

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

(1)

First Appeal No. 27 of 2020

**Date of institution : 17.01.2020
Reserved on : 01.12.2023
Date of Decision : 13.02.2024**

Dr. Asha Garg, aged about 44 years, C/o New Delhi Hospital & Nursing Home, Jalalabad Road, Sri Muktsar Sahib
.....Appellant/OP No.1

Versus

1. Sarika aged about 37 years wife of Sh. Surinder Kumar, resident of House No.9032, Kazoor Wali Gali, Dhawan House, Sri Muktsar Sahib

...Respondent/Complainant

2. Oriental Insurance Company Ltd., 4E/14, Azad Bhawan Jhandelwalan Ext. New Delhi – 110005 through its Managing Director/Authorized Signatory.

....OP No.2

(2)

First Appeal No. 96 of 2020

Date of institution : 12.02.2020

Sarika aged about 37 years w/o Sh. Surinder Kumar, r/o H. No.9032, Kazoor Wali Gali, Dhawan House, Sri Muktsar Sahib
.....Appellant/Complainant

Versus

1. Dr. Asha Garg c/o New Delhi Hospital and Nursing Home, Jalalabad Road, Sri Muktsar Sahib.

2. Oriental Insurance Company Ltd., 4E/14, Azad Bhawan Jhandelwalan Ext. New Delhi-110005 through its Managing Director/Authorized Signatory.

....Respondents No.1&2/Opposite Parties

**First Appeals under Section 15 of the
Consumer Protection Act, 1986 against the
order dated 12.12.2019 passed by the District**

**Consumer Disputes Redressal Commission,
Sri Muktsar Sahib.**

Quorum:-

**Hon'ble Mrs. Justice Daya Chaudhary, President
Ms. Simarjot Kaur, 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 in F.A. No. 27 of 2020:-

For the appellant : Sh.Navjot Singh, Advocate with
Dr. Niraj Kumar Garg, Auth. Rep.
For respondent No.1 : Sh. H.S. Bedi, Advocate with
Ms. Sarika, in person
For respondent No.2 : Sh. B.R. Madan, Advocate

Present in F.A. No. 96 of 2020:-

For the appellant : Sh. H.S. Bedi, Advocate with
Ms. Sarika, in person
For respondent No.1 : Sh.Navjot Singh, Advocate with
Dr. Niraj Kumar Garg, Auth. Rep.
For respondent No.2 : Sh. B.R. Madan, Advocate

SIMARJOT KAUR, MEMBER :

By this common order, two appeals i.e. **First Appeal No.27 of 2020** and **First Appeal No.96 of 2020** shall be disposed off as both the Appeals are arising out of the same order. In F.A. No. 27 of 2020, **Appellant (OP No.1-Doctor)** is seeking for setting aside of the impugned order whereas in F.A. No. 96 of 2020, **Appellant (Complainant)** praying for the enhancement of the amount of

compensation as claimed in the Complaint. The facts of the case have been taken from First Appeal No.27 of 2020.

First Appeal No.27 of 2020

2. **Appellant/Opposite Party No.1-Doctor**, has filed the present appeal to challenge the impugned order dated 12.12.2019 passed by the District Consumer Disputes Redressal Commission, Sri Muktsar Sahib (in short, “the District Commission”), whereby the Complaint filed by the **Respondent No.1/Complainant-Sarika** had been **allowed**.

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

4. Briefly, the facts of the case as made out by the Respondent No.1/Complainant-Sarika in the Complaint filed before the District Commission are that when the Complainant came to know about her conception, she along with her husband approached OP No.1-Gynecologist on 18.06.2018 for her check-up. After check-up, OP No.1 prescribed some medicines to the Complainant. The Complainant felt severe pain in her lower abdominal part and decided to contact OP No.1-Doctor again in her hospital for the said problem. She visited the OP No.1 Dr. Asha Garg on 28.06.2018, 29.06.2018 and on 06.07.2018. OP No.1 got Ultrasound conducted from Madho Hospital, Sri Muktsar Sahib on 28.06.2018. Other tests like BETA HCG, +HB were also conducted on 29.06.2018 and 04.07.2018. The Complainant did not get any relief with the medicines prescribed by

