

## Sarojani vs Dr. B. Narayan on 2 July, 2025

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI

RESERVED ON: 12.06.2025

PRONOUNCED ON: 02.07.2025

REVISION PETITION NO. 2599 OF 2019

(Against the Order dated 07.11.2019 in Appeal No. 1075/2008 of the  
U.P. State Consumer Disputes Redressal Commission, Lucknow)

WITH

IA/19726/2019, IA/1840/2024, IA/1841/2024, IA/13689/2024

(Legal aid, Legal Heirs, Condonation of delay, Early Hearing)

Smt.Sarojani

W/o Shri Harilal

R/o Mohalla, Patharkata Chauraha,

PS Kotwali, District Fatehpur, U.P.

... Petitioner

Versus

1. (Deleted vide order dated 12.06.2025)

2. Mohd. Zubair

Near Railway Station (City Side),

Dr. Katzu Road, Behind Hotel Sameer,

Allahabad.

... Respondents

BEFORE:

HON'BLE AVM J RAJENDRA AVSM VSM (Retd.), PRESIDING MEMBER

HONBLE MR. JUSTICE ANOOP KUMAR MENDIRATTA, MEMBER

For Petitioner : Mr. Vijay Pal Sharma, Amicus Curiae

For Respondent No.1 : Deleted

For Respondent No.2 : Mr. Nikhil Jain, Advocate

JUDGMENT

AVM J RAJENDRA AVSM VSM (Retd.), PRESIDING MEMBER

1. The present Revision Petition has been filed under Section 58 of the Consumer Protection Act, 2019 (the "Act") against the Order of U.P. State Consumer Disputes Redressal Commission („State Commission ") dated 07.11.2019 in First Appeal No. 1075/2008 allowing the appeal of the Opposite Party (OP) and setting aside the decision of the District Consumer Dispute Redressal Forum Allahabad („District Forum ") dated 03.05.2008 in CC No. 284/2005.

2. For convenience, the parties are referred to as placed in the original Complaint filed before the District Forum.

3. Brief facts of the case as per the Complainant, are that at about 01:00 AM on 24.08.2004, she brought her daughter to the OP s nursing home, with complaints of stomach pain, fever and an intestinal ulcer. She deposited Rs.5,000 towards initial treatment. The patient was admitted to the OP hospital for treatment. It is the allegation of the Complainant that, after administering her daughter a glucose injection, the Complainant was told to deposit an additional sum of Rs.12,000 on the ground that her daughter required an urgent surgical procedure. As the Complainant was unable

to furnish the said amount immediately, her daughter was thereafter administered a life-expired glucose injection and a poisonous injection, which allegedly led to rapid deterioration in her daughter's medical condition, ultimately resulting in her death in the morning hours of 25.08.2004. The Complainant further alleged that her request to meet OP-1 to ascertain the reasons was denied. Further, despite her repeated demands, she was not provided with the treatment records or any related information. Aggrieved by the alleged deficiency in service and medical negligence, she approached the Consumer Forum.

4. On being issued notice, OP filed its written statement, and admitted that the Complainant's daughter, Ms Rubi, was admitted to its nursing home on 24.08.2004 and that Rs.5,000 was deposited towards her treatment. However, it was contended that the Complainant failed to deposit the additional amount of Rs.12,000 and to arrange two units of blood required for her daughter's treatment and she voluntarily chose to take the patient out of the nursing home. The OPs further contended that a refund of Rs.4,560 was issued to the Complainant at the time of discharge of the patient. The OPs asserted that the patient was alive when she left the premises. OP denied any liability for the events that occurred thereafter and asserted that no act of medical negligence was committed by the doctors attending to the patient. It was submitted that the allegations levelled by the Complainant were based on incorrect facts, and accordingly, the OP prayed for dismissal of the complaint.

