

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 146 OF 2011

(Against the Order dated 23/02/2011 in Complaint No. 58/2000 of the State Commission
Chandigarh)

1. POST GRADUATE INSTITUTE OF MEDICAL
EDUCATION & RESEARCH & ANR.

The Director post Graduate institute Of Medical Education
& research ,
chandigarh
Haryana

2. DR. V.KKHOSLA

Professor and head of Neuro surgery Department
,PGI,chandigarh At neuro Surgery Department , Fortis
Hospital ,
Mohali
Chandigarh

.....Appellant(s)

Versus

1. SHRI DEVENDRA KUMAR SHARMA & ORS.

Shri Devendra Kumar Sharma R/o Plot No. 39, Jassian
Road ,Jagdishwara Nand Colony ,Sandhu Nagar , Near
Railway Line ,Po. Netaji Nagar , Ludhiana.

2. SHRI ANAND SHARMA S/O SH.DEVENDRA
KUMAR SHARMA

R/O Plot No, 39 , Jassian Road ,Jagdishwara Nand Colony
,Sandhu Nagar , Near Railway Line, P.O.Netaji Nagar ,
Ludhiana

3. AEKTA SHARMA D/O SH.DEVENDRA KUMAR
SHARMA

R/O Plot No.39,Jassian Road Jagdishwara Nand Colony ,
Sandhu Nagar,Near Railway Line P.O.Netaji Nagar,
Ludhiana.

.....Respondent(s)

BEFORE:

**HON'BLE MR. JUSTICE R.K. AGRAWAL,PRESIDENT
HON'BLE MR. DINESH SINGH,MEMBER**

For the Appellant : Mr. Rajesh Garg, Senior Advocate

Mr. Vipin Mittal, Advocate

For the Respondent : Mr. Devendra Kumar Sharma, Complainant

Dated : 16 Oct 2020

ORDER

ORDER

HON'BLE MR. DINESH SINGH, MEMBER

1. This Appeal has been filed under Section 19 of The Consumer Protection Act, 1986, hereinafter referred to as the 'Act', challenging the Order dated 23.02.2011 in C. C. No. 58 of 2000 passed by the State Consumer Disputes Redressal Commission, U.T. of Chandigarh, hereinafter referred to as the 'State Commission'.

The Appellants herein, Post Graduate Institute of Medical Education & Research, Chandigarh and Dr. V.K. Khosla, Professor & Head of Neuro Surgery Department, were the Opposite Parties No. 1 and 2 before the State Commission, and are hereinafter being referred to as the 'Hospital' and the 'Doctor' respectively.

The Respondents No. 1 to No. 3 herein, Mr. Devendra Kumar Sharma, Mr. Anand Sharma and Ms. Aekta Sharma, were the Complainants before the State Commission, and are hereinafter being referred to as the 'Complainants'.

Deceased Smt. Indrawati Sharma, wife of Mr. Devendra Kumar Sharma and mother of Mr. Anand Sharma and Ms. Aekta Sharma, expired in the Hospital after surgery by the Doctor, and is hereinafter being referred to as the 'Patient'.

2. We heard arguments of both sides and perused the material on record including *inter alia* the impugned Order dated 23.02.2011 of the State Commission and the Memorandum of Appeal.

3. Brief facts, shorn of unnecessary rhetoric, are that the Patient was diagnosed with "right internal carotico ophthalmic aneurysm". She was referred to the Hospital. She was admitted on 03.09.1999. She was first operated on 27.09.1999 for "clipping of aneurysm". The brain surgery was started under anesthesia; it was abandoned "due to unavailability of drill", without "clipping of aneurysm". She was again operated on 07.10.1999. She expired the next day i.e. on 08.10.1999.

The Complainants filed a Complaint before the State Commission on 21.09.2000, alleging negligence deficiency.

The State Commission vide its Order of 23.02.2011 allowed the Complaint and determined negligence deficiency on the part of the Hospital and the Doctor.

