STATE CONSUMER DISPUTES REDRESSAL COMMISSION, PUNJAB, CHANDIGARH.

First Appeal No. 994 of 2022

Date of institution : 18.11.2022
Reserved on : 05.09.2025
Date of Decision : 14.10.2025

1. Dayanand Medical College & Hospital, Ludhiana through its Medical Supdt.
2. Dr. Baldev Singh Aulakh (Dr. B.S. Aulakh), Dayanand Medical College & Hospital, Ludhiana

….Appellants/Opposite Parties No.1&2

Versus

1. Kirpal Singh son of Dasonda Singh through his legal representatives:
   (i) Kulwant Kaur wife of Kirpal Singh,
   (ii) Sukhdev Singh son of Kirpal Singh,
   (iii) Amarjeet Kaur daughter of Kirpal Singh
   (iv) Harender Singh Gill son of Kirpal Singh

   All residents of Ward No.9, 2.N.N., P.O.-4.N.N., Tehsil Padampur, District Sri Ganganagar, Rajasthan.

….Respondent No.1/Complainant

2. The United India Insurance Company Ltd., Savitri-I, First Floor, G.T. Road, Ludhiana through its Divisional Manager/Branch Manager.

….Respondent No.2/OP No.3

First Appeal under Section 41 of the Consumer Protection Act, 2019 against the order dated 09.09.2022 passed by the District Consumer Disputes Redressal Commission, Kapurthala, Camp Court at Ludhiana in RBT C.C. No. 508 of 2016.

Quorum:-

Hon'ble Mrs. Justice Daya Chaudhary, President
Mr. Vishav Kant Garg, 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**

Present:-

For the appellants : Sh. Ivan Singh Khosa, Advocate
For respondent No.1 : Sh. K.K. Goyal, Advocate
For respondent No.2 : Sh. Nitin Gupta, Advocate

VISHAV KANT GARG, MEMBER :

Appellants/Opposite Parties No.1&2 i.e. Dayanand Medical College & Hospital, Ludhiana and another, have filed the present Appeal **through its Medical Superintendent** to challenge the impugned order dated 09.09.2022 passed by the District Consumer Disputes Redressal Commission, Kapurthala, Camp Court at Ludhiana (in short, "the District Commission"), whereby the Complaint filed by the **Respondent No.1/Complainant-Kirpal Singh** had been Partly Allowed.

2. It would be apposite to mention here that hereinafter the parties will be referred, as were arrayed before the District Commission.

3. Briefly, the facts of the case as made out by the Respondent No.1/Complainant in the Complaint filed before the District Commission are that the Complainant on suffering with kidney problem had approached OP No.1 for treatment and OP No.2-Doctor, after check-up had advised for kidney transplantation. The Complainant was asked to arrange a person to donate his kidney to him. The Complainant's real brother, namely, Richpal Singh @ Rachpal Singh (now mentioned as "Rachpal Singh") had agreed to donate his kidney. After conducting all the necessary tests of said Rachpal Singh, OP No.2 had informed that everything was OK regarding

transplantation of the kidney. OP No.2 had also issued Form-4 i.e. certification of medical fitness of living donor. All other formalities regarding kidney transplantation were completed by the OP-Hospital. On the asking of the Hospital, for kidney transplantation the Complainant was admitted in OP-Hospital on 21.04.2016 and had deposited Rs.2,65,000/- as transplantation fee.

4. Thereafter, the date of surgery was fixed as 26.04.2016 but on 25.04.2016, when the Anesthetist visited for giving injection to the Donor and the Complainant, on seeing the medical reports, CT Scan had told that operation could not be conducted under such circumstances as the stone was found there in both kidneys of donor. The Hospital had refunded the remaining amount of Rs.2,44,170/-, out of the deposited amount i.e. after deducting the treatment expenses so incurred. When the Doctor had refused to conduct the transplantation on 25.04.2016, the family member of the Complainant were shocked and confused as they had to arrange the new donor. The Complainant was discharged in the night of 25.04.2016 without conducting the transplantation surgery.

