STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND, DEHRADUN

Date of Admission : 22.07.2014
Date of Final Hearing : 30.10.2025
Date of Pronouncement : 20.11.2025

SC/5/CC/12/2014

Sh. Sandeep Gupta S/o Sh. M.C. Gupta
R/o Hari Dham Colony, Vir Bhadra, Rishikesh, District Dehradun
(Through: Sh. Avnit Rastogi, Advocate)
…..Complainant

VERSUS

1. Max Super Speciality Hospital
Malsi Estate, Mussoorie Diversion Road, Dehradun

2. Dr. A.K. Singh

3. Dr. Preeti Sharma

4. Dr. Punish Sadana

5. Dr. Amit Rana

2 to 5 All C/o Max Super Speciality Hospital, Malsi Estate, Mussoorie Diversion Road, Dehradun
(Through: Sh. S.K. Agarwal, Advocate)
…..Opposite Party Nos. 1 to 5

6. Sh. Mahesh Chand Gupta S/o Sh. Chandra Prakash Gupta

7. Sh. Sanjay Agarwal S/o Sh. Mahesh Chand Gupta

8. Sh. Gaurav Agarwal S/o Sh. Mahesh Chand Gupta

9. Smt. Sushma Gupta W/o Sh. Deepak Gupta, D/o Sh. Mahesh Chand Gupta

10. Smt. Vandana Gupta W/o Sh. Ashish Gupta, D/o Sh. Mahesh Chand Gupta

All R/o Hari Dham Colony, Vir Bhadra, Rishikesh, District Dehradun

(Through: Sh. Kawaljeet Singh, Advocate)

…..Proforma Opposite Party Nos. 6 to 10

Coram:
Ms. Kumkum Rani, President
Mr. C.M. Singh, Member

ORDER

(Per: Mr. C.M. Singh, Member):

This complaint under Section 12 of The Consumer Protection Act, 1986 has been filed on behalf of the complainant. Brief facts of the case are as such that the complainant states that his mother late Smt. Shakuntala Devi was experiencing pain on the left side of her face and visited the opposite party No. 1 – Max Super Speciality Hospital, Dehradun (in short "Hospital") for consultation on dated 01.04.2014. Upon examination and review of her previous medical records, the doctor at opposite party No. 1 – Hospital advised that she required surgery and also prescribed certain medications. The complainant decided to obtain second opinion and consulted Dr. A.K. Singh – opposite party No. 2, Director, Max Institute of Neurosciences – MIND, Dehradun of the Hospital on dated 10.04.2014. After reviewing the medical reports, the opposite party No. 2 advised that a MRI and certain other medical tests be conducted. The MRI was done on dated 10.04.2014 and other tests were conducted on dated 11.04.2014. Upon perusal of the reports, the opposite party No. 2 informed the complainant that the surgery of his mother would be performed on dated

14.04.2014 and instructed the Cardiac clearance tests to be carried out prior to the surgery. The complainant was advised to take his mother to Dr. Preeti Sharma – opposite party No. 3, Senior Cardiologist of the Hospital. The opposite party No. 3 alongwith Dr. Punish Sadana – opposite party No. 4 also a Senior Cardiologists MD (Med.) DM examined the complainant's mother, reviewed her medical reports and advised for a Dobutamine Stress Echo (DSE) Test. The said DSE test was scheduled to be conducted by Dr. Amit Rana – opposite party No. 5 of Hospital. The opposite party No. 5 performed the said DSE test on dated 12.04.2014. During the course of the said test, after administration of the peak doses, the complainant's mother suffered a cardiac arrest and became unresponsive, hypotensive and was immediately shifted to ICU. As a result of such incident, the complainant's mother remained in a vegetative and unconscious state from 12.04.2014 onwards. The complainant alleged that the opposite party No. 5 failed to take necessary precautions during the procedure, as he neither explained the nature and risk before nor properly monitored the administration of the Dobutamine injection and rate of its infusion, as required under standard medical procedural. The conduct of opposite party No. 5, therefore, fell below the standard of a reasonable competent medical practitioner. The complainant further alleged that despite a super specialty hospital, the opposite party No. 1 lacked essential and adequate equipment to effectively handle the emergency situation. Further, the complainant stated that at the time of admission, he was informed total cost of treatment would be approximately Rs. 1,65,000/-. However, to his shock, he later received a bill amounting to

Rs. 5,61,000/-, which he was compelled to deposit on dated 09.05.2014. Thereafter, the complainant's mother was forcibly discharged from the Hospital. Subsequently, the complainant admitted his mother to Nirmal Ashram Hospital, Rishikesh where she passed away on dated 13.05.2014. The complainant sent a legal notice dated 11.05.2014 to the opposite party Nos. 1 to 5 alleging medical negligence and demanding refund of treatment expenses alongwith compensation for the loss suffered. However, the opposite party Nos. 1 to 5 failed to respond properly leaving the complainant with no option to file present complaint. However, the opposite party Nos. 1 to 5 neither paid the amount, nor responded, which amounted deficiency in service, compelling the complainant to file a present complaint. The complainant has sought relief that the opposite party Nos. 1 to 5 be directed to pay Rs. 5,66,360/- towards medical expenses, Rs. 2,00,000/- towards travelling & other expenses during the period of treatment, Rs. 25,00,000/- towards pain and agony suffered by complainant and entire family of deceased Smt. Shakuntala Devi, Rs. 37,228/- towards medical bills of Nirmal Ashram Hospital, Rishikesh, Rs. 50,00,000/- towards loss of life of complainant's mother and damages suffered on account thereof alongwith Rs. 11,000/- towards costs of notice dated 11.05.2014 to the opposite party Nos. 1 to 5.

2. In the joint written statement, the opposite party Nos. 1 to 5 denied the allegations made by the complainant. The opposite party Nos. 1 to 5 contended that considering the complainant's mother is restricted physical activity for the past 15 years, she was advised to undergo Dobutamine Stress Echo (DSE) test for pre-operative cardiac evaluation. It was further

stated that an informed consent for the said test was also obtained. During consent, both the patient and her attendant were informed about the risk of sudden cardiac emergency during the procedure. After due deliberation and understanding of the associate risks, the patient and her attendant consented to undergo the DSE test. The opposite party Nos. 1 to 5 further stated that immediately after the cardiac arrest, the Hospital declared the Code Blue and in accordance with Advanced Cardio Life Support (ACLS) protocol, immediate Cardio Pulmonary Resuscitation (CPR) was initiated by the team of qualified and experienced doctors. The patient was immediately shifted to ICU for further emergency. The opposite party Nos. 1 to 5 also submitted that considering the patient's known history of hypertension, obesity and restricted mobility, she was advised ECG and Dobutamine Stress Echo by the Cardiologist before any surgical intervention. The opposite party Nos. 1 to 5 further submitted that the Hospital is fully equipped with all the necessary medical instruments and infrastructure required to handle any emergency situation. It is further contended that the Hospital and its doctors are well trained and competent to manage all types of medical emergency. It was also stated that the Hospital provides super-specialty treatment to its patients including the complainant's mother. The opposite party Nos. 1 to 5 further contended that the present complaint is misconceived, based on false and incorrect allegations and therefore the same is not maintainable and is liable to be dismissed with costs.

3. The complainant has filed the evidence on record (paper Nos. 113 to 129) wherein he reiterated the facts as stated in the complaint and also categorically denied the averments made by the opposite party Nos. 1 to 5 in their written statement. The complainant has also submitted original bills of medical expenses incurred at Max Super Speciality Hospital, Dehradun (paper Nos. 192 to 234).

4. The opposite party Nos. 1 to 5 have filed their evidence (paper Nos. 135 to 144) wherein they reiterated the facts and contentions stated in the written statement.

5. As the complaint was filed by one of the legal heirs of deceased - late Smt. Shakuntala Devi. The remaining legal heirs were also impleaded as proforma opposite party Nos. 6 to 10.

6. Learned counsel Sh. Avnit Rastogi for the complainant, learned counsel Sh. S.K. Agarwal for opposite party Nos. 1 to 5 and learned counsel Sh. Kawaljeet Singh for opposite party Nos. 6 to 10 have appeared. Opposite party No. 3 – Dr. Preeti Sharma has also appeared.

7. Learned counsel for the complainant has reiterated the facts as mentioned in the complaint. He also submitted that the opposite party No. 5 had negligently conducted DSE test without proper explanation of risk or without monitoring the rate of infusion of Dobutamine injection, which lead the patient cardiac arrest. The consent obtained for DSE test was merely formal and not truly informed. Learned counsel for complainant further stated that Hospital - opposite party No. 1 despite being a Super Specialty Hospital lacked adequate emergency preparedness and delay in resuscitation shows clear deficiency in service on their part. The patient conscious before DSE test became vegetative thereafter, establishing direct negligence**.** Learned counsel further questioned whether DSE test, was medically necessary in the first place. Learned counsel also stated that the complainant was mis-lead on the treatment costs – quoted as Rs. 1,65,000/-, but charged Rs. 5,61,000/- and despite serving a legal notice, the Hospital had failed to respond. Learned counsel further argued that the opposite party Nos. 1 to 5 had also jointly or severally liable for

medical negligence and deficiency in service and be directed to pay just compensation.

8. Learned counsel for the opposite party Nos. 1 to 5 submitted that the DSE test was conducted specifically as per medical protocol under expert supervision and Cardiac Arrest was known risk, not due to negligence. Learned counsel further asserted that informed consent was duly obtained after explaining all risks including cardiac arrest. He further stated that immediate Code Blue response and ACLS measure were taken and the patient was promptly shifted to ICU and the Hospital is fully equipped with the facility alongwith trained staff to manage the emergency and given the patient history of hypertension and obesity and limited mobility, the DSE test was necessary. Learned counsel further contended that the complaint was baseless**,** filed with malafide intention**,** hence, the same is liable to be dismissed with costs.

9. We have heard learned counsel for the parties and perused the record available on file.

10. It stands undisputed that Smt. Shakuntala Devi (deceased) underwent Dobutamine Stress Echo (DSE) test on dated 12.04.2014 at Hospital – opposite party No. 1 under the supervision of opposite party No. 5. During the procedure, she suffered cardiac arrest. She shifted to ICU and remained in vegetative state until she died on dated 13.05.2014. The primary issue is whether the opposite party Nos. 1 to 5 were negligent in conducting DSE test and deficient in providing appropriate medical care during and after the procedure and whether the complainant and proforma defendant Nos. 6 to 10 are entitled to get the relief.

11. Upon perusal of the record, it is evident that the opposite party Nos. 1 to 5 have not produced any material to establish that a consent was obtained from the patient or her attendants prior to undertaking DSE test. There is no specific consent form showing details of nature of the procedure, its risks, complications nor there is any record demonstrating that such information was ever explained to the patient or her attendants. The requirement of obtaining consent prior to conducting the DSE test was necessary as was confirmed by Dr. Preeti Sharma – Opposite party No. 3, who was present during the hearing. The absence of such consent amounts to deficiency in service and constitute negligence on the part of the opposite party No. 5.

12. As the DSE test was actually conducted by Dr. Amit Rana – opposite party No. 5, the primary responsibility for the negligence was with opposite party No. 5. However, the opposite party No. 1 being Hospital where the negligent act occurred is vicariously liable for the negligence committed by its doctor (opposite party No. 5 during the course of employment). The opposite party Nos. 2, 3 & 4 were merely a referring and consulting doctors, who did not participate in conducting DSE test. There is no evidence on record of any independent negligence on the part of the opposite party Nos. 2, 3, & 4. Accordingly, they cannot be held liable for any medical negligence.

13. Learned counsel for the complainant has cited a case law **Maharaja Agrasen Hospital & Ors. vs. Master Rishabh Sharma & Ors., Civil Appeal No. 6619 of 2016,** decided on **16.12.2019** by the **Hon'ble Supreme Court of India.** In this case, the Hon'ble Supreme Court of India has held as under:-

a) Medical Negligence and Duty of Care

11.4.1 Medical negligence comprises of the following constituents: (1) A legal duty to exercise due care on the part of the medical professional; (2) failure to inform the patient of the risks involved; (3) the patient suffers damage as a consequence of the undisclosed risk by the medical professional; (4) if the risk had been disclosed, the patient would have avoided the injury; (5) breach of the said duty would give rise to an actionable claim of negligence.

b) Vicarious liability of the acts of negligence committed by doctors engaged or empaneled to provide medical care

11.4.17 "It is well established that a hospital is vicariously liable for the acts of negligence committed by the doctors engaged or empaneled to provide medical care. It is common experience that when a patient goes to a hospital, he / she goes there on account of the reputation of the hospital, and with the hope that due and proper care will be taken by the hospital authorities. 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 the acts of commission or omission on behalf of their doctors.

11.4.18 Accordingly, we hold Appellant No.1 - Hospital to be vicariously liable for the acts of omission and commission committed by Appellant Nos. 2 to 4.

> We hold all the Appellants as being jointly and severally liable to pay compensation to the Complainants."

The above cited case law is fully applicable to the case in hand.

14. In view of the above, we are of the opinion that the opposite party No. 1 – Hospital and opposite party No. 5 – Dr. Amit Rana be held liable, jointly or severally, for medical negligence and deficiency in service. We find that the opposite party Nos. 1 & 5 failed to exercise the reasonable duty of care expected from medical professionals. Accordingly, opposite party No. 1 – Hospital is held liable to pay compensation of Rs. 10 Lakh including medical expenses of Rs. 5,84,201.67 (as per paper No. 234) incurred in the medical treatment of deceased – Smt. Shakuntala Devi under the principle of vicarious liability.

15. Accordingly, the consumer complaint is partly allowed. Opposite party Nos. 2, 3 & 4 are exonerated from any liability. The opposite party No. 1 - Hospital is hereby directed to pay a sum of Rs. 10 Lakh to the complainant and proforma defendant Nos. 6 to 10 in equal proportion alongwith litigation expenses of Rs. 50,000/- together with simple interest @ 6% per annum from the date of institution of this complaint, i.e. 22.07.2014 till the date of actual payment within a month from the date of this Judgment and Order.

16. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 /2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties.

17. File be consigned to the record room along with a copy of this Order.

(Ms. Kumkum Rani)
President

(Mr. C.M. Singh)
Member

This judgment is dated, signed and pronounced today.

(Ms. Kumkum Rani)
President

(Mr. C.M. Singh)
Member

Pronounced on: 20.11.2025