

ADDITIONAL BENCH

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
PUNJAB, CHANDIGARH.**

First appeal No.385 of 2021

**Date of institution : 29.10.2021
Reserved on : 18.08.2023
Date of decision : 31.08.2023**

1. Garg Hospital, Zira Road, Opposite Military Camp, Moga through its Managing Director Dr. Sandeep Garg.
2. Dr. Ram Sethi, C/o Garg Hospital, Zira Road, Opposite Military Camp, Moga.

.....Appellants/OPs No.1 & 2

Versus

1. Satnam Singh S/o Nirmal Singh S/o Sham Singh, R/o village Makhi Kalan, Tehsil Patti, District Taran Taran.

.....Respondent No.1/Complainant

2. Oriental Insurance Company Limited, Delhi 4E/14, Anand Bhawan, Jhandel Wala, New Delhi-110055.

....Respondent No.2/OP No.3

**First Appeal under Section 41 of the
Consumer Protection Act, 2019 against
the order dated 14.09.2021 passed by
District Consumer Disputes Redressal
Commission, Moga**

Quorum:-

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

Present:-

For the appellants : Sh. Sukhjinder Singh, Advocate for
Sh. Vivek Gupta, Advocate
For respondent No.1: Sh. Jasdeep Singh, Advocate for
Sh. Rajan Sharma, Advocate
For respondent No.2: Sh. Satpal Dhamija, Advocate

KIRAN SIBAL, MEMBER

The instant appeal has been filed by the appellants/opposite parties against the order dated 14.09.2021 passed by District Consumer Disputes Redressal Commission, Moga (in short, the "District Commission"), whereby the complaint

filed by complainant against opposite parties (in short 'OP'), under the Consumer Protection Act, was partly allowed as under:-

“14. Resultantly, in view of the aforesaid facts and circumstances of the case, the complaint of the complainant is partly allowed and the opposite parties No. 1 & 2 are jointly and severally directed to make the compensation of Rs.28,500/- (Rupees twenty eight thousands five hundred only).”

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 wife of the complainant; namely, Kuljit Kaur was admitted in Rajiv Hospital, Moga for delivery purpose and three issues were born on 10.06.2017. After delivery the concerned Authority of Rajiv Hospital, Moga sent these issues to Garg Hospital, Zira Road, Moga without the consent of complainant. When the complainant came to know about the said fact, he rushed to Garg Hospital, Zira Road, Moga, where he noticed that proper medical treatment was not provided to the children as required. At night, when the physical condition of the children became worst, the complainant told Dr. Ram Sethi that he was not satisfied with the treatment provided by them. Then Dr. Ram Sethi mis-behaved with the complainant and proper diagnose was not provided to the children. On the next date i.e. 11.06.2017 in the early morning, the condition of the children became more critical due to negligence at Garg Hospital. The opposite party-Hospital also charged Rs.76,608/- from the complainant illegally, unjustly and in violation of rules. The complainant had to admit the children in

another hospital i.e. Suresh Nursing Home, Akalsar Road, Moga. The services rendered by the opposite parties were deficient as they had not done proper diagnose/treatment and had also charged the abovesaid amount in excess to the rates as provided. Alleging deficiency in service on the part of OPs, the complainant filed consumer complaint before the District Commission and sought directions against the OPs to refund an amount of Rs.76,608/- and further to pay Rs.2,00,000/- as compensation for damages, mental agony and harassment etc.

4. Upon notice, opposite party No.1 & 2 appeared through counsel and contested the complaint by filing joint written reply and raised certain preliminary objections therein, which are not required to be reproduced here for the sake of brevity. On merits, OPs No.1 & 2 stated that Dr. Ram Sethi was called by the Gynecologist of Rajiv Hospital during and after delivery of babies and all babies were resuscitated. All three babies had life threatening condition and lack of oxygen due to immaturity of the lung. One of the baby did not cry and was cyanosed and intubated immediately and was taken on bag and mask ventilation. Other two babies cried immediately, but had difficulty in breathing with a silverman score of about 8. As all the babies were premature and their condition was critical, they were shifted to Garg Hospital after proper information and oral consent of the father of the babies. They were shifted in the ambulance of Garg Hospital and during transport, babies were accompanied by Dr. Ram Sethi and the trained staff of Garg Hospital. The complainant also came to the hospital alongwith the babies in the said ambulance of

