

ADDITIONAL BENCH

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
PUNJAB, DAKSHIN MARG, SECTOR 37-A CHANDIGARH.**

First Appeal No.347 of 2022

**Date of institution : 10.05.2022
Reserved on : 19.11.2025
Date of decision : 04.12.2025**

Ritesh Kumar aged about 23 years son of Sh. Mohinder Kumar, resident of Krishna Gali, Mukerian, District Hoshiarpur.

.....Appellant/Complainant

Versus

1. Bariana Eye Hospital & Lasik Laser Center, 1-R, Model Town, opposite Hotel Presidency, Near Bus Stand, Hoshiarpur, through its Managing Director.
2. Dr. Prabhjinder Aulakh Bariana C/o Bariana Eye Hospital & Lasik Laser Center, 1-R, Model Town, Opposite Hostel Presidency, Near Bus Stand, Hoshiarpur.

....Respondents/Opposite Parties

First Appeal under Section 41 the Consumer Protection Act 2019, against the order dated 27.12.2021 passed by the District Consumer Disputes Redressal, Commission, Hoshiarpur in CC/17/2018

Quorum:-

**Mr. H.P.S. Mahal, Presiding Judicial Member
Mrs. Kiran Sibal, Member**

Present:-

For the appellant	: Sh. M.S. Rana, Advocate
For respondent	: Sh. Manpreet Singh, Adv. for Sh. Arnav Sood, Advocate

KIRAN SIBAL, MEMBER

The instant appeal has been filed by the appellant/complainant against the order dated 27.12.2021 passed by District Consumer Disputes Redressal Commission, Hoshiarpur (in short, now "the District Commission"), whereby the complaint filed by

complainant against opposite parties (in short 'OPs'), under the Consumer Protection Act, was dismissed being devoid of merits.

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

3. Brief facts for the disposal of the appeal are that the complainant on 20.11.2017, approached OP's Hospital, as he was having some eye problem. The OPs after examination of his eyes told him that his distance vision of right eye was -2.00 and left eye was -1.75 and advised for standard Lasik operation. Thereafter on 23.11.2017, the complainant also took second opinion from another doctor and same problem was diagnosed i.e. Myopia in both eyes. The said doctor also suggested for the same operation. The complainant visited OP No.1 and deposited Rs.25,000/- advance for operation and Rs.3000/- for tests. Thereafter, the complainant again visited OP No.1 hospital on 24.11.2017, where OP No.2 suggested to conduct Lasik with Custom Vue operation instead of standard Lasik operation, which would cost him around Rs.55,000/-. The OPs told the complainant that under the said surgery the light would not scatter in the eyes and further no blade is used. On the suggestion of OP No.2, the complainant agreed for Lasik with Custom vue operation and deposited an amount of Rs.30,000/- with OP No.1. The operation was conducted by the OPs and he was discharged on the same day. The OPs charged a total sum of Rs.59000/- from the complainant and when he demanded the original bills, OP No1 assured him that he would get the same within one or two days. The complainant alleged

that the OPs took 2 ½ hours for conducting the operation and blade was also used during operation. Thereafter, on 25.11.2017 the complainant noticed that he was not able to see the things properly and he approached OP No.2, who assured that after taking the prescribed medicines, his eye sight would be OK within 5-6 days. However, even after 7-8 days, the problem still existed and light was also scattering in his eyes. The complainant again approached OP No.2, who misbehaved with him and gave a vague reason that before operation, the back light of his eyes was already very weak, therefore, he was not able to see properly. The complainant alleged that the act and conduct of the OPs was unprofessional and sheer negligence in performing the medical obligations. The complainant further stated that bill provided to the complainant on 02.12.2017 was qua standard Lasik operation and the amount of Lasik with Custom vue was mentioned on the bill. Thereafter on 08.01.2018 the complainant visited to Gautam Eye Hospital and after check up of his vision, he was diagnosed -0.50 (cylindrical) each, which means that his problem was increased after operation as there was no cylindrical distance vision before the operation. Even there was no such problem of weak back light in the eyes of the complainant, as told by OP No.2. The complainant also got conducted routine check up on 24.01.2018 at Thind Eye Hospital, Jalandhar and found that his eye sight was not become normal, rather the problem increased after operation. Alleging deficiency in service as well as medical negligence on the part of the OPs, the complainant filed consumer complaint before the District

Commission and sought direction against the OPs to pay Rs.5,00,000/- as damages and compensation for causing damage to the eyes of the complainant and further to pay Rs.3,00,000/- for causing mental agony and harassment to him.

