STATE CONSUMER DISPUTES REDRESSAL COMMISSION, PUNJAB, CHANDIGARH.

Misc. Application No.757 of 2019
In/and
Consumer Complaint No.907 of 2018

Date of Institution : 20.11.2018
Date of decision : 09.04.2021

Neetu Rani, aged 26 years, wife of Sh. Amrit Singh, resident of Ward No.4, Sardulgarh, Tehsil Sardulgarh, District Mansa, Punjab.

….Complainant

Versus

1. Nagpal Super Specialty Hospital, Mall Road, Bathinda, District Bathinda, through its Proprietor, Dr. Rupinder Kaur.

2. Dr. Rupinder Kaur Nagpal, Medical Officer/Owner of Nagpal Super Specialty Hospital, Mall Road, Bathinda, District Bathinda, Punjab.

3. Dayanand Medical College and Hospital, Civil Lines, Ludhiana, Punjab, through its Director.

….Opposite Parties

Consumer Complaint under Section 17 of the Consumer Protection Act, 1986.

Quorum:-
Hon'ble Mr. Justice Paramjeet Singh Dhaliwal, President
Mr. Rajinder Kumar Goyal, Member
Mrs. Kiran Sibal, Member.

1) Whether Reporters of the Newspapers may be allowed to see the Judgment? Yes/No
2) To be referred to the Reporters or not? Yes/No
3) Whether judgment should be reported in the Digest? Yes/No

Argued By:

For the complainant : None
For OPs No.1 & 2 : Sh. G.S. Bhasin, Advocate
For OP No.3 : Sh. B.B.S. Sobti, Advocate.

JUSTICE PARAMJEET SINGH DHALIWAL, PRESIDENT

"We have not lost faith, but we have transferred it from God to medical profession." …George Bernard Shaw.

A common man treats doctor as a God on the earth. One has tremendous faith in one's heart on the doctor. When one approaches a doctor, he completely surrenders to him/her. For this reason, medical professionals should shoulder their responsibilities with all care and caution to strengthen the doctor-patient relationship.

Relief Sought:

The complainant has filed this complaint, under Section 17 of the Consumer Protection Act, 1986 (in short, "the Act"), against the opposite parties, alleging deficiency in service and medical negligence and has sought issuance of following directions to opposite parties No.1 & 2:

i) to pay compensation of ₹25 lac to the complainant, along with interest at the rate of 12% till realization for the pain, sufferings, harassment etc. suffered by the complainant; and

ii) to pay ₹1.5 lac as cost of litigation;

Total: ₹31,00,000/-.

iii) Or any other appropriate order, as may be deemed fit in view of the facts and circumstances of the present complaint, may be passed.

Facts of the Complaint

2. Brief facts, as set out in the complaint, are that the marriage of the complainant (hereinafter to be referred as, "patient") was solemnized with Sh. Amrit Soni on 15.10.2016. After the marriage,

the patient and her husband cohabited and on one day, the patient experienced severe stomach pain. She was taken to Garg Diagnostic Centre, Sirsa, where her ultrasound scan was conducted. From the ultrasound report, it transpired that the patient was having tube pregnancy and was advised to take immediate treatment. On 25.04.2017, the patient was brought to opposite party No.1-Nagpal Super Specialty Hospital (hereinafter to be referred as “hospital”); where she was examined by opposite party No.2-Dr. Rupinder Kaur Nagpal. Ultrasound report prepared by Garg Diagnostic Centre was seen by her and thereafter, the complainant was admitted in opposite party No.1-Hospital on the same day. The surgery was advised, which was performed on 26.04.2017. After the surgery, the patient was assured that the surgery was successful. She was discharged on 28.04.2017, vide Discharge Card Annexure C-1. However, the patient continued to experience stomach pain. She contacted opposite party No.2, who assured that this was due to surgery and it generally happens and she would be fine after some time. However, on 03.05.2017, the patient again suffered severe stomach pain and contacted opposite party No.2 on telephone, who prescribed “Muffalspas” tablet. The patient took the medicine as per given instructions, but on 04.05.2017 in the evening, she again experienced severe pain. Opposite party No.2 was again contacted telephonically, but she admonished the patient, not to call her again and prescribed an injection, which was given by the local doctor on her instruction. Thereafter, the patient started suffering severe pain and vomiting

green liquid. On 05.05.2017, the complainant was again taken to opposite party No.2 and she was admitted for one day and was discharged on the next day, after advising some medicines. However, she also suffered heavy pain and vomited green liquid on 07.05.2017. Faced with this situation, the patient was taken to Dr. Monika Singla, who advised ultrasound scan from Satyam Diagnostic Centre, Mansa. After perusing the ultrasound scan report, the complainant was advised that she is in serious condition and advised to take her to the operating doctor, i.e. opposite party No.2. On this, the patient was again taken to opposite party No.2, who told that some fluid is seen in stomach, which is required to be drained out with the help of needle. Therefore, the patient was again admitted in opposite party No.1-Hospital, but there was no recovery and the patient continued to vomit green liquid till 08.05.2017. Opposite party No.2 told that she is a qualified doctor and can handle the situation, but there was no improvement, though the patient remained under her treatment from 25.04.2017 to 08.05.2017. Ultimately, the patient was taken to opposite party No.3-Dayanand Medical College & Hospital, Ludhiana (hereinafter to be referred as “DMC Hospital”) on 08.05.2017, where she was admitted on the same day i.e. 08.05.2017 and underwent surgeries and was discharged on 27.05.2017. The Discharge Summary of DMC Hospital is Annexure C-2. At the time of surgery in DMC Hospital, the patient was told that she would have died, had she would not have come to that it. Then, it transpired that the patient suffered cut in her intestine at opposite party No.1-Hospital during

