

**Distt Consumer Disputes Redressal Commission
Ladowali Road, District Administrative Complex,
2nd Floor, Room No - 217
JALANDHAR
(PUNJAB)**

**Complaint Case No. CC/483/2018
(Date of Filing : 20 Nov 2018)**

1. Gagan aged 24 Years
son of Late Sh. Jagan Nath son of Kaura Ram R/o
Mahalla No. 13, House No. 48, Jalandhar Cantt.
Jalandhar
Punjab

.....Complainant(s)

Versus

1. Goodwill Hospital and Maternity Home,
Hoshiarpur Road, Rama Mandi, Jalandhar Cantt.
Through its Managing Director
Jalandhar 144001
Punjab

2. Dr. Dimple Sharma Gynecologist
Goodwill Hospital and Maternity Home, Hoshiarpur
Road, Rama Mandi, Jalandhar Cantt.
Jalandhar
Punjab

3. Dr. Rahul Gupta Surgeon
Goodwil Hospital and Maternity Home, Hoshiarpur
Road, Rama Mandi, Jalandhar Cantt.
Jalandhar
Punjab

.....Opp.Party(s)

BEFORE:

**Kuljit Singh PRESIDENT
Jyotsna MEMBER
Jaswant Singh Dhillon MEMBER**

PRESENT:

Sh. Jatinder Arora, Adv. Counsel for the
Complainant.

.....for the Complainant

Mrs. Navjot Kaur Sidhu, Adv. Counsel for OPs
No.1 to 3.

.....for the Opp. Party

Dated : 28 Sep 2021

Final Order / Judgement

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, JALANDHAR

Complaint No.483 of 2018

Date of Instt.20.11.2018

Date of Decision: 28.09.2021

Gagan aged 24 years son of late Sh. Jagan Nath son of Kaura Ram, resident of Mohalla No. 13, House No. 48, Jalandhar Cantt.

.....Complainant

Versus

1. Goodwill Hospital & Maternity Home, Hoshairpur Road, Rama Mandi, Jalandhar Cantt, through its Managing Director.
2. Dr. Dimple Sharma, Gynecologist, Goodwill Hospital and Maternity Home, Hoshiarpur Road, Rama Mandi, Jalandhar Cantt.
3. Dr. Rahul Gupta Surgeon, Goodwill Hospital and Maternity Home, Hoshiarpur Road, Rama Mandi, Jalandhar Cantt.

Opposite Parties

Complaint Under the Consumer Protection Act.

Before: Sh. Kuljit Singh (President)

Smt. Jyotsna (Member)

Sh. Jaswant Singh Dhillon (Member)

Present: Sh. Jatinder Arora, Adv. Counsel for the Complainant.

Mrs. Navjot Kaur Sidhu, Adv. Counsel for OPs No.1 to 3.

Order

Kuljit Singh(President)

1. The instant complaint has been filed by the complainant, against OPs on the averments that his wife namely Babita was admitted in hospital/OP no.1 on 28.09.2017 and she delivered a son. OPs no.1 to 3 told the complainant either to save the child or to mother. The deceased was taken to Operation Theater for surgery at 6.30 PM on the same day. During surgery, uterus was not contracted as the doctors did not give oxytocin injection to her which is specially meant for contraction of the uterus. Uterus was not contracted, excessive bleeding started and ultimately they had to remove the uterus at 7.45 PM. On 29.09.2017, above said doctors told that she was to be referred to Apollo Hospital and note was also made on 29.09.2017. The condition of the wife of the complainant deteriorated and she kept informing regarding her condition to OPs no.1 to 3 and she was admitted at SPS Hospital Ludhiana on 29.09.2017 and thereafter she died. The wife of the complainant died due to criminal medical negligence in which OPs no.1 to 3 failed to exercise his duty with reasonable and proper care. Due to criminal medical negligence of OPs in failing to exercise their duty with reasonable and proper care due to breach of duty as a gross negligence, which fatal to life of complainant' s wife and caused death. There was medical negligence and deficiency in service on the part of OPs while handling the case of the wife of the complainant. Due to act and conduct of OPs, the complainant has filed the present complaint and prayed that the OPs be directed to pay the damages of Rs.20 lakh to complainant.