Garg Hospital. Babies were admitted in Garg hospital at 11:00 pm on 10.06.2017 in very life threatening critical condition and they were not able to maintain oxygen saturation in room air. All three babies were given surfactant separately by insure technique and then each baby was put on non-invasive mode of ventilator support without which none of the three babies would have survived. Each baby required surfactant, which was given by Dr. Ram Sethi after showing the separate three vials, one for each to be used for three babies separately and the same were shown to the father of the babies. Father had no money at that time but in spite of that all babies were managed. Dr. Ram Sethi was present in the NICU for the whole night to take care of three very critical and sick babies with help of NICU staff without which the three babies would not have survived. The condition of all three babies improved dramatically in the morning and they were maintaining saturation in room air. Next morning since all three babies were alright and the complainant did not want to pay the bill, therefore he asked for LAMA discharge for all three babies. Everything had been done diligently by opposite party no.1 & 2, prudently with utmost due care and caution in treating the said patient. When the complainant was asked to clear all the dues mainly of 'Surfactant and CPAP circuits', he started levelled false allegation that only one vial was open and given to all three babies. At that time the opposite parties showed him all three vials which were used in the night and all the 3 CPAP circuits were attached to the babies. All the expenses were explained to the complainant in the presence of referring gynecologist prior to shifting of the babies to Garg Hospital.

There was no deficiency in service on the part of answering OPs. After denying the other averments made in the complaint, OPs No. 1 & 2 prayed for dismissal of the complaint.

5. Opposite party No.3 appeared through counsel and contested the complaint by filing written reply, wherein it also raised certain preliminary objections, which are not required to be reproduced here for the sake of brevity. On merits, it denied all the allegations made in the complaint and prayed for dismissal of the complaint qua it.

6. The parties led their evidence in support of their respective contentions and the District Commission after going through the record and hearing learned counsel for the parties, partly allowed the complaint of the complainant, vide impugned order as mentioned above. Aggrieved with the same the present appeal has been filed by the appellants/OP No.1 & 2.

7. We have heard the Ld.counsel for the parties and have carefully gone through the written submissions filed by the appellants and the record of the case.

8. Learned counsel for the appellants/OPs No.1 & 2, has vehemently contended that the District Commission has wrongly and without appreciating the true facts and evidence on record and without giving any heed to the specific averments, partly allowed the complaint against the appellants. The District Commission has not considered the fact that proper and necessary parties are not made in the complaint. Respondent No.1/complainant has not raised any

concern or complaint regarding the fact that the appellant Hospital or treating doctors were not having the adequate equipments or were not properly qualified. Even there is not a single assertion in the whole complaint about any instance, which can explain that the doctors were not present, they were not vigilant or they adopted the wrong treatment, while treating the babies. The only grouse is regarding charging of the hospital admission and treatment charges. The stand of the appellants is that it had not charged any amount more than the recommended charges and are right in claiming the recovery for the same. The District Commission has failed to appreciate the fact that during emergency to save life, no consent is required. However, oral consent of the complainant was taken before shifting the babies to the Garg Hospital. The learned counsel further argued on the similar lines as stated in the written reply filed before the District Commission and prayed for acceptance of the present appeal by setting aside the impugned order.

9. On the other hand, the learned proxy counsel for the respondent No.1/complainant has vehemently contended that the order passed by the District Commission is a well reasoned order and it had rightly allowed the complaint in favour of the complainant. The learned counsel further argued on the similar lines as stated in the complaint filed before the District Commission and prayed for dismissal of the present appeal.

10. The learned counsel for respondent No.2/OP No.3 also argued on the similar lines as stated in the written reply filed by it

before the District Commission and prayed for dismissal of the present appeal qua it.