4. We note that the State Commission has weighed the evidence and passed a reasoned Order.

For ready appreciation, extracts from the State Commission's appraisal are reproduced below:

10. The contention of learned counsel for complainants is that Smt. Indrawati Sharma was only 47 years old, she was admitted in the PGI for treatment when an emergent operation was to be performed, she was taken for operation on 26.9.1999 but the operation was left midway due to non-availability of drill machine . The learned counsel for complainants referred to Annex P-3 the operation note . It is not disputed that the operation was to be conducted by Dr. V.K. Khosla- OP No.2 . **It is also admitted that the drill machine did not work properly . There is no dispute about it that the operation was not completed and the skull was closed without clipping the Aneurysm . This necessitated second operation which was conducted on 06.10.1999 .** The learned counsel argued that it was a deficiency in service on the part of OPs due to which two operations had to be conducted which resulted in the death of Smt. Indrawati Sharma . Learned counsel for OPs has opposed these contentions. He referred to the reply and the affidavit of Dr. V.K. Khosla in which it was specifically stated that the drill was not needed for completing the operation. According to him, there was no deficiency in service or negligence on their part. **A perusal of the affidavit of Dr. V.K. Khosla shows that he is changing his stand .** According to him, the drill was not necessary and operations in the past had been performed even without a drill machine. In para-4 of the affidavit, **he admitted that the drill machine was available but did not function satisfactorily .** Even the reason for not proceeding further with the operation as mentioned in the operation note Annexure P-3 is that due to non-availability of drill, procedure abandoned and closure done without clipping Aneurysm . **There is no other reason for not completing the operation .** However, now OPs are alleging in order to cover up their negligence and deficiency in service that **the operation was not abandoned due to the drill machine .** His contention is that **the drill machine had been borrowed from some other department but it also did not work .** The learned counsel is unable to explain that **if there was no need of drill machine or the operation could be conducted without a drill machine then why a drill machine was borrowed from some other department and when and what necessity arose to see whether the machine works or not .** Further, if the drill machine was not needed, though it was available then **why operation was not completed . In Annexure P-3 no other reason been mentioned for abandoning the operation . We are , therefore , of the opinion that a drill machine was needed for this operation . OPs started the operation without availability of a drill machine and when they felt need of it they may have borrowed it from some other department but the same did not work and therefore the operation had to be abandoned .** For the sake of repetition, it is stated that it was a skull operation, a part of the skull had to be cut and removed for clipping of aneurysm. OPs were so negligent that they did not see before starting the operation whether they had drill machine which would be used when the need arose . They thought of it only after the operation was started and drill machine which was borrowed did not function . It necessitated the closure of the skull without completing the operation . From these facts , negligence and deficiency in service on the part of OPs NO.1 & 2 is fully proved .

11. The learned counsel for OPs has argued that the first operation as well as second operation were successful, patient was fully conscious and therefore postponing the operation was not the cause of death. This fact may be true because the complainant did not agree for the postmortem examination of the deceased. However, **we cannot deny that conducting two operations on the skull when only one would have been suffice would naturally cause the blood loss and aggravate the process of death .** No doubt , it was a routine operation for the OPs but for a patient the skull operation assumes importance in view

the fact that the brain is involved . Not only blood loss but **there was a delay of about 10 da in conducting the 2nd operation which could have also aggravated the disease** . The pati was only 47 years old and **died a day after the second operation** . It also shows that postponement of the first operation contributed towards the death of the deceased. **The contention of the OPs that second operation was successful cannot be accepted because patient thereafter survived only for a day** .

12. The learned counsel for OPs also argued that Dr. V.K. Khosla is a competent surgeon, knows his job, the operation was done in a proper manner by conducting proper procedure ar with the consent of the complainant and therefore no liability for the death of the patient can imposed upon him. This argument on the face of it appears to be correct, unless we take noti of the **negligence on the part of OPs in not arranging and checking the drill machine bef starting the operation** . The consent of the complainant does not authorize the surgeon to ac negligently . The complainant is not questioning the surgical skill of OP No.2 but **the manne in which OPs proceeded and subsequently abandoned the operation without completing the job for which skull operation was started** .