surgery done by opposite party No.2. The father-in-law of the patient filed complaint dated 21.08.2017, Annexure C-3, to the Chief Medical Officer, Bathinda, but he did not take any action. A complaint, Annexure C-4, was also moved to S.S.P., Bathinda on 06.11.2017, but to no effect. The patient also filed CRM-M No.18109 of 2018 before the Hon'ble High Court for issuance of directions to act against opposite party No.2, but the matter was stated to be still pending for 20.11.2018. Feeling aggrieved against the act and conduct of opposite parties No.1 & 2, which amount to deficiency in service and medical negligence, the present complaint has been filed, seeking aforesaid reliefs.

Defence of the Opposite Parties

3. Upon notice, opposite parties appeared before this Commission. Opposite parties No.1 & 2 filed their joint reply to the complaint by way of affidavit of Dr. Rupinder Kaur Nagpal, whereas opposite party No.3 filed its separate reply.

4. Opposite parties No.1 & 2, in their reply by way of affidavit, raised preliminary objections that the patient has exaggerated the claim, in order to create jurisdiction of this Commission. This Commission has no pecuniary jurisdiction to try and decide the present complaint. The complainant has not approached this Commission with clean hands. The Discharge Summary, Ex.R-1, issued by DMC Hospital refers to perforation, but it is nowhere mentioned that the same was due to the previous surgery performed by opposite party No.2. It is also one of the preliminary objections that the said

Discharge Summary specifically states that perforation peritonitis is secondary to enteric fever. It is also mentioned therein “Another impending perforation 5cm proximal from other perforation”. From this diagnosis, it is clear that enteric fever may have caused these multiple perforations, which is also supported by article “Typhoid Intestinal Perforation:24 Perforations in One Patient”, Ex.R-2, and Sabiston (Text Book of Surgery) Ex.R-3. It is further pleaded that the perforation caused by surgery mostly occurs within 96 hours of surgery, as has been emphasized in the medical journal namely “Laparoscopic Bowel Injury: Incidence and Clinical Presentation”, Ex.R-4. Opposite party No.2 is a competent M.B.B.S. and M.S. Gynae doctor (Gold Medalist). Qualification certificates of opposite party No.2 are Ex.R-5 to Ex.R-8. On merits, similar pleas, as raised in preliminary objections, have been reiterated. It is admitted that Neetu Rani, complainant/patient was admitted in opposite party No.1-Hospital with the complaint of ectopic pregnancy on 25.04.2017 and she was operated upon on 26.04.2017 and was discharged on 28.04.2017. However, after 10 days, she complained of vomiting for the first time and opposite party No.2 treated her with fluid and antibiotics. Ultrasound scan done during her admission showed no collection in the abdomen. The report of the same was also given to the patient. The patient had no episode of vomiting. Widal test (Ex.R-9) was conducted on 08.05.2017, which also did not indicate any complication. Endorsement regarding leaving the hospital against medical advice (LAMA) is Ex.R-10. No intestine cut had occurred during surgery of ectopic done on 26.04.2017. This

fact has neither come on the record of DMC Hospital nor any expert evidence has been produced to prove so. All the treatment record was given to the patient, before going to DMC Hospital. All other allegations levelled in the complaint were denied and it was prayed that the complaint be dismissed.

5. Opposite party No.3-DMC Hospital, in its reply, raised preliminary objections that no relief has been claimed against it in the complaint. Proper treatment was given to the patient at DMC Hospital and no fault has been pointed by the patient therein. It is admitted that the patient, 25 years old female, was admitted in DMC Hospital on 08.05.2017, vide MRD No.260101 with pain in abdomen for 15 days, vomiting for 6 days. She underwent right salpingectomy for right ectopic pregnancy on 26.04.2017 (done outside DMC Hospital). The patient was resuscitated with IV fluids and IV antibiotics. On history, clinical examinations and investigations, the patient was diagnosed as a case of perforation peritonitis secondary to enteric fever (status post right salpingo-oophorectomy for ectopic (outside on 26.04.2017). After taking written consent for high risk surgery, patient underwent exploratory laparotomy with loop ileostomy with PD and PL under GA on 08.05.2017 for ileal perforation. Operative findings are as follows:

> "1 x 1 cm perforation present approx 10 cm from ileocaecal junction, another impending perforation 5 cm proximal to the perforation".

After the surgery, the patient was shifted to surgery ICU on 08.05.2017 on ventilator support with inotropes. She was started on total

parenternal nutrition and IV antibiotics were given, according to culture and sensitivity. Ventilatory support was weaned off on 09.05.2019. Regular monitoring of the HMG, RFT and CXR was done and report followed. Gradually, inotropic support was tapered down and there was discharge from wound site, for which skin sutures were removed and managed conservatively by regular dressings under aseptic conditions. Patient was shifted to surgery ward on 19.05.2017. In view of fever, MDCT abdomen was done, s/o collection seen in pelvis with largest 3.1 x 4.3 x 3.6 cm. Interventional radiologist consultation was sought, but collection was non-tapable and was managed conservatively, gradually the patient improved and started accepting orally. The patient underwent suturing under LA on 25.05.2017. Her stoma was functioning adequately and the wound was healthy with no suture discharge. Hence, she was discharged on 27.05.2017 in a stable condition.