5. The learned District Forum vide Order dated 03.05.2008, dismissed the complaint with the following finding:

"12. The complainant proved her complaint by way of affidavit and proved that she had deposited Rs. 5,000/- in the nursing home and proper treatment was done due to not meeting the demand of additional Rs. 12,000/-. The O.P. done the negligence due to which Kumari Rubi died. Certainly the O.P. damaged the holy profession of the doctor. Doctor is treated as God who gives life but O.P. made the medical negligence which resulted the casual death of Kumari Rubi and they O.P. found guilty for the medical negligence.

13. The case citation AIR 1996, Supreme Court Cases Page no. 550, titled as Indian Medical Association Versus B.P. Sangha. According to this citation Opposite Parties are found guilty are medical negligence due to which Kumari Rubi died. In such circumstances the complainant is entitled for compensation and complaint is liable to decreed.

ORDER The complaint of the complainant is decreed, Opposite Party is directed to pay Rs.2,00,000/- on account of compensation and Rs.1000/- as litigation cost within two months from today and interest @ 8% per annum after two months till the date of payment."

6. Being aggrieved by the District Forum order, the OP filed Appeal No.1075/2008 and the State Commission vide Order dated 07.11.2019 allowed the Appeal and set aside the District Forum order,

with the following observations:

"In our opinion, if a person does not get desired results, this cannot be a sole ground to establish that the doctor have not performed their duty or they have been negligent in the treatment. Considering the facts of the case and without any Specialist's opinion it is difficult to conclude that the doctors have committed medical negligence.

The copy of the investigation report done by the SP Fatehpur and SSP Allahabad is available in the file and it is found that the case of the complainant is untrue.

From the perusal of the file it is clear that the Learned District Forum has erred in passing the order without considering the complete evidence in the case.

As a result, the present appeal is allowed.

Order The present appeal is allowed and the impugned judgment and order dated 03/05/2008 passed in complaint no. 284 year 2005 by District Consumer Disputes Redressal Forum, Allahabad is set aside."

7. Dissatisfied by the Order of the State Commission, Complainant filed the present Revision Petition before this Commission praying:

a) The State Commission, Lucknow order dated 07/11/2019, quashed and Revision be allowed according to the Complaint

b) Pass any other order which this Commission may deem fit and proper in the facts and circumstances of this case.

8. The learned counsel for the Complainant reiterated the facts of the case and argued that the Complainant's daughter was admitted to Happy Nursing Home at around 12:30 AM on the intervening night of 24th/25th August 2004 and expired in the early morning hours on the same day at about 5:00 AM. He asserted that, the doctor of OP nursing home placed the dead body of Kumari Rubi outside the nursing home premises and, despite her repeated requests the Complainant was denied access to the relevant medical documents concerning her daughter's treatment. It was further argued that, under the distressing circumstances and being in no position to engage in legal formalities at that time, the Complainant took the body of her deceased daughter to her residence and performed cremation. The learned counsel assailed the findings of the State Commission, contending that the State Commission failed to appreciate the reasoned findings of the District Forum. He argued that several material aspects were overlooked by the State Commission while setting aside the said order. It was specifically contended that the State Commission did not consider the finding of the District Forum regarding the absence of any documentary evidence or receipt placed on record by the OP to support its claim of refund of Rs. 4,560, nor was such claim substantiated by any affidavit. It was also argued that the copy of the investigation reports prepared

by the Superintendent of Police, Fatehpur and the Senior Superintendent of Police, Allahabad, were never placed on record before the District Forum and, therefore, any reliance on such documents at the stage of Appeal before the State Commission was impermissible, as records not forming part of the proceedings before the District Forum could not be considered for the first time before an appellate authority. He asserted that the Revision Petition be allowed in the interest of justice and the reasoned order of the District Forum, Allahabad be restored.