OP No.1. Again on the asking of OP No.1, Ultrasound was conducted on 06.07.2018 from P.S. Bhandari Diagnostic Centre, Sri Muktsar Sahib. When the Complainant realized that the prescribed medicines could not cure her pain, on 08.07.2018 husband of the Complainant got admitted her at CMC, Ludhiana. There the Doctors after diagnosis of the condition of the patient removed both her Fallopian Tubes as the same had been damaged. The Complainant came to know that her problem was life threatening and she was not operated upon well in time by OP No.1 and the OP No.1 had not taken care of her medical problem properly. As a Gynecologist, she had failed to understand the problem as reported in Ultrasound Reports/Tests in which it had been shown that her tubes had ruptured and required immediate medical treatment to stop bleeding. In the Ultrasound Report of Madho Hospital **the findings were “Large... 2) Halmo Peritonoeus, Ruptured Ectopic”** and in the second Ultrasound, **condition was found aggravated**. The medicines prescribed by OP No.1 were for Vitamins/Iron deficiency. She had pleaded that the OP No.1 was negligent in her duty as the Doctor had failed to give the required treatment to her well in time and was also unable to understand the opinion/report given in the Ultrasound Reports. Said negligence of the OP No.1 had put her life in danger and by this act, the Complainant had to suffer a lot as she could not enjoy the happiness of motherhood in her future life. Due to the said act of OP No.1, she had faced mental trauma and had to incur extra expenses on her treatment at CMC, Ludhiana. The OP No.1 had remained deficient and negligent in service.

5. The said act of OP No.1 was not proper as per medical ethics so the Complainant had prayed in the Complaint for directing the opposite parties to pay compensation of Rs.18,00,000/- on account of medical negligence, mental trauma and future loss. The Complainant had also claimed Rs. 50,000/- as litigation cost.

6. Upon issuance of notice in the Complaint, the Appellant/ Opposite Parties filed their separate written statements. Appellant/OP No.1 in her written statement had raised certain preliminary objections that the Complaint was wholly misconceived, groundless, frivolous and vexatious. It was filed just to defame the reputation of OP No.1/Appellant. The Complainant/Respondent No.1 wanted to extort illegal money from it/her. She had no cause of action to file the present complaint. OP No.1 was a qualified, experienced and reputed Doctor in the area. On merits, it was pleaded that on 18.06.2018 when Complainant-Sarika approached OP No.1-Hospital, she was advised to get the tests conducted like Ultrasound abdomen and hemoglobin. Further she was prescribed certain medication for three days. Instead of coming after 3 days, she had visited the OP No.1 Hospital on 28.06.2018 i.e. 10 days after her first visit. She did not get Ultrasound conducted as advised. The Complainant had not followed the advice of the Doctor. On 28.06.2018 upon examination, she was advised ultrasound pelvis, which was got conducted from Madho Hospital. Said Ultrasound report reflected that her uterus was bulky and large. Also there was **large amount of fluid collection gathered in the pouch of Douglas, septal present. Impression:?? Hemoperitoneum (ruptured ectopic pregnancy).** The report

showed that the patient was hemodynamically stable and ultrasound pelvis report was equivocal. To confirm it Beta HCG, as per medical literature was advised on 28.06.2018. She was also prescribed medication on 28.06.2018 like Rebired & Polybion as routine treatment and not for tubal pregnancy. Again the patient came on 29.06.2018 with BETA HCG report which revealed a level of 835.6 mIU/ml (0.53). Her CBC levels as revealed in the report were Hb-9, TLC-9,200, platelets-327000, **which was normal**. After check-up, she was advised Beta HCG to be repeated after 48 hours which was repeated on 04.07.2018 and was not shown to the appellant/OP No.1 on that day. Thereafter, she came on 06.07.2018 with the pain in abdomen, upon her clinical examination (positive findings) per abdomen, lower abdominal tenderness was present. BETA HCG test report dated 04.07.2018 was shown to Doctor on 06.07.2018, it was 555.68 mIU/ml, which was declining. The patient was again advised ultrasound abdomen which she got done from two doctors, one from Madho Hospital and second from Dr. P.S. Bhandari. However, she did not approach the Doctor to show the USG report or for follow up/treatment. Again it was pleaded that every act had been done diligently, prudently, with utmost care and as per medical ethics. Every care had been taken during the treatment of the Complainant. As the Complainant had not approached her regularly for follow up on suggested dates, therefore, this act was the sole negligence of the Complainant/patient herself and not of the treating Doctor. The Complainant had levelled false allegations on OP No.1 but was unable to produce any evidence in support of her allegations. The

