

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 44 OF 2008

1. PRIYA NARHARI & ANR.

W/o. Mr. Ravi Narhari., R/o. 1021, POTMAC STREET,
NW WASHINGTON DC

2. ANJALI TATHGIR

W/o. Mr. Vikram Tathgir, R/o. 31, Saffron St, Markham
Ontario-l6 E2 B5
Canada

.....Complainant(s)

Versus

1. CHIEF OF ARMY STAFF & ORS.

ARMY HEAD QUARTERS,
NEW DELHI CANTT.

2. COMMAND HOSPITAL

THROUGH COMMANDANT, COMMAND
HOSPITAL,

SOUTHERN COMMAND,
PUNE - 40

3. LIEUTENANT GENERAL ADITYA SINGH

GENERAL OFFICER COMMANDING - IN - CHIEF,
SOUTHERN COMMAND,
PUNE - 40

4. DR. LT. COL. H. P. SINGH

COMMAND HOSPITAL,
SOUTHERN COMMAND,
PUNE - 40

5. LT. COL. RAMA DEVI

COMMAND HOSPITAL,
SOUTHERN COMMAND,
PUNE - 40

6. MS. BETTY (NURSE)

COMMAND HOSPITAL,
SOUTHERN COMMAND,
PUNE - 40

.....Opp.Party(s)

BEFORE:

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

For the Complainant : Mr.Rohan Chawla, Advocate

For the Opp.Party : Mr. R.V.Sinha, Advocate

Dated : 26 Nov 2020

ORDER

This original petition has been filed by the complainants Priya Narhari & anr. alleging deficiency on the part of the opposite parties Chief of Army Staff and Ors.

2. The brief facts of the case are that the complainants' mother, who was a beneficiary of Ex Servicemen Contributory Health Scheme by virtue of her late husband being an army officer, was diagnosed with ovarian cancer in May, 2004 and underwent chemotherapy for six cycles at Research & Referral Hospital, New Delhi with drugs Gemcite and Carboplatin and declared cancer free. She suffered a relapse in February, 2006 and the treatment was again started with the same medicines for a 21 days cycle. As alleged, she was showing tremendous progress, however, when she went for 4th cycle, the opposite party No.4 doctor mentioned on her case sheet 'same protocol as on February 17th 2006'. The opposite party No.5- Ward In-charge requested for supply of Cisplatin instead of prescribed drug Carboplatin. During previous cycles, opposite party No.5 was herself administering the drug, but this time she asked her junior nurse (opposite party No.6) to administer the drug who also did not pay any attention that a wrong drug was being administered. Due to administration of wrong drug the patient suffered extreme uneasiness and severe pain and, subsequently, the patient died due to multiple organ failure. It is alleged that the dead body of the patient was given to complainants only after taking an undertaking that they shall not initiate any criminal proceedings against the opposite parties. That only after much pressure from the complainants, the opposite parties started an internal investigation and conducted court inquiry in the matter but kept the complainants away from those proceedings. That the complainants were not made available the medical documents of the deceased despite several efforts and the application filed under RTI Act in this regard. That the complainants on their visit to India in 2008, came to know through newspapers that the Army had sentenced three years loss of seniority to the opposite party no.5. Thus, alleging admission of medical negligence on the part of the opposite parties and negligence in injecting wrong chemotherapy medicine, due to which the precious life of their mother had been lost, the complainants filed this complaint.

3. The complaint has been resisted by the opposite parties by filing the written statement and by stating that medicine Cisplatin was mistakenly given by the Nurse opposite party No.5 in lieu of Carboplatin and the Army Court inquiry was proceeded against the Opposite party No.5 and appropriate punishment has already been given. The mistake was not deliberated and it was a bona-fide mistake, therefore, it cannot be considered as medical negligence. It has been requested to dismiss the complaint.

4. Both the parties have filed their evidence by way of affidavits which have been taken on record.

5. Heard the learned counsel for both the sides and perused the record. Learned counsel for the complainants stated that the deceased started suffering ovarian carcinoma with hypertension since February, 2004 and was managed at AHRR with cytoreductive surgery (R-1) Resection followed by adjuvant chemotherapy with paclitaxel based therapy + Carboplatin. The treatment

was completed in September, 2004 and the patient became free from cancer. In February 2006 the patient again suffered with relapse of this cancer and was treated with the same medicines i.e. gemcit and carboplatin. On 20th April, 2006 doctor opposite party No.4 advised the following:-

“IV cycle chemotherapy as per protocol on 17 Feb 2006.”

