

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**CONSUMER CASE NO. 112 OF 2011**

1. KESHAVRAO V. YADAV

R/o. Miraj pratap Colony, Laxmi Narayan building,  
Miraj,  
Sangli  
Maharashtra

.....Complainant(s)

Versus

1. DR. J.V.S. VIDYASAGAR & ORS.

Orthopedics, Arthoroscopy & Sports Medicine,  
Department Of Orthopedics, Kamineni hospital, Ring  
Road L.B. Nagar,  
Hyderabad - 500 963

2. DR. J.V.S. VIDYASAGAR

-

3. DR. ANIL B. PATIL

MS ORTHOPEDIC, BAPUJI ORTHOPEDIC CENTRE  
1ST GATE, TILAKWADI,  
BELGAUM, KARNATAKA

4. DR. GUNJAL

ANESTHETIST, YASH HOSPITAL, CRITICAL CARE  
CENTRE, 4924/33, MAHADWAR ROAD,  
BELLGAUM-01, KARNATAKA

5. DR. SUBHASH PATIL

YASH HOSPITAL, CRITICAL CARE CENTRE,  
4924/33, MAHADWAR ROAD,  
BELGAUM-01, KARNATAKA

6. DR. SANJEEV K. PATIL, MD

YASH HOSPITAL, CRITICAL CARE CENTRE,  
4924/33, MAHADWAR ROAD,  
BELGAUM-01, KARNATAKA

.....Opp.Party(s)

**BEFORE:**

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

**For the Complainant :**

**For the Opp.Party :**

**Dated : 01 Jan 2021**

**ORDER**

Appeared at the time of arguments through Video Conferencing

	Mr. Kailash Pandey, Advocate
	Mr. Ranjeet Singh, Advocate
For the Complainant	:
	Ms. Sushmita Mishra, Advocate
	Mr. Basava Prabhu Patil, Advocate
For the Opposite Parties	:
	Mr. Shailesh Madiyal, Advocate
	Mr. T. C. Mopagi, Advocate
	Mr. Kartik Anand, Advocate

**Pronounced on: 1<sup>st</sup> January 2021**

**ORDER**

**The Facts:**

1. The Complainant Keshavrao V. Yadav is father of Dr. Sunil K. Yadav (since deceased, hereinafter referred to as the “patient”). The patient himself was an Orthopaedic Surgeon and Professor & HOD of Orthopaedics in Bhartiya Vidyapeeth University Medical College & Hospital at Sangli (Maharashtra). Dr. Sunil was to attend the Continuation of medical Education (hereinafter referred to as ‘CME’ or Conference) arranged by Karnataka Orthopaedic Association, on 07.06.2009 at Yash Hospital, Belgaum, Karnataka. He informed his father that during the CME he was to get operated his left knee by the hands of Orthopaedic surgeons expert in Arthroscopy doctors at Yash Hospital having all the facilities available. On 06.06.2009 after breakfast, he drove himself with his colleague Dr. Gautam Tarlekar and reached Belgaum at 2.30pm. It was alleged that Dr. Anil B. Patil (hereinafter referred to as the Opposite Party No. 2) arranged the CME and forced the patient to get operated by the hands of Dr. Vidyasagar, from Hyderabad the expert in Arthroscopy (hereinafter referred to as the “Opposite Party No. 1”). The Complainant’s second son Dr. Rajshekhar (alias Shekhar), a practising Gynaecologist at Belapur also joined the patient on 07.06.2009 at 8.00 am during proposed operation. At around 11.30 am, Dr. Shekhar telephoned his father and informed that Dr. Sunil’s health became in danger and asked him to come immediately to Belgaum with mother. However, the Complainant’s wife and