5. All the required tests of the donor had already been conducted on the recommendations of OP No.2-Doctor in the OP No.1-Hospital, which includes Ultrasound KUB, Renal Function Study and other tests on 04.03.2016 and CT Scan, Culture Report tests on 15.03.2016. The OP No.2 Doctor after going through all the tests had also issued certification of medical fitness to the donor on 18.03.2016. OP No.2-Doctor upto the last moment in not disclosing the fact of any hindrance or danger in kidney transplant, had refused to conduct the transplantation, on the pretext of stones in the kidneys of the donor. Said act was not appropriate on the part of the OPs No.1&2 on the last moment, which amounted to an act of

'negligence', 'deficiency in service' and 'unfair trade practice' on their part. Due to said act of OPs No.1&2, the Complainant alongwith Donor had to remain admitted unnecessarily in the Hospital and had suffered harassment alongwith his family members. Said negligent act of the OPs No.1&2 not only had resulted into harassment to the Complainant but his family members had also suffered mental tension and physical harassment. It was averred that the OP No.2 being the renowned professional had not acted with due care in this case and the OP No.1-Hospital being a renowned Hospital in the region was also vicariously liable for the negligent act of its employees.

6. Stating the act of the opposite parties No.1&2 to be a case of '**deficiency in service'** and '**unfair trade practice'**, it was prayed in the Complaint that the OPs be directed to compensate the Complainant to the tune of Rs.15 lakh for their negligence and refund the amount of Rs.72,609/- charged for treatment alongwith interest. Rs.20,000/- was also prayed on account of litigation expenses.

7. Upon issuance of notice in the Complaint, the Appellants/ Opposite Parties No.1&2 had filed the written statements by raising certain preliminary objections that the Complainant had no cause of action to file the Complaint as it was based on false, frivolous and vague averments. It was submitted that OPs had not conducted any surgery on noticing the stones in both the kidneys of the donor. So in that situation due to risky affair of transplantation to the life of both the Complainant and Donor, decision was taken not to transplant the kidney of donor having stones in kidneys, to the Complainant. This action of the OPs must be appreciated being taken in the interest of the Complainant and Donor's life. It was further submitted that in the right kidney of the Donor, multiple hyper-dense

foci-suggestive of calculi was seen in the mid and lower calyx with the largest measuring approx. 1.7 x 0.7 cm in lower calyz. A stag-horn calculus measuring approx. 2.4 x 1.3 cm was seen, involving mid and lower calyx. There was possibility of obstruction and steno-sis at level of lower calyces's with associated parenchymal thinning. In the Donor's left kidney, hyper dense focus-suggestive of calculus measuring approx. 6.0 mm was seen in lower calyx. Therefore, in these circumstances right kidney of the donor could not have been donated to the recipient. As there were stones in both the kidneys of the donor, in such circumstances, donating the kidney could have a risky affair for the Donor as well as transplanting to the Complainant. Therefore, examining the circumstances, right decision in the interest of the Donor and Complainant was taken by the expert Doctor i.e. OP No.2 not to operate upon the donor and to transplant his kidney to the Complainant. Said decision of the Doctor was not found to be faulty by the Medical Board. It was pleaded that levelling false allegations upon the OPs No.1&2 by the Complainant regarding refusing the hospital to transplant the kidney of his own brother to him, was his selfish approach because he only wanted to the transplant, without considering the risk upon the donor as well as the later impact of the same also upon him. It was the responsibility/duty of the treating team to decide for the transplantation to be undertaken if he feels that the case was risk free or there was minimum controllable risk. Doctor is always competent to take the said decision even after taking the patient on the operation table, if found that the said transplant/surgery is not risk free or life threatening to patient. Time factor had played no role in taking the said decision whereas no delay had occurred in the present case. Immediately when coming to know that the stones were there in the kidneys of the donor, they were