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

12. Admitted facts of the case are that the wife of respondent No.1/complainant; namely, Kuljit Kaur was admitted in Rajiv Hospital Moga on 10.06.2017 for delivery purpose and three issues were born, which were referred to Garg Hospital, Moga due to critical condition of the babies. The respondent No.1/complainant alleged that babies were referred to the said hospital without his consent and no proper treatment/diagnosis was provided to the children by the appellants/OPs No.1 & 2. He further alleged that the appellants had charged Rs.76,608/- from the complainant illegally, unjustly and in violation of rules. On the other hand, the appellants/OPs denied the allegations made by respondent No.1/complainant and pleaded that all the babies were premature and their condition was critical with life threatening oxygen de-saturation due to lung immaturity. They were shifted to their hospital and were given proper treatment as per medical procedure and there was no deficiency in service on their part. The complainant filed consumer complaint, alleging the appellants deficient in service, before the District Commission, which was partly allowed by it vide impugned order as above. Aggrieved with the same the present appeal has been filed by the appellants/OP No.1 & 2 for setting aside the same.

13. First of all, we would like to deal with the contention of respondent No.1/complainant that before referring the babies to Garg Hospital, no consent was taken by the concerned authorities. In this regard, it is pertinent to mention here that respondent No.1/complainant levelled the said allegation against the Rajiv Hospital where the babies were born but he has not impleaded the said Hospital as opposite party in the complaint filed before the District Commission. The appellants/OPs No.1 & 2 has also specifically taken the objection that the complaint was bad for non-joinder of the necessary party. Moreover, no medical record of the Rajiv Hospital has been brought forward by respondent No.1/complainant from where we can establish the seriousness and medical emergency of the children, due to which they were referred to appellants-Garg Hospital having NICU facilities. The respondent/complainant has himself alleged in his complaint that after the delivery of the children at Rajiv Hospital, Moga, the concerned authorities send these issues to Garg Hospital, Moga without his consent. It is an undisputed fact that it was an emergency situation as the medical condition of all the three babies was life threatening as there was lack of oxygen due to immaturity of the lungs. Even one of the baby did not cry for which he was incubated and was taken on bag and mask ventilation. It was for this reason that the babies were shifted to Garg Hospital by the authorities of Rajiv Hospital as it has proper NICU facilities. It is also not in dispute that Dr. Ram Sethi was called by Gynecologist of Rajiv Hospital during and after delivery of babies and all the babies were

resuscitated. Thereafter, all the three babies were shifted to appellant's Hospital in its emergency ward and during transport they were accompanied by Dr. Ram Sethi and the trained staff of Garg Hospital. The appellants/OPs No.1 & 2 have specifically stated in their reply that they had no role to play as the babies were referred by Rajiv Hospital after duly informing and seeking oral consent of the complainant. Hence, we do not find force in the said contention of respondent No.1/complainant and reject the same.

14. Now the point for consideration before us is whether there is any negligence on the part of the appellants/OPs No.1 & 2 or not? To determine this point, we have carefully perused the pleading and evidence on record. From the perusal of 'Discharge Cards' of all the three babies, placed on record by the respondent/complainant, Ex.C-2 to C-4, show that the babies were admitted in Garg Hospital on 10.06.2017 and discharged on 11.06.2017 under LAMA. The babies were diagnosed as Preterm/AGA/Triplet-I/RDS. The course of medicine given to the babies is also clearly stated in the discharge cards. The categorical stand of the appellants/OPs No.1 & 2 is that all the babies were admitted in their hospital at 11:00 PM in a very life threatening critical condition and they were not able to maintain oxygen saturation in room air. All the three babies were given surfactant separately by 'Insure Technique' and then each baby was put on non-invasive mode of ventilator support without which none of the three babies would have survived. Each baby required surfactant, which was given by Dr. Ram Sethi, who was also present in the NICU for the whole night and the condition of all three babies improved

dramatically in the morning, after giving the treatment as per medical procedure. In support of their version, the appellant/OPs No.1 & 2 placed reliance on the medical literature produced before the District Commission as Ex. OP1,2/5. As per the said medical literature, (Ex.OP1,2/5) the terms 'Surfactant replacement therapy' is discussed as under:-

“Surfactant replacement: *it was established as an effective and safe therapy for immaturity-related surfactant deficiency by the early 1990s. Systematic reviews of randomized, controlled trials confirmed that surfactant administration in preterm infants with established respiratory distress syndrome (RDS) reduces mortality, decreases the incidence of pulmonary air leak (pneumothoraces and pulmonary interstitial emphysema) and lowers the risk of chronic lung disease or death at 28 days of age.”*