niece Pintu Shitole went to Belgaum and the Complainant stayed at home. At about 6.00pm by ambulance the patient's dead body was brought to the Complainant's house at Miraj and in the same night, cremation was completed at their native place Ganeshwardi in Kolhapur District. Thereafter, on 08.06.2009 the Complainant inquired with his son Dr. Shekhar about the details of Dr. Sunil's death and he told that on 07.06.2009 at around 10.00am, the patient was taken inside the Operation Theatre (hereinafter referred to as 'OT') for the left knee operation. Dr. Anil was not available there and not contactable. The doctors did not allow Dr. Shekhar to enter the OT but asked him to remain at the conference hall and watch the live demo of the said operation. Accordingly, he went to conference hall but the live demo was not started even after 15-20 minutes. Therefore, immediately Dr. Shekhar approached the OT but he was not allowed to enter there as the patient was serious. On enquiry, the doctor informed that the heart of Dr. Sunil had suddenly stopped and at that time the necessary lifesaving equipment and the presence of Cardiologist was not there, therefore the patient was to be shifted to KLE Hospital. There was no ambulance facility; therefore ill equipped ordinary ambulance was called by Dr. Anil Patil. In the ambulance, the doctors were pressing the patient's chest. However by the time ambulance reached KLE Hospital, the patient was declared dead.

2. The Complainant further averred that 09.06.2009, the news came out in the newspaper that Dr. Sunil Keshavrao Yadav died during the operation and the Anaesthetist Dr. Vivek Sawant had committed suicide. Then the Complainant was doubly sure that the death of his son was not natural but it was caused due to the negligence of the doctors at the CME. After gathering all the information, the Complainant filed an FIR with the Police at Sangli in Marathi language. The Complainant wrote several letters to the Managing Director of Yash Hospital to furnish the entire Medical Record of his deceased son. The Complainant further alleged that his son died on 07.09.2009 whereas the Medical Record was issued on 27.10.2009 without death certificate with wrongly mentioned time and place of death. It was further alleged that after the death of Dr. Sunil, the documents were created and intentionally mentioned that Dr. Sunil chose his Anesthetist. Even otherwise, it was the duty of the hospital and the surgeon to verify whether the Anesthetist was qualified to give a proper dose. Therefore, ample time was there to fabricate the Medical Record which speaks volume against the Opposite Parties about the concocted record. The Opposite Parties did not conduct mandatory post-mortem in the said case.

3. The Complainant set out the following points of alleged negligence caused by the Opposite Parties during surgical procedure and caused the death of his son:

- (i) Pre anaesthesia fitness of Sunil was not obtained from any doctor; leave aside qualified cardiologist.
- (ii) Dr. Anil Patil had not conducted any tests on Sunil at Belgaum;
- (iii) Doctors from Yash Hospital or doctors managing the CME, had not taken any pains to discuss with relatives present in the hospital even though there was danger to give general anaesthesia to Sunil;
- (iv) Verification was not taken by the doctors of Yash Hospital as to whether the anaesthetist who gave anaesthesia to Sunil, is having recognized post graduate qualification and registration from Karnataka State and whether that doctor was permitted to work as anesthetist in Karnataka State;

(v) Dr. Gunjal who is working as anaesthetist in Yash Hospital was sitting outside while the patient was on the operation table. Did he administer anaesthesia to Sunil? Is this not negligence or deliberately causing his death;

(vi) The operation theatre was neither well equipped nor had sufficient number of specialist doctors;

(vii) The doctors who were supposed to be present at the time of emergency were not even in the Operation theatre;

(viii) No advice was taken from any other doctor regarding General anaesthesia though it was initially decided to give spinal anaesthesia.

(ix) The owner and Managing Director of Yash Hospital is Homeopath, but he falsely prints his title as M.D. Only when the complainant asked letters/copies of case papers, he has written "Hom" in "ink" after his title MD. Even his resident staff is either Ayurvedic or Homeopathic, to the best of knowledge & belief of the complainant. The nursing staff at Yash Hospital is not qualified or registered nurses to the best of knowledge & belief of the complainant;

(x) No Post-Mortem was done mostly to hide their mistakes and the real cause of death which is highly suggestive of their guilty mind;

(xi) It is not clear whether the surgeon to perform operation had permission to operate in Belgaum as he is registered in Andhra. No proof whether he was present in the operation theatre;

(xii) The Anaesthetist – Dr. Vivek Sawant who gave spinal anaesthesia committed suicide. Even he was registered with Maharashtra Medical Council and not in Karnataka State;

4. The Complainant is a senior citizen aged 76 years, lost his young son Dr. Sunil due to alleged medical negligence of the Opposite Parties and his entire family suffered irreparable loss and mental agony. Being aggrieved the Complainant filed the Consumer Complaint before this Commission under Section 21(a) (i) of the Consumer Protection Act 1986 (for short, the Act, 1986) and prayed for Rs. 3 Crore as compensation.