13. The contention of OPs NO.1 & 2 is that the operation was abandoned in the best intere of the patient due to compelling circumstances and not due to non-availability of the drill machine. We do not find any merit in this contention. As earlier mentioned, **Annexure P-3 gives the reason as to why the operation was abandoned and no other reason is mention there** . Even in his reply and affidavit **OPs No.1 & 2 have not given any reason as to why operation was abandoned** . When the **operation had started and continued for a long tin why it was not completed is a big question and the answer is given only by Annexure P- that due to non-availability of drill machine they could not proceed further** . The conten of OPs that there were certain other reasons to abandon the operation, therefore, does not app to be correct nor have the same been specified in the reply or the record .

14. The learned counsel for OPs has also argued that there was no deficiency in service on part of OP No.3. She rather attended upon the patient in a most affectionate manner. The complainant has not produced any evidence to suggest if she caused any injury while insertin the catheter. On the other hand, learned counsel referred to para-8 of the reply mentioning tha the so called catheter was an endo-trachael tube which was required to treat respiratory infect and respiratory difficulty of the patient. We, therefore, do not find any deficiency in service c the part of OP NO.3.

15. The contention of complainant is that the deceased was 47 years old woman. She was operating a boutique and was earning Rs.4000/- to Rs.5000/- per month. She had lot of love & affection for her husband Devendra Kumar Sharma and her son and daughter Anand Sharma and Aekta Sharma complainants. **The OPs NO. 1 & 2 due to their negligence thrust a seco operation on the patient which could have been avoided had they been not negligent** . Tl complainants had to spend money on her treatment and therefore they also suffered mentally, physically and financially due to negligent act of OPs No.1 & 2. We are, therefore, of the opinion that the compensation of Rs. Two lacs would be just and proper which shall be paid l OPs No.1 & 2 jointly and severally to the complainants within 30 days from the date of recei of copy of the order. OPs NO.1 & 2 shall also pay Rs. 10,000/- as costs of litigation. If the above amounts are not paid within thirty days, OPs shall be liable to pay the same alongwith interest @ 12% p.a. since the filing of the present complaint i.e. 21.9.2000 till its payment to complainants.

Resultantly, **complaint is allowed** in the aforementioned terms.

(emphasis supplied by

5. We are broadly in agreement with the examination and findings of the State Commission.

To add thereto, it is noteworthy that:

[a] The Hospital, Post Graduate Institute of Medical Education & Research, Chandigarh, is well-endowed with the requisite infrastructure and wherewithal. Its website https://pgimer.edu.in/PGIMER_PORTAL/PGIMERPORTAL/home.jsp# states its 'Mandate' and 'Mission Statement' as below:

Mandate

The Postgraduate Institute of Medical Education and Research (PGIMER) Chandigarh was conceived in 1960 as a center of excellence which would endeavour to develop patterns of teaching in postgraduate medical education in as many branches as possible and attempt to produce specialists in several disciplines of medicine. It was also envisaged that these specialists would spread out in the country in various medical colleges and medical institutions and impart medical education of highest standard to the students and set up nucleus of excellence in their own institutions. The **PGIMER** was also given the responsibility to broaden the horizons of medical knowledge by intensive research in the field of health.

Mission Statement

vkRrZ lsok loZHknz% 'kks/k“p

Postgraduate Institute of Medical Education and Research, Chandigarh was mandated to

1. Provide high quality **Patient care** .
2. Attain **Self-Sufficiency** in postgraduate medical education and to meet the country's need for highly **Qualified** medical teachers in all medical and surgical disciplines.
3. Provide **Educational facilities** for the training of personnel in all important branches of health activity.
4. Undertake **Basic Community** based research.

The mission of PGI is engraved in its logo which reads vkRrZ lsok loZHknz% 'kks/k“p meaning **"Service to the Community, Care of the Needy and Research for the Good of all"** .