6. It is further pleaded that the patient was re-admitted in DMC Hospital on 14.07.2017, vide MRD No.260101 on OPD basis from stoma reversal. Distal loopogram came out to be normal. After pre-anesthetic check-up and after taking written consent, the patient underwent Exploratory Laparotomy with stoma reversal on 15.07.2018. She was kept NPO for three days. On 4th post-operative day, the patient passed flatus and oral liquid diet was started. The condition of the patient was gradually improved and she started accepting orally well and, as such, she was discharged on 21.07.2017 under satisfactory condition, with passing stools and flatus with healthy

wound. Complete bed head ticket of the patient is Ex.R-3/1 and Ex.R-3/2. The entire medical record was supplied to the patient at the time of discharge. The patient herself pleaded in Para-6 of the complaint that the answering opposite party has been impleaded, just for production of medical record on record. Since the entire medical record of the patient has come on record, so the name of opposite party No.3 is liable to be deleted from the array of the opposite parties.

7. On merits, similar pleas, as raised in preliminary objections, have been reiterated. It is pleaded that the patient was treated as per standard medical protocol. It has been prayed that complaint against opposite party No.3 be dismissed.

Evidence of the Parties

8. To prove her claim, the complainant filed her own affidavit, along with copies of documents i.e. Discharge Card issued by opposite party No.1-Hospital Annexure C-1, Discharge Summary of DMC & Hospital Annexure C-2, complaint dated 21.08.2017 moved of CMO, Bathinda Annexure C-3/P-1 and complaint made to SSP, Bathinda dated 06.11.2017 Annexure C-4/P-2.

9. Opposite parties No.1 & 2, along with reply by way of affidavit of Dr. Rupinder Kaur Nagpal (opposite party No.2), filed copies of documents i.e. Discharge Summary of DMC Hospital Ex.R-1, Article “Typhoid Intestinal Perforation:24 Perforations in One Patient”, Ex.R-2, Article Sabistan (Text Book of Surgery) Ex.R-3, article “Laparoscopic Bowel Injury: Incidence and Clinical Presentation”,

Ex.R-4, certificates of opposite party No.2 Ex.R-5 to Ex.R-8, widal test report Ex.R-9 and writing about LAMA Ex.R-10.

10. Opposite party No.3, in support of its defence, filed affidavit of Dr. Sandeep Sharma, Medical Superintendent, along with complete medical record of the patient Ex.R-3/1 and Ex.R-3/2.

Contentions of the Parties

11. We have heard learned counsel for the opposite parties, as none appeared on behalf of the complainant at the time of arguments. Even no written arguments have been filed on her behalf. We have also gone through the written arguments submitted on behalf of the opposite parties and record carefully.

12. The case of the complainant/patient, as per averments made in the complaint, is that she was admitted in opposite party No.1-Hospital on 25.04.2017 and was operated upon on 26.04.2017. She remained under treatment of opposite party No.2 from 25.04.017 to 08.05.2017. The ultrasound scan, which was done at Satyam Diagnostic Centre, Mansa, revealed that the patient was suffering from serious problem and she was required to be taken to the same hospital. The patient had been complaining abdominal pain for many days and had episodes of vomiting the green liquid, in-spite of surgery done by opposite party No.2. The patient had contacted opposite party No.2 on telephone on 03.05.2017 and 04.05.2017 and was prescribed medicines and injection, but she got no relief. Ultimately, she was brought to opposite party No.1-Hospital again on 05.05.2017, but there was no improvement. Thereafter, the patient was taken to DMC

Hospital, where the doctors diagnosed the patient to be a case of perforation peritonitis secondary to enteric fever. She was firstly admitted in DMC on 08.05.2017 and was discharged on 27.05.2017. Thereafter, she was re-admitted in DMC Hospital on 14.07.2017 and was discharged on 21.07.2017. During those periods, the patient was operated twice at DMC Hospital. It has been further contended that opposite parties No.1 & 2 did not provide proper care and treatment to the patient during her stay at their hospital, which resulted in deterioration of her condition, leading to her admission and surgeries in DMC Hospital, from where she recovered. Opposite parties No.1 & 2 did not provide the medical record to the patient, nor they have produced the same along with their reply. Complaints against opposite parties No.1 & 2 were moved to CMO, Bathinda and SSP Bathinda, but no action was taken. The deficiency in service and medical negligence on the part of opposite parties No.1 & 2 have been duly proved on record and, as such, the patient is entitled to all the reliefs, as prayed for in the complaint.

13. The written arguments submitted on behalf of opposite parties No.1 & 2 are on the lines of pleadings made in their reply. The sum and substance of oral and written arguments is that they have provided proper and standard treatment to the patient while her stay from 25.04.2017 to 28.04.2017 and she was discharged in a stable condition. The patient again came to opposite party No.1-Hospital on 07.05.2017 and was discharged on 08.05.2017 with no complaint. Perforation caused by surgery (Laparoscopy complications) mostly

occur within 96 hours of surgery, but in this case the patient complained about vomiting for the first time on the 10th day of surgery. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated upon. Reliance has been placed on *Central Bureau of Investigation v. K. Narayana Rao 2012 (4) RCR (Criminal) 601 (SC).* Opposite party No.2 is a qualified doctor and there was no injury during the surgery of the patient conducted at her hospital. The alleged injury was the result of enteric fever and typhoid and there is no deficiency in service or medical negligence on the part of opposite parties No.1 & 2. The complaint is liable to be dismissed.