5. The Opposite Parties Nos. 2 & 3 jointly filed written version and denied the allegations. The Opposite Parties Nos. 1, 4 and 5 have adopted the same written version. The preliminary objection that the present case was not maintainable under the Act, 1986 as it was not a 'service' under section 2(o) the Act, 1986. The surgery / procedure were a part live demonstration during the CME Workshop and completely free wherein even the consumables were not charged. The opposite parties further submitted that the owner of the hospital is the Opposite Party No. 5 who provided facility for the CME workshop. The Yash Hospital is well quipped and having all facilities including specialized surgery and ICU etc. the Opposite Parties Nos. 1 and 2 are Orthopedic surgeons, the Opposite Party No. 3 is an Anesthesiologist and the Opposite Party No. 4 Dr. Subhash Patil were working under the Opposite Party No. 1. The operating procedure on the patient was not started by any of these Opposite Parties. Though the Opposite Party No. 3 an Anesthesiologist was present in the hospital, he did not administer anesthesia to the patient but it was administered by Dr. Vivek Sawant. The sudden death of Dr. Sunil due to massive cardiac arrest after administration of anesthesia was an unexpected unfortunate incident. It was not due to no negligence from the Opposite Parties.

6. Both the sides have filed their respective affidavits of evidence.

7. Heard the arguments from both sides. The parties have filed their written arguments. The learned Counsel for Complainant vehemently argued that the Opposite Party No. 5 Dr. Sanjeev K. Patil who claims to be Managing Director of Yash Hospital is an MD Homeopath, but he deliberately omits to write it and he does not have requisite qualifications to run a Hospital & that too a critical care center with the help of Ayurvedic & Homeopathic resident doctors. Therefore he mislead several patients and playing with their lives on account of his false degree mentioned in the hospital board and letter head. The Complainant placed on record the copy of the visiting card of Dr. Sanjeev K. Patil, showing his degree and also facilities available in Yash Hospital. The Hospital does not have qualified nursing staff as per the medical standards therefore the details of the nursing staff and other staff had purposefully been not given.

8. The learned Counsel further argued that Dr. Vivek Sawant was stated to have committed suicide on 07.06.2009 and in said connection a Complaint was filed with police on 05.07.2009 against the Opposite Parties and Dr. Vivek Savant for the offence punishable under section 304 A, 209 and 34 of IPC. The Belgaum police while investigating the Complaint and after recording the statements of Dr. Rajashekhar Yadav (Dr. Shekhar) and Dr. Gautum Tarlekar did not find any case made out against the opposite parties and no Charge sheet has been filed and came to the conclusion that the Complaint as against Dr. Vivek Sawant got abated in view of his death. The learned Counsel relied upon the following decisions:

1. Rajat Jain & Anr. vs. D. R. Nursing Home & Ors., (IV) 2012 (CPJ) 123 (NC);
2. D. Uma Devi vs. M/s Yashoda Hospital & Ors., First Appeal No. 1169/2014 (NCDRC);
3. Dr. Pinnamaneni Narasimha Rao vs. Gundavarapu Jayaprakasu&Ors., AIR 1990 AP 207;
4. Dr. U.K. Kini & Anr. vs. K. Vasudeva Pai & Ors., 2001 ACJ 2141 ;
5. Smt. Bhanupal vs. Dr. Prakash Padode & Ors., (II) 2000 CPJ 384;
6. Arunaben D. Kothari & Ors. vs. Navdeep Clinic & Ors., (III) 1996 CPJ 605

9. The learned Senior Counsel for the Opposite Parties vehemently argued that Dr. Anil Patil, the Opposite Party No. 2 is a qualified Orthopedic Surgeon and having expertise in the surgical work. The CME workshop was arranged under the aegis of Karnataka Orthopedics Association at Yash Hospital, Belgaum. The patient Dr. Sunil Yadav had knee problem and was desirous and volunteered to undergo surgery during the workshop, which was free of cost. Even on the face of the Complaint, the case of negligence or deficiency in service against the Opposite Parties is not made. Even before the surgery commenced, the patient Dr. Sunil Yadav expired due to Cardiac Arrest after the administration of Anesthesia by Dr. Vivek Sawant. Therefore, negligence cannot be attributed to the Opposite Parties Nos. 1, 2 and 4, who are the Orthopedic Surgeons and had no role to play in the administration of Anesthesia. So far as the Opposite Party No. 3 Dr. Gunjal, the senior anesthetist, Yash Hospital, is concerned, he was neither involved in any manner with the proposed surgery nor he administered Anesthesia to the deceased. Therefore, the instant Complaint is not maintainable against the Opposite Parties Nos. 1 to 4. He further argued that the