(The above has been taken from its extant website.) In 1999, also, when the incident took place, the Hospital was a premier tertiary referral hospital, well-known and reputed in the region.

[b] The Patient was earlier treated in Amritsar and Ludhiana. She was then referred to the said Hospital at Chandigarh.

[c] She was admitted in the Hospital on 03.09.1999 for treatment of “right internal carotico ophthal aneurysm”.

[d] An open brain surgery for “clipping of aneurysm” was performed under general anesthesia on 27.09.1999 i.e. after 3 weeks 3 days (24 days) of admission.

[e] “clipping of aneurysm” was to prevent rupturing of the affected artery and consequent release of blood into the brain and the cranium (which could lead to brain hemorrhage, stroke, damage).

[f] A drill machine was essential for the said surgery. The drill machine of the department did not function properly. Another drill machine was statedly “borrowed” from some other department of the Hospital; it, too, did not function.

[g] On 27.09.1999 the surgery was started. The Patient was prepared, put under anesthesia. The scalp was opened. The drill machine was found to be dysfunctional. Trialing was undertaken re the cranium. The procedure for “clipping of aneurysm” was aborted. The scalp was stitched back (“closure done without clipping of aneurysm”). The “clippers”, intended to be used in the surgery, were returned to Patient’s attendant, her husband, the Complainant No. 1.

[h] A surgical note dated 27.09.1999 states “Due to unavailability of drill, procedure abandoned and closure done without clipping of aneurysm.”.

[i] A second surgery, for the same purpose, was then performed on 07.10.1999 i.e. after 1 week 3 days (10 days) of the first surgery.

[i] The patient expired on 08.10.1999 i.e. the next day of the second surgery.

6. The State Commission, on appraisal of the evidence, has explicitly observed that: “- - - due to non-availability of drill, procedure abandoned and closure done without clipping of Aneurysm. - - -” and “- - - There is no other reason for not completing the operation. - - -” and “- - - OPs are alleging order to cover up their negligence and deficiency in service that the operation was not abandoned due to the drill machine.- - -” and “- - - the drill machine had been borrowed from some other department but it also did not work. - - -” and “- - - The learned counsel is unable to explain that if there was no need for a drill machine or the operation could be conducted without a drill machine then why a drill machine was borrowed from some other department and when and what necessity arose to see whether the machine works or not. - - -” and “- - - Further, if the drill machine was not needed, though it was available then why operation was not completed. - - -” and “- - -In Annexure P-3 no other reason has been mentioned for abandoning the operation. - - -” and “- - - OPs started the operation without availability of a drill machine and when they felt need of it they may have borrowed it from some other department but that same did not work and therefore the operation had to be abandoned. - - -” and “- - - They thought of only after the operation was started and drill machine which was borrowed did not function. It necessitated the closure of the skull without completing the operation. - - -” and “- - - From these facts negligence and deficiency in service on the part of OPs NO.1 & 2 is fully proved. - - -”.

7. The Patient was admitted on 03.09.1999. The first surgery was undertaken on 27.09.1999 i.e. 03 weeks 03 days (24 days) after admission. There was, thus, sufficient time, and more, to carefully

prepare for the surgery. It was not as if the surgery was undertaken most immediately at admission (evidently, the surgery was 'in turn').

The Hospital and the Doctor neither had a functional drill machine in the department, nor did they inspect and satisfy themselves of the satisfactory functioning of a statedly "borrowed" drill machine, respect of equipment essential for the surgery. The Patient was put under general anesthesia, her scalp opened, the drill machine was found to be non-functional, trialing was undertaken with the cranium, scalp was stitched back, the procedure for "clipping of aneurysm" (for which the surgery was undertaken) was not completed.

The surgical note dated 27.09.1999 clearly states that "Due to unavailability of drill, procedure abandoned and closure done without clipping of aneurysm."

It was admitted by the Hospital and the Doctor in their written version filed before the State Commission that "- - - The drill was available but did not function satisfactorily, - - -".