6. On 21.04.2006, the medical record states that the patient got Cisplatin in lieu of Carboplatin and the patient developed vomiting and headache. By that time, it was known to the doctor and other staff of the hospital that a wrong medicine has been administered to the patient. The learned counsel stated that all the parties have accepted in their statements/affidavits that the patient was administered Cisplatin in place of Carboplatin. The learned counsel argued that the deficiency in service on the part of the doctor is that he did not write the actual names of the medicines rather, advised to follow the protocol of 17.02.2006. It was further argued by the learned counsel that even the Medical Officer In-charge of supply of medicines did not tally the medicine with the actual prescription and allowed wrong medicine to be given to the patient. The opposite party No.5 has also admitted her mistake. The opposite party No.4, the treating doctor has also admitted that the wrong medicine was given to the patient as the doctor was not present. Due to this wrong medicine and wrong dose, the patient developed high toxicity and her kidney was damaged and other organs failed. The condition of the patient started deteriorating fast on 24th April, 2006 and she was put on ventilator and finally on 25th April she passed away. The learned counsel for the complainants has argued that this is a clear case of medical negligence because the wrong medicine has been administered to the patient. In support of his argument, the learned counsel referred to the judgment of the Hon'ble Supreme Court in **Spring Meadows Hospital & anr. Vs. Harjol Ahluwalia & anr. (1998) 4 SCC 39**, wherein it has been observed:-

“9. Very often in a claim for compensation arising out of medical negligence a plea is taken that it is a case of bona fide mistake which under certain circumstances may be excusable, but a mistake which would tantamount to negligence cannot be pardoned.”

10. Gross medical mistake will always result in a finding of negligence. Use of wrong drug or wrong gas during the course of anaesthetic will frequently lead to the imposition of liability and in some situations even the principle of res ipsa loquitur can be applied. Even delegation of responsibility to another may amount to negligence in certain circumstances. A consultant could be negligent where he delegates the responsibility to his junior with the knowledge that the junior was incapable of performing of his duties properly.”

7. On the basis of the above judgment, the learned counsel argued that a mistake has caused death of a person and therefore, it is a case of negligence and cannot be called bona-fide. Learned counsel further argued that it was the duty of the doctor opposite party No.4, to have administered the drug in his presence, however, he has failed in his duty. Moreover, hospital has vicarious liability for any treatment given in the hospital and therefore, the liability for the negligence has to be attributed towards opposite party No.4 and the hospital opposite party No.2 apart from opposite party No.5. In support of his argument, the learned counsel relied upon the case of **Maharaja Agrasen Hospital and Ors. Vs. Master Rishabh Sharma and Ors., 2019 SCC OnLine SC 1658**, wherein the following has been observed:-

“11.4.17. It is well established that a hospital is vicariously liable for the acts of negligence committed by the doctors engaged or empanelled to provide medical care. It is common experience that when a patient goes to a hospital, he/she goes there on account of the reputation of the hospital, and with the hope that due and proper care will be taken by the hospital authorities. If the hospital fails to discharge their duties through their doctors, being employed on job basis or employed on contract basis, it is the hospital which has to justify the acts of commission or omission on behalf of their doctors.”

8. Learned counsel for the complainants also stated that the death certificate of the deceased clearly mentioned that:

DEATH CERTIFICATE

Ward No.ICU (M)

A & D No.A803/4/06

Date of Admission 20/4/06

MEDICAL CERTIFICATE OF DEATH: ALL RANKS

“Certified that Smt. Kavita Bhatia (Name of deceased) Aged 57 yrs. Sex: Female Relation with deceased (Wife) of No.IC-12133 Rank Ret. BRIG Name Romesh Bhatia Unit R/o AHQ died/killed in action on 25.04.2006 at 1810 hrs.

