. K. G. Sharma, Advocate

For Respondent No. 3 & 4 : Ex-parte vide Order dated 23.11.2015

For Respondent No. 5 : Mr. Vedant Mishra, Advocate

Pronounced on: 5th October 2020

ORDER

PER DR. S. M. KANTIKAR, MEMBER

1. These Revision Petitions have been filed against a common Order dated 30.04.2013 of the Punjab State Consumer Disputes Redressal Commission (hereinafter referred to as the “State Commission”) in First Appeal No. 130, 109 & 126 of 2007, whereby FA/109/2007 was partly accepted and the Order of the District Consumer Disputes Redressal Forum, Bathinda (hereinafter referred to as the “District Forum”) was modified, and FA/126/2007 & FA/130/2007 were dismissed and the order of the District Forum was affirmed.

2. For convenience, the Parties are placed in their respective position as stated in the original Consumer Complaint before the District Forum.

3. Brief facts are that, the Complainant's wife, Smt. Sukhpal Kaur, (hereinafter referred to as the 'patient') on 07.09.2005 underwent hysterectomy by Dr. Sanjay Garg, (hereinafter referred to as the Opposite Party No. 1) in Delhi Nursing Home, Bathinda. After surgery she was made ambulatory (to walk within 12 hours of surgery) and oral feeds within 24 hours, the urinary catheter was put for 48 hours of surgery. She was discharged on 10.09.2005 in satisfactory condition. However, on the next day due to swelling and numbness in her left leg, she was taken to Opposite Party No. 1 in emergency. Her condition further deteriorated and she was taken to M/s Delhi Heart Institute and Research Centre, Bathinda (hereinafter referred to as the Opposite Party No. 2), wherein she was diagnosed as post-hysterectomy DVT with anemia and septicemia. After short treatment, she was referred to Dayanand Medical College and Hospital, Ludhiana (hereinafter referred to as the "DMC") (hereinafter referred to as the Opposite Party No. 3). There she was diagnosed as post hysterectomy DVT with septicemic shock with DIC and MOF. The doctors therein informed that the condition of patient was due to the negligence of the Opposite Party No. 1. The patient died in DMC on 12.09.2005. The Complainant alleged that the operation was performed negligently by the Opposite Party No. 1 and no post-operative tests were conducted to rule out complications such as Deep Vein Thrombosis (DVT) and septicemia. Being aggrieved a Consumer Complaint before the District Forum, Bathinda was filed by the husband of the deceased.

4. The Opposite Parties filed their written versions and denied allegations of negligence. The preliminary objection on maintainability of the Complaint was raised as the Complainant had no locus standi. The Complaint was frivolous and filed with intention to blackmail the Opposite Parties. The Opposite Party No. 1 contended that the surgery was successfully conducted with due care as per the standard method and the recovery was good. All required precautions were taken during operation and post-operatively. There is no nexus between DVT and the hysterectomy. The Opposite Party No. 1 admitted that the patient was brought again on 11.09.2005 and DVT was diagnosed. After initial treatment for DVT, the patient was referred to the Opposite Party No. 2 wherein she was treated for short period and referred to DMC, Ludhiana (the Opposite Party No. 3) for further management. Subsequently, the patient died due to sudden cardiac arrest on 12.09.2005. The Opposite Parties Nos. 4 & 5 also filed their respective written versions and denied medical negligence.

5. After the appraisal of the evidence on record, the District Forum vide order dated 12.12.2006, partly allowed the Complaint against the Opposite Parties Nos. 1, 3 & 4 and passed the following Order:

35. In the result, complaint against Opposite Party No. 1, 3 & 4 is accepted with cost of Rs.1,000/- to be shared by them equally. Complaint against Opposite Parties No.2 & 5 stands dismissed. Directions to Opposite Parties No. 1, 3 & 4 are given as under:

(i) Opposite Parties No. 1 & 4 to pay Rs.2,35,000/- to the complainant i.e. Rs.2,00,000/- as compensation on account of death of Mrs. Sukhpal Kaur, Rs.20,000/- as compensation for cost of treatment incurred by him at the hospitals and Rs.15,000/- under Section 14(1)(d) of the Act. Their liability is joint as well as several.

(ii) ***Opposite Party No. 3 to pay Rs.15,000/- to the complainant as compensation under Section 14 (1)(d) of the Act.***

Compliance of this order be made within 30 days from the date of receipt of copy of this order failing which the amount of compensation under Section 14(1)(d) of the Act would carry interest @ 9% p.a. till payment.