informed that the transplant from the said Donor was not possible. It was pleaded that issuance of medical fitness certificate to the donor had only reflected the fact that the donor was not mentally challenged and was capable of taking rational decision and medically fit to undergo surgery. The same was issued strictly as per the instructions issued by the Government. Said act had been done in advance only to avoid any delay in the treatment procedure. Medical fitness, tissue matching, all other aspects of the organ to be donated and even the fitness of the donor has to be considered even at 11th hour of the transplant surgery to be undertaken. In case everything was okay before surgery, still at the time of transplant/surgery, Doctor found any problem, then it is the Transplant Surgeon to take a final call and competent to defer the surgery, may be the permission granted by the Authorization Committee. **In the present case, initial Ultrasound Report of the Donor had no indication of any stones in any of the kidneys of the donor and the said Ultrasound examination was conducted on 04.03.2016 and the normal condition of the kidneys was further confirmed by Renal Function Study (DTPA Scan),** which was conducted on 04.03.2016 and the application was signed showing normal kidneys as reported in the both the reports. After that the donor got his CT Scan done on 15.03.2016. The Complainant and his family very much knowing the presence of the stones through CT Scan Report but had concealed the said fact deliberately. It was pleaded that only on 25.04.2016 just before the date of surgery, the said CT Scan Reports were produced by the Complainant. On evaluating the said report, it was noticed that there were stones in both the kidneys, which were found in CT Scan Report of the donor. Accordingly, the Complainant was advised that the Donor was not in a fit condition to donate the kidney. He was

advised to look up another donor. Till the suitable donor is found, he was provided the standard protocol treatment like dialysis from which he had received some relief. The decision taken by the OP No.2 Doctor was beneficial for the Donor and the Complainant, which save them from any future complication arisen in the present case. It was pleaded that there was no negligence on the part of the OPs No.1&2 and the said decision was taken for the benefit and interest for life of both the Donor and the Complainant. It was prayed that the Complaint being without any merit be dismissed.

8. OP No.3 in its written reply had taken the objection that the Complainant had not hired its services by paying any consideration, hence, the Complaint was not maintainable against it. There was no privity of contract of Insurance between the Complainant Kirpal Singh and OP No.3. The privity of contract of insurance was between OP No.1 DMC Hospital, Ludhiana and OP No.3 United India Insurance Co. Ltd., therefore, the Complaint was bad for misjoinder of necessary parties as OP No.3 was neither a necessary nor a proper party to the Complaint. The Complaint was not maintainable as there was no allegations or averments with regard to any ‘deficiency in service’ and ‘negligence’ on its part. Hence, the Complaint being without any merit, the same be dismissed.

9. After considering the contents of the Complaint and the replies thereof filed by the Opposite Parties as well as on hearing the oral arguments raised on behalf of both the sides, the Complaint filed by the Complainant was partly allowed by the District Commission vide order dated 09.09.2022. The relevant portion of the said order as mentioned in Para-23 is reproduced as under:

> "23. The Ops No.1 & 2 are held negligent for adopting unfair trade practice. Being a big and repudiated institution in the field of providing health services, this sort of practice is not acceptable and as such, complaint is partly allowed and Ops No.1 & 2 are directed to compensate the complainant to the tune of Rs. 5,00,000/- on account of mental tension, harassment and agony suffered by the complainant. The Ops No.1 & 2 will also pay litigation expenses of Rs. 15,000/-. Needful be done within 30 days from the date of receipt of copy of this order failing which the said amount would carry an interest @8% per annum from the date of passing of the order. Copies of the order be furnished to the parties free of cost by District Consumer Commission, Ludhiana and thereafter, the file be consigned to record room .

10. The aforesaid order dated 09.09.2022 passed by the District Commission has been challenged by the **Appellants/Opposite Parties** No.1&2 by way of filing the present Appeal by raising a number of arguments.

11. **Mr. Ivan Singh Khosa, Advocate, learned Counsel for the Appellants** has submitted that the Complainant had filed the Complaint levelling allegations of 'deficiency in service' and involved in 'unfair trade practice' by not informing the Complainant and his family in time about any problem of stones found in both the kidneys of Donor. Said act had forced them to face lot of inconvenience, mental agony and harassment. Whereas to contradict such allegations, the Appellants had tendered sufficient evidence. It was pleaded that it was the responsibility/duty of the Doctor to decide regarding the transplant to be undertaken risk free of with minimum risk. Even the said decision can be taken when the patient was put on operation table is found that the said transplant is not risk free or life threatening for anyone, patient or donor. The time factor has no role in the said decision as the transplant cannot be reversed. In such cases, the concerned Doctor has every right to take a final call regarding the surgery. It was argued that in the initial Ultrasound Report dated 04.03.2016 of the Donor no indication of any stones was found in the kidneys of the Donor