14. The written arguments submitted on behalf of opposite party No.3 are also on the lines of pleadings made in its reply. The sum and substance of oral and written arguments is that the patient was treated and operated in DMC Hospital as per standard medical protocols and was discharged in satisfactory condition, without any complaint. No relief has been claimed against opposite party No.3, nor any allegations have been levelled against it. Hence, the complaint against opposite party No.3 is liable to be dismissed.

Consideration of Contentions

15. We have given our thoughtful consideration to the contentions raised by the learned counsel for the opposite parties.

Misc. Application No.757 of 2019:

16. This application has been filed by the complainant with prayer to refer the record of the complaint to the expert Medical Board

to give opinion regarding negligence committed by opposite parties No.1 & 2, while treating her.

17. The aforesaid application has been opposed by opposite parties No.1 & 2 by filing reply thereto, stating that similar Direction Petition seeking similar relief, bearing No.CRM-M No.18109 of 2018 **(Amrik Singh v. State of Punjab)** is pending before the Hon'ble High Court of Punjab and Haryana. The present application has been filed after two years of surgery. The application has been filed just to fill up the lacuna in the case of the complainant. Hence, the application is liable to be dismissed.

18. It needs to be mentioned that in case ***V. Kishan Rao v. Nikhil Super Speciality Hospital & Another,*** 2010(2) RCR (Civil)-929(SC), the Hon'ble Supreme Court held that the expert witness is not required to be examined in all cases of medical negligence. It was observed as follows:-

> *"13. In the opinion of this Court, before forming an opinion that expert evidence is necessary, the Fora under the Act must come to a conclusion that the case is complicated enough to require the opinion of an expert or that the facts of the case are such that it cannot be resolved by the Members of the Fora without the assistance of expert opinion. This Court makes it clear that in these matters no mechanical approach can be followed by these Fora. Each case has to be judged on its own facts. If a decision is taken that in all cases medical negligence has to be proved on the basis of expert evidence, in that event the efficacy of the remedy provided under this Act will be unnecessarily burdened and in many cases such remedy would be illusory.*
> *xxxx xxxx xxxxx xxxxx*
> *15. We do not think that in this case, expert evidence was necessary to prove medical negligence.*
> *xxxx xxxxx*

37. In view of the aforesaid clear formulation of principles on the requirement of expert evidence only in complicated cases, and where in its discretion, the Consumer Fora feels it is required, the direction in paragraph 106, quoted above in D'souza (supra) for referring all cases of medical negligence to a competent doctor or committee of doctors specialized in the field is contrary to the principles laid down by larger Bench of this Court on this point. In D'souza (supra) the earlier larger Bench decision in Dr. J. J. Merchant (supra) has not been noticed.

38. Apart from being contrary to the aforesaid two judgments by larger Bench, the directions in paragraph 106 in D'souza (supra) is also contrary to the provisions of the said Act and the Rules which is the governing statute.

47. In a case where negligence is evident, the principle of res-ipsa-loquitur operates and the complainant does not have to prove anything as the thing (res) proves itself. In such a case, it is for the respondent to prove that he has taken care and done his duty to repel the charge of negligence.

48. If the general directions in paragraph 106 in D'souza's (supra) are to be followed, then the doctrine of res-ipsa-loquitur which is applied in cases of medical negligence by this Court and also by Courts in England, would be redundant.

49. In view of the discussions aforesaid, this Court is constrained to take the view that the general direction given in paragraph 106 in D'souza (supra) cannot be treated as a binding precedent and those directions must be confined to the particular facts of that case.

54. This Court however makes it clear that before the Consumer Fora if any of the parties wants to adduce expert evidence, the Members of the Fora by applying their mind to the facts and circumstances of the case and the materials on record can allow the parties to adduce such evidence if it is appropriate to do so in the facts of the case. The discretion in this matter is left to the Members of Fora especially when retired judges of Supreme Court and High Court are appointed to head National Commission and the State Commission respectively. Therefore, these questions are to be judged on the facts of each case and there cannot be a mechanical or strait jacket approach that each and every case must be referred to experts for evidence. When the Fora finds that expert evidence is required, the Fora must keep in mind that an expert witness in a given case normally discharges two functions. The first duty of the expert is to explain the technical issues as clearly as possible so that it can be understood by a common man. The other function is to assist the Fora in

> *deciding whether the acts or omissions of the medical practitioners or the hospital constitute negligence. In doing so, the expert can throw considerable light on the current state of knowledge in medical science at the time when the patient was treated. In most of the cases the question whether a medical practitioner or the hospital is negligent or not is a mixed question of fact and law and the Fora is not bound in every case to accept the opinion of the expert witness. Although, in many cases the opinion of the expert witness may assist the Fora to decide the controversy one way or the other.*
> *55. For the reasons discussed above, this Court holds that it is not bound by the general direction given in paragraph 106 in D'souza (supra). This Court further holds that in the facts and circumstances of the case expert evidence is not required and District Forum rightly did not ask the appellant to adduce expert evidence. Both State Commission and the National Commission fell into an error by opining to the contrary. This Court is constrained to set aside the orders passed by the State Commission and the National Commission and restores the order passed by the District Forum. The respondent no.1 is directed to pay the appellant the amount granted in his favour by the District Forum within ten weeks from date."*