Opposite Party No. 5 is Managing Director of Yash Hospital at Belgaum and the patient was not under treatment of Yash Hospital but it was the venue for CME wherein the patient was to be operated. The Yash Hospital had provided only the premises and the facilities for the said CME. Therefore, the Complaint is not maintainable against the Opposite Party No. 5. The Hospital is well-equipped and recognized by the Government of Karnataka under Government Employees Medical Reimbursement Scheme. It is also recognized for National Health Insurance Scheme, Bharat Sanchar Nigam Ltd., Yashaswini Co-operative Farmers Health Care Scheme (Yashaswini Scheme) introduced by the Government of Karnataka.

10. Dr. Sunil (the patient) who himself was an Orthopedic Surgeon and Professor at Bharatiya Vidyapeeth University Medical College and Hospital at Sangali, Maharashtra had history of injury to the left knee. He suffered Haemarthrosis and previously had been treated conservatively. However, it was affecting his routine activities. In order to avail the opportunity to get operated by the experts, he volunteered to undergo Arthroscopic knee operation and its live demonstration during the CME at Belgaum. The entire procedure including the cost of consumables was free. Dr. Sunil on 06.06.2009 from Sangli at about 9.30 am telephonically called to Dr. Anil Patil (the Opposite Party No. 2) and told that he would be reaching Belgaum for the surgery. The Opposite Party No. 2 recommended Dr. Sunil to bring an attendant for surgery along with him. Accordingly, the hospital staff was directed to prepare an In-patient Medical Record in the name of Dr. Sunil Yadav and to book a private room for him which was done at about 12.00 pm. The entire medical record of the patient is in the form of a Booklet (Annexure R-7).

11. On 06.06.2009, Dr. Sunil Yadav reached the Yash Hospital at Belgaum between 1.00 pm and 2.00 pm with his colleague Dr. Gautam Taralekar as a patient's attendant, who also was an Orthopedic Surgeon having worked with him in Medical College. Dr. Sunil brought his reports of MRI Scan of left knee joint, Electro cardiogram (ECG) and other blood tests which he underwent at Bharatiya Vidyapeeth Medical College and Hospital on 05.06.2009 i.e. a day prior his admission to the CME. The reports were examined by the anesthetist and the patient was found fit for surgery. After admission at Yash Hospital, Dr. Sunil was clinically examined by the Opposite Party No. 1 and the Opposite Party No. 2, and recorded the clinical findings as :

1. CVS-NAD i.e., Cardio Vascular System- No abnormality detected;
2. No history of IHD (Ischemic Heart Diseases)

12. It was further argued that the patient who himself was an Orthopedic Surgeon, insisted that his anesthesiologist friend one Dr. Vivek Sawant the Anesthesiologist associated with him, would administer the anesthesia for the proposed surgery. Though it was not a normal practice, but considering the factual position, the request was conceded and the same was recorded in the consent form for the surgery. Dr. Vivek Sawant, verified the arrangements in the OT and the equipments, being satisfied commenced the process of administering Spinal anaesthesia to the patient. The OT was fitted with multipara monitor which shows real time ECG, SPO<sub>2</sub> and NIBP, Anaesthetist work station having oxygen and Nitrous oxide cylinders fixed, syringe pump and central line catheter for emergency cardiac medication/resuscitation, cardiac defibrillator and all emergency medicines.

13. On the day of procedure 07.06.2009, the Opposite Parties Nos. 1 and 4 were present in the OT who were about to scrub/paint the left lower limb of the patient. The anesthetist Dr. Vivek Sawant immediately after administration of spinal anesthesia noticed respiratory problem to the

patient and immediately asked the doctors to stop the procedure. He intubated the patient with Endotracheal tube (ETT) and started ventilating with 100% oxygen. Dr. Gunjal was also called to assist. For resuscitation, Dr. Vivek Sawant injected Atropine and Adrenaline, the external cardiac massage was continued. The Physician was also called immediately who after examination, advised medicines and to continue external cardiac massage, also the Cardiologist Dr. Sanjay Porwal reached OT within 10-15 minutes. In the meantime other doctors including the Opposite Party No. 2 came to the OT.