and the same was found in normal condition. Said fact had also been confirmed from Renal Function Study/Scan conducted on the same day. However, another CT Scan of the Donor was conducted on 15.03.2016 and the details of the same had been with the Complainant only upto 25.04.2016 i.e. the day when the same were shown to the Hospital/Doctor as per admission by the Complainant in the Hospital on 21.04.2016. On examining the said CT Scan dated 15.03.2016, operating Doctor found that there were stones in both the kidneys of the donor and the kidney stones could cause potential danger to the well-being of both the donor and donee. Said Doctor took a call not to take any risk by doing surgery. Said decision was taken by the treating Doctor, which requires appreciation, who decided not to take even 0% risk in such circumstances with the life and well- being of the Donor and Donee. If one kidney of the Donor was removed, it could be a risky affair to the life and well-being of the Donor as his right kidney had multiple hyperdense foci-suggestive of calculi, which were seen in mid & lower calyz with the Largent measuring approx.. 1.7 x 0.7 cm in lower calyx. A staghorn calculus measuring approx.. 2.4 x 1.3 cm was seen involving mid and lower clayx. There was very much possibility of obstruction and stenosis at level of lower calyces with associated parenchymal thinning. Donor's left kidney had also involved with hyper dense focus-suggestive of calculus measuring approx.. 6.0mm seen in lower clayx, so it was found that his right kidney could not donated to the recipient. His left kidney was also not found free from stones, so donating a kidney would be a very risky affair on the part of the Donor, which might also be risky affair for the recipient. Always it is the motive of the Doctor that life of his patient or donor shall never be tangled with any risk from his treatment/surgery, therefore, in these circumstances,

OP No.2 did not go ahead with the transplant. The treating Doctor in such circumstances found incapability of the Donor to donate the kidney due to the reasons explained above, therefore, no act of negligence, deficiency in service or unfair trade practice on the part of the OPs No.1&2 was found. The District Commission, however, came to the conclusion that there was no occasion of medical negligence in the present case but illegally and wrongly held the Hospital and treating Doctor vicariously liable to compensate the Complainant for causing mental tension and harassment. It was argued that seeing the all above circumstances, decision taken by the treating Doctor not to operate upon the Donor to transplant his kidney to the Complainant was a conscious and correct medical decision. Further argued that in a quasi-judicial proceedings, it was the duty of the Court/Commission to give the reasoning, which led to decide that the case falls under the category of 'deficiency in service' or 'unfair trade practice', whereas said ingredient was not available in the impugned order. The application of the OPs for abatement of the Complaint on account of death of the Complainant was dismissed in a non-speaking manner by the District Commission, whereas it is a well settled law that a personal action dies with the death of the claimant. It was prayed that impugned order be set-aside.

12. On the other hand, **Sh. K.K. Goyal, Advocate** learned Counsel for the Respondent No.1/Complainant has argued that after receiving the CT Scan report dated 15.03.2016, wherein it was found that the donor has various calculi in the right kidney and calculi of 6.0 mm in the left kidney, Appellant No.2-Doctor had issued the medical fitness certificate on 18.03.2016, mentioning therein that *the donor is in proper state of health, not mentally challenged and is medically fit to be subjected*