19. While discussing a large number of authorities in ***V. Kishan Rao***'s case (supra), the Hon'ble Supreme Court held in Para Nos.47 to 49 that the directions given in ***Martin F. D'souza's*** case cannot be treated as a binding precedent. In another case "***Malay Kumar Ganguly v. Dr. Sukumar Mukherjee & Ors.", 2009(4) RCR (Criminal)-1(SC)***, Hon'ble Supreme Court dealt with the criminal negligence and civil negligence, opinion of expert witness. In Para no.48, it was observed as follows:-

> "48. *In* ***Nizam Institute of Medical Sciences Vs. Prasanth S. Dhananka & Others, 2009(3) RCR (Criminal)-124: 2009(3) RCR (Civil)-174: 2009(3) RAJ- 634: [2009(7) SCALE-407],*** *this Court held as under:-*
> *"32. We are also cognizant of the fact that in a case involving medical negligence, once the initial burden has been discharged by the complainant by making*

> *out a case of negligence on the part of the hospital or the doctor concerned, the onus then shifts on to the hospital or to the attending doctors and it is for the hospital to satisfy the Court that there was no lack of care or diligence*.

20. In view of the settled proposition of law laid down in above noted cases, it is not necessary to examine medical expert in each and every case of medical negligence. After patient's discharge of initial onus of alleging medical negligence on the part of the opposite parties No.1 & 2 the onus automatically shifted upon them to prove that they were not medically negligent while treating the patient. So, we do not think that in this case, expert evidence is necessary to prove medical negligence on the part of opposite parties No.1 & 2. The present complaint can be decided on the basis of evidence available on record. Accordingly, the above noted application filed by the complainant is dismissed.

Pecuniary Jurisdiction

21. So far as the objection of opposite parties regarding pecuniary jurisdiction of this Commission, on the ground that the claim has been unnecessarily exaggerated, is concerned, it needs to be mentioned that complainant has claimed compensation of ₹25 lac along with interest at the rate of 12% till realization besides litigation expenses of ₹1.5 lac. It is to be kept in mind that the patient was operated many times in opposite party No.1-Hospital & opposite party No.3-Hospital and suffered life threatening complications due to lack of care and caution on the part of opposite parties No.1 & 2. As a result,

she would have to undergo medical treatment for a long time in future by incurring extra expenses. In these circumstances, it cannot be said that the claim has been exaggerated.

Medical Negligence:

22. It is an admitted case that the patient had ectopic pregnancy, for which she was admitted in opposite party No.1-Hospital on 25.04.2017 and her surgery was performed by opposite party No.2 on 26.04.2017. She remained in that hospital from 25.04.2017 to 28.04.2017, as is clear from Discharge Card, Annexure C-1. However, the patient continued to suffer acute stomach pain even after surgery. The patient had contacted opposite party No.2 on telephone on 03.05.2017 and 04.05.2017 and was prescribed medicines and injection, but she got no relief. She was again admitted with opposite parties No.1 & 2 on 07.05.2017 and discharged on 08.05.2017, but there was no improvement in her condition. After the surgery, the patient had informed opposite party No.2 about the abdominal pain time and again. She was even admitted second time on 07.05.2017. Opposite party No.2 failed to synthesis, decide and act on the information provided by the patient. Opposite party No.2 failed to use indicated tests to identify abdominal pain. It is case of inadequate evaluation, failure to recognize complications after surgery. Opposite party No.2 did not obtain CT scan, which should have been done to assess the abdominal pain. There is also failure of thorough history for and just-in-time approach. There appears to be apparent investigation errors, such as required lab. tests and diagnostic images were not

done. The result is failure to appropriately conduct diagnostic testing and monitoring and resultant delay in referral, for that reason the patient may have opted for LAMA (Left Against Medical Advice). This situation is of 07.05.2017 and 08.05.2017. Opposite party No.2 failed to recognise the urgency of diagnosis and complications. Perforation was noticed in DMC Hospital on 08.05.2017. Failure to make exact diagnosis is often less important than correctly assessing the urgency of patient's illness. Opposite party No.2 missed the diagnosis of perforation, such is lack of gold standard for both testing and standard of care. Hence, it amounts to medical negligence and deficiency in service. After about 10 days of surgery, the patient was admitted in opposite party No.3-DMC Hospital, Ludhiana, where perforations were noted and managed by its doctors. The patient remained admitted in DMC Hospital from 08.05.2017 to 27.05.2017. As per Discharge Summary, Ex.C-2/Ex.R-3/1 (colly.), the "Diagnosis" and "Procedure Performed" upon the patient read as under:

> *"**Diagnosis**: C/o Perforation Peritonitis Secondary to Enteric Fever with Status Post Right Salpingo-Oophorectomy for Ectopic Pregnancy (outside) (26.04.2017)**.***
>
> ***Procedure Performed**: Exploratory Laparotomy with Loop Ileostomy with Peritoneal Lavage and Peritoneal Drainage under GA on 08.05.2017.*
>
> ***OT Findings:***
>
> *1) 1* cm Perforation present ileum approx. 10 cm from ileo-Caecal Junction*
>
> *2) Approx. 1-1.5L Feco Purulent material present in Abdomen only*

3) Pyogenic Mesenteric Flakes present over Gut Wall

4) Another impending Perforation 5cm proximal from other perforation."

