

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION
UT CHANDIGARH**

First Appeal No. A/303/2023

(Date of Filing : 31 Oct 2023)

(Arisen out of Order Dated 11/09/2023 in Case No. CC/315/2021 of District DF-I)

1. Akhilesh Kumar

Chandigarh

.....Appellant(s)

Versus

1. Max Hospital India Ltd.

Chandigarh

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI PRESIDENT

HON'BLE MR. RAJESH KUMAR ARYA MEMBER

PRESENT:

Dated : 14 Jun 2024

Final Order / Judgement

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,

U.T., CHANDIGARH

Appeal No.	:	303 of 2023
Date of Institution	:	31.10.2023
Date of Decision	:	14.06.2024

1. Akhilesh Kumar Sinha, aged about 60 years son of Smt. Kapuro Sinha (now deceased), resident of H.No.2157, Sector-15-C, Entrance by second gate, Chandigarh-160015.
2. Tarun Sinha, aged about 59 years wife of Akhilesh Kumar Singh, resident of H.No.2157, Sector-15-C, Entrance by second gate, Chandigarh-160015.
3. Vedansh Sinha, aged about 22 years, son of Akhilesh Kumar Singh, resident of H.No.2157, Sector-15-C, Entrance By second gate, Chandigarh-160015.

....Appellants/ Complainants

VERSUS

1. Max Hospital India Ltd. Regd. Office No.110, Panchsheel Park, New Delhi-110017 through its Chairman and Managing Director.

2. Max Super Speciality Hospital (A unit of Hometrail Buildtech Private Limited) Near Civil Hospital, Phase 6, SAS Nagar (Mohali), Punjab-160055 through its Managing Director.
3. Max Super Speciality Hospital (A unit of Hometrail Buildtech Pvt. Ltd.) Near Civil Hospital, Phase 6, SAS Nagar (Mohali), Punjab-160055 through its Medical Superintendent.
4. Dr. Ramesh Kumar Sen, Senior Director and Head of Department, Institute of Orthopedic Surgery, Max Super Speciality Hospital (A unit of Hometrail Buildtech Pvt. Ltd.) Near Civil Hospital, Phase 6, SAS Nagar (Mohali), Punjab-160055 through its Managing Director.
5. Dr. Bansidhar Tarai, M.D. Senior Consultant & Head Microbiology, Max Super Speciality Hospital (A unit of Hometrail Buildtech Pvt. Ltd.) Near Civil Hospital, Phase 6, SAS Nagar (Mohali), Punjab-160055, through its Managing Director.

.....Respondents/Opposite parties.

ARGUED BY:

Sh. Akhilesh Kumar Sinha, appellant No.1 and Mrs. Tarun Sinha, appellant No.2 in person as also an Advocate on behalf of appellant No.3.

Sh. Yoginder Nagpal, Advocate for the respondents.

Appeal No.	:	348 of 2023
Date of Institution	:	29.12.2023
Date of Decision	:	14.06.2024

1. Max Super Speciality Hospital, Near Civil Hospital, Phase 6, SAS Nagar (Mohali), Punjab-160055.

A unit of Hometrail Buildtech Private Limited

2. Max Hospital India Ltd.

(Correct Name is):

Hometrail Buildtech Private Limited, having its registered office at N-110, Panchsheel Park, New Delhi-110017.

3. Dr. Bansidhar Tarai, M.D. Senior Consultant and Head Microbiology, Max Super Speciality Hospital, (West Block), Saket at 1, Press Enclave Road, Saket-110017.

...Appellants

VERSUS

1. Akhilesh Kumar Sinha, R/o H.No.2157, Sector-15-C, Entrance By second gate, Chandigarh-160015.
2. Tarun Sinha, R/o H.No.2157, Sector-15-C, Entrance By second gate, Chandigarh-160015.
3. Vedansh Sinha, R/o H.No.2157, Sector-15-C, Entrance By second gate, Chandigarh-160015.
4. Dr. Ramesh Kumar Sen, Senior Director & Head of Department of Orthopedic Surgery, Max Super Speciality Hospital, Near Civil Hospital, Phase 6, SAS Nagar (Mohali), Punjab-160055.

.....Respondents

BEFORE: JUSTICE RAJ SHEKHAR ATTRI, PRESIDENT.

MR. RAJESH K. ARYA, MEMBER.

ARGUED BY:

Sh. Yoginder Nagpal, Advocate for the appellants.

Sh. Akhilesh Kumar Sinha, respondent No.1 and Mrs. Tarun Sinha, respondent No.2 in person as also an Advocate on behalf of respondent No.3.