14. At that juncture as insisted by the patient's brother Dr. Rajashekhar it was decided to shift the patient to KLE Society's Dr. P.K. Hospital and the ambulance from the said Hospital was called for immediately. The patient was taken to KLE Hospital in the ambulance equipped with all emergency medicines and equipment, including Oxygen Cylinders and CPR Kit accompanied with Dr. Gautam Taralekar, Dr. Vivek Sawant and Dr. Rajeshkhar Yadav and Dr. Zobin. However, despite all resuscitative measures the patient expired due to cardiac arrest at KLE Dr. P.K. Hospital Belgaum.

15. The Opposite Parties file few judgments of Hon'ble Apex Court viz:

i. Indian Medical Association vs. V.P. Shantha, (1995) 6 SCC 651;

ii. Kishore Lal vs. Chairman ESI Corpn. (2007) 4 SCC 579 ,

iii. Iswar Bhai C. Patel alias Bachu Bhai Patel vs. Harihar Behera & Anr (1999) 3 SCC 457

### **Observations & Discussion:**

16. I have perused the entire material on record *inter-alia* details of facilities available at Yash Hospital and the Medical Record of the patient (Annexure 'C' colly).

17. Admittedly the Belgaum Knee Orthoscopy CME was organized at Yash Hospital Critical Care Centre at Belgaum. The Yash Hospital provided an equipped OT facility, the Conference Hall and basement for catering at free of cost. Dr. Anil Patil and Dr. Gunjal were visiting consultants at Yash Hospital. The patient's medical record revealed Dr. Sunil was given IPD No. 2019 and was provided a private room. It was free for CME. So far as the hospital facilities are concerned, the information sheet revealed all facilities were available including ICU, Lab, Radiology Department and Operation Theatres for Neurosurgery, laparoscopic surgery and plastic surgery. I have perused patient's relevant laboratory reports like Hemogram, Biochemical and ECG done on 05.06.2009 at Bharatiya Vidyapeeth Medical College and Hospital. Those reports were necessary for pre anesthetic check-up and fitness. The reports were within normal limit. The Admission record revealed that the patient was admitted at 12' noon on 06.06.2009 under the CME Arthroscopy. The names of the patient's brother Dr. Rajshekhar Yadav and a friend Dr. Gautam Tarlekar were mentioned as the patient's attendants. The referring doctor was the patient himself and the mode of payment mentioned was stated as " **free**". The clinical history recorded was the pain in knee on long standing and walking, pain aggravates on activity and partial relief on taking rest, instability of knee not allowing him to do routine activity. The examination findings are as below:

“On examination: Afibrile                      R.R.- 16/min

Vitals – Pulse – 60/min                      BP – 130 / 80 mm of Hg

Left knee

- Tenderness present over medial joint line
- Anterior Drwyer Test positive, 3+, complete ACL tear
- Lacthman’s test positive, 3+
- Mcmarry’s test positive for medial meniscus tear

CVS – NAD, CNS – NAD, DA-NAD, R.S.- NAD

The provisional diagnosis was ‘ACL Tear of left knee’. At the caption of operative procedure mentioned as “ **NOT DONE** ”. The name of Anesthetist mentioned as Dr. Vivek Sawant and also mentioned about patient suffered Cardiac arrest while anesthesia was given. The Consent form shows the name of the Anesthetist as Dr. Vivek Sawant and mentioned as “the patient’s own Anesthetist” and the operating surgeon was Dr. J.V.S. Vidyasagar. The Consent was signed by his brother Dr. Rajshekhar Yadav. The patient had no history of DM/HTN/TB/IHD. The investigations Hemogram, Blood Sugar, Urea were within normal limits. As stated by Dr. Sunil Yadav, he has consulted his family Physician who declared him fit for anesthesia and same had been discussed with his anesthetist Dr. Vivek Sawant, who actually was to give anesthesia during CME.