6. Being aggrieved by the order of the District Forum, the Opposite Party No. 1 and the Opposite Party No. 4 filed FA/130/2007 and the Opposite Party No. 3 filed FA/126/2007 before the State Commission, Punjab for dismissal of the Complaint, whereas, for enhancement of compensation, the Complainant Harjit Singh filed FA/109/2007.

7. The State Commission dismissed the FA/126/2007 and FA/130/2007. The State Commission partly accepted the FA/109/2007 and enhanced the total award to Rs. 4,35,000/- to be paid to the Complainant. Further in FA/126/2007, the Opposite Party No. 3 was directed to remit the amount of Rs. 7,667/- to the Complainant along with interest.

8. Being aggrieved, New India Assurance Co. (hereinafter referred to as the Opposite Party No. 4) and Dr. Sanjay Garg (the Opposite Party No. 1) have filed these Revision Petitions.

9. We have heard the learned Counsel for the Petitioners as well as the Complainant and perused the material on record *inter alia* treatment records from all three hospitals where the patient was treated.

10. We note the Complainant in para 7 of the Complaint stated that “on 11.09.2005, in the early morning, patient’s left leg got swollen and became numb. He immediately took her to the Opposite Party No. 1 at Delhi Nursing Home and got her admitted at 7.00 am. The Opposite Party No. 1 Dr. Sanjay Garg attended her, conducted some tests and examinations, and administered some medicines, but failed to control her affliction and consequently her condition got worsened. Thereafter, the Opposite Party No. 1 referred the patient to Delhi Heart Institute (Opposite Party No. 2) for further treatment. In our view, the Opposite Party No. 1 promptly attended to the complications and made proper referral to the higher center. In the instant case we do not find any dereliction in duty of care by the treating doctor. In Delhi Heart Institute (the Opposite Party No. 2) Pulmonary Embolism was suspected with anuria and septicemia. The initial treatment, given was Ecosprin, Clopigerel, injection Heparin and Dopamine. Thereafter, for further treatment patient was referred to Cardiology Department at Dayanand Medical College (the Opposite Party No. 3). She subsequently, developed DIC and septicemic shock with multi organ failure. The patient died on 12.09.2005 due to sudden cardiac arrest.

11. It is relevant to know about DVT and Pulmonary Embolism from the standard medical textbooks (Harrison’s Internal Medicine) and the medical literature on the subject, wherein it has been observed as under:-

Deep Vein Thrombosis (DVT) is a condition that happens when a blood clot forms in a deep vein, usually in the leg. DVT can occur when sitting or lying down for long periods of time, such as during recovery from Surgery or during a long airplane flight. The Pulmonary Embolism (PE) happens if the clot breaks off and travels through your bloodstream to the

lungs. The clot can block a blood vessel leads to low oxygen levels in blood. That it can damage the lung and other organs and cause heart failure too. Depending on the symptoms the patient was treated with thrombolytic drugs. Once the diagnosis of DVT or PE made, the goal is to shrink the clot and prevent other clots from forming. An anticoagulant is a type of blood thinner that slows blood clotting. Two types of anticoagulants are Warfarin and Heparin . The doctor may give thrombolytics to break up the clot very quickly. Such type of medication be given in a hospital, often in an emergency room.

Prophylactic measure is increasing the amount of ambulatory movement for postoperative patients. Walking increases the amount of blood flow in patients, leading to a decreased probability of blood clot formation. Additionally, intermittent pneumatic compression (IPC) can be used for patients who are wheelchair or bed-bound. Due to a relative lack of mobility and dehydration, DVT and PE may occur among people traveling on long airplane flights.

12. We note that post operatively to avoid infection, the Opposite Party No. 1 administered higher antibiotics viz. Augmentin, Amikacin and pain killers. Patient was also advised for early ambulation. However, the State Commission did not consider these aspects. During postoperative period the patient was afebrile, taking oral feeds, passing the stools. On 10.09.2006 the patient was discharged in stable condition. The Pulmonary Embolism is very fatal condition developed in the instant patient and it caused multiorgan failure (MOF) and subsequently death. However, in our view, septicemia appears to be a provisional diagnosis made by the Opposite Parties Nos. 2 and 3.

13. The Hon'ble Supreme Court in **Achutrao Haribhau Khodwa and others versus State of Maharashtra and others** (1996) 2 SCC 634, case held that doctor is not liable for negligence if he performs his duty with reasonableness and with due care. It 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.”

14. Based on the foregoing discussion, in the given facts and the entire material on record before us, it is not feasible to attribute negligence on the opposite parties. We set aside the Order of the State Commission and allow these Revision Petitions and dismiss the Complaint.

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R.K. AGRAWAL
PRESIDENT

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DR. S.M. KANTIKAR
MEMBER