Respondent No.4 exparte vide order dated 02.05.2024.

PER RAJESH K. ARYA, MEMBER

ORDER

Vide this order we are disposing of above captioned appeals bearing No.303 of 2023 filed by the Complainant – Akhilesh Kumar Sinha & Ors. and Appeal No.348 of 2023 filed by the Opposite Parties – Max Super Speciality Hospital & Ors. against order dated 11.09.2023 passed by District Consumer Disputes Redressal Commission-I, U.T., Chandigarh (for short ‘District Commission’) in Consumer Complaint No.315 of 2021. Vide the said order, the District Commission has partly allowed the complaint in the following manner:-

“4. In the light of the aforesaid discussion, the present consumer complaint succeeds, the same is hereby partly allowed and OPs 1 to 3 & 5 are directed as under :-

- i. to pay lump sum amount of ₹5,00,000/- to the complainants alongwith interest @ 9% per annum from the date of institution of the present consumer complaint i.e. 12.5.2021 onwards, as compensation on account of the medical negligence as well as for the mental and physical pain and trauma suffered by the complainants and the amount spent by them on treatment of the patient and out of the aforesaid awarded amount, ₹4,50,000/- shall be paid by OPs 1 to 3 and the remaining ₹50,000/- shall be paid by OP-5.
- ii. to pay ₹10,000/- to the complainants as costs of litigation.

5. This order be complied with by the OPs 1 to 3 & 5 within thirty days from the date of receipt of its certified copy, failing which, they shall make the payment of the amount mentioned at Sr.No.(i) above, with interest @ 12% per annum from the date of this order, till realization, apart from compliance of direction at Sr.No.(ii) above. It is, however, made clear that the aforesaid awarded amounts shall be apportioned amongst the complainants in equal share.

6. Since no medical negligence or deficiency in service has proved against OP-4, the consumer complaint against him stands dismissed with no order as to costs.”

2] The facts, in brief, as culled out from the impugned order passed by the District Commission, are that the complainants filed a complaint in respect of medical negligence, deficiency in service and unfair trade practice on the part of the opposite parties for not providing adequate medical treatment to Smt. Kapuro Sinha (now deceased), mother of complainant No.1. It was stated that in the evening of 19.5.2020 around 7:30 p.m., the mother of complainant No.1 namely Smt. Kapuro Sinha (hereinafter referred to as “patient”) had fallen down in the lawn of her house while she was strolling in the garden and she could not stand up on her own. Immediately, she was brought to her bed where cool pack therapy was given to her. As there was lockdown in Chandigarh, complainant No.1 could manage to arrange portable x-ray from Medical Diagnosis Centre, Chandigarh on 22.5.2020 and on the same day around 3:00 p.m. x-ray was conducted and it was revealed that she had suffered right leg femur fracture. On 23.5.2020, complainant No.1 approached opposite party No.-1 Hospital (hereinafter referred to as “treating hospital”) where he wanted to meet Dr. Ramesh Kumar Sen – opposite party No.4 (hereinafter referred to as “treating doctor”) who was specialized in ortho surgery and at that time, only junior/assistant and Dr. Puneet attended complainant No.1. After going through x-ray report, it had been opined that surgery was required which might take six days and there was package of surgery of patient by the hospital. Complainant No.1 insisted to meet Dr.Ramesh Kumar Sen but it was informed that he would only see the patient once she was admitted. Rough estimate, Annexure C-2 for the total package ₹3,24,000/- was given. At that time, patient was 91 years old and was suffering from eye and hearing problems. Thereafter, the patient was brought to the treating hospital on 26.5.2020 in ambulance where she was admitted and an amount of ₹50,000/- was deposited as advance and complainant No.1 was asked to deposit ₹50,000/- more when the patient would be taken to the operation theatre on 27.5.2020 or 28.5.2020. The patient was allotted a single private room and payment receipt of advance amount was issued by opposite party No.1, Annexure C-3. However, the treating doctor did not turn up on 27.5.2020 and rather another doctor came for treatment, who put the right leg of the

patient on traction with 4 kg. water weight. Opposite party No.4 had delegated his responsibility to the junior and did not attend the patient and in this manner, the opposite parties had not discharged their duty and function of diagnosis, advice and treatment as expected, which amounted to professional misconduct. A specialist like the treating doctor had to exercise high degree of care than a generalist. It was discussed by complainant No.1 with the hospital management to send the sample of COVID-19 test of the patient to PGI, Chandigarh which could save time but instead of sending the sample to PGI, the opposite parties took the sample and sent the same to Max Hospital, Delhi for testing. The swab of the sample was taken on 26.5.2020 and the same was received by the laboratory on 27.5.2020 and in the report (Annexure C-4), the patient was shown to be COVID-19 positive. At evening time, when the patient was taking dinner, complainant No.1 was informed by the management of the opposite parties that they had received WhatsApp message from Max Hospital, Saket, Delhi that the patient is COVID positive and as a result, the patient came under trauma and she was shifted to another ward by the staff of the treating hospital in PPE kit, where she remained in this painful and pathetic condition.