PART -I

Disease or condition directly leading to death (a) *(Acute Renal Failure with*
(Due to (or) as a consequence)

Antecedent cause (b) *Multiorgan Failure*
Septicaemia with Cisplatin
(Due to (or) as a consequence)

Morbid condition, if any given rise to the above (c) *Toxicity*
Cause stating the underlying condition list.

PART -II

Other significant condition contributing to the death but not related to the disease or condition causing it.

(i) Relapsed Ovarian Carcinoma

Antecedent cause

(ii)

Sd/-

H.P.Singh

Station: command Hospital (SC)

LT/Co.

Pune

CL SPL of Medicine

Dated: 25.04.06

& Med Onology

Post Mortem: Not Required

Signature of MO (Name in full)

Designation

9. The learned counsel for the complainants also stated that this Commission has sought the report of the All India Institute of Medical Sciences (AIIMS), New Delhi. The AIIMS has submitted its first report dated 22.02.2012, which was not conclusive and therefore, further clarificatory report was sought from AIIMS, which was sent by AIIMS on 07.08.2013. This report clearly states the following:-

“Subject: *Opinion of the Medical Board constituted at AIIMS for expert opinion in compliance of orders dated 04.04.2013 of Hon’ble National Consumer Disputes Redressal Commission, New Delhi, vide Consumer Complaint No.44 of 2008 with I.A.1698/2013 (for Direction to Medical Board) titled Priya Narhari & anr. versus Chief Army Staff & Ors.*

A medical board was constituted by the Medical Superintendent, AIIMS on subject noted above. The Board consist of the following members:

i. Dr. Neerja Bhatla

Professor, Deptt of Obs. & Gynae

- Chairperson

ii. Dr. Atul Sharma

*Addl. Professor, Deptt. Of Medical
Oncology*

- Member

Iii Dr. Naval K. Vikram

Assoc. Professor, Deptt. Of Medicine

- Member

iv Dr. Manisha Palaskar

Department of Hospital Administration

- Member Secy.

“ The meeting of the medical board was held on 02.08.2013 at 02:00 P.M. in Room No.13, M.S.Office Wing, AIIMS. All the members have attended the meeting. After through scrutiny of the documents/reports provided, the board is of the opinion that:

Mrs. Kavita Bhatia, 57 yrs wife of, Brig (retd) Romesh Bhatia was diagnosed with Carcinoma Ovary state III C at Army Hospital (R7R), with hypertension as co-morbidity in Feb 2004.

As per the records and documents provided it appears that though the instruction were given for administration of same chemotherapy as on 17/02/2006, cisplatin was given in the lieu of carboplatin. (As recorded on medical case sheet dated 21/04/06)

Records also show that injection cisplatin 600mg was indented dated 20/04/06. However after perusing the available records it is not clear whether the same 600mg dose of cisplatin was infused. In case 600mg of cisplatin was administered, it has the potential for causing acute nephrotoxicity. From the records it appears that patient developed renal failure requiring dialysis. As per the investigation report on 20/04/06 i.e. at the time/before cisplatin administration, the functional status of kidneys at baseline was within normal limit. But subsequently serum creatinine and serum urea levels on 25/04/06 were raised indicating acute renal failure.

Death summary reveals that the cause of death is acute renal failure and cisplatin nephrotoxicity.”

10. It was also stated by the learned counsel for the complainants that the doctor, opposite party No.4 in his statement has clearly stated that the Nurse was not a trained Nurse for cancer treatment and this was a clear deficiency on the part of the hospital. It was also stated by the learned counsel for the complainants that even when the severe symptoms were noticed by opposite party No.4, the nephrologist was not called. When on 24.04.2006 at night he was called, by that time, it has become too late and the patient was already put on ventilator. Thus, the hospital and the doctor were also negligent in calling the nephrologist.