23. The perforation was not due to Iatrogenic reasons, but was possible due to enteric fever. The hospitalization of the patient on 07.05.2017 is admitted by opposite parties No.1 & 2 and subsequently, she had gone to DMC Hospital and the document, Ex.R-10, produced by opposite parties No.1 & 2 refers to "Left Against Medical Advice" (LAMA). However, the said document apparently appears to have been created and is clearly deficient in many aspects. It is an undated document and there is no stamp and seal of opposite party No.1-Hospital. There are no signatures of any doctor on this document. Even there is no date on the Discharge Card, Annexure C-1, issued by opposite party No.2. Although, on the second page of Discharge Card, opposite party No.2 had signed, but there are no signatures on the first page. Even the other details have not been provided in the Discharge Card. Except the widal test report, Ex.R-9, no other document regarding hospitalization/treatment of the patient at opposite party No.1-Hospital has been produced. It is also the categorical stand of the patient that no medical record was supplied to her by opposite parties No.1 & 2 at the time of her discharge or thereafter. When she was admitted in DMC Hospital, only Discharge Card of opposite party No.1 was with her. As per Regulation 1.3.1 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002, the Hospitals are required to maintain indoor records in a

standard proforma at least for three years from the commencement of treatment. Therefore, for not producing the complete record, an adverse inference is to be drawn against opposite parties No.1 & 2. This apparently amounts to deficiency in service on the part of opposite parties No.1 & 2.

24. Besides this, opposite parties No.1 & 2 have not annexed any medical record regarding treatment of the patient, along with their reply. Rather, they are relying upon the medical record produced along reply filed by opposite party No.3-Hospital, which is complete Discharge Summary regarding admission and discharge of the patient from that hospital. Non-providing the medical record itself indicates that there must be some lapse on the part of opposite parties No.1 & 2, that is why they have not produced any medical record in support of their pleas. On this ground also, the deficiency in service of opposite parties No.1 & 2 is clearly established. Besides this, it cannot be accepted that the complainant, who was only 25 years old at the time of her surgery, was having enteric fever. If that would have been so, the same would have been recorded in the history, when she was admitted and it cannot be presumed that the enteric fever and typhoid have resulted into perforation. Otherwise also, the onus is shifted upon opposite parties No.1 & 2 to prove that the patient was having enteric fever and typhoid before or after the surgery. Even document Ex.R-10 is not referred in the Discharge Card, Annexure C-1, issued by opposite party No.1-Hospital. It means that principle of the maxim ‘res ipsa loquitur’ (the thing speaks for itself) is applicable in the present

case. The application of this maxim in medical negligence cases can be with a caveat that it can only be applied if the alleged negligence is derived from something absolute and the occurrence could not reasonably have taken place without negligence. The maxim 'res ipsa loquitur' is used to describe the proof of facts which are sufficient to support an inference that the opposite party (ies) was/were negligent and thereby to establish a prima facie case against it/them. It is not a presumption of law, but a permissible inference, which Commission/Court may draw, if upon all the facts, it appears to be justified. It is invoked in the circumstances, when the known facts relating to negligence consists of the occurrence itself or where occurrence may be of such a nature as to warrant an inference of negligence. The maxim alters neither the incidence of onus nor the rules of pleading. As already discussed above, the Hon'ble Supreme Court in ***V. Kishan Rao***'s case (supra), clearly held in para No.47 that in a case where negligence is evident, the principle of res-ipsa-loquitur operates and the complainant/patient does not have to prove anything as the thing (res) proves itself. In such a case, it is for the opposite party(ies) to prove that they have taken care and done their duty to repel the charge of negligence. However, opposite parties No.1 & 2 have miserably failed to repel the charge of medical negligence alleged by the patient against them, by leading cogent and convincing evidence on record.

25. Opposite parties No.1 & 2 have relied upon medical journal namely "Laparoscopic Bowel Injury: Incidence and Clinical

Presentation", Ex.R-4, to contend that the perforation caused by surgery mostly occurs within 96 hours of surgery. Even if this plea of opposite parties No.1 & 2 is considered, even then the fact that the patient had been continuously complaining abdominal pain after the surgery on telephone and no effective steps were taken by the doctor to remove pain of the patient, as per standard medical protocols. Even it is not proved by opposite parties No.1 & 2 on record that valid Informed Consent of the patient was taken before performing surgery upon her, as per Regulation 7.16 of Indian Medical Council (Professional, Conduct, Etiquette and Ethics) Regulations, 2002.

26. So far as filing of CRM-M No. 18109 of 2018 before the Hon'ble High Court is concerned, it needs to be mentioned that as per Section-3 of the Act, these proceedings are in addition to and not in derogation of the provisions of any other law for the time being in force. The present complaint is for seeking compensation for the deficiency in service and medical negligence of opposite parties No.1 & 2 and, as such, filing of aforesaid CRM in the Hon'ble High Court does not bar the filing of this complaint.