4. Upon notice, OPs appeared through counsel and filed written reply, wherein it raised certain preliminary objections, which are not required to be reproduced here for the sake of brevity. On merits, OPs stated that the complainant approached them and complained about the difficulty in seeing the distant objects i.e. Myopia. For correcting the distant vision patient is to prescribe to use either spectacles or contact lenses. However, with the growth in the medical science, a new procedure came up i.e. Lasik Eye Surgery, which means using a laser underneath a corneal flap (in situ) to reshape the cornea (keratomileusis). The complainant expressed his intention to get the eye sight corrected with Lasik Eye Surgery. All the prognosis of the Lasik Eye Surgery were explained to the complainant by the OPs in vernacular and simple language. The OPs are using "Nidek-EC-5000 CXIII Excimer Laser" and the said machine was given the FDA (Food & Drug Administration, USA) clearance on 22.11.2006. The said machine was having seven profiles of doing Lasik Eye Surgery and is capable of doing the customized Lasik Eye Surgery. The complainant paid the full charges for the Lasik Eye Surgery procedure done by the OPs on the eyes of the complainant. The complainant was clearly told that the said surgery would be done by using Micro Keratome Moria Machine, which will make the corneal flap with a very

fine blade. The OPs further stated that the surgery was completely successful, yet the law is that even with the best possible efforts, things if sometimes go wrong in surgical operations or medical treatment, a doctor is not to be held negligent simply because something goes wrong though nothing went wrong in the present case. The doctor can be held liable for the negligence only when he falls below the standard of reasonably competent practitioner of his field. Further as per the medical literature and the medical journals, the regular follow up visits after Lasik Eye Surgery usually are scheduled for a period of six months or even a longer period. In most of the cases, the vision becomes stable and clear at the period of six months post operative visit to the doctor. Most of the symptoms which the patient experiences after the Lasik Eye Surgery disappear or significantly reduced during the period of six months. The complainant became restless and impatient and consulted many other doctors immediately after the surgery without for six months period. Otherwise also neither the OPs ever assured the complainant that his eye sight would be 6/6 both eyes nor the medical journals so state that after the Lasik eye surgery, the eye sight would become 6/6. No eye surgeon/professional can visualize as to what would be the refractive status of the patient after the procedure. As such, there was no deficiency in service or medical negligence on the part of the OPs. After denying the other averments made in the complaint, the OPs prayed for dismissal of the complaint.

5. The parties led their evidence before the District Commission in respect of their respective contentions and the District Commission, after going through the record and hearing learned counsel on their behalf, dismissed the complaint of the complainant, vide impugned order. Aggrieved with the same the present appeal has been preferred by the appellant/complainant.

6. We have heard learned counsel for the parties and have also gone through written submission filed by them as well as record of the case.

7. Learned counsel for the appellant, vehemently contended that the District Commission has failed to appreciate the fact that standard Lasik treatment was given to the appellant/complainant instead of Lasik with custom vue surgery, for which he had agreed and made the requisite payment. Even in the bill dated 02.12.2017 the mentioned treatment was not Lasik with custom vue but the amount charged was of that very treatment. Moreover, when the appellant had made payment on 24.11.2017, then why the bill delayed for about 7 days by the OPs. The learned counsel has further argued that the District Commission overlooked a seminal piece of evidence i.e. discharge card, which clearly showed that appellant having made to undergo the Lasik treatment for unusually longer period of time. Moreover, the reports of Gautam Eye Hospital, clearly showed that after the operation, the right and left eye distance vision had deteriorated from pre-operation stage and had become -0.50 (cylindrical). The learned counsel further argued that after the

operation the appellant's eyes did not became normal for about 6 months, as he kept suffering with the after effects of a poorly conducted operation and whenever he approached the OPs, he was treated unfairly by them. The learned counsel further argued on the similar lines as stated in the complaint and prayed for acceptance of the present appeal.