11. Coming to the objection of the opposite parties that the service provided by the hospital cannot be treated as covered under the provisions of Consumer Protection Act, 1986 because there was no charge taken from the patient in question, the learned counsel for the complainants stated that it was not a general hospital and the patient was covered under the service conditions of her husband under the Ex Servicemen Contributory Health Scheme. Learned counsel relied upon the judgment of the Hon'ble Supreme Court in **Indian Medical Association Vs. VP Shantha & Ors. (1995) 6 SCC 651**, wherein the following has been observed:-

“55. On the basis of the above discussion, we arrive at the following conclusions:

(10) Service rendered at a government hospital/health centre/ dispensary where services are rendered on payment of charges and also rendered free of charge to other persons availing of such services would fall within the ambit of the expression ‘service’ as defined in Section 2(1)(o) of the Act, irrespective of the fact that the service is rendered free of charge to persons who do not pay for such service. Free service would also be ‘service’ and the recipient a ‘consumer’ under the Act.

(11) Service rendered by a medical practitioner or hospital/nursing home cannot be regarded as service rendered free of charge, if the person availing of the service has taken an insurance policy for medical care whereunder the charges for consultations, diagnosis and medical treatment are borne by the insurance company and such service would fall within the ambit of ‘service’ as defined in Section 2(1)(o) of the Act.

12. Similarly, where, as a part of the conditions of service, the employer bears the expenses of medical treatment of an employee and his family members dependent on him, the service rendered to such an employee and his family members by a medical practitioner or a hospital/nursing home would not be free of charge and would constitute ‘service’ under Section 2(1)(o) of the Act.”

12. On the basis of the above decision of the Hon'ble Supreme Court, the learned counsel for the complainants argued that the patient was getting treated under the Ex Servicemen Contributory Health Scheme, therefore, even if nothing was apparently paid by the patient to the hospital, the service of the hospital is covered under the provisions of the Consumer Protection Act, 1986.

13. The learned counsel for the complainants further stated that the deceased was not employed, however, she was a homemaker. Even the loss of homemaker entitles the complainants for a reasonable compensation. The contribution of the homemaker to the family cannot be underestimated and has to be properly acknowledged. In this regard, learned counsel referred to the judgment of the Hon'ble Supreme Court in **Arun Kumar Manglik Vs. Chirayu Health & Medicare Pvt. Ltd. & anr. (2019) 7 SCC 401** wherein the following has been held:-

“51. That leads the Court to the question of damages. Finding the hospital and its Director guilty of medical negligence, the SCDRC directed compensation in the amount of Rs. 6 lakhs together with interest at 9%.

52. While quantifying the compensation, the SCDRC was in error in holding that since the son and daughter of the appellant are “highly educated and working” and had not joined as complainants, the complainant himself would be entitled to receive compensation only in the amount of Rs. 6 lakhs.

53. The complainant has lost his spouse, who was 56 years of age. Though she was not employed, it is now well settled by a catena of decisions of this Court that the contribution made by a non-working spouse to the welfare of the family has an economic equivalent.

*54. In **Lata Wadhwa v State of Bihar** , a three judge Bench of this Court computed damages to be paid to dependants of deceased persons as well as burn victims in the aftermath of a fire at the factory premises. The Court took into consideration the multifarious services rendered to the home by a home-maker and held the estimate arrived at Rs12,000 per annum to be grossly low. It was enhanced to Rs 36,000 p.a. for the age group of 34 to 59 years.*

*55. In **Malay Kumar Ganguly v Sukumar Mukherjee** , Justice S B Sinha, J. held thus: (SCC pp. 282-83, para 172*

“172.Even otherwise a wife's contribution to the family in terms of money can always be worked out. Every housewife makes a contribution to her family. It is capable of being measured on monetary terms although emotional aspect of it cannot be.”

Thus, in computing compensation payable on the death of a home-maker spouse who is not employed, the Court must bear in mind that the contribution is significant and capable of being measured in monetary terms.

57. In our view, the interests of justice would be met, if the amount of compensation is enhanced. We accordingly, direct that the appellant shall be entitled to receive an amount of Rs.15 lakhs by way of compensation from the first respondent.

58. The compensation, as awarded, shall carry interest at the rate of 9% from the date of the institution of the complaint before the SCDRC until payment or realisation. Payment should be effected within two months.”

14. On the basis of the above arguments, the learned counsel for the complainants stated that the medical negligence is proved in the matter and appropriate compensation should be awarded to the complainants.