27. Opposite parties No.1 & 2 have failed to lead any evidence to prove that injury had not occurred during surgery of the patient in their hospital. Mere writing in opposite party No.3's record does not absolve opposite parties No.1 & 2 from the same. Intestinal perforation is a potentially devastating complication. Common cause of such perforation includes trauma, instrumentation, inflammation, infection, malignancy etc. It was otherwise the duty of opposite parties No.1 & 2

to early recognize such type of injury by making investigations through ultrasound and other means, which has not been done. The ultrasound report had indicated that there was some fluid, but no details of the same have been mentioned, as to what was done by opposite party No.2 for removal of the same. Discharge Summary, Ex.R-1/Ex.R-3/1 (colly.), of opposite party No.3 clearly indicates presence of perforations and fecal material etc. which is very dangerous. The spillage of intestinal contents results into morbidity and peritoneal mortality of peritonitis. They could have recognized at least the exact cause of pain, specifically in view of history given by the patient that she was suffering from abdominal pain and vomiting etc. The clinical examination can determine such things, read with history given by the patient. In these circumstances, we are of the prima facie view that opposite parties No.1 & 2 were medically negligent while treating/operating the patient. They also failed to provide post-operative care to the patient, specifically when she contacted opposite party No.2 telephonically on some occasions, as mentioned above, and the doctor took the matter casually, by prescribing general medicines and injection on telephone. It also amounts to deficiency in service on the part of opposite parties No.1 & 2. Hon'ble State Consumer Disputes Redressal Commission, Telangana in Complaint Case No.CC/89/2011 **(S. Gopalakrishna v. Dr. Sanjib Kumar Nehera)** decided on 13.06.2017 held the opposite parties deficient on account of non-providing of post-operative care to the patient. In Para-55 it was held as under:

> *"55. The facts of the instant case are fully attracted to V. Kishan Rao's case (Supra). There is sufficient evidence on behalf of the complainant with respect to the medical negligence committed by the opposite parties no.1 and 2 while not conducting pre-operative tests and post-operative care of the patient. Therefore, the civil liability of the opposite parties with respect to the compensation to the complainant due to loss of life of the wife of the complainant cannot be denied. For the foregoing reasons, we answer the point No.1 framed for consideration at paragraph No.18, supra, in favour of the Complainant and against the Opposite parties."*

28. Thus, keeping in view the above discussion and the evidence on record, preponderance of probability and inferences, we hold that the complainant/patient has been able to prove her case of deficiency in service and medical negligence against opposite parties No.1 & 2. It is true that medical negligence cases do sometimes involve questions of factual complexity and difficulty and may require the evaluation of technical and conflicting evidence. However, in the present case, the complainant has been able to discharge the onus of proving on a balance of probabilities, the medical negligence and deficiency in service averred against opposite parties No.1 & 2. Thus, it stands clearly proved that opposite parties No.1 & 2 were grossly negligent while treating/operating the patient and providing post-surgery care to her. Due to sheer negligence and deficiency in service on their part, the patient had to be admitted in DMC Hospital and undergo repeated surgeries and resultantly suffered more hospitalization and medical expenses, besides physical hardship, mental agony and harassment.

29. As already discussed above, no allegation has been levelled against opposite party No.3-DMC Hospital, nor any relief has

been sought against it. As per own case of the patient, DMC Hospital has been impleaded, just to bring on record its medical record to prove negligence on the part of opposite parties No.1 & 2, as no medical record has been produced by them. Hence, the complaint is liable to be dismissed against opposite party No.3.

Quantum of Compensation

30. Now, coming to the quantum of compensation to be awarded in favour of the complainant/patient, on account of deficiency in service and medical negligence on the part of opposite parties No.1 & 2.

31. Human life is most precious. It is extremely difficult to decide on the quantum of compensation in the medical negligence cases, as the quantum is highly subjective in nature. Different methods are applied to determine compensation.

32. Hon'ble National Commission in ***Dr. (Mrs.) Indu Sharma (supra)***, observed in Paras No.53, 59 & 60 as follows:

> *"53. A decision in the case of* ***Spring Meadows Hospital & Anr. v. Harjol Ahluwalia through K.S. Ahluwalia & Anr*** *reported in (1998) 4 SCC 39. Their Lordships observed as follows:*
>
> *" 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. In the former case a court can accept that ordinary human fallibility precludes the liability while in the latter the conduct of the defendant is considered to have gone beyond the bounds of what is expected of the skill of a reasonably competent doctor."*
>
> *- - - - - - - - - - - - - -- - - - - -*
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> *59. Nizam Institute Case- 2009 Indlaw SC 1047:*

In the Nizam Institute case 13, the Supreme Court did not apply the multiplier method. In 1990, twenty-year old Prasant S. Dhananka, a student of engineering, was operated upon at the Nizam Institute of Medical Sciences, Hyderabad. Due to medical negligence of the hospital, Prasant was completely paralysed. Compensation was claimed, and the matter finally reached the Supreme Court. The court did not apply the multiplier method and awarded a compensation of Rs. 1 crore plus interest. The court observed:

"Mr. Tandale, the learned counsel for the respondent has, further, submitted that the proper method for determining compensation would be the multiplier method. We find absolutely no merit in this plea. The kind of damage that the complainant has suffered, the expenditure that he has incurred and is likely to incur in the future and the possibility that his rise in his chosen field would now be restricted, are matters which cannot be taken care of under the multiplier method.