to the procedure of organ or tissue removal. On this, the Complainant was got admitted in the Hospital on 21.04.2016 and deposited transplant fee of Rs.2,65,000/-. The surgery was scheduled for 26.04.2016 but on 25.04.2016 when the Doctor came to give the injection for anesthesia, told that surgery cannot be done because there were stones in the kidneys of the donor. Some amount was refunded but with deductions. The Complainant was asked to arrange new donor and the Complainant had returned from the Hospital without transplant. Said act of refusing the transplant at 11th hour, inspite of knowing well in time about the condition of the Donor, was an act of 'negligence' and 'unfair trade practice', so clearly 'deficiency in service' on the part of the Appellants was found. The District Commission had thoroughly discussed all these issues and found the Appellants, involved in 'negligence', 'unfair trade practice' and 'deficiency in service' and awarded the compensation of Rs.5,00,000/-. It was argued that when the medical tests reports, conducted in the same hospital, were already available with the Hospital then it was the duty of the Doctor to examine the same well in time about the pros and cons of the surgery in such circumstances and not to admit the Complainant in the Hospital on 21.04.2016 and conduct the tests upon him. With regard to contention of the Appellant that the Complainant knowingly and intentionally had hidden the Scan Report dated 15.03.2016 of the Donor, has no basis because it was the brother of the Complainant, who agreed to donate his kidney and conducted all sorts of test and completed all the formalities, therefore, there was no reason with them to hide such reports. Also in the prestigious hospitals like the Appellant every report was issued and reference of the same was provided to the treating Doctor, therefore, there was no basis of such like contention of the Appellants regarding

concealment of Scan Report upto 25.04.2016 and the same was not believable. With regard to objection regarding abatement, it was settled principle that if the Complainant dies, the legal heirs can be substituted for further proceedings. In the present case, the Complainant and his family members, who looked after him in the Hospital and being a beneficiaries, also suffered mental, physical tension and harassment at the hands of the Appellants are fully entitled to continue the litigation after the death of the Complainant on his behalf. It was prayed that the Appeal being without any merit, be dismissed.

13. **Mr. Nitin Gupta, Advocate, learned Counsel for Respondent No.2-Insurance Company** had argued that the Respondent No.2 was only liable to compensate on behalf of the OP No.2 in case any medical negligence was found on the part of the OP No.2 and not for the other allegations like harassment and financial suffering. No direction to pay any amount on behalf of the OP No.2 was ordered by the District Commission.

14. We have heard the oral arguments of the learned Counsel for the parties and have also carefully perused the impugned order passed by the District Commission, written arguments submitted by all the parties and the relevant documents available on the file.

15. Both the Appellants and Respondent No.1 in support of their contentions submitted number of judgments, which we have considered on discussing the matter on merits, to find out as to whether the conduct of the OP No.2-Doctor in examining the Donor medically, relates to any carelessness or imperfection in his field.

16. The first objection of the Appellants regarding abatement of the Complaint after the death of the Complainant as the legal heirs of the

Complainant had no right to continue with the Complaint and they were not entitled to ask for any compensation on behalf of the Complainant. This issue had recently been decided by this Commission in M.A. No. 6 of 2025 in F.A. No. 329 of 2024 i.e. **"Reliance General Insurance Co. Ltd., Chandigarh Branch & Others** Versus **M/s Banarsi Lal and Sons**", wherein the specific objection of the Appellants was the same that on the death of the Complainant, his LRs had no right to continue with the case. To answer the same, this Commission after examining Sub-Section (12) of Section 38 of the Consumer Protection Act, 2019 and discussing the judgment of the Hon'ble Punjab and Haryana High Court passed in **"Rup Ram Versus Nand Ram @ Nand Lal (deceased) through LRs.)**", RSA No. 2146 of 1988, decided on 19.07.2018, wherein the Court has held that the First Appellate Court had overlooked the amendment made in Order 22, Rule 42 of CPC, 1908 and had observed that after the amendment, it is clear that *suit does not abate against the deceased defendant even if no application is made under sub rule (2)*. Further held by the Hon'ble Court that Rules were enacted to avoid dismissals of the appeals on technical grounds and to grant an opportunity to the appellant to move an application for bringing on record legal heirs of the respondent, if already not done…Further this Commission had observed that the Superior Courts has held that too hyper-technical approach should be avoided in looking at a provision. Courts should, whenever possible, unless prevented by compelling circumstances of any particular case, make a benevolent and justice-oriented inference to dismiss the Application of the Appellants. The District Commission by taking the similar view had also dismissed the Application of the OPs No.1&2 vide its order dated 08.09.2022. So as discussed above, the said objection of the Appellants has no force. Also it

is notable that the family members and donor of the Complainant had also accompanied the Complainant during the treatment/check-up, therefore, they had also faced the inconvenience and harassment. Therefore, in these circumstances, we concur with the decision of the District Commission and held that the LRs of the Complainant had every right to continue the Complaint, after the death of the Complainant.