8. On the other hand, the learned counsel for the respondents/OPs has argued that there is no illegality in the order passed by the District Commission and it has indeed applied its mind very carefully with all wisdom. The learned counsel further argued that the appellant after consulting some doctors made up his mind to go for customized lasik eye surgery from the OPs. The surgery was completely successful and the best medical treatment and guidance was given to the appellant. As per the medical literature and journals, the regular follow up visits after lasik eye surgery usually are scheduled for a period of six months or even a longer period. Most of the symptoms which the patient experiences after the operation disappear or significantly reduced during the period of six months. The appellant did not follow the post operative guidelines and filed the complaint after a period of almost 2 months only i.e. on 07.02.2018. Thus the complaint filed by the appellant is a premature complaint and is liable to be dismissed. The learned counsel further argued that there is no evidence on record to show that the operation and the medical treatment were wrong and incorrect. The learned counsel further

argued on the similar lines as stated in the written reply and prayed for dismissal of the present appeal.

9. We have given thoughtful consideration to the contentions raised by the parties.

10. The factual matrix of the case is that the appellant/complainant approached the respondents/OPs for correction of his eye sight and the OPs performed Lasik Eye Surgery for treatment of said ailment suffered by the appellant/complainant (Ex.C-6). It is also not in dispute that the respondents/OPs charged a total sum of Rs.59,800/- (Ex.C-7) from the appellant/complainant for the said procedure. The appellant/complainant alleged that after the operation, the right and left eye distance vision had deteriorated from pre-operation stage and had become -0.50 (cylindrical). Moreover, standard Lasik treatment was given to the appellant/complainant instead of Lasik with custom vue surgery, for which he had agreed and made the requisite payment. Alleging deficiency in service as well as medical negligence on the part of the OPs, the appellant/complainant filed consumer complaint before the District Commission, which was dismissed vide impugned order. Aggrieved with the same, present appeal has been preferred by the appellant/complainant.

11. The foremost ground of appeal raised by the appellant/complainant is that the District Commission has failed to appreciate the fact that standard Lasik treatment was given to the appellant/complainant instead of Lasik with custom vue surgery, for which he had agreed and made the requisite payment. Even in the bill

dated 02.12.2017 the mentioned treatment was not Lasik with custom vue but the amount charged was of that very treatment. On the other hand, the case of the respondents/OPs is that the complainant paid the charges for the Lasik Eye Surgery procedure, which was done by the OPs on the eyes of the complainant. The complainant was clearly told that the said surgery would be done by using Micro Keratome Moria Machine, which will make the corneal flap with a very fine blade. To determine the said issue, we have carefully perused the pleadings, evidence placed on record as well as the impugned order passed by the District Commission. From the perusal of Discharge Card (Ex.C-6) we find that the nature of operation performed by the OPs on the eyes of appellant/Complainant is mentioned as "Lasik Laser done both eyes". Even on the receipt issued by the respondents/OPs for charging an amount of Rs.59,800/- (Ex.C-7) it has been mentioned as 'Lasik Laser both eyes + workup & medicines'. The doctor has also advised the complainant on 20.11.2017 for Lasik workup as mentioned in the prescription slip (annexure A) attached with Ex.C-3. It has nowhere been mentioned on the above said documents that the said surgery was a Standard Lasik Surgery or Lasik with custom vue surgery. The respondents/OPs have categorically stated in their written reply as well as in the affidavit that they performed Lasik Laser surgery on the eyes of the appellant/complainant and accordingly charged the amount for the said procedure from the appellant/complainant. Moreover, said surgery would be done by using Micro Keratome Moria Machine, which made the corneal flap with a very fine blade. The onus was on

the appellant/complainant to prove his version by leading cogent evidence on record. But he failed to establish on record that standard Lasik treatment was given to the appellant/complainant instead of Lasik with custom vue surgery and they charged extra amount from him. It appears that the appellant/complainant has wrongly made up the case of deficiency in service on the part of the respondents/OPs while relying on the document of a third party i.e. Thind Eye Hospital showing the cost as 'with blade' surgeries and 'blade free' surgeries, which is not applicable in the present case. Accordingly, we do not find any force in this contention raised by the appellant and the same is hereby rejected.

12. So far as the allegations of the appellant/complainant that the respondents/OPs had issued the receipt of amount charged on 02.12.2017, after a delay of 7 days from the date of conducting the operation, is concerned, the respondents/OPs have categorically stated in their written reply as well as in the affidavit that the appellant/complainant had made the payment on 02.12.2017, after the insurance company refused to settle his insurance claim. As such, we are of the view that receipt issued by the respondents/OPs after a delay of 7 days is justified.