9. Per contra, the learned counsel for OP-2 argued that the revisional jurisdiction of this Commission was limited in scope and could be exercised only in cases involving material irregularity or jurisdictional error, none of which had been demonstrated by the Complainant. It was contended that OP 2 was merely the proprietor of the premises in which the nursing home was situated and was neither a medical practitioner nor part of the nursing home staff, and therefore bore no responsibility in relation to the alleged incident. It was further submitted that the Complainant's daughter was brought to the nursing home of OP-1 at about 00:30 AM on 25.08.2004, suffering from acute stomach pain, intestinal ailments, and fever. She was accompanied by her brother, Shri Anil Kumar, who was informed to deposit Rs. 5,000 towards immediate treatment involving glucose administration. For the proposed operation, he was required to arrange Rs.12,000 and two units of blood. Upon failing to procure the same, Shri Anil Kumar requested the discharge of the patient. It was pointed that he gave a written statement on the back of the bed-head ticket, acknowledging that he was taking the patient on his own volition and responsibility. A refund of Rs.4,560 out of the deposited amount was made to him, after deducting Rs.440 for treatment already administered. It was asserted that no death occurred in the nursing home and that the Complainant failed to establish any instance of negligence, deficiency in service, or improper treatment. He maintained that all necessary first aid was given to the patient and that the order passed by the State Commission was based on appreciation of the evidence on record, and accordingly, prayed that the complaint be dismissed.

10. We have examined the pleading and associated documents placed on record, including the order of the learned District Forum and the learned State Commission and rendered thoughtful consideration to the arguments advanced by learned counsels for both the parties.

11. It is not in dispute that the patient was admitted to Happy Nursing Home in the early hours of 25.08.2004, around 12:30-1:00 AM, with complaints of abdominal pain, vomiting, breathlessness, and a history of fever for the preceding ten days. She was examined and diagnosed with enteric perforation accompanied by septicaemia caused due to rupture of the intestines. It is further admitted that an initial sum of Rs.5,000 was deposited by the Complainant for treatment and that glucose was administered as part of the preliminary care. It is also an admitted position that the nursing home demanded additional sum of Rs.12,000 along with two units of blood for performing the required surgery. The OP contended that, due to the Complainant's inability to arrange the requisite amount and blood units, the patient was voluntarily discharged by her brother, and a refund of Rs.4,560 was issued after deducting Rs. 440 towards treatment charges, and that patient was alive when she left the premises. The Complainant, however, alleged that despite informing the nursing home of her financial incapacity, the patient was administered an expired glucose injection, which led to a rapid deterioration of her condition and her ultimately death. She further alleged that

the conduct of the treating doctors was negligent and inhumane, amounting to deficiency in service, while the OPs deny any negligence and assert that the patient was taken away voluntarily and no death occurred in the nursing home

12. The learned District Forum held the OPs liable for negligence and deficiency in service. It noted that by way of affidavit, the Complainant proved that Rs.5,000 was deposited for the treatment of the patient and that proper medical attention was denied solely due to her inability to pay an additional Rs.12,000. It further observed that no receipt or documentary proof of refund of Rs.4,560 was furnished by the OPs nor was any supporting affidavit filed to that effect. In its findings, the District Forum made strong remarks on OP doctors' conduct observing that their negligence had caused the untimely and avoidable death, bringing disrepute to the noble medical profession. However, the State Commission took a contrary view and set aside the District Forum order. It held that the District Forum failed to consider the totality of evidence on record, including absence of expert opinion or specialist report to substantiate the allegation of negligence. It observed that adverse medical outcome alone could not be the sole basis for establishing negligence unless corroborated by credible and independent evidence. It was also noted that the investigation reports placed on record at the stage of appeal contradicted the Complainant's version and that the complaint was not supported by cogent evidence of wilful negligence in the treatment. Concluding that the District Forum findings were based on an erroneous appreciation of facts, the State Commission had allowed the appeal and dismissed the complaint.