18. After the clinical examination, Dr. J.V.S. Vidyasagar recorded findings as below:

“6/06/09              c/s Dr. J.V.S. Vidyasagar And advised

Case to be posted for LA knee Arthroscopy under spinal /GA on 7/06/09 at around 9.00 am

Pre-operative orders:

- NBM from 10.00 pm
- Take informed consent
- Prepare parts
- Inform anaesthetist For evaluation Dr. Sawant
- I V Cannula to be put before shifting pt to O.T.
- shift pt to O.T. at 9.00 am”



His family physician who investigated and Dr. Gautam confirmed the same during discussion.

sign

7.6.09 -- pt examined XXXXX by Dr. Savant Vivek

-- Cannula put by him to rt hand

-- Patient taken to O.T.

sign

19. The treatment chart as on 07.06.2009 mentioned the drugs used were Inj. Atropine 1) amp IV, Inj. Xylocaine 2% 1cc, Inj. Sensorcaine IV, Inj. Nervovac3amp, Inj Pantothane 4,1%, Inj Adrenaline, Inj Sodabio carbonate, Inj Corts-S 1 vial, IV DNS, IV RL, IV NS. These medicines are necessary during resuscitation of cardiac arrest.

20. Dr. M. K. Gunjal, the visiting Anesthesiologist of Yash Hospital during enquiry submitted the events happened in the OT. The enquiry note is reproduced as below:

At about 9.30 am today, I was in OT for preparation of next case arrangement. xxxxx Dr. Yadav (patient) came with Dr. Sawant, anesthesiologist into OT, Dr. Sawant verified arrangements in OT and started giving spinal anaesthesia to the pt. I asked whether any assistance is required? He said "No I will manage". I went to changing room. After sometime, I was called again in OT when I entered the OT, Dr. Sawant had intubated the pt with ET tube and was ventilating the pt. Dr. Sawant told me the condition of the pt is critical and requested me to ventilate the pt. At his request, I started ventilating the pt. In the mean time, Dr. Sawant asked to stop the painting (the part) and asked the sister to load Inj Atropine and adrenaline and he started giving ext. cardiac massage. I xxxx continued to ventilate the patient with 100% O2. The physician came, examined the pt and started giving ext cardiac massage and instructed Dr. Sawant to administer the drugs. Meanwhile other doctors came, shifted the pt to KLE Hopsital with ambubag. Dr. Sawant accompanied the Pt.

21. The events happened during surgery are mentioned in "The operation record". It is reproduced as below:

"L lower limb was scrubbed

Electronic pneumatic tourniquet applied but was not inflated

Dr. JVS Vidyasagar & myself were about to paint the L lower limb

Dr. Sawant asked us to stop

Dr. Sawant started giving ext cardiac massage to pt.

Dr. Gunjal was giving mechanical ventilation

Signature

XXXXXXXXXX

22. It is more relevant to peruse the statement of Dr. Gautam Tarlekar, the relevant paragraph is reproduced as below:

“On 07/06/2009 at about 6.00 A.M. Dr. Rajshekar Yadav, elder brother of Dr. Sunil was come from Bombay to the Yash Hospital. He has signed all the pre operation Documents after Signing at about 10 ‘O clock Dr. Sunil shifted to operation theatre of Yash Hospital, at that time Dr. Vidyasagar, Dr. Anil Patil, Dr. Vivek Sawant, Dr. Gunjal, Dr. Basavaraj, Dr. Naveen Malagi, Dr. Subhash Patil and Hospital staff were present in the operation theatre. Dr. Sunil told that his friend Dr. Vivek has to give bull to him, hence Dr. Vivek was administered bull (Anastasia); at that time immediately after administering the bull Dr. Sunil received heart pain, with the help of emergency medical treatment equipments he was treated and who were present at that time were shocked and started pressing the chest immediately ambulance was brought and shifted to KLE Hospital, after examination the Doctors told that Dr. Sunil has dead. Knowing this fact with a fear Dr. Vivek Sawant has committed suicide.”

... XXXXX....

“Now I seen the complaint shown to me, this is the complaint given by Shri. Keshavrao Venkatrao Yadav the father of deceased Dr. Sunil Yadav. As the Dr. Rajshekar do not want to conduct the post mortem on the dead body of his brother Dr. Sunil, the dead body was handed over for funeral by taking in writing. Dr. Rajshekar and his elder sister Sangeeta Komalrao Rani took the dead body and they have conducted the funeral as per their custom.”