17. Now on merits, it is not disputed that the Complainant had approached the Appellants/OP Nos.1&2 for kidney transplant and his brother was ready to donate the kidney to him. All the medical tests of the Complainant and his brother (donor) were conducted by the OPs, before the admission of the Complainant in the Hospital of the OP No.1 on 21.04.2026. He had also deposited Rs.2,65,000/- with the OP No.1 as transplant fee. The grouse of the Complainant was that suddenly on 25.04.2016, the OP No.2 Doctor refused to conduct the transplantation on the ground that stones were visible in the kidneys of the Donor and he was asked to arrange the new donor. Due to said act of the OP Nos.1&2 on the last moment, they had suffered huge mental pain, agony, harassment as well as financial burden, whereas the CT Scan dated 15.03.2016 was conducted on the asking of the OP No.2 in the same Hospital i.e. DMC, Ludhiana, therefore, he was well aware about the report and condition of the Donor but he refused the transplantation at the last moment. Said act of the OP No.2 was not as per the medical ethics because as per same, it was the accountability of the healthcare professionals to examine the test report of the treating person in time and take timely decision about further course of action.

18. As in the present case, the Complainant had not levelled allegations regarding medical negligence on the part of the OPs No.1&2

and had only prayed that due to carelessness/negligence in examining the Donor's reports in time, not taking timely decision and informing the Complainant and his family about the opinion that the Donor was not fit for transplantation, they had suffered huge mental harassment & agony and were entitled for compensation on this account. Now the issue for consideration before us is as to whether the OP No.2 was well-aware in advance about the medical condition of the Donor or not and had not taken the appropriate decision timely?

19. To examine the same, we have gone through the medical records available on the file. It is clear from prescription slip dated 24.02.2016 of Kirpal Singh, OP No.2-Doctor suggested kidney transplant to him. Thereafter on 01.03.2016 said OP No.2-Doctor examined Donor Rachpal Singh and suggested him USG – KUB. USG is an Ultrasound test conducted to visualize the conditions of Kidneys, Ureter and Bladder, which helped the Doctor to find the conditions of any kidney stones, urinary tract infections etc. On the file, there were two different Reports dated 04.03.2016 and 15.03.2016 of the Donor Rachpal Singh, which were contrary to each other, however, both the tests were conducted in DMC, Ludhiana. On perusal of Ultrasound Report dated 04.03.2016 of Rachpal Singh, it shows multiple cysts of various sizes at all pole of bilateral kidneys. Few of them show wall calcification & Echogenic Debris within them and the impression given is "Bilateral Polycystic Kidney Disease". Moreover, at the end of the report, it was mentioned as "may please/to be correlated clinically". Therefore, it is clear that in the said report of Rachpal Singh, some problem was shown but the Doctor had not taken the same seriously and had proceed further. On examining the medical evidence, it is revealed that w.e.f. 01.03.2016 to 15.03.2016, many tests had been

conducted upon the Donor Rachpal Singh and the Certificate regarding the fitness of the Donor was issued on 18.03.2016 by OP No.2 as well as OP No.1 Hospital, following the Government Instructions. Therefore, it was clear that during the period from 01.03.2016 till 25.04.2016, OP No.2 had examined the Donor Rachpal Singh time and again. One of such Certificate dated 18.03.2016 of Medical Fitness of living Donor i.e. Form No. 4 on page 231 is available wherein the said Doctor had specifically mentioned that the Donor was medically fit, subject to the procedure of organ or tissue removal.

20. There is another CT Scan Report dated 15.03.2016, wherein it was mentioned that stones were found in the kidneys of the Donor. Said test was only conducted on the recommendation of OP No.2-Doctor within a gap of 11 days from 04.03.2016. Said report was totally different than earlier one. Whereas as observed above, in the report dated 04.03.2016, multiple cysts of various sizes were found and the impression was given as "Bilateral Polycystic Kidney Disease/to be correlated clinically". Such problem of cysts and developing stones in the kidney of the donor within such a short period, was not expected, therefore, ignoring the same, amounts to a case of negligence. Therefore, being the Specialist Doctor in the field of Kidney Transplant, it was the duty of the OP No.2 to take immediate steps after seeing the report dated 04.03.2016 but he had not done the same. Moreover CT Scan was done on 15.03.2016in the Hospital of OP No.1, as referred by OP No.2 Doctor. Then on 18.03.2016 issuing certificate of medical fitness i.e. Form No.4 to the Donor, the OP No.2-Doctor has not considered/demanded the reports of CT Scan already recommended by him. Moreover, as per the stand of OP No.2-Doctor regarding the concealment of CT Scan report of the Donor by the