2. Upon notice, OPs no.1 and 2 appeared and filed their joint written reply and contested the complaint of the complainant by raising preliminary objections that complaint is not maintainable. The complainant has not come to the Court with clean hands and has concealed the material facts. On merits, it was averred that Babita wife of the complainant admitted in hospital of OP no.1 on 28.09.2017 and she delivered baby. The deceased delivered as about 3.30 pm baby normally and no surgery was done till then when the uterus did not contracted, she has excessive bleeding if after delivery uterus contracts normally the bleeding stops but it did not happen in the present case, OP no.2 gave her best medical treatment. Considering bleeding and non-contraction of uterus five units of blood were given to patient and medically as well as manually efforts were

done to stop bleeding, but efforts failed. After post partum Hemorrhage was done, excessive bleeding occurs due to non-contraction of uterus not due to any medical negligence of OPs. OPs no.1 and 2 treated the patient very carefully. It was denied that wife of the complainant has gone in critical condition due to the cuts in the uterus of the nerves. Rest of the averments was denied by OPs no.1 and 2 and they prayed for dismissal of the complaint.

3. OP No.3 appeared and filed its separate written reply and contested the complaint of the complainant by raising preliminary objections that complaint is not maintainable. The complainant has not come to the Court with clean hands. On merits, it was averred that Op no.3 was not working with OP no.1 when the treatment of deceased was carried on so no question of criminal medical negligence on the part of OP no.3 may arise and there is no question of breach of the duty. OP No.3 exercises his duty with reasonable and proper care. The death of the wife of the complainant occurred due to negligence of SPS Hospital Ludhiana and she died at SMS Hospital, Jaipur. Rest of the averments of the complainant was denied by OP no.3 and it prayed for dismissal of the complaint.

4. The complainant has tendered in evidence copies of documents Ex.C-1 to Ex.C-91. On the other hand, OPs no.1 and 2 tendered in evidence affidavit of Dr. Dimple Sharma Gynecologist as Ex.OP No.1&2/A along with copies of the documents Ex.OP1&2/1 to Ex.OP1&2/16 and closed the evidence.

5. We have heard learned counsel for the parties and have also gone through the record of the case as well as written arguments filed by both the parties.

6. This fact is admitted that deceased Babita wife of the complainant admitted in OP no1 hospital on 28.09.2017 and delivered a son. The deceased was taken to Operation Theater for surgery at 6.30 PM on the same day. When uterus was not contracted excessive bleeding started and ultimately they had to remove the uterus at 7.45 PM. On 29.09.2017 doctors told that she was to be referred to Apollo Hospital and note was made on 29.09.2017, this fact is clear from Ex.C-1 on

the record. Her condition deteriorated and she kept informing regarding her condition to OPs and ultimately she was admitted at SPS Hospital Ludhiana on 29.09.2017. After operation at the hospital of OP no.1, the complainant was informed that due to cuts in uterus of nerves excess bleeding of the patient has gone in a critical condition and seeing the critical condition OPs no.1 to 3 referred the deceased at SPS Hospital Ludhiana but ultimately she died. From perusal of document Ex.C-1 i.e. referral note and report Ex.C-2 it is clear that her tests are normal at the time of admission in the hospital of OP no.1. When wife of the complainant (since deceased) admitted in SPS Hospital Ludhiana her condition is not good, this fact is clear from Lam Summary Ex.C-45, which is placed on the record. Dr. Dimple Sharma Gynecologist stated in her affidavit that considering bleeding and non-contraction of uterus five units of blood were given to the patient and medically as well as manually efforts were done to stop bleeding but efforts failed. In CT Scan report of the patient at SPS Hospital Ludhiana it has been specifically mentioned that "No evidence of any extra-axial bleed seen." Firstly, the complainant admitted in Goodwill Hospital & Maternity Home and date of admission is mentioned as 28.09.2017 and date of discharge as 29.09.2017, this fact is clear from document Ex.OP-1&2/1 and Ex.OP1&2/2 which are placed on the record. The OPs referred the patient to another hospital for further treatment and consent for this purpose was given by the complainant. The consent form Ex.OP1&2/4 placed on the record. The OPs no.1 to 3 gave treatment to patient as and when required, this practice clear from documents Ex.OP1&2/6 to Ex.OP1&2/13 on the record. The wife of the complainant Babita admitted in OP hospital on 28.09.2017 and she delivered a son. Prior to the birth of the child OPs no.1 to 3 told the complainant either to save the child or to mother. This is not good suggestion given by them to complainant. The deceased was taken to the operation theater for surgery at 6.30 pm on the same day. During surgery, uterus was not contracted as doctors did not give oxytocin injection to her. When uterus was not contracted excessive bleeding started and ultimately they had to remove the uterus at 7.45 pm. On 29.09.2017, the above said doctors told that she was to be referred to Apollo Hospital, this was wrong practice adopted by the OPs. Ultimately, she was admitted at SPS Hospital Ludhiana on 29.09.2017 and thereafter she died. This lapse on the part