13. As regards consideration allegations involving matters of medical negligence, the settled legal position as enunciated by the Hon'ble Supreme Court in *Kusum Sharma and Ors. vs. Batra Hospital and Medical Research Centre and Ors.*, (2010) 3 SCC 480 has laid down the following principles:

"94. On scrutiny of the leading cases of medical negligence both in our country and other countries specially United Kingdom, some basic principles emerge in dealing with the cases of medical negligence. While deciding whether the medical professional is guilty of medical negligence following well known principles must be kept in view:

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.

95. In our considered view, the aforementioned principles must be kept in view while deciding the cases of medical negligence. We should not be understood to have held that doctors can never be prosecuted for medical negligence. As long as the doctors have performed their duties and exercised an ordinary degree of professional skill and competence, they cannot be held guilty of medical negligence. It is imperative that the doctors must be able to perform their professional duties with free mind."

14. In Jacob Mathew vs. State of Punjab, (2005) 6 SCC, the Hon ble Supreme Court while dealing with negligence as tort referred to the Law of Torts, Ratanlal and Dhirajlal, (24th Edn., 2002 edited

by Justice G.P. Singh) and noted that:

"Negligence is the breach of a duty caused by the 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. Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or property. ... the definition involves three constituents of negligence: (1) A legal duty to exercise due care on the part of the party complained of towards the party complaining of the former's conduct within the scope of the duty; (2) breach of the said duty; and (3) consequential damage. Cause of action for negligence arises only when damage occurs; for, damage is a necessary ingredient of this tort."

15. As regards the burden of proof in such cases of medical negligence, in C.P. Sreekumar (Dr.), MS (Ortho) v. S. Ramanujam, (2009) 7 SCC 130, the Hon ble Supreme Court had observed:

"37. We find from a reading of the order of the Commission that it proceeded on the basis that whatever had been alleged in the complaint by the respondent was in fact the inviolable truth even though it remained unsupported by any evidence. As already observed in Jacob Mathew case \[(2005) 6 SCC 1: 2005 SCC (Cri) 1369] the onus to prove medical negligence lies largely on the claimant and that this onus can be discharged by leading cogent evidence. A mere averment in a complaint which is denied by the other side can, by no stretch of imagination, be said to be evidence by which the case of the complainant can be said to be proved. It is the obligation of the complainant to provide the facta probanda as well as the facta probantia."

16. Likewise, in PGIMER Chandigarh vs. Jaspal Singh, (2009) 7 SCC 330, the Court emphasized:

"23. It needs no emphasis that in the medical negligence actions, the burden is on the claimant to prove breach of duties, injury and causation. The injury must be sufficiently proximate to the medical practitioner's breach of duty. In the absence of evidence to the contrary adduced by the opposite party, an interference of causation may be drawn even though positive or scientific report is lacking"

17. It is also relevant to note the decision in Savita Garg (Smt.) vs. Director, National Heart Institute, (2004) 8 SCC 56, which provides:

"Once an allegation is made that the patient was admitted in a particular hospital and evidence is produced to satisfy that he died because of lack of proper care and negligence, then the burden lies on the hospital to justify that there was no negligence on the part of the treating doctor or hospital. Therefore, in any case, the hospital is in a better position to disclose what care was taken or what medicine was administered to the patient. It is the duty of the hospital to satisfy that there was no lack of care or

diligence. The hospitals are institutions, people expect better and efficient service, if the hospital fails to discharge their duties through their doctors, being employed on job basis or employed on contract basis, it is the hospital which has to justify and not impleading a particular doctor will not absolve the hospital of its responsibilities."

18. In *Devarakonda Suryasesha Mani v. Care Hospital, IV (2022) CPJ 7 (SC)*, the Supreme Court held:

"..2. Unless the appellants are able to establish before this Court any specific course of conduct suggesting a lack of due medical attention and care, it would not be possible for the Court to second-guess the medical judgment of the doctors on the line of medical treatment which was administered to the spouse of the first appellant. In the absence of any such material disclosing medical negligence, we find no justification to form a view at variance with the view which was taken by the NCDRC. Every death in an institutionalized environment of a hospital does not necessarily amount to medical negligence on a hypothetical assumption of lack of due medical care."