Complainant till 25.04.2016 from the record, it is observed that CT Scan was got conducted on the recommendations of OP No.2-Doctor in the Hospital of OP No.1 then at the time of admission on 21.04.2016, OP No.2 again had failed to call and examine the CT Scan report of the Donor either from the Complainant or from the other Department of OP No.1-Hospital, which proves the negligence on the part of OP No. 2. The method to be applied for judging whether the Doctor was negligent or not, is to examine whether he had exercised timely action, after examining the patient. Negligence has been defined in ***Halsbury's Laws of England***, 4th Edn., Vol. 26 pp.17-18, which is as under:-

> "22. **Negligence. – Duties owed to patient**. A person who holds himself out as ready to give medical advice or treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person, whether he is a registered medical practitioner or not, who is consulted by a patient, owes him certain duties, namely, a duty of care in deciding whether to undertake the case; a duty of care in deciding what treatment to give; and a duty of care in his administration of that treatment. A breach of any of these duties will support an action for negligence by the patient"

21. The Hon'ble Supreme Court in the judgment of **"Kusum Sharma and others versus Batra Hospital & Medical Research Centre & Others",** 2010(3) SCC 480 issued the guidelines to the effect that the following principles must be kept in mind while deciding whether the medical professional is guilty of negligence. It was mentioned under these guidelines that the medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. It was also held under these guidelines that medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field. So from the above discussion in Para 20, **the act of OP No.2 shows that he had acted in a manner, which is below the standard of a reasonably competent**

practitioner in his field, because he was Professor in the Department of Transplant Surgery, being a highly qualified person in his field but revealed that no acted to the extent of experience gained in his field. Further it is noticeable that denying to conduct transplant, no document annexed on the file, explaining the reasoning given by OP No.2 and that Anesthetist denied to give injection in that situation. Therefore, believing the stand of OP No. 2 with blind eyes is not possible in the given circumstances.

22. The stand of OP No.2 was that CT Scan Report dated 15.03.2016 of the Donor-Rachpal Singh had not been shown to him till 25.04.2016. In view of above discussion, this contention of the OP No. 2 has no force because as proved from above discussion that the Donor was in regular touch with the OP No.2 from 01.03.2016 till the date of transplant because number of his tests were conducted one by one and he had to obtain the requisite Certificates from the different Department regarding his fitness to donate the kidney to his brother. For the said purpose, he time and again visited OP No.2 and when OP No. 2 knew that the said case was not an ordinary treatment case and relates to kidney transplant, it was his duty to take all the required steps before admitting him for kidney transplant. The stand of the Appellants/OPs No.1&2 that no case of negligence has arisen as no surgery was ever performed by them. Only conducting the surgery or its result does not fall under the category of negligence, rather the other acts relating to the treatment also falls under the same category. Any kind of carelessness or negligence attributed in the treatment, definitely attract such an act, falls under the category of negligence. In case "***D. Uma Devi*** *v.* ***M/s Yashoda Hospital & Others"****,* F.A. No.1169 of 2014, decided on 11.04.2016, the Hon'ble National Commission held as under:

> *"11. In this context, we rely upon the judgment in **Laxman Balkrishna Joshi (Dr.) v. Dr. Triambak Bapu Godbole,** AIR 1969 SC 128, it was held that a doctor, when consulted by a patient, owes him certain duties. It was held as under:*
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> *"A person, who holds himself out ready to give medical advice and treatment, impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient, owes certain duties, namely, a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give, and a duty of care in the administration of that treatment."*
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> *In the present case, the doctors at OP hospital, are qualified but, failed in their duty of care…."*