of OPs, OPs gave wrong treatment to deceased. If position of the wife of the complainant is not a good then why they referred the patient (Babita) wife of the complainant to another hospital. The patient died due to negligence of the OPs. OPs failed to exercise their duty with reasonable and proper care and did not take precautions guarding against injury to the patient and breach of duty which was gross negligence caused the death of the patient.

7. Learned counsel for OPs denied any deficiency in service or unfair trade practice on their part and placed on record judgments in support of their case. The case titled as **Punjab Small Industries and Export Corporation Ltd. Vs. Suresh Chander Nanda of State Commission Punjab Chandigarh reported in 2012 (1) CLT 452** that service of the respondent were not hired on payment basis. Appellants not consumer. The case titled as **Chander Mohan Head Constable Vs. Preet Nursing Home and others reported in 2010(3) CLT 76** by State Commission Punjab Chandigarh that the appellant admitted in respondent Hospital where doctors amputated his right leg. There is no evidence if the appellant had made any payment to respondent hospital or the doctors. Therefore, the appellant is not a consumer. Complaint dismissed. **R. P. Bhola and others vs. V.K Mehta and others by Hon'ble National Commission New Delhi reported in 2010(4) 603** that incompetence of doctors or his negligence in treatment was added subsequently to get compensation from OP. Allegation of medical negligence on the part of OP not substantiated. No case of medical negligence on the part of OP is proved. The citations placed on record by counsel for OPs not applicable in the present case. The OPs pleaded that complainant is not consumer of OPs. But the complainant availed the facilities from OPs hospital and he is beneficiary as such he is consumer of the OPs and we cannot deny this fact. The OPs further denied deficiency in service on their part but deficiency in service or unfair trade practice was proved on the part of OPs. If condition of the wife of the complainant not good then why OPs Hospital referred her to another hospital for further treatment. This lapse on the part of OPs.

8. From perusal of document i.e. admission record, the prescription mentioned by doctor of the said hospital shows that the condition of the patient is better, then why this hospital referred the

patient to SPS Hospital Ludhiana for further treatment. This conduct of above hospital/OPs no.1 to 3 shows the major deficiency in services and unfair trade practice proved on their part. OPs no.1 and 2 have not produced any cogent evidence, valuable documents or diagnosis which were given to the patient on the record.

9. The fact of medical negligence is settled by Hon'ble Apex Court. **Hon'ble Apex Court has also held in case of titled as Nizam Institute of Medical Sciences vs. Parasnath S. Dhananka & Ors 2009 (2) CPC 402 (SC)** that *"once the complainant had discharged initial burden, it was incumbent upon hospital authorities to prove that they had done their duty without any negligence on their part which they have failed to do ."*

" A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence."

10. The fact of medical negligence is also proved from judgment **Savita Garg vs. Director National Heart Institute reported in (2004) 8 SCC 56**, wherein it has been observed as under:

"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."

11. Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in **Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P. Singh)**, referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: "duty", "breach" and "resulting damage".