19. In *M.A Biviji v. Sunita & Ors., 2023 LiveLaw (SC) 931*, the Hon ble Supreme Court observed that:

"38. To hold a medical practitioner liable for negligence, a higher threshold limit must be met. This is to ensure that these doctors are focused on deciding the best course of treatment as per their assessment rather than being concerned about possible persecution or harassment that they may be subjected to in high-risk medical situations. Therefore, to safeguard these medical practitioners and to ensure that they are able to freely discharge their medical duty, a higher proof of burden must be fulfilled by the complainant. The complainant should be able to prove a breach of duty and the subsequent injury being attributable to the aforesaid breach as well, in order to hold a doctor liable for medical negligence. On the other hand, doctors need to establish that they had followed reasonable standards of medical practice."

20. In the present case, the Complainant alleged medical negligence against OPs on the ground that the patient was administered expired glucose and a poisonous injection, which deteriorated her condition and led to her death. However, these assertions rest solely on the Complainant's uncorroborated Affidavit and remained unsupported by any medical records, expert opinions, forensic analysis, post-mortem report etc. On the contrary, the medical records placed on record indicate that the patient was administered immediate first aid in accordance with standard medical protocol. There is no evidence that has been adduced to show that this course of treatment deviated from accepted norms. The bed-head ticket supports this and affirms that treatment was provided promptly, thereby negating any allegation of deficiency in service at that stage. The allegation that the treatment was denied due to the inability to pay an additional Rs.12,000 also stands disproven by the discharge document furnished by OPs, which reflects that the patient was taken away



voluntarily by her own brother by signing a written statement to that effect, expressly acknowledging the decision to discharge her from the OP nursing home was on his own volition. A refund of Rs.4,560 was also issued, and these facts were acknowledged by the State Commission. No material has been brought on record to establish any negligent conduct or omission by the treating doctors that fell below the standards expected of a reasonably competent medical professional. Even presuming that the patient died in the nursing home, to impute medical negligence on the OPs, the Complainant was duty bound to establish a proximate causal link between the alleged negligent act and the resultant death, which is an obligation that remains unfulfilled. There is no expert testimony or medical evidence on record to indicate that administration of expired glucose or any other treatment resulted in her death. The Complainant failed to produce any credible medical opinion to substantiate this allegation. Even to accept the assertion that expired glucose was administered, such a lapse, at best, may have diminished the intended therapeutic effect or reduced the effectiveness of glucose. However, it would be untenable to state that would by itself lead to fatal outcome, unless such consequence is established through reliable evidence.

21. As per the settled legal position discussed in the cases above, the initial burden lies on the Complainant to establish a prima facie case, which has not been discharged in the present matter. Applying these settled principles, it is evident that the Complainant failed to prove medical negligence. Thus, in the complete absence of expert opinion, clinical documentation or independent evidence and a specific denial supported by discharge notes and medical records, no case of deficiency in service or negligence is made out against the OPs. In the absence of proximate link between the alleged acts of the OPs and the unfortunate demise of the patient, it is evident that the Complainant has not been able to prove negligence on part of the OPs.

22. In view of the foregoing, we are of the considered view that the learned District Forum erred in proceeding solely on the Complainant's affidavit. In contrast, the learned State Commission appropriately concluded that, in the absence of cogent and probative evidence, mere assertions could not sustain a claim for medical negligence. Therefore, we find no infirmity, illegality or jurisdictional error in the Order passed by the State Commission in FA No.1075 of 2008 dated 07.11.2019.

23. The Revision Petition No. 2599 of 2019 is, therefore, dismissed.

24. Considering the circumstances of the case, there shall be no order as to costs.

25. All pending Applications, if any, also stand disposed of accordingly.

..... (AVM J. RAJENDRA, AVSM, VSM (RETD.) PRESIDING  
MEMBER ..... (ANOOP KUMAR MENDIRATTA, J) MEMBER  
/Hitaishree