treatment was given as per the medical practice, therefore, the Complainant was not entitled for any compensation.

7. OP No.2-Oriental Ins. Com. Ltd. had filed its separate written statement by raising certain preliminary objections that the Complainant was not a consumer of OP No.2. It was also pleaded that OP No.1-Dr. Asha Garg had obtained Professional Indemnity Policy bearing No.272200/48/2019/4009 for a sum of Rs.5,00,000/- for any one accident, with certain exceptions. Validity of the said policy was w.e.f. 01.06.2018 to 31.05.2019. It was pleaded that no such claim was lodged. To conduct an investigation for any such claim, the same is required to be lodged as per the terms and conditions of the policy. The liability under the policy was limited, subject to certain exceptions and requirements of the policy. Since no claim was intimated, therefore, no liability could be fastened upon OP No.2. It was prayed that the complaint be dismissed against it.

8. 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 all the sides, the complaint filed by the Complainant was allowed by the District Commission vide order dated 12.12.2019. The relevant portion of said order as mentioned in Para-18 is reproduced as under:

“18. In view of the discussion made above, present complaint is allowed. Although loss of complainant cannot be compensated with the money but opposite party no.1 is directed to pay Rs.2,50,000/- as compensation to the complainant alongwith Rs.54,762/- which she paid in the CMC, Ludhiana for her treatment. The opposite party no.1 is

also directed to pay Rs.10,000/- as litigation expenses to the complainant. As per reply filed by opposite party no.2, the profession of opposite party no.1 is insured with opposite party no.2 vide policy No.272200/48/2019/4009. So, opposite party no.1 is at liberty to recover the amount awarded in this order from the opposite party no.2/Insurance Company by following due process of law. This order is directed to be complied with within a period of 30 days from the date of receipt of copy of this order, thereafter, complainant is entitled for interest @ 9% per annum on the entire amount.”

9. The aforesaid order dated 12.12.2019 passed by the District Commission has been challenged by the **appellant/OP No.1** by way of filing Appeal i.e. **F.A. No. 27 of 2020** being the treating Doctor/Hospital and other appeal i.e. **F.A. No.96 of 2020** has been filed by the Complainant for enhancement of the amount of compensation. The parties have raised number of arguments and grounds in their appeals.

10. **Mr. Navjot Singh, Advocate, learned counsel for the Appellant** in F.A. No. 27 of 2020 has submitted that the order passed by the District Commission was against the factual position and medical record available on the file. The Complainant had no ground to file the present complaint and the same had been filed to defame the reputation of OP No.1 as well as to extort illegal money from the appellant/OP No.1. The pleas raised by OP No.1 had not been duly considered by the District Commission in right perspective. The report of the Committee appointed by the Civil Surgeon under the instructions of Deputy Commissioner, Sri Muktsar Sahib had not been considered by the District Commission, wherein it has been clearly

stated that there was no negligence in the treatment. **“Complainant has failed to explain in his complaint how the treatment given by the OP No.1 was against the medical ethics”**. Therefore, no negligence can be fastened upon OP No.1 as she had administered the treatment as per the medical reports/tests of the Complainant. It was orally argued by the learned counsel for the appellant that when Ultrasound Report of Madho Hospital showed ruptured ectopic pregnancy with query mark, the appellant/OP No.1 immediately advised certain investigations to the Complainant. The advice given by the Doctor had not been followed by the Complainant. The Discharge summary/report of CMC, Ludhiana did not mention **Ruptured Ectopic Pregnancy**. In support of his contentions, relevant medical literature had been submitted to show that there was no medical negligence on the part of the OP No.1. It was prayed that there was no negligence in the treatment and thus, the complaint be dismissed.