12. The treatment given to patient by doctor based on liability of medical practitioner. There is an unwritten contract between the two. Patient entrust himself to doctor that doctor agrees to do his best at all times for patient. Such doctor-patient contract is almost always an implied contract except when written informed consent is obtained. This fact is clear from citation of **Hon'ble Supreme Court of India in case titled as Dr. P.B Desai vs. State of Maharashtra and another reported in (2013) 6 Supreme Court 450** that due to very nature of medical profession , degree of responsibility on practitioner is higher than that of any other service provider. Concept of doctor-patient relationship forms foundation of legal obligations between doctor and patient.

12. The citation **Dr. P.B. Desai Vs. State of Maharashtra (supra)** further held that "if patient suffered because of negligent act/omission of the doctor, the same gives right to the patient to sue

the doctor for damages. This is a civil liability of the doctor under law or tort or contract. The negligent act of doctor may also give rise to criminal liability as well.” When reasonable care, expected of the medical profession is not rendered, the same amounts to negligence.” This citation of Apex Court is applicable in the case in hand. This citation proves that the patient taken the treatment from doctor on good faith that he has done his duty in a very good manner and to do his best, at all times for patient. If doctor fails to perform his duty during treatment then he is liable for medical negligence. The fact of medical negligence is also proved by judgment of Apex Court in **V. Krishna Kumar Versus State of T.N reported in 2015(2) Apex Court Judgments 762 (S.C)** wherein it has been held that “Hospital is vicariously liable for the acts of its doctors”.

13. We also observed that in this case principle of res ipsa loquitur is applicable in this case where negligence is evident, principle of res ipsa loquitur operates and complainant does not have to prove anything as the thing prove itself.

14. The learned counsel for complainant placed on record judgments in support of his case. Firstly, the case titled as **V.Kishan Rao versus Nikhil Super Speciality Hospital & another reported in 2010(3) CPJ 1 of Hon’le Supreme Court of India** , wherein it has been held that *“claim of petitioners cannot be rejected only on the ground that expert witness was not examined to prove negligence of Doctor. It is not required to have expert evidence in all cases of Medical Negligence.”* The learned counsel for complainant further placed on record judgment titled as **Dr.Laxman Balkrishna Joshi versus Dr. Trimbak Bapu Godbole and another of Hon’ble Supreme Court reported in 1969 AIR (SC) 128** wherein it has been held that *“Negligence of surgeon towards his patient. Duties of doctor towards his patient- who holds himself out ready to give medical advice and treatment impliedly skill undertakes that he possessed of skill and knowledge for the purpose. Practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. “*

Further, case titled as **Harbans Kaur versus Orthonova Joit and Trauma Hospital and another by Hon'ble State Commission Punjab Chandigarh in First Appeal no.616 of 2017 decided on 03.06.2020 .**

15. We have examined the above referred judgments, after going through the above citations, we are of the opinion that judgments cited by complainant are applicable in the present case but the judgments placed on record by OPs are on different footings.

16. From facts and circumstances of the case and going through the plethora of judgments cited above, the medical negligence is proved on the part of OPs. Keeping in view the totality of the facts and circumstances of the case, we allow the present complaint against OPs no.1 to 3 to pay Rs.5,00,000/- (Rupees five lakh only) jointly and severally as compensation for mental harassment and physical harassment including the expenses, which has spent by complainant in OPs Hospital and in SPS Hospital Ludhiana for further treatment. The complainant is further entitled Rs.50,000/- as costs of litigation and cost of litigation. The compliance of the order be made within 45 days from receipt of copy of this order.

1 8. C opies of the order be sent to the parties, as permissible, under the rules. This complaint could not be decided within stipulated time frame due to rush of work. File be indexed and consigned to the record room after due compliance.

Announced in open Commission

28th of September 2021

**Kuljit Singh
(President)**

Jyotsna
(Member)

Jaswant Singh Dhillon
(Member)

[Kuljit Singh]
PRESIDENT

[Jyotsna]
MEMBER

[Jaswant Singh Dhillon]
MEMBER