23. From the above discussion, it is clear that to some extent the OP No.2 was careless in noticing the exact cause shown in the reports of the Donor and he had failed to reach to the conclusion that the Donor was not fit for donating the kidney well before the date of admission of the Complainant in the Hospital on 21.04.2016. Only on 25.04.2016 just before the date of operation/surgery, he had informed the Complainant and his family members that the Donor was not fit to donate the kidney to the Complainant, when both the Complainant and Donor were got admitted on 21.04.2025 for said surgery. Such an act can be said to be a case of 'carelessness/deficiency in service' on the part of OPs No.1&2. The responsibility of the Doctor was not started on treating the patient but his duty starts from the period of *'pre and post treatment examination'*, when the patient had approached him to consult and after surgery for further course of action.

24. The District Commission in its order had discussed all the aspects and thereafter reached to the conclusion that OPs No.1&2 were negligent in their duties. As per above discussion, we are also of the same

view that certainly there was negligence on the part of OPs No.1&2 in performing their duties.

25. We have also gone through the judgments cited by both the parties in support of their arguments. Most of the judgments relied upon by the Appellants relate to describing the meaning of medical negligence, whereas the present case relates to negligence in examining the medical tests report by OP No.2, therefore, most of such judgments are not applicable in the present circumstances. One of the judgment relied upon by the Appellants, passed by the Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla i.e. F.A. No. 111 of 2019 "**Avtar Singh** versus **Smt. Monika and Ors."**, decided on 19.12.2022 held that the Consumer Complaint was filed without supporting evidence to establish the roles of Opposite Parties regarding negligence, is not applicable in the present case because in the case in hand, the Complainant was able to prove the negligence on the part of OP No.2, through documents placed on the file. Most of the judgments relied upon by OP No.2 relates to abatement of the Complaint. As discussed above, the LRs of the Complainant are fully entitled to continue the case, therefore, these judgments are also not applicable in the present case.

26. Another arguments of the Appellant was that the District Commission has awarded compensation without any basis as no surgery was performed in the present case. As discussed earlier that OP No.2 Doctor without examining/scrutinizing the test reports of the Donor in right perspective got admitted the Complainant on 21.04.2016 and further continued the tests of the Complainant and Donor till the last minute, so careless/negligence was on the part of the OP No.2 and OP No.1 Hospital is also responsible for the acts of its employee and vicariously liable in

paying the compensation, if any granted. On the question of determination of loss by a consumer on account of deficiency in service and unfair trade practice, the following observations had been given by a three Judge Bench of the Hon'ble Supreme Court in ***Charan Singh v. Healing Touch Hospital & Ors.*** (2000) 7 SCC 668:

> *"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 awarding 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."*

27. The District Commission had dealt the submissions of both the parties and passed a detailed order. Keeping in view the aforesaid discussion, examining the documents available on the file and considering the judgments of the Superior Courts, we do not find any force in the arguments raised by the Counsel for the Appellants that there is no evidence on record, which justify the stand of OPs No.1&2 that there was no negligence on its part and with regard to wrongly awarding compensation to the Complainant by the District Commission. Therefore, we deem it appropriate to affirm the impugned order dated 09.09.2025 passed by the District Commission. Accordingly, the present Appeal **being devoid of any merit is dismissed** and the impugned order dated 09.09.2025 passed by the District Commission is affirmed.

28. As we noticed that the OPs No.1&2 were insured with Insurance Company(s), therefore, they are at liberty to claim such amount,

if so desire, as per the terms and conditions of the policy from their Insurance Company(s).

29. Since the main case has been disposed off, so all the pending Miscellaneous Applications, if any, are accordingly disposed off.

30. The Appellants had deposited a sum of Rs.2,57,000/- at the time of filing of the Appeal. Said amount, along with interest which has accrued thereon, if any, shall be remitted by the Registry to the District Commission forthwith. The Concerned Party may approach the District Commission for the release of the same and the District Commission may pass appropriate order in this regard in accordance with law.

31. The Appeal could not be decided within the statutory period due to heavy pendency of Court Cases.

(JUSTICE DAYA CHAUDHARY)
PRESIDENT

(VISHAV KANT GARG)
MEMBER

October 14, 2025.
as