15. On the other hand, learned counsel for the opposite parties stated that the hospital is a well-known Army Hospital where even VIPs are treated and therefore, utmost precaution and quality of treatment is maintained in the hospital. The mistake in the present case was a bona-fide mistake and the ward-n-charge opposite party No.5 has already admitted her mistake and appropriate action has been taken by Army against her in the Court of Inquiry proceedings. During the inquiry, she has expressed remorse and has not defended herself for her mistake. The learned counsel further states that a doctor cannot be present always when the medicine is administered to the patient. Moreover, the doctor has written a clear advice that protocol of 17.02.2006 be followed. In these circumstances, no negligence can be attributed to the treating doctor opposite party no.4. There has been no shortcoming from the side of the hospital in making facilities available to the patient or in any manner in treatment. The main responsibility of the hospital is to provide competent doctors and staff and other diagnostic and other facilities to the patient for which the opposite party No.2 has never failed. Thus, there should be no question of fixing any liability on treating doctor opposite party No.4 and opposite party no.2 hospital. It was further argued by the learned counsel for the opposite parties that the hospital has not charged anything for the treatment of the patient in question, therefore, as per Section 2(1)(o) of the Consumer Protection Act, 1986, the complaint is not maintainable as the service was free.

16. The learned counsel for the opposite parties further argued that this Commission has asked for an expert opinion from All India Institute of Medical Sciences, New Delhi (AIIMS) and the AIIMS has submitted its report dated 22.02.2012. In this report, the following has been mentioned:-

“Subject : Report of the Medical Board for expert medical opinion in respect of consumer complaint No.44 of 2008 titled ‘ Priya Narhari versus Chief of Army Staff.

An expert committee was constituted by the Medical Superintendent, AIIMS on subject noted above. The committee consist of the following members:

1. Dr. Neerja Bhatla

- Chairperson

Professor, Deptt of Obs. & Gynae

2. Dr. Atul Sharma

- Member

Addl. Professor, Deptt. Of Medical
Oncology

3. Dr. Naval K. Vikram

- Member

Assoc. Professor, Deptt. Of Medicine

4. Dr. Jithesh V

- Member Secy.

Deptt. of Hospital Administration

A meeting of the Medical Board constituted for the case was held under the chairmanship of Dr. Neerja Bhatla, Professor, Department of Obs & Gynae, AIIMS on 18.02.2011 at 12:00 noon in Room No.13, VIP Consultation Room, M.S.Office Wing, AIIMS. After thorough scrutiny of the documents available the board has come to the following conclusion:-

Mrs. Kavita Bhatia, 57 years, wife, Brig (retd) Romesh Bhatia was diagnosed with Carcinoma Ovary Stage III C at Army Hospital (R&R), with Hypertesion as co-morbidity in Feb 2004.

As per the documents provided by the Honourable Court, at the time of diagnosis, the patient was in an advanced stage of cancer with spread to various parts of the body, including the peritoneum and paraaortic lymph nodes, which indicate a poor prognosis.

She underwent surgery followed by adjuvant chemotherapy as the standard protocols in practice. Her follow up appears to have been done regularly on expected lines of treatment. Recurrence of significant disease was detected during follow up in the year 2006 and subsequent second line treatment with chemotherapy was started along the standard treatment practices.

This Board is not able to opine on the cause with the available documents, as multi organ failure could have been caused due to the disease progression. The functional status of the various organs can not be ascertained based on the available documents, including the functional status of the kidney at baseline and at the time of the administration of the drugs especially in light of her co-existing Hypertension.

It is submitted for information that toxicity to the kidneys standard is a known complication of cisplatin but the possibility of kidney toxicity developing after a single dose of Cisplatin in otherwise normal case is unlikely. Cisplatin was apparently used on 21/04/2006 on this patient, who had been receiving Carboplatin. However, the dosage of Cisplatin and the reason for change of the drug cannot be commented based on the available documents."

17. On the basis of the above report of AIIMS, the learned counsel for the opposite parties stated that it was a case of relapse of cancer and the cancer had already spread to many parts of the body and the condition of the patient was already precarious and multi organ failure may be a result of

the spread of the main disease of cancer. Therefore, even if the bona fide mistake of the Nurse is treated as medical negligence, the compensation has to be awarded keeping in view the medical condition of the patient as stated in the report dated 22.02.2012 of AIIMS.