3] It was further the case of the complainants that immediately, complainant No.1 attended a meeting with the management in their conference hall in presence of four doctors and it was discussed that the other blood sample be sent to the PGI, Chandigarh for testing. Accordingly the sample of the patient was sent to PGI, Chandigarh and in the meanwhile, due to aforesaid false report (Annexure C-4), the complainants were asked to be in home quarantine by the authorities as a result whereof, they were also under tremendous trauma and pain. Thereafter, the blood samples of all the complainants were also taken for testing to PGI, Chandigarh but strangely, when the reports arrived, all the complainants were found to be negative. It was further stated that before declaring the patient as COVID positive, the opposite parties conducted all other tests, which were otherwise not required to be conducted prior to COVID test. All the medical record of the patient was found fine but the things started misfiring after the patient was declared COVID positive on 27.5.2020 on the report of Max Hospital, Delhi. As per the record received from the opposite parties, it was disclosed that 26 doctors and 20 nurses had attended the patient but surprisingly, all the aforesaid doctors or nurses who were in contact with the patient were not quarantined nor their tests were conducted. In this manner, administration of opposite party No.1 had violated the standards laid down by the Ministry of Health and WHO.

4] It was further stated that despite repeated requests of complainant No.1, the patient was not shifted to PGI, Chandigarh, rather complainant No.1 was asked to leave the private room at 9:00 p.m. During this period, the patient was left all alone in the night in COVID isolation ICU with no attendant. On the basis of report (Annexure C-4), on 28.5.2020 at the instance of opposite party No.1 Hospital, U.T. M.C. Department & UT Health Department came to the residence of the complainants and put quarantine notice (Annexure C-10) and asked the complainants to head for General Hospital, Sector 16, Chandigarh for COVID testing, being family contact of the patient. The complainants were also taken in ambulance for COVID sample check up in the aforesaid hospital with health workers in PPE kit and in this manner, atmosphere of dishonor and disgrace was created. Not only this, even the right hands of the complainants were stamped with quarantine seal. On 29.5.2020, at evening time, the complainants had received their reports from PGI declaring all of them negative. In this manner, all the complainants, including the patient were found COVID negative and the wrong reports given by the opposite parties had put the complainants in trauma as due to the said report, even the complainants were put in illegal confinement. It was further stated that finally on 31.5.2020,

complainant No.1 had decided that he would take his mother to his home after getting her discharged from the treating hospital and for that purpose, he went to the said hospital at 11:00 a.m. and met the patient and thereafter started discharge process of the patient. Complainant No.1 cleared all the bills to the tune of ₹1,77,490/- and accordingly, the patient was discharged from opposite party No.1 Hospital and was taken to her home.

5] It was further stated that even the medical record, which was supplied to complainant No.1 on his request by opposite party No.1, had wrongly mentioned the mother of the complainant as divorcee instead of widow and the said false entry in the record had also shocked the complainants. Due to the negligence on the part of the opposite parties, the patient was brought home on 31.5.2020 and she breathed her last on 3.6.2020 as she was kept under heavy medical dose. The patient was perfectly fine till 27.5.2020 except that her leg was fractured but things started taking twist once she was admitted in the treating hospital where on her admission, she was not found with any fever, cough, cold etc. It was further stated that the aforesaid acts of the opposite parties amounted to medical negligence, deficiency in service as well as unfair trade practice as neither the opposite parties had given proper treatment to the patient nor they had given correct COVID report qua the patient, as a result of which, all the complainants and the patient were put to unnecessary harassment. It has further been stated that the opposite parties were requested several times to admit the claim but with no result.