13. Another ground of appeal raised by the appellant/complainant is that the District Commission has ignored the vital evidence placed on record by him that after the operation, the right and left eye distance vision had deteriorated from pre-operation stage and had become -0.50 (cylindrical). To rebut the said allegations

of the appellant/complainant, the respondents/OPs have categorically stated in their written reply that as per the medical literature and the medical journals, the regular follow up visits after Lasik Eye Surgery usually are scheduled for a period of six months or even a longer period. In most of the cases, the vision becomes stable and clear at the period of six months post operative visit to the doctor. Most of the symptoms which the patient experiences after the Lasik Eye Surgery disappear or are significantly reduced during the period of six months. In support of their version, the respondents/OPs placed reliance on the medical literature published by **Dr. Vance Thompson, MD, FACS**, Director of Refractive Surgery at Vance Thompson Vision in Siaux Falls, S.D, the relevant portion of the same is reproduced as under:-

“How Long Is The Lasik Recovery Time:

Your eyes start healing immediately after your Lasik Surgery, and the initial healing usually occurs rapidly. But it's normal to experience some blurred vision and fluctuations in your vision for several weeks or even months after Lasik.

Xxx
 xxx
 xxxxxxx

Regular follow-up visits usually are scheduled for a period of six months or longer to continue to monitor your vision and eye health. In most cases, vision should be stable and clear at the six-month post-op visit. Also, if you experience dry eyes, halos, glare or other visual disturbances after Lasik, most of these symptoms should be either gone or significantly reduced at your six month visit.

If your vision is bothersome six months after Lasik, your surgeon may recommend a Lasik enhancement procedure to sharpen your eyesight. Generally most surgeons wait a minimum of six months before performing an enhancement, to provide adequate recovery time after the first surgery.”

As per above said medical literature in most of the cases, the vision becomes stable and clear at the period of sixth month, post operative

visit to the doctor and most of the symptoms, which the patient experiences after the Lasik surgery disappear or are significantly reduced during the period of six months. In the present case, the appellant/complainant has filed the consumer complaint on 07.02.2018 i.e. after about 2½ months from the date of surgery conducted on 24.11.2017. Appellant/complainant should have regularly followed up after the Lasik eye surgery at least for a period of six months, as such like symptoms are disappeared or significantly reduced during that period. It is not the case of the appellant/complainant that the appellants/OPs have not performed the said procedure of 'Lasik Laser Surgery' as per the standard medical protocol. Negligence is an essential ingredient of the offence and if needs to be established, then it must be culpable or gross and not the negligence merely based upon an error of judgment. Reliance has been placed on the judgment passed by Hon'ble Apex Court in the case of "**Jacob Mathew Vs. State of Punjab and Anr., 2005 (6) SCC 1**" wherein the Hon'ble Apex Court has taken into consideration the case of '*Bolam Vs. Friern Hospital Management Committee*', and held as under:

"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. 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, as recognized, are three: "duty", "breach" and "resulting damage", that is to say:

- 1) *The existence of a duty to take care, which is owed by the defendant to the complainant;*
- 2) *The failure to attain that standard of care, prescribed by the law, thereby committing a breach of such duty; and*

3) Damage, which is both casually connected with such breach and recognized by the law, has been suffered by the complainant.

If the claimant satisfies the court on the evidence that these three ingredients are made out, the defendant should be held liable in negligence.

....., it must be shown that the accused doctor did something or failed to do something which in the given facts and circumstances, no medical professional in his ordinary senses and prudence would have done or failed to do".

In the case in hand, neither there is any error nor any specific allegation that the procedure adopted by the doctors was not as per medical protocol. Rather the main dispute seems to be of the amount charged by the respondents/OPs. As such, we are of the considered opinion that there is no medical negligence on the part of the respondents/OPs while giving treatment to the appellant/complainant for the ailment suffered by him.

14. In the light of the above discussion, we are of the opinion that a medical practitioner or hospital would be liable only where their conduct fell below the standards of a reasonably competent practitioner in their field. As such, we are of the considered opinion that no negligence can be attributed to the said doctors as well as the hospital as the doctors have performed their duties with reasonable skill and knowledge. As such, we do not find any force in the contentions raised by the appellant/complainant and the same is hereby rejected. The District Commission has rightly decided the case and there is no material infirmity and irregularity in the order of the District Commission. Finding no merit in this appeal filed by the

appellant/complainant, the same is hereby dismissed & the order of the District Commission is upheld.

15. The appeal could not be decided within the stipulated period due to heavy pendency of Court cases.

**(H.P.S. MAHAL)
PRESIDING JUDICIAL MEMBER**

**(KIRAN SIBAL)
MEMBER**

December 04, 2025
(Dv)