18. It was further stated by the learned counsel for the opposite parties that no post-mortem has been conducted to ascertain the cause of death and therefore, the real cause of death cannot be stated to be administration of medicine Cisplatin. It was argued by the learned counsel that the treating doctor opposite party No.4 called the Nephrologist when he felt the need to do so. It cannot be questioned as it may at the most be an error of judgment and error of judgment cannot be inferred as medical negligence. Learned counsel relied on the judgment of Hon'ble Supreme Court in **Kusam Sharma Vs. Batra Hospital & Medical Research Centre & Ors., Civil Appeal No.1385 of 2001, decided on 10.02.2020**, wherein the following has been held:-

*"89. In **Spring Meadows Hospital & Another** (supra), the court observed that an error of judgment is not necessarily negligence. In **Whitehouse** (supra) the court observed as under:-*

"The true position is that an error of judgment may, or may not, be negligent, it depends on the nature of the error. If it is one that would not have been made by a reasonably competent professional man professing to have the standard and type of skill that the defendant holds himself out as having, and acting with ordinary care, then it is negligence. If, on the other hand, it is an error that such a man, acting with ordinary care, might have made, then it is not negligence."

19. We have carefully considered the arguments advanced by both the learned counsel for the parties and examined the record. First of all, we agree that the mother of the complainants was covered under Ex Servicemen Contributory Health Scheme and that is why she was eligible for treatment in the hospital opposite party No.2, therefore, in the light of the judgment of the Hon'ble Supreme Court in **Indian Medical Association Vs. VP Shantha & Ors.** (supra), the service of the hospital would be treated as covered under Section 2(1)(o) of the Consumer Protection Act, 1986. Therefore, we find that the complaint is maintainable.

20. Coming to the merits of the case, we find that the doctor has clearly advised on 20.4.2006 that protocol of 17.02.2006 be followed. The Nurse was to administer the same medicine as prescribed on 17.02.2006 which was Carboplatin and not Cisplatin. All the parties in the case accept that the Cisplatin was administered in lieu of Carboplatin and the medical record also speaks the same. Clearly the Nurse may not have given this injection deliberately to the patient and it may have been a bona-fide mistake. However, the patient has lost her life because of this mistake and therefore, we cannot treat this mistake out of medical negligence as held by the Hon'ble Supreme Court in **Spring Meadows Hospital & anr. Vs. Harjol Ahluwalia & anr.** (supra). It is also true that the ward-in-charge opposite party No.5 has already been proceeded under the Court of Inquiry by the Army and she has been appropriately punished under the relevant law. We agree with the assertion of the learned counsel for the opposite parties that the doctor cannot be present always when a drug is administered to a patient and that too when the drug is being repeated. Thus, we do not find any lapse on the part of the doctor opposite party No.4 in advising same protocol as on 17th Feb 2006 or for his absence during administration of the drug.

21. It has been argued that when to call the nephrologist was clearly a call to be taken by the treating doctor, however, this call has been taken very late. It was known from 21.04.2006 itself that the patient had suffered toxicity due to administration of Cisplatin. Obviously on 22nd April 2006, the treating doctor tried to deal with the symptoms as per his diagnosis and skills. But when the situation did not improve and the symptoms of toxicity did not subside and the peritoneal puffiness as well as the puffiness on the face was noticed, then this may have been the right time to refer to a nephrologist or to advise the initial renal function tests from blood sample. Medical record shows that on every visit of the doctor, there is a reference to nephrotoxicity due to Cisplatin and therefore when the condition of the patient did not improve, the reference should have been made to the nephrologist or at least initial blood tests for knowing the renal function may have been advised. Definitely this can be an error of judgment on the part of the treating doctor opposite party No. 4, but in the light of the judgment of the Hon'ble Supreme Court in Kusam Sharma (supra), it is to be seen whether this error of judgment would have been done by an equally competent medical professional. In the circumstances when the case was a known case of nephrotoxicity caused due to Cisplatin and the symptoms of toxicity were not being controlled, we are of the view that a normal and equally competent doctor would have referred the case for opinion of a nephrologist or at least would have advised initial renal function tests. The Cardiologist in examination on 23rd April 2006 has clearly indicated it to be a case of acute renal failure, but still there was no attempt to call the nephrologist for examining the patient. The nephrologist was called after the patient was put on ventilator and by that time enough damage was done to the organs of the patient. The report of AIIMS dated 07.08.2013 also indicates that the renal function was more or less normal before the Cisplatin was administered to the patient which caused acute renal failure as revealed by the tests done afterwards. Even though the nephrotoxicity was clearly indicated, no tests relating to renal function were advised in this period. There can be no doubt on the sincerity and efforts of the treating doctor opposite party No.4 in treating the patient as he immediately referred to an eye specialist as soon as blurred sight was complained by the patient. However, the case required urgent treatment for the nephrotoxicity caused by Cisplatin and with this aim, the consultation with nephrologist was an urgent necessity. Thus, considering all these aspects, we are of the view that this error of judgment on the part of the doctor opposite party No.4 for not calling the nephrologist in time would come in the category of negligence even though it is not certain that an early reference to the nephrologist would have made any difference because the condition of the patient was already precarious due to the main disease of relapse of ovarian cancer as indicated in the report dated 22.02.2012 of AIIMS.