6] On the other hand, while contesting the allegations made in the complaint, the opposite parties filed their joint reply before the District Commission, wherein they admitted that the patient was brought to the hospital with leg fracture for her treatment on 26.6.2020 and all the required treatment was given to her. However, it was denied that there was any medical negligence, deficiency in service or unfair trade practice on the part of the opposite parties. It has further been stated that the patient and complainant No.1 were attended by Dr. Neha and Dr. Sagar who were the team members of Dr. R.K. Sen and treated the patient to the best of their ability and skill. It has further been stated that the complainants had no knowledge about the complex medical procedure involved and made false allegations against the opposite parties, especially when the treating doctors were holding masters and super-speciality degrees in their respective fields. It has further been stated that all the tests, which were required to be conducted before surgery, were conducted immediately after admission of the patient and Dr. Sen maintained frequent telephonic communication after the patient was discharged on LAMA. It has further been stated that Dr. Sen himself being more than 60 years old was minimizing personal contact with people as much as possible. As per x-ray evaluation, it was informed to the attendants that x-ray showed hip fracture and surgery was advised. Even the death of the patient was solely due to the reasons beyond the control of the opposite parties. It has further been stated that the patient remained unattended by the complainant for four days even after finding fracture on her hip in the x-ray on 22.5.2020 since the patient was brought to the hospital on 26.5.2020. It has further been stated that best treatment was given to the patient immediately after her admission in the hospital. It has further been stated that as COVID test was required to be conducted before heading for surgery, the same was conducted and the patient was found COVID positive. It has further been stated that even the blood tests of the patient were conducted, which were found with infection etc. It was denied that complainant No.1 was informed that the sample had been sent to Delhi. It has further been stated that immediately after receiving the sample report, the complainants were informed about positive report. It has further been stated that the test reports were not 100% foolproof and there were lot of variations and the

Govt. had also acknowledged that 15-20% variation and in this manner, the opposite parties could not be held negligent. It has further been stated that the operation of the fracture could not have been performed unless the patient was declared COVID negative. It has further been stated that as consent for the operation was not given by the complainants, there was no medical negligence, deficiency in service or unfair trade practice on the part of the opposite parties.

Appeal No.303 of 2024:

7] In their appeal bearing No.303 of 2024, the complainants are seeking enhancement in the compensation as awarded by the District Commission on the ground that the said amount is very meager as the patient Mrs. Kapuro Sinha, 91 years of age, had died because of total negligence and deficiency on the part of the opposite parties. It has further been stated that the treating doctor – Opposite Party No.4 was solely responsible for looking, caring and operating on the patient as per contractual agreement and being a specialist, he was above the generalist. It has further been stated that Hon'ble Supreme Court of India has held that a determination about deficiency in service is to be made by applying the same test as is applied in an action for damages for negligence. It has further been stated that this amounted to nothing but professional misconduct and an unethical practice and calls for stringent penalty. It has further been stated that in the present case, there was total breach of duty on part of opposite party No.4. It has further been stated that a medical practitioner has various duties towards his patient and he must act with reasonable degree of skill and knowledge and with due care. This is the least which a patient expects from a doctor. It has further been stated that when the patient had come to the hospital for surgery of her right femur fractured leg, they never took the x-ray of the fractured leg which is very necessary for a doctor to detect through the x-ray reports rather they carried out various other test on the patient and did not take x-ray in the hospital. It has further been stated that this is total deficiency and height of negligence. It has further been stated that they depended on the portable x-ray report provided by complainant No.1 which could be shaky. It has further been stated that failure to take the x-ray and deliver the x-ray films to the patient attendant amounted to negligence. It has further been stated that opposite party No.4 had ample time to take the x-ray before the surgery which was not performed creating a doubt in the mind of the patient attendant. It has further been stated that a consultant doctor could be negligent where he relegates the responsibility to his junior and escapes the liability of attending the patient being the treating and admitting doctor and specialist in his field. It has further been stated that a person ready to give medical advice and treatment undertakes to possess skill and knowledge for the purpose. A breach of any these duties will support an action of negligence. It has further been stated that it is well settled law that it is duty of a senior consultant doctor to divide his duty and function in three faces (1) Diagnosis i.e. he should have taken the x- ray report from his machine in the Max Hospital, (2) Given the advice to the patient who is totally in his hand for surgery and recovery, (3) Treatment.

8] It has further been stated that the District Commission has erred and overlooked this issue and has observed that no medical negligence or deficiency in service has been proved against opposite party No.4 and the complaint against Dr. R.K. Sen has been wrongly dismissed with no order as to cost. It has further been stated that opposite party No. 4 was the main person who has been negligent and there has been a breach of duty on his part being treating and admitting doctor of the patient (deceased). It has further been stated that the Court cannot loose sight of the fact the death cannot be compensated in monetary terms. It has further been stated that a very paltry sum has been given and the complainants/appellants pray for enhancement of

the said compensation as the opposite parties cannot be let free being responsible for not performing his medical duties. It has further been stated that the complainant was even asked to take her retest of Covid-19 sample and sent the same to PGI, Chandigarh on that particular date which was done. The attendant was asked to vacate the private room as the patient was shifted to inadequately equipped ICU and mismanagement ICU Isolation where there was no one except herself as it was not in ICU center but created temporarily as Covid Isolation ICU.

