

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 4240 OF 2014**

(Against the Order dated 20/08/2014 in Appeal No. 1411/2006 of the State Commission Uttar Pradesh)

1. RAJIYA BEGUM

W/O SAFIQUE AHMAD, R/O 226 JASWANTPURI SARWAT,  
PARAGANA TEHSIL &

DISTRICT : MUZAFFARNAGAR

U.P

.....Petitioner(s)

Versus

1. DR. AMITABH SINGHAL

SWAROOP NURSING HOME, 34 MAHAVIR CHAWK IN  
FRONT OF AGARWAL MARKET, MUZAFFARNAGAR,  
TEHSIL &

MUZAFFARNAGAR

U.P

.....Respondent(s)

**BEFORE:**

**HON'BLE DR. S.M. KANTIKAR, PRESIDING MEMBER**

**For the Petitioner :**

Appeared at the time of arguments

Mr. Sanjeev Kumar Verma, Advocate  
with Petitioner in person

**For the Respondent :**

Appeared at the time of arguments

Mr. Ritesh Khare, Advocate  
Mr. Siddharth Sangal, Advocate

**Dated : 24 Nov 2022**

**ORDER**

1. The instant Revision Petition was filed under Section 21(b) of the Consumer Protection Act, 1986 against the Order dated 20.08.2014 passed by the Uttar Pradesh State Consumer Dispute Redressal Commission, Lucknow (hereinafter referred to as 'State Commission') in Appeal No. 1411/2006 whereby the Appeal filed by the Complainant was dismissed.

2. The main grievance of the Complainant was that due to negligence of doctor (OP) during hysterectomy operation, she subsequently suffered burst abdomen.

3. The brief facts relevant to dispose this Revision Petition that, on 02.10.1993 the Complainant Rajiya Begum (Petitioner-for short 'the patient') was operated by Dr. Amitabh Singhal in his Swaroop Nursing Home. It was alleged that, after 10 days, on 11.10.1993 the stitches were removed and she was discharged without any advice. However, on the same day, during sleep in the night, her abdomen got busted suddenly, the stitches got opened and intestine came out. It was alleged that she suffered severe abdominal pain and even water came out when she drunk water. Therefore, on the next day morning immediately she was taken to OP nursing home, stitches were again with sedation and discharged after sometime. The dressing was done courteously for one month, but pain did not subside till 22.01.1994. The OP just kept on assuring, the pain would subside soon. Thereafter, she visited the Government hospital where in another surgery for incisional hernia was advised, but

due to heavy expenses and paucity of funds she could not get operated. Therefore, till date she is facing difficulty in walking, sitting on the floor. She has to use abdominal belt continuously. Therefore, being aggrieved by the negligence by the OP during operation, the Complainant filed Complaint before the District Forum, Muzaffarnagar.

4. The Opposite Party filed the written version and denied the negligence during the treatment.

5. The matter was heard by 3 Members before the District Forum. Two separate Orders passed; one by the President and other by the two Members. The President allowed the Complaint and directed the OP to pay Rs.20,000/- plus Rs.2,000/- as litigation cost. Both the Members have passed dissenting order and dismissed the Complaint. Thus, the Complaint was dismissed by the Order on majority.

6. Being aggrieved, the Complainant challenged the Order of dismissal by filing the Appeal before the State Commission. The Appeal was dismissed with the following observations:

“In the case in question, onus lies on the complainant to prove that the operation of the intestine was done by the O.P./Respondent. No evidence as such has been placed before this Commission by which it is proved that the operation of the intestine was performed by the Respondent/O.P. and due to deficiency in service appellant/complainant suffered. Complainant failed to prove her allegation. There is no force in appeal. Appeal is liable to be dismissed.”

(From translated copy from Hindi)

7. Being aggrieved, the Complainant filed the instant Revision Petition before this Commission.

8. Heard the arguments from the learned counsel for both the sides and perused the entire record.

9. The learned Counsel for Petitioner/Complainant argued that the Order passed by the District Forum was against the legal principles and procedure as contemplated u/s 14(2-A), Sub-clause 1 of the Consumer Protection Act, 1986. It was the gross error of the District Forum which passed two separate Orders on different dates. The learned Counsel further argued on merit that after hysterectomy operation the patient was kept in hospital unnecessarily for 10 days. The OP did not maintain day-today record of surgical wound status, it was the reluctance of OP. He further argued that the Consent was defective and it was not an informed consent. The OP did not inform about possible complications after surgery. In this context, the Counsel relied upon a book “Law of Medical Negligence & Compensation” by Dr. R.K. Bag and ‘Medical Negligence’ by Michael J. He further submitted that the OP failed to give proper instructions at the time of discharge about “do's and don'ts”. Though the patient was under continuous follow up till 22.01.1994, but failed to diagnose Incisional hernia. It was diagnosed on 24.01.1994 at the District Hospital which clearly indicates the negligence and unfair trade practice of the OP during post-operative care. The learned Counsel relied upon **Dr. Laxman Balkrishna Joshi v. Dr. Trimbark Babu Godbole and Anr.**[\[1\]](#) & **Anil Dutt & Anr. versus Vishesh Hospital & Ors.**[\[2\]](#)

10. The learned Counsel for the OP/Respondent submitted that Dr. Amitabh Singhal is a qualified and experienced doctor practicing as a Surgeon for last 36 years in Muzaffarnagar. Both the fora have given concurrent findings of facts and dismissed the Complaint, therefore, the revisional jurisdiction of this Commission is limited. The OP performed abdominal hysterectomy, there was no question to interfere with the abdominal organs. He further submitted that