11. **Mr.H.S. Bedi, Advocate, learned counsel for the Respondent No.1/Complainant** has submitted that the treatment given by the OP No.1 was not proper and the Complainant did not get any relief from the medicines prescribed by OP No.1 inspite of numerous visits. Many tests were conducted but the OP No. 1 had not correctly understood the opinion given in these reports. However, the condition of the Complainant deteriorated day by day and the pain was unbearable. Later on when the Complainant could not be cured of her problem, she was taken to CMC Hospital, Ludhiana on

08.07.2018. She was operated upon in the emergency and both her fallopian tubes were removed. Due to the negligence of OP No.1, Complainant had to suffer a lot and she remained bed ridden for several days. Due to such act of OP No.1, the Complainant had to undergo surgery at CMC, Ludhiana and resultantly, she was unable to conceive naturally for life. The only option available for having a baby is IVF Treatment. OP No.1 had not treated the Complainant for ruptured ectopic pregnancy, whereas from ultrasound report dated 28.06.2018 the treating Doctor came to know about the said problem in the beginning only. **OP No.1 Doctor herself admitted in her cross examination that if the BHCG level is below 1500 MI Units then use of injection of methoxtraxate upon patient, can stop the growth of the embryo in the fallopian tube.** Said statement has clearly proved that the Doctor had not undertaken the immediate steps to cure the problem of the Complainant as her BHCG level was below 1500 MI Units. The compensation amount awarded by the District Commission was not just and proper and F.A. No. 96 of 2020 had been filed to enhance the same as prayed in the Complainant because the Complainant had to suffer with life time problem due to negligent treatment of OP No.1.

12. **Mr. B.R. Madan, Advocate, learned counsel for Respondent No.2/Ins. Co.** had argued that the Complaint was allowed only against OP No.1-Doctor/Hospital. Liberty was given to OP No.1 to recover the amount from this Respondent/OP No.1. There was no direct privity of contract between the Insurance

Company and the Complainant. It was admitted that Dr. Asha Garg had obtained Professional Indemnity Policy with sum the assured of Rs.5,00,000/- and validity of the same was w.e.f. 01.06.2018 to 31.05.2019. However, no claim was lodged and if any filed, the same could be considered as per terms and conditions of the insurance policy. The liability, if any, under the policy term was limited, subject to certain exceptions and fulfillment of requirements of the policy. No direction was given to OP No.2 to pay any amount to the Complainant.

13. We have heard the arguments of learned counsel for the parties and have also carefully perused the impugned order passed by the District Commission, written arguments submitted by the parties and all relevant documents available on the file. We have also gone through the judgments cited by both the parties.

14. It is not disputed that on her conception, the Complainant had approached OP No.1 on 18.06.2018, who was a Gynecologist. OP No.1 had checked the Complainant and prescribed certain medicines but the Complainant did not get any relief. Thereafter, upon her visit to the Doctor again on 28.06.2018, 29.06.2018 and 06.07.2018 she got Ultrasounds conducted from Madho Hospital, Sri Muktsar Sahib and P.S. Bhandari Diagnostic Centre, Sri Muktsar Sahib, respectively. To diagnose any other problem during the said period some tests like BHCG, +HB were also conducted. It has been alleged that after the treatment of OP No.1-Doctor, the Complainant did not get any relief as the Doctor had only prescribed the medicines

for Vitamins/Iron deficiency. The main allegation of the Complainant is that OP No.1, being the Gynecologist had failed to understand her problem even after going through the Ultrasound Reports and other tests. OP No.1 was negligent in dealing with her case and had not taken proper and necessary steps well in time. Due to said negligence/delay on the part of OP No.1, she had to suffer a lot as her both the Fallopian Tubes got damaged and the same were removed at CMC, Ludhiana in an emergency operation. The Complainant had taken the assistance of Dr. Jiwanjot Kaur, for an expert opinion. The said Doctor was experienced in the field of Gynecology. After going through her medical record, she had opined that in not opting for proper treatment of ruptured ectopic after 29.06.2018 by the treating Doctor it was a clear cut case of negligence and delay had occurred in treatment. During the course of arguments, the Complainant-Ms. Sarika had pleaded her case along with the learned counsel.