22. It is important to note that the management of a hospital not only involves providing services of doctor or other staff, but also to ensure that proper treatment is provided to the patient. In the present case, it has come on record that the Nurse was not a trained Nurse for Chemotherapy and this was definitely deficiency on the part of the hospital. Moreover, a death has occurred in the hospital because of administration of a wrong drug, therefore, the whole system of prescribing, providing and administering the drug comes into question. System of checks and balances was not there to prevent such an incident. The Hon'ble Supreme Court in **Smt. Savita Garg Vs. The Director, National heart Institute, IV (2004) CPJ 40 (SC)** has held the following:-

“Once an allegation is made that the patient was admitted in a particular hospital and evidence is produced to satisfy that he died because of lack of proper care and negligence, then the burden lies on the hospital to justify that there was no negligence on the part of the treating doctor or hospital. Therefore, in any case, the hospital is in a better position to disclose what care was taken or what medicine was administered to the

patient. It is the duty of the hospital to satisfy that there was no lack of care or diligence. The hospitals are institutions, people expect better and efficient service, if the hospital fails to discharge their duties through their doctors, being employed on job basis or employed on contract basis, it is the hospital which has to justify and not impleading a particular doctor will not absolve the hospital of its responsibilities.”

23. Thus, the hospital cannot escape its liability for the medical negligence that has been meted out in the present case. Thus, we are of the view that the hospital is required to compensate for the medical negligence that has happened in the hospital.

24. While coming to the question of compensation for medical negligence, the learned counsel for the complainants has argued that the deceased was a homemaker whose contribution has to be kept in mind while deciding the compensation. In the present case, the fact is that the husband of the mother of the complainants had predeceased the patient in question. Both the complainants are married daughters of the deceased and therefore, it is not clear as to whose home was being run by deceased as a homemaker and who has suffered the absence of this homemaker. The other heirs of the deceased have not come forward to file the complaint and therefore, in our opinion any special treatment to be given for the homemaker is not applicable in the present case.

25. Based on the above discussion, we find negligence on the part of opposite party No.4 doctor and opposite party No.5 ward incharge in the present case aggregating to the deficiency in service on the part of the hospital as well. We have also noted the precarious condition of the patient due to relapse and spread of cancer as well as non-applicability of any special consideration due to deceased being a homemaker. Keeping all the factors in view, we order a compensation of Rs.10 lakhs to be paid to the complainants by the opposite parties Nos.2,4 and 5. The opposite party No.2 hospital will pay a compensation of Rs.6,50,000/- and opposite party No.4 doctor will pay a compensation of Rs.2,50,000/- whereas the opposite party No.5 will pay a compensation of only Rs.1,00,000/- as she has already been appropriately punished in a Court of inquiry. These opposite parties are directed to pay this amount to the complainants within a period of 60 days from the date of receipt of the order, otherwise these amounts will attract interest at the rate 6% per annum from the date of this order till actual payment.

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PREM NARAIN
PRESIDING MEMBER

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C. VISWANATH
MEMBER