23. I have perused the affidavit of the staff nurse Ms. Shivaleela, working at Yash Hospital who was on OT duty on 07.06.2009. She submitted that Dr. Vivek Sawant came to the hospital at around 8am and after examination of the patient, put IV canula in the right hand, and instructed her to shift the patient to OT around 10 am and at that time Dr. Rajshekar Yadav (patient’s brother) and Dr. Tarlekar were also present. After verifying the arrangements in the OT prior to administration of anesthesia, Dr. Vivek Sawant administered anesthesia. At the same time, Dr. Gunjal a senior visiting consultant anesthetist was present to attend another surgery in Yash Hospital. She further submitted the events happened in the OT.

24. In the instant case the allegation was that the deceased Dr. Sunil’s autopsy was not done. It is pertinent to note that the cause of death was known without existence of any suspicious circumstances and as desired by Dr. Rajashekhar, no post-mortem was conducted. Dr. Rajashekhar expressed difficulty in transporting the dead boy from Belgaum (Karnataka) to his native place in Miraj, Maharashtra. The Yash Hospital issued a Death Certificate (Annexure 10) certifying that the patient expired due to massive cardiac arrest. In the Progress Note (page 143 of the paperbook), Dr. Rajashekhar had signed a note and denied the autopsy/Post Mortem. It is reproduced as below:

“07/06/2009

I, the undersigned Dr. Shekhar K Yadav, elder Brother of Dr. Sunil K Yadav have understood the complications that caused the death of my younger brother (Dr. Sunil K. Yadav). And further declare that I do not wish to carry out an autopsy (Post-mortem) for the cause of the death. Kindly issue me the death certificate.

(Dr. Shekhar K. Yadav)”

25. Unfortunately, Dr. Vivek Sawant the Anesthesiologist committed suicide at his home town on 07.06.2009. On perusal of the Complaint given by Sh. Laxman Sawant, the father of Dr. Vivek Sawant, at Police Station Belgaum who categorically stated as below:

“My son was anesthetist and he got mentally heart due to the death of his friend Dr. Yadav and committed suicide by injecting the injection of poison to himself. We do not suspect on anybody, and my son Vivek age 35 years, r/o Ichalkaranji is expired due to heart fail or due to getting the injection of poison, and we have got doubt about it. So the further action may be taken and his dead-body may be handed over to us. Humble request to you.

Date: 08/06/2009

Belgaum

Yours faithfully

Sd/

(Laxman Pandurang

Sawant)

**Conclusion:**

26. The Knee Arthroscopy CME was organized under the aegis of Karnataka Orthopedic Centre at Yash Hospital, Belgaum. The Yash Hospital is owned by the Opposite party No. 5 Dr. Sanjeev Patil, a Homoeopathist, who had no active role in the CME either in procedure or surgery. The hospital information brochure is mentioned about facilities and names of Consultants. It is a well-equipped hospital having Radiology, Laboratory, ICU and OTs with Consultants of different specialties and super-specialities. Dr. Anil Patil - the Opposite Party No. 2 is one of visiting Consultant Orthopedic Surgeon, having experience and trained in Arthroscopy in India and USA. The hospital is empaneled under various government schemes and National Health Insurance schemes like BSNL and Yashaswini Scheme. (Govt. of Karnataka). Therefore allegations of Complainant (*para 7 supra*) against the hospital facilities and the qualification of Dr. Sanjeev Patil (the owner of the hospital) are not sustainable. Moreover, for the CME he provided the hospital facilities and venue for free of cost.

27. It is evident from the medical record, that the necessary pre-operative investigations viz laboratory reports and ECG were done by Dr. Sunil (the patient) on 05.06.2009 (a day prior) at his working place Bhartiya Vidyapeeth University, Medical College, Sangli. All the reports were within normal limits and fitness for the operation was obtained from his Physician and same was mentioned in the clinical notes by Dr. Vidyasagar. Those reports were again checked by the Anesthesiologist Dr. Vivek Sawant, on 07.06.2009 before the Arthroscopic procedure.