The term 'Insure Strategy' is also discussed as under:-

“Early Administration of Surfactant followed by Brief Ventilation and Extubation to CPAP (Insure Strategy): *The INSURE strategy is widely used throughout the world. In randomized clinical trials performed before 2008, the INSURE approach, compared with rescue surfactant administration in infants with RDS, was associated with a significantly reduced need for mechanical ventilation (RR 0.67; 95% CI 0.57-0.79) and a reduced need for oxygen at 28 days. In an analysis stratified by fraction of inspired oxygen requirement at study entry, a significantly higher frequency of patent ductus arteriosus was observed among infants in the rescue surfactant group, who required a fraction of inspired oxygen greater than 0.45 (RR 2.15; 95% CI 1.09-4.23).”*

15. At this stage, it would also be relevant to discuss the law laid down and the guidelines issued by the Hon'ble Supreme Court in the cases of medical negligence and deficiency in services.

The Hon'ble Supreme Court in **Civil Appeal No.1385 of 2001** titled **"Kusum Sharma & Ors. Vs. Batra Hospital & Medical Research Centre & Ors."** decided on 10.02.2010, the following guidelines have been formulated by the Hon'ble Supreme Court while assessing the medical negligence and professional misconduct of the doctor:

- i) *Negligence is the breach of a duty exercised 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.*
- ii) *Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.*
- iii) *The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.*
- iv) *A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.*
- v) *In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of other professional doctor.*
- vi) *The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence.*
- vii) *Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.*

- viii) *It would not be conducive to the efficiency of the medical profession if no Doctor could administer medicine without a halter round his neck.*
- ix) *It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessary harassed or humiliated so that they can perform their professional duties without fear and apprehension.*
- x) *The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurizing the medical professionals/hospitals particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.*
- xi) *The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals.*

In the present case, it is proved on record vide Ex. C-2 to C-4 i.e. discharge cards, that the babies were diagnosed with 'Respiratory Distress Syndrome(RDS)' and they were given Surfactant by Insure Technique, which is a due medical procedure for treatment of said medical condition. The question of skill of the Doctor and even the procedure/treatment adopted by the Doctor in the said hospital is not under challenge. Therefore, negligence cannot be attributed to a Doctor as long as he has performed his duty with reasonable skill and competence and course of action chosen by him was acceptable to the medical profession. 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 also 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 present case neither there is any error nor any allegations of gross negligence. The respondent/complainant has simply stated that the appellant/OP No.2 was rude with him and that the condition of the babies did not improve, which is contrary to the findings in the discharge cards of the Suresh Nursing Home. The main issue that the respondent/complainant has raised is qua the medical bills, which according to him were on exorbitant side, which has been duly justified by the appellants-Hospital that 3 separate vials had been administered to the 3 babies and the oxygen level was maintained through 'Insure Technique', which incurs a higher cost. Moreover, the respondent/complainant, after discharge of the babies under LAMA,

has taken the children to another hospital i.e. Suresh Nursing Home. From the perusal of discharge card of Suresh Nursing Home, Ex.C-19, we find that under heading "Diagnosis it is mentioned "Preterm/SGA/Mild resp dis/NNJ", from which an inference can safely be drawn that the children were not in critical condition when they were brought to 'Suresh Nursing Home'. The respondent/complainant has failed to lead any cogent evidence to show that the appellants were negligent in providing the treatment to the children. Even the bills raised by the Suresh Nursing Home i.e. for consultation, bed/room and nursing care etc. are almost at par with the Garg Hospital. Therefore, it cannot be said that the bills raised by the appellants were on exorbitant side.

16. 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 doctor as well as the hospital as the appellant-Doctor has performed his duties with reasonable skill and knowledge and has also been present during the night when the children of the complainant were admitted in emergency care of Garg Hospital. Accordingly, we find force in the contentions raised by the appellants and the impugned order of the District Commission is liable to be set aside.

17. Sequel to our above discussion, we allow the appeal of the appellants/OPs No.1 & 2 and the impugned order of the District

Commission is hereby set aside. The complaint filed by the respondents/complainants is also dismissed.

18. The appellants had deposited an amount of Rs.14,250/- at the time of filing the appeal with this Commission. This amount alongwith interest, which accrued thereon, if any, be remitted by the Registry to the appellant/OP No.1 by way of demand draft/crossed cheque, after the expiry of 45 days from the date of receipt of certified copy of this order, in accordance with law.

19. 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

August 31, 2023

(dv)