9] It has further been stated that one cannot ignore the psychological and psychiatric impact the patient had to undergo when she was shifted to Covid Isolation ICU and was all alone with no attendant. It has further been stated that the patient could hardly hear from her right ear after putting the hearing aid instrument. Moreover, she had undergone the left eye cornea transplant and could hardly see from her left eye as she was blind from her right eye which was totally damaged. It has further been stated that one can imagine the plight of an elderly 91 years patient who was put in such a terrorizing situation created by the Max Hospital Staff roaming in PPE Kit and now she could not converse or recognize anybody.

10] It has further been stated that on 28.05.2020, at the instance of Max Hospital, Mohali, who had updated Chandigarh Administration, the officials of Administration came to the residence of the complainants alongwith police escort and asked them to go to General Hospital, Sector-16 for the covid medical checkup being in contact of the patient. It has further been stated that this total affair was dramatized in front of neighbours and passerby, such attitude creates atmosphere of scorn, dishonor and disgrace to practicing lawyers i.e. complainant no. 1 & 2. It has further been stated that the complainants had to face a discriminating covid stigma as if they were criminals. It has further been stated that the fear of Covid was such that human beings started distancing from humans and a new word can be coined i.e. (era of Covid-19 racism). It has further been stated that as a lawyer, the complainant and his wife felt that the total exercise of quarantine by putting a stamp on their right hand was a stigma and disgrace in the eyes of public at large. It has further been stated that the complainant's covid reports came from PGI in evening declaring them negative and the patient's second report from PGI was released at 11 p.m. on 28.05.2020 declaring her covid negative too. It has further been stated that the height of negligence is that Max Hospital and their attending doctors did not shift the patient to the private room rather she was kept in covid isolation and staff still attending in PPE Kit. The patient had to go through hell due to the wrong report of Max Hospital where the patient was first declared covid positive and within 24 hours she was declared covid negative. It has further been stated that the physical scars will heal but the mental scars of ill treatment will ever remain.

11] It has further been stated that the District Commission should have looked into issues above while granting compensation. In this situation, heavy compensation should be given to the complainants including the patient who was made to suffer at an old age with no fault of her.

12] It has further been stated that the District Commission did not look into this vital evidence i.e. C-22 the pen drive and rather the whole Pandora box open when the ECG report of heart was given of the patient to the complainant where no description of the patient name and age was mentioned in the ECG report though she was in-house hospital patient with all records tagged to her hands and bed. Rather everything looked hanky-panky through Annexure C-13/A of CC/315/2021 where no name of the patient was entered and in the column age, it was written

that the ECG was of the patient assumed to be 50 years of age. It has further been stated that this is height of negligence and to cover up their cardiac arrest flaw they had given a wrong report.

13] It has further been stated that rather the patient was put on heavy doses of steroids and other medicines diverting the issue from leg surgery to heart and because of heavy doses of medicines the patient died on 03.06.2020. It has further been stated that the opposite parties shifted from leg surgery to heart surgery by relying upon the false report of ECG. The hospital put the patient in high dose of medicines which is clear from the record given to complainant no.1 at the time of discharge of patient on 31.05.2020. It has further been stated that this reflects the casual and unprofessional approach on part of the doctors and hospital.

14] Lastly, it has further been stated that complainant no.1 to 3 (appellants) are entitled for compensation prayed for alongwith interest due to the death of the patient and mental agony and harassment caused to the complainants due to the wrong report of Covid positive of the patient and due to the negligence of the Max Super Speciality Hospital, Mohali and the concerned admitting doctor i.e. opposite party No. 4 did not operate upon the fractured leg of the patient inspite of her being declared covid negative on 28.05.2020.

Appeal No.348 of 2023:

15] On the other hand, in appeal bearing No.348 of 2023, the opposite parties are seeking setting aside the impugned order on the ground that the District Commission has erred in passing a non-speaking order in as much as there is no reasoning in the order as to what in their opinion constituted medical negligence on the part of the appellants and why have they been held guilty of medical negligence. It has further been stated that the District Commission has erred in holding that the laboratory investigation report of the patient indicated that blood grouping, RH Factor, EDTA, Renal Profile (without) urine), serum, liver function test profile and urine routine and microscopy tests of the patient were found to be normal in utter disregard of the fact that a bare perusal of these reports, annexed hereto as Ann. A-1 (Colly), clearly shows that reports of the patient were not normal as the patient had hyponatremia, pus cells in urine-10-20 leucocyte counts/HPFs. It has further been stated that the District Commission has wrongly observed that major organs of the patient were found to be normal and further that the same was evident from 2D Color and Doppler Echocardiography report of the patient in utter ignorance of the fact that the said report clearly mentions "mild concentric LVH. No RWMA at rest. LVEF=62%. Grade I LV diastolic dysfunction. Mild AR. Trau MR/TR and an estimated PA systolic pressure 20 mmHg." which means the patient may go for cardiac failure/MI i.e. myocardial infraction if the patient was subjected to a surgery. It has further been stated that District Commission also failed to take into consideration that the DSE Report of the patient also tested positive for inducible ischemia which means that there was blockage in the patient's heart. It has further been stated that the District Commission has wrongly mentioned that heavy doses were induced to the patient on 31.05.2020 and 01.06.2020 as they were not required to be given to the patient as her major organs were found to be normal without appreciating that the patient was having blockage in her heart and the medicines that were prescribed to her were as per standard medical protocols. It has further been stated that the impugned order is contrary to the position of law settled by the Hon'ble Supreme Court in case titled as "C.P. Sreekumar (Dr.), MS Ortho Vs. Ramanujam" reported as (2009) 7 SCC 130 wherein it was clearly held that the Commission ought not presume that the allegations in the Complaint are inviolable truth even when they are unsupported by any evidence. It has further been stated that the District

Commission has erred in arriving at the conclusion that there was medical negligence on the part of the appellants in utter disregard of the fact that there was no medical evidence on record of the District Commission to show that there was negligence on the part of the appellants either in conducting the Covid test Report and/or in administering treatment to the patient at appellant No.1 - Hospital and further, that, in the facts of the instant case, medical evidence was required to be tendered by the complainants as the adjudicating authority is not an expert in the field of medicine to record an independent opinion. It has further been stated that District Commission has, while passing the impugned order, failed to take into consideration the appellants' submission that medical literatures clearly provide that no covid test report can yield 100% accurate results and there is a possibility that it might be a false positive. It has further been stated that the District Commission has erred in holding that the patient was treated with a very casual approach as the appellants had tampered with their own reports and have given treatment to the patient with heavy doses for the disease for which she was not suffering in utter disregard of the fact that there was nothing on record of the District Commission to prove the same. It has further been stated that the District Commission has erred in awarding compensation to the tune of Rs.5,00,000/- without there being any material to substantiate and support the same or which could have helped the District Commission to quantify the compensation. Lastly prayer for setting aside the impugned order and dismissing the complaint has been made.

16] We have heard the rival contentions of the parties and gone through the material available on record.

17] The moot question, which falls for consideration before us in these appeals, are as to (i) whether the treating doctor or the opposite parties were deficient in their duty of care in the administration of the treatment given to the patient/mother of complainant No.1 and (ii) whether the complainants have been adequately compensated by the District Commission in view of deficiency so held by the District Commission on the part of opposite parties No.1 to 3 & 5?.

18] However, before deciding this question, we may like to refer a case titled as Dr. Laxman Balkrishna Joshi vs. Dr. Trimbark Babu Godbole and Anr., AIR 1969 SC 128 and A.S.Mittal v. State of U.P., AIR 1989 SC 1570

19] In Tarun Thakore vs. Dr. Noshir M. Shroff (O.P. No. 215/2000 dated 24.9.2002) the Hon'ble National Commission made some observations about the duties of doctor towards his patient. From those observations, it is clear that one of the duties of the doctor towards his patient is a duty of care in deciding what treatment is to be given and also a duty to take care in the administration of the treatment. A breach of any of those duties may lead to an action for negligence by the patient.

20] From above, it is clear that doctors have a responsibility to leverage their knowledge and expertise to accurately diagnose a condition and recommend the most appropriate treatment options based on current medical practices and standards. Once a treatment plan is chosen, the doctor must ensure it's administered with due care and attention, which involves proper procedures and protocols to minimize risks and maximize the chance of a successful outcome.

21] In the instant case, the excerpt from Annexure C-8 of the laboratory report appeared to be an echocardiogram report, which is a type of ultrasound used to examine the heart. Perusal of the same makes it abundantly clear that the said report mentioned normal sizes and

functioning of the left and right ventricles, atria and major vessels (aorta and pulmonary artery). It suggested no major structural abnormalities in the heart chambers or blood flow. Further, as regards Mild mitral and aortic valve abnormalities, the said report noted mild posterior mitral annular calcification and mild aortic valve sclerosis. These findings suggested some slight hardening of the tissues in these valves but it doesn't seem severe enough to cause any functional problems at this point. Further, in the report, finding qua PSG-8 mm Hg referred to the portosystemic gradient (PSG), which is a measurement of pressure difference between the portal vein (draining blood from the intestines) and the hepatic vein (draining blood from the liver). However, it is important to note that PSG is not typically measured during an echocardiogram. It is usually assessed during a procedure focused on the liver and portal system. The presence of PSG measurement in an echo report might be an error or a mislabeling. Overall, the report suggested a relatively normal heart structure and function based on the echocardiogram. Not only above, even the ECG done on the patient, which is Annexure C-13A on record of the District Commission, should ideally include basic patient demographics like name and age of the patient. Not including these details, especially when the actual age of the patient (91 years old) significantly differed from the assumed age (50 years old) used for interpretation, raised doubts about the accuracy of the interpretation itself. In our view, age is a crucial factor in ECG analysis, as normal heart rhythms can vary depending on age. The lack of the patient's name on the ECG report raises concerns about whether the ECG truly belongs to the patient in question. This makes it difficult to definitively link the ECG findings to the patient's medical record. These omissions suggest a lack of proper attention and could potentially lead to misinterpretations of the ECG results. If Annexure C-4 & C-6 are indeed incorrect i.e. COVID-19 positive reports, it suggests a potential misdiagnosis, which led to unnecessary treatment and isolation measures. Even the delay in transferring the patient to a normal ward after receiving a negative test result (Annexure C-12) is concerning. Early removal from isolation is crucial to prevent complications and psychological stress. However, administering heavy medications (Annexure C-17 & C-18) without a clear diagnosis and considering the patient's normal health parameters beforehand needed further investigation. In our considered view, high doses of medication, especially for an elderly patient, could have caused adverse effects. Relying solely on an unconfirmed ECG diagnosis (Annexure C-13A) for a heart attack and administering heavy medication is a serious concern. A more thorough evaluation, potentially with additional tests, was necessary before such treatment decisions.

22] It may be stated here that the law of negligence regarding professional has undergone considerable change in recent times. As far as medical profession is concerned, the law laid down in Bolam v. Froern Hospital Management Committee ((1957) 2 All ER 118) is considered to be the *locus classica* (**most authoritative on a particular subject.**) in the field. In the said decision, it was held as follows:

"The test is the standard of the ordinary skilled man exercising and professing to have that special skill. a man need not possess the highest expert skill; it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art. In the case of a medical man, negligence means failure to act in accordance with the standards of reasonably competent medical men at the time....."

Failure of a doctor and hospital to discharge this obligation is essentially a tortious liability. A tort is a civil wrong (*right in rem*) as against a contractual obligation (*right in personam*) – a breach that attracts judicial intervention by way of awarding damages. Thus, a patient's right to receive medical attention from doctors and hospitals is essentially a civil right. The relationship takes the shape of a contract to some extent because of informed consent, payment of fee, and performance of surgery/providing treatment, etc. while retaining essential elements of tort. In the instant case, the alleged tampering with initial COVID-19 reports (Annexure C-4 & C-6) is a serious accusation. It raises serious ethical concerns about the hospital's practices.

Administering heavy medications for an unconfirmed illness (especially considering the patient's age and normal health parameters) suggests a potential deviation from standard medical practices. The medical protocol has not been followed by opposite parties No.1 to 3 & 5 in view of pathology tests (Annexure C-7 & C-8). Thus, the evidence seemed to point towards potential negligence on the part of opposite parties No.1 to 3 & 5 involved in the patient's care. However, the evidence clarified that there was no apparent role of opposite party No.4 – Dr. Sen in patient's treatment and the District Commission rightly dismissed the complaint against him because the operation of the fracture could only have been performed by Dr. Sen unless the report of the patient was declared COVID negative. Moreover, Dr. Sen was solely relying upon the report, which was not correct. Any doctor, in his place, could have done the same, when it was not in his knowledge that the report prepared by opposite party No.5 was not correct. Thus, in our considered view, the patient was not attended properly and given due care in the hospital. Further the ECG report was not of the patient as it lacks various important credentials and even the Covid test reports of the patient and the family members was wrong instead all were found positive when tested with the same sample outside. Even the operation was delayed on account of giving wrong report of Covid-19 of the patient and there was delay in transferring the patient to a normal ward after receiving a negative test result. Thus, opposite parties No.1 to 3 & 5 miserably failed in duty of care in the administration of the treatment keeping in view the law laid down in Bolam v. Froern Hospital Management Committee (supra).

23] It is understandable that the family members (complainants) suffered due to the situation. A misdiagnosis of COVID-19, especially for an elderly loved one, caused significant emotional distress and worry for the family. Being placed under home quarantine based on an inaccurate report (Annexure C-4 & C-6) disrupted daily life and also caused inconvenience. Even the public notices about COVID-19 positive cases led to social stigma on the complainants, even if, later proven negative (Annexure C-12). Thus, the alleged tampering with initial reports suggesting COVID-positive status, despite a negative test later (Annexure C-12), proved potential negligence on the part of opposite parties No.1 to 3 & 5. Further, the improper treatment i.e. administering medications for a non-existent condition and heavy doses for an unconfirmed heart condition was non-adherence to proper medical protocols. The mental and physical suffering of the patient brought distress due to the misdiagnosis and improper treatment given by opposite parties No.1 to 3 & 5 and thus, the unnecessary home quarantine and social stigma faced by the complainants (family) due to the misdiagnosis was proven deficiency in service and unfair trade practice on the part of opposite parties No.1 to 3 & 5, for which, the District Commission has rightly awarded compensation.

24] However, looking at the agony and suffering caused to the complainants due to aforesaid deficiency in service on the part of opposite parties No.1 to 3 & 5, the compensation awarded by the District Commission seems to be inadequate and on the lower side, which needs to be enhanced suitably. It may be stated here that during the course of arguments, a Compatible

Disk placed on record, was run in the Court Room, which was not clearly audible but to some extent, the patient i.e. the mother of complainant No.1 was heard of saying that she wanted to go home and kept on requesting complainant No.1 for taking her home. In this regard, it is apposite to mention here that being placed in isolation for suspected COVID-19, especially at an advanced age, could be incredibly lonely and frightening, which could lead to anxiety, depression and even delirium in some cases. The patient's hearing difficulties (right ear) and vision problems (left eye) further exacerbated the isolation and confusion caused by being in an unfamiliar environment. The lack of familiarity with the staff due to PPE and the uncertainty surrounding the illness significantly heightened her (patient's) fear and anxiety. Sensory deprivation, isolation, and underlying medical conditions certainly increased her risk of delirium. Thus, in our considered view, the compensation awarded by the District Commission to the tune of Rs.5 Lakh, if enhanced to Rs.8 Lakhs would meet the ends of justice as the mother of complainant No.1 even did not survive later on.

25] For the reasons recorded above, appeal bearing No.303 of 2023 filed by the complainants is partly accepted and the impugned order is modified in the following manner:-

Opposite Parties No.1 to 3 & 5 are directed:-

(i) to pay lump sum amount of ₹8 Lakhs to the complainants, out of which, ₹7,50,000/- shall be paid by opposite parties No.1 to 3 and the remaining ₹50,000/- shall be paid by opposite party No.5, as compensation on account of the medical negligence as well as for the mental and physical pain and trauma suffered by the complainants and the amount spent by them on treatment of the patient;

(ii) to pay ₹10,000/- to the complainants as costs of litigation.

26] This order be complied with by Opposite Parties No.1 to 3 & 5 within thirty days from the date of receipt of its certified copy, failing which, they shall make the payment of the amount mentioned at Sr.No.(i) above, with interest @9% per annum from the date of this order till realization, apart from compliance of direction at Sr.No.(ii) above. It is, however, made clear that the aforesaid awarded amounts shall be apportioned amongst the complainants in equal share.

27] Consequently, the appeal bearing No.348 of 2023 stands dismissed with no order as to costs.

28] Pending applications, if any, in both the appeals stand disposed of having been rendered infructuous.

29] A copy of this order be placed in connected appeal bearing No.348 of 2023.

30] Certified copies of this order be sent to the parties free of charge..

31] Files be consigned to Record Room after completion.

Pronounced.

14.06.2024.

[RAJ SHEKHAR ATTRI]

PRESIDENT

(RAJESH K. ARYA)

MEMBER

Ad

[HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI]

PRESIDENT

[HON'BLE MR. RAJESH KUMAR ARYA]

MEMBER