28. Admittedly Dr. Vivek Sawant, a patient's colleague from Ichalkaranji, who was called by the patient himself to administer anesthesia during the procedure. Dr. Vivek Sawant, administered Spinal anesthesia to the patient and suddenly the patient developed respiratory problem and Cardiac arrest. Therefore, he instructed to the doctors to stop the scrubbing and painting procedure. Immediately, Dr. Vivek Sawant started Cardiac resuscitation, the patient was intubated and administered Atropine and Adrenaline. The ventilation with 100% oxygen started.

The physician was called. Dr. Gunjal and other doctors in the OT were assisting during resuscitation of the patient. In my view the doctors present in the OT were competent and have performed cardiac resuscitation as per standard protocol. The unexpected cardiac arrest during spinal anesthesia is rarely seen. I would like to refer one medical article “Unexpected cardiac arrest in spinal anesthesia” -Acta Anaesth. Belg., 2006, 57, 365-370, noted that:

*“The common mechanisms of cardiac arrest during spinal anaesthesia seems to involve still poorly understood relations among vasodilatation, reduced venous return, reduced cardiac output and brady-cardia mediated by direct and/or vagal cardiac reflexes.”*

In my view the Anesthesiologist is the most appropriate person to decide on the fitness for surgery and use proper drugs for the cardiac resuscitation. [Ref: standard book “Physiologic and Pharmacologic Bases of Anesthesia by Vincent J. Collings, M.D., SC.D].

29. Thus it is apparent that after the administration of anesthesia patient suffered massive cardiac arrest; it was before the commencement of the surgical procedure. Therefore in my view the team of Orthopedic Surgeons (Opposite parties) cannot be attributed with negligence as their role did not commence at all. In this context, I do not find any deviation from standard of practice from the doctors in the OT who immediately initiated cardiac resuscitation and despite all efforts patient could not survive. Moreover, it is sad to note that subsequently the Anesthesiologist Dr. Vivek Sawant who administered anesthesia to the deceased Dr. Sunil had committed suicide under depression at his home town.

30. The four ‘*D s*’ of medical negligence are duty, dereliction (breach), direct cause (causa causens) and damages. Each of these four elements must be proved to have been present, based on a preponderance of the evidence, for negligence to be found. Nevertheless, a simple lack of care, an error of judgment or an accident is not a proof of negligence on the part of doctor. So long as the doctors follows a practice acceptable to the profession on that day he can't be held liable for negligence merely because a better alternative course of treatment was available or a more skilled doctor would not have chosen to follow or resort to that practice which the accused followed.

31. The Hon'ble Supreme Court through various judgments laid down the vital legal principles for determining the fundamental aspect of medical negligence on part of a skilled medical practitioner. In the case **Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Babu Godbole and Anr** AIR 1969 SC 128, the Hon'ble Supreme Court elaborated the duties which a doctor owes to his patients came up for consideration. The Court held that a person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for that purpose. Such a person when consulted by a patient owes him certain duties, viz a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to be given or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient. The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.

32. In the present case, it was an unfortunate and unexpected death of Dr. Sunil (Patient) even before the surgeons putting a knife for surgery. For me the ‘causation’ of medical negligence is not visible. In my view the general test for causation is that which requires the Complainant to show that the injury would not have occurred “*but for*” the negligence of the doctors – the

Opposite parties. It is important that the Complainant has to establish on a balance of probabilities that the defendant's tortious act was a necessary cause of alleged injuries. I do not find any failure of duty of care from the doctors or there was any evidence to indicate any unexplained deviation from the standard protocol in the Operation Theatre. Further, I would like to rely upon the recent judgment of Hon'ble Supreme Court in the matter **Vinod Jain Vs. Santokba Durlabhji Memorial Hospital and Ors.**, JT 2019 (3) SC 9, which has upheld the Order passed by this Commission exonerating the opposite parties i.e. the hospital and treating doctor from any medical negligence.

33. To conclude, there is not much one can do to prevent a disgruntled Complainant/ Patient from approaching a Court or redressal Forum. In the instant case, I do agree the agony of the Complainant, but then, that by itself cannot be a cause for awarding damages for the passing away of his son. Though my sympathy is for the Complainant, but it cannot translate into a legal remedy.

34. In obtaining the facts and the evidence adduced, in the instant case it is not feasible to determine medical negligence or deficiency in service on the part of doctors and hospital. Resultantly the Consumer Complaint fails. It is dismissed. There shall be no order as to costs.

.....  
**DR. S.M. KANTIKAR**  
**PRESIDING MEMBER**