15. On the other hand, the appellant/OP No.1-Doctor/Hospital had taken the stand that the Complainant had neither followed her advice to take the medicines properly nor she got her required tests conducted timely.

16. Now the disputed issue in the said case is as to whether the treating Doctor had failed to understand the reports of Ultrasound, other test and had failed to give immediate treatment. Whether this act of the treating Doctor-OP No.1 amounts to negligence in its services and the Complainant had suffered due to said act or not?

17. To ascertain as to whether there was any negligence in the treatment of OP No.1. Besides the written submissions/oral arguments of the parties, we have gone through the documents related to the medical history of the Complainant/Respondent No.1 available on the case file as well as medical literature provided by the parties. The following documents on the case file have been perused:-

S.No.	Ex. No.	Page No.	Document Details
1.	C-1	71-77	OPD Slip dated 18.6.18 of New Delhi Hospital & Nursing Home, Jalalabad Road, Sri Muktsar Sahib
2.	C-2	81-83	Madho Hospital, Ultrasound Pelvis Report
3.	C-3	85-87	Beta Human Chorionic Gonadotropin (hCG) Test Report of Modern Clinical Singla Lab (P.85) Dr. Lal Path Labs Test Report of HCG, BETA, TOTAL, PREGNANCY, SERUM @ (CMIA) (P.87)
4.	C-4 & 5	179-183	Scanning Report of P.S. Bhandari Diagnostic Centre
5.	C-3	91-178, 185-187	Medical Treatment Record, Discharge Summary of Christian Medical College, Ludhiana
6.	CW-4	193-201	Statement and Affidavit of Dr. Jiwan Jot Kaur, MS Obst. And Gynae (Retired)
7.		203-209	Complaint given by Surinder Kumar, husband of complainant to D.C. Sri Muktsar Sahib & Others
8.	CW-4	239-243	Statement/Cross-examination of Dr. Jiwan Jot Kaur
9.		265-271	Statement/Cross-examination of Dr. Suman Kumar, DIO, Office of Civil Surgeon, Taran Taran
10.		275-281	Statement/Cross-examination of Dr. Asha Garg
11.			Literature of American Family Physician on Diagnosis and Management of Ectopic Pregnancy
12.			Literature on Ruptured ectopic pregnancy
13.			Punjab Medical Council order dated 05.03.2021

18. The medical record of the Complainant as available on the file has clearly reflected that the Urine Pregnancy Test Report of Reema Diagnostic Centre (P.75) was positive and on the same day, the Complainant had approached OP No.1 Hospital/Doctor, who after examining her initially advised USG of whole abdomen but on seeing

the same, it was found that there was crossed marked on the said advice/circle(Ex.C-1). On 28.06.2018 (Ex.C-2), the Complainant had got her Ultrasound Pelvis conducted from Madho Hospital, wherein it was reported **“ruptured ectopic pregnancy found”**. The Complainant had shown the said report dated 28.06.2018 to the Doctor and it was recorded in the Ultrasound report *‘kindly review’* (Ex.C-2). The Radiologist after review on 06.07.2018 had reiterated the same report. On the advice of OP No.1, the Complainant had also got her Beta Human Chorionic Gonadotropin (BHCG) test conducted, wherein her BHCG level was recorded as 835.6. For the sake of having second opinion, the Complainant had got another Ultrasound done from P.S. Bhandari Diagnostic Centre, wherein again it was reported **Pelvic Mass (CH. Ectopic Nodal Mass)**. The Complainant had remained in contact with OP No.1-Doctor since she had started suffering from severe pain. However, with the treatment of OP No.1 she did not get any relief. The husband of the Complainant had decided to admit her in CMC, Ludhiana on 07.07.2018 as her condition was deteriorating. Said Hospital had also diagnosed the same problem of the Complainant and informed her relatives that her condition was serious and both her fallopian tubes needed to be removed immediately as an emergency measure. The risk of the surgery was also informed to them. Furthermore they were told that the Complainant would never be able to conceive in future. Accordingly, the surgery of the Complainant was conducted on 08.07.2018.