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60. Kunal Saha's Case (2014) 1 SCC 384 :

The Supreme Court rejected the multiplier method in this case and provided an illustration to show how useless the method can be for medical negligence cases. Hon'ble Justice Mr.V.Gopala Gowda opined that;:

"The multiplier method was provided for convenience and speedy disposal of no fault motor accident cases. Therefore, obviously, a "no fault" motor vehicle accident should not be compared with the case of death from medical negligence under any condition. The aforesaid approach in adopting the multiplier method to determine the just compensation would be damaging for society for the reason that the rules for using the multiplier method to the notional income of only Rs.15,000/- per year would be taken as a multiplicand. In case, the victim has no income then a multiplier of 18 is the highest multiplier used under the provision of Ss. 163 A of the Motor Vehicles Act read with the Second Schedule.... Therefore, if a child, housewife or other non-working person fall victim to reckless medical treatment by wayward doctors, the maximum pecuniary damages that the unfortunate victim may collect would be only Rs.1.8 lakh. It is stated in view of the aforesaid reasons that in today's India, Hospitals, Nursing Homes and doctors make lakhs and crores of rupees on a regular basis. Under such scenario, allowing the multiplier method to be used to determine compensation in medical negligence cases would not have any deterrent effect on them for their medical

negligence but in contrast, this would encourage more incidents of medical negligence in India bringing even greater danger for the society at large."

33. Further, on the question of determination for the loss or injury suffered by a consumer on account of deficiency in service, the following observations by a three Judge Bench of the Hon'ble Supreme Court in ***Charan Singh v. Healing Touch Hospital & Ors.*** (2000) 7 SCC 668 are also apposite:

"While quantifying damages, Consumer Forums are required to make an attempt to serve ends of justice so that compensation is awarded, in an established case, which not only serves the purpose of recompensing the individual, but which also at the same time, aims to bring about a qualitative change in the attitude of the service provider. Indeed, calculation of damages depends on the facts and circumstances of each case. No hard and fast rule can be laid down for universal application. While warding compensation, a Consumer Forum has to take into account all relevant factors and assess compensation on the basis of accepted legal principles, on moderation. It is for the Consumer Forum to grant compensation to the extent it finds it reasonable, fair and proper in the facts and circumstances of a given case according to established judicial standards where the claimant is able to establish his charge."

34. Furthermore, Hon'ble Supreme Court in case ***R.D. Hattangadi v. Pest Control (India) (P) Ltd.*** (1995) 1 SCC 551 held in Para No.9 as under:

"9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profits up to the date of

trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

35. The complainant has claimed compensation of ₹25 lac, along with interest at the rate of 12% till realization, besides litigation expenses of ₹1.5 lac. Although, no bills of medical expenses have been produced, yet in view of admission of opposite parties about treatment/surgeries of the patient in opposite parties No.1 & 3-Hospitals, it can presumed that substantial amount has been spent on her treatment, as it is a matter of common knowledge that no hospital treats/operates any patient, without charging any money. Even otherwise, if it is considered that no payment was made, even then the complainant falls under the definition of 'consumer', as per law laid down by the Hon'ble Supreme Court in case ***Smt. Savita Garg Vs. The Director, National Heart Institute 2***004 (10) CPSC 1031. The age of the complainant was about 25 years at time of surgeries in DMC Hospital. The Hon'ble Supreme Court of India in ***"V. Krishnakumar Vs. State of Tamil Nadu & others" Civil Appeal No.8065 of 2009, decided on 01.07.2015*** has taken the expectancy of human life to be of 70 years and further held in para No.23 as under:-

"23. *Inflation over time certainly erodes the value of money. The rate of inflation (Wholesale Price Index-Annual Variation) in India*

presently is 2 percent as per the Reserve Bank of India. The average inflationary rate between 1990-91 and 2014-15 is 6.76 percent as per data from the RBI. In the present case we are of the view that this inflationary principle must be adopted at a conservative rate of 1 percent per annum to keep in mind fluctuations over the next 51 years.

The formula to compute the required future amount is calculated using the standard future value formula:-

$$FV = PV \times (1+r)^n$$

PV = Present Value

r = rate of return

n = time period

Accordingly, the amount arrived at with an annual inflation rate of 1 percent over 51 years is Rs.1,37,78,722.90 rounded to Rs.1,38,00,000/-."

36. Although, the loss suffered by the patient due to deficiency in service and medical negligence of opposite parties No.1 & 2 cannot be compensated in terms of money, yet in view of law laid down by the Hon'ble Supreme Court in above referred authority, age of the patient, and the totality of facts and circumstances of the case, we award lump sum compensation of ₹10,00,000/- (Rupees Ten Lac only) to the complainant, along with interest at the rate of 7% per annum from the date of filing of the complaint till realization, due to deficiency in service and medical negligence and deficiency in service on the part of opposite parties No.1 & 2 and resultant mental agony, harassment, avoidable pain, sufferings caused to the complainant and her family members, including medical expenses.

37. In view of our above discussion, the complaint is partly allowed against opposite parties No.1 & 2 and the same is dismissed against opposite party No.3. Following directions are issued to opposite parties No.1 & 2:

i) to pay lump sum of ₹10,00,000/- (Rupees Ten Lac only), to the complainant, as compensation, along with interest at the rate of 7% per annum from the date of filing of the complaint till realization, on account of deficiency in service and medical negligence on the part of the opposite parties No.1 & 2 and resultant loss, mental agony, harassment, unavoidable pain, sufferings caused to her, including medical expenses; and

ii) to pay ₹11,000/- (Rupees Eleven Thousand only) as litigation costs.

38. The compliance of this order shall be made by opposite parties No.1 & 2 within a period of 30 days of the receipt of certified copy of the order.

39. The complaint could not be decided within the stipulated timeframe, due to heavy pendency of Court cases and the pandemic of COVID-19.

(JUSTICE PARAMJEET SINGH DHALIWAL)
PRESIDENT

(RAJINDER KUMAR GOYAL)
MEMBER

(MRS. KIRAN SIBAL)
MEMBER

April 09, 2021.
(Gurmeet S)