It is also admitted by the Hospital and the Doctor in para 3.n) of the Memorandum of Appeal that "- The CR record of the patient shows that aneurysm was successfully clipped at the second operation. -" (emphasis supplied by us).

8. To state the obvious, the surgery on 27.09.1999 was performed carelessly and negligently.

9. Due to failure of the first surgery (on 27.09.1999), the patient was unnecessarily required to subsequently undergo an additional second surgery, on 07.10.1999, i.e. after 1 week 3 days (10 days for the same purpose for which the first surgery was performed (and aborted).

After failure of the first surgery, treating the situation as an emergency, ensuring that no infection or harm occurs to the Patient, undertaking the second surgery on first and top priority, were required and expected of the Hospital and the Doctor.

There is, but, nothing on record, placed by the Hospital and the Doctor, to show that they treated the situation as such emergency.

The principal endeavour of the Hospital and the Doctor has been to anyhow justify abandonment of first surgery, and to anyhow argue that in any case a second surgery was subsequently undertaken for the purpose.

And all this in a hospital well-endowed with the requisite infrastructure and wherewithal.

("Provide high quality **Patient care**", written in its 'Mission Statement', is nowhere evident in the instant case.)

10. Negligence / deficiency is writ large.

11. During arguments on 05.03.2020, learned senior counsel for the Hospital and the Doctor prayed for allowing the appeal and dismissing the Complaint. The Complainant No. 1 in person prayed for enhancement in compensation, to Rs. 30.70 lakh [as per a 'Claim' (computation) dated 26.09.2019

annexed by him with his brief of written arguments], and also drew attention to the trauma he and his children (the Complainants No. 2 and 3) faced in the death of the Patient and the travails they faced in the subsequent two-decade litigation.

12. In respect of ‘allowing the appeal’, we note that the Hospital and the Doctor are defending the indefensible. The facts of the case are simple, and serious, and speak for themselves, and merit otherwise.

13. In respect of ‘compensation’, we note that the Complainants, in their Complaint, had asked for compensation of Rs. 15 lakh with interest @ 18% per annum.

The State Commission has awarded compensation of Rs. 2 lakh and cost of litigation of Rs. 10,000/- be paid within 30 days of the receipt of its Order, failing which it shall carry interest @ 12% from the date of filing of the Complaint till the payment to the Complainants. The liability of the Hospital and the Doctor has been made joint and several.

We may first say that loss of human life cannot be quantified in monetary terms.

However, noting the palpable grave ingredients of negligence / deficiency, the facts and specificities of the case, the loss of wife / mother to the Complainants, way back in 1999, and considering the various relevant factors holistically, we are of the considered view that compensation of Rs. 15 lakh (as asked for in the Complaint) with interest at the rate of 8% per annum (lower than that asked for in the Complaint) from the date of death of the patient (08.10.1999) till realisation would be just and equitable. In addition, noting that the litigation has taken about two decades, from 2000 to 2020, cost of litigation of Rs. 2.50 lakh would be just and equitable. The liability of the opposite parties i.e. the Hospital and the Doctor would be joint and several.

14. Sequel to the above discussion, the prayer of the Hospital and the Doctor for dismissing the Complaint is rejected.

The Award made by the State Commission is modified as follows: The Hospital and the Doctor shall jointly and severally, pay Rs. 15 lakh with interest at the rate of 8% per annum from the date of death of the patient (08.10.1999) till its realisation and cost of litigation of Rs. 2.50 lakh to the Complainants within 6 weeks of the date of pronouncement of this Order.

15. In case of non-compliance, the State Commission shall undertake execution, for ‘ *Enforcement* ’ under Section 25(3) and ‘ *Penalties* ’ under Section 27 of the Act, as per the law.

16. The Registry is requested to send a copy each of this Order to all parties within 3 days of its pronouncement.

.....J
R.K. AGRAWAL
PRESIDENT
.....
DINESH SINGH
MEMBER