19. To substantiate her case, the Complainant had taken assistance of Dr. Sunita Goyal, Professor & Head of Department, CMC, Ludhiana as CW-2 (Page 53 of LCR), who had treated her. Said Doctor in her statement before the District Commission had stated that after diagnosis of the problem of the patient, it was necessary to conduct surgery immediately. In her statement, she had further stated that as per her opinion surgery could have been conducted much before 08.07.2018 i.e. the day her surgery was done in CMC, Ludhiana. Lastly, she has stated in her statement that she cannot comment on the previous treatment given to the patient.

20. In support of her allegations, the Complainant had also taken the assistance of one Dr. Jiwanjot Kaur, M.S. Obst. And Gynae at Medical College, Faridkot (now retired), as an expert. The said Doctor had vast experience of 23 years in the same field. The said Doctor in her affidavit had stated that she had carefully gone through the medical record shown to her by Patient Sarika/Complainant. She had stated that Ultrasound report dated 28.06.2018 of Madho Hospital, Mukatsar had **confirmed haemoperitoneum corresponding to history and test as ruptured ectopic pregnancy**. She had further stated that at that time patient was required to be guided about seriousness of her condition. She should have been referred to an expert in the field or immediate surgery should have been advised. Such cases could not be taken lightly. Her ultrasound report needed immediate hospitalization. In such case the patient was not given treatment for 10 days in the OPD. In her opinion, not opting for immediate treatment for ruptured ectopic and

unnecessary delay in treatment for 10 days **was a clear cut case of negligence**. The treating Doctor had to co-relate the said symptoms with the clinical history of the patient even if there was any doubt about the test report/Ultrasound. In the cross-examination of Dr. Jiwan Jot Kaur, the counsel for OP No.1's was not able to prove that she had done any out of the way favour to the Complainant during her submission or in tendering affidavit before the District Commission (Page 239 of LCR).

21. Dr. Suman Kumar, DIO, office of Civil Surgeon, Taran Tarn (Page 265 of LCR) had also been cross-examined by the Counsel for the Complainant. Said Doctor had not commented on the treatment given by the OP No.1 as to whether the same was right or wrong. Rather on most of the places, he had replied that '***I cannot say or I do not know***', whereas he himself had constituted the Medical Board to inquire into the complaint of the husband of the Complainant when it was referred to him by the Deputy Commissioner, Sri Muktsar Sahib. Said Doctor had given only a general opinion. Such statement/cross examination cannot be treated as an authentic document in the eyes of law.

22. Appellant/OP No.1 in her stand could only say that the Complainant had not followed her instructions and also had not approached her for follow up on the given dates. **She had admitted that she had given the medicines only for the symptoms and not for the treatment for "RAPTURED ECTOPIC PREGNANCY"**. She had further admitted that **the medicines prescribed by her could not improve the condition of Ruptured Fallopian Tubes**. She had

further stated that **she could not say in YES or NO, as to whether the ruptured ectopic pregnancy was a medical emergency.**

23. The medical literature as provided by the Appellant cannot be taken as a ground for not assessing the emergency condition of the patient. The Doctors have to co-relate the clinical condition of the patient with the tests/reports. They are to take decision for taking an urgent measure to treat the patient even if it is not as per the medical literature. The literature submitted by the Appellant/OP No.1 itself says that *ectopic pregnancy is high risk condition that occurs in 1.9 percent of reported pregnancies. The condition is the leading cause of pregnancy-related death in the first trimester. If a woman of reproductive age presents with abdominal pain, vaginal bleeding, syncope, or hypotension, the physician should perform a pregnancy test. If the patient is pregnant, the physician should perform a work-up to detect possible ectopic or ruptured ectopic pregnancy. Prompt ultrasound evaluation is key in diagnosing ectopic pregnancy. Equivocal ultrasound results should be combined with quantitative beta subunit of human chorionic gonadotropin levels. If a patient has a beta subunit of human chorionic gonadotropin level of 1,500 mIU per mL or greater, but the transvaginal ultrasonography does not show an intrauterine gestational sac, ectopic pregnancy should be suspected.* In both the BHCG reports of the Complainant, her BHCG Units were less than 1500 mIU i.e. 835.6 mIU/ml (0.53) on 29.06.2018 and 555.68 mIU/ml on 04.07.2018. *In a normal pregnancy, the BETA-HCG level doubles every 48-72 hours until it reaches 10,000-20,000 mIU/ml. In ectopic pregnancies, BETA-HCG*

levels usually increase less. Meaning thereby that the BETA-HCG levels as reported were decreasing instead of increasing (Source:Google). It has been observed that the treating Doctor had failed to take into consideration the deteriorating medical/clinical condition of the Complainant and had not taken emergency measure i.e. operating upon her which was required.

24. The Respondent No.1/Complainant had supplied the medical literature under the caption of "ActionSTAT" by Deborah Young wherein it has been clearly mentioned about "**what you must do immediately in the case of Ruptured Ectopic Pregnancy**". As per said literature in case the Ultrasonography has confirmed a ruptured ectopic pregnancy, so Doctor should prepare for immediate surgery. Without prompt, appropriate treatment, patient is at risk for hypovolemic shock and death. Meaning thereby ectopic pregnancy is a high risk/life threatening medical condition. Any life threatening condition is required to be treated with utmost emergency, which OP No.1-Doctor had failed to follow in the present case.

25. The District Commission has dealt with the aforesaid subject in detail. Before reaching the right conclusion with respect to medical negligence, the District Commission had examined a number of experts/Doctors of the concerned field as discussed above in paras No.19 & 20. The DIO, who was a part of the Committee as formulated by the Civil Surgeon pursuant to the complaint lodged by the husband of the Complainant with the Deputy Commission, had failed to substantiate as to whether there was any medical negligence on the part of OP No.1. His submissions had been vague as discussed in

para No.21. OP No.1-Doctor had admitted in her cross examination that **medicines had been given only for symptoms and not for the treatment for RAPTURED ECTOPIC PREGNANCY.** Therefore, it is clear that due to delay in dealing with the medical condition of the patient, OP No.1 had failed to take immediate necessary step in operating upon the Complainant which has resulted into the loss of the fallopian tubes of the patient, for which the OP No.1/Doctor is responsible. For the said action of the OP No.1, the Complainant/Respondent No.1 had been deprived of her happiness of becoming a mother. For the reasons and circumstances as mentioned above, **it has clearly emerged that the treating Doctor i.e. OP No. 1 remained negligent and deficient in her services.**

26. In view of the above discussion, it is clear that the order of the District Commission is detailed one, every material aspect of the said case has been discussed in detail while deciding upon the medical negligence on the part of OP No.1-Dr. Asha Garg. The Appellant-OP No.1 could not tender any cogent evidence to exonerate herself from the allegations of medical negligence on her part. Her only stand is that the Complainant had not followed her medical advice in time, which is contrary to the facts that have manifested in the above discussion. Therefore, First Appeal No. 27 of 2020 (Dr. Asha Garg Vs. Sarika & Anr.) filed by the appellant/OP No.1 **is dismissed, the Appellant/OP No.1-Dr. Asha Garg cannot be exonerated from her conduct of medical negligence. No ground is made out which can prove that the medical treatment given by OP No.1 was administered as per the clinical condition**

of the patient. Therefore, the order of the District Commission **is upheld** with respect to medical negligence of OP No.1, which has been proved beyond doubt.

27. The appellant had deposited a sum of Rs.25,000/- at the time of filing of the appeal and Rs.2,89,762/- in compliance with the order dated 11.02.2020, with this Commission. Said amount, along with interest which has accrued thereon, if any, shall be remitted by the Registry to the District Commission forthwith. The respondent No.1/Complainant 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.

FIRST APPEAL NO. 96 OF 2020

28. We also have to examine the grounds made by the Complainant/Appellant in F.A. No. 96 of 2020 for the enhancement of the amount of compensation awarded by the District Commission.

29. The Complainant had pleaded in her appeal that due to negligent act of OP No.1 she had to go through physical suffering as well as mental depression. She could not conceive naturally during her life time as her reproductive system had been effected due to removal of her Fallopian Tubes. The only remedy left with her to become a mother is to undergo/try IVF Treatment. The said treatment is a costly treatment, hence, the compensation awarded by the District Commission be enhanced to Rs.18,00,000/-.

30. Counsel for OP No. 1/Respondent No.1 has been unable to rebut the aforesaid factual position of the Complainant with respect

to her suffering a lot, IVF treatment is only option available with the Complainant to enjoy motherhood.

31. It is clear from the detailed discussion in F.A. No. 27 of 2020 that OP No.1-Dr. Asha Garg had not exercised due diligence in the treatment of high risk medical condition of the Complainant. She had failed to co-relate the findings of USG and other test reports of the Complainant with her deteriorating clinical condition. Her line of treatment was not prompt enough to deal with the medical emergency of the Complainant. This fact has sufficiently been supported by the expert opinion given by Dr.Jiwanjot Kaur, M.S. Obst. and Gynae at Medical College, Faridkot (now Retired) and Dr. Sunita Goyal, MD, Professor and Head of Department, CMC Ludhiana. Had the Complainant been treated with medication like Methotrexate, which stops Cell growth and dissolves existing Cells, she would have been saved from her suffering. Meaning thereby early treatment could have saved further damage to her Fallopian Tubes and the Complainant could have become mother with natural conception. Also even in case the emergency surgery had to be conducted upon the patient due to ectopic pregnancy with heavy bleeding, it could have been done laparoscopically or through abdominal incision (Laparotomy). **In certain cases, the fallopian tube can be saved even on removal of ruptured tube.** (Source: Google) Had the surgery been conducted well in time, the Complainant could have been saved from damage of her another Fallopian Tube. It is a settled principle that the interest and welfare of

the patient is paramount to the medical professionals while providing treatment which had not happened in the present case.

32. Due to negligence of the Doctor, the reproductive system of the Complainant had been severely damaged and her fallopian tubes had to be removed during an emergency surgery. The only option left to her to enjoy the happiness of motherhood was only IVF treatment. No amount of compensation can substitute the suffering of the Complainant. We are of the considered view that the amount of compensation so awarded by the District Commission is on the lower side so it needs to be enhanced to convert the dream into reality by awarding the adequate compensation to meet out the future medical expenses for treatment. The Complainant also needs to be compensated for causing the physical and mental suffering due to action/inaction on the part of Doctor/OP No.1.

33. In view of the above circumstances, we are of the opinion that the Appellant/Complainant is entitled for enhancement of amount of compensation. Accordingly, the order passed by the District Commission requires modification. The second appeal i.e. F.A. No. 96 of 2020 is **partly allowed** by enhancing the amount of compensation from Rs.2,50,000/- to **Rs.5,00,000/-**. Remaining part of the order of the District Commission **is upheld**. The said order of the District Commission with respect to expenditure incurred at DMC, Hospital, Litigation Fee, Interest and liberty to claim amount from Ins. Co. is reproduced below:-

“....alongwith Rs.54,762/- which she paid in the CMC, Ludhiana for her treatment. The opposite party no.1 is also

directed to pay Rs.10,000/- as litigation expenses to the complainant. As per reply filed by opposite party no.2, the profession of opposite party no.1 is insured with opposite party no.2 vide policy No.272200/48/2019/4009. So, opposite party no.1 is at liberty to recover the amount awarded in this order from the opposite party no.2/Insurance Company by following due process of law. This order is directed to be complied with within a period of 30 days from the date of receipt of copy of this order, thereafter, complainant is entitled for interest @ 9% per annum on the entire amount.”

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

35. The appeals could not be decided within the statutory period due to heavy pendency of court cases and pandemic of COVID-19.

**(JUSTICE DAYA CHAUDHARY)
PRESIDENT**

**(SIMARJOT KAUR)
MEMBER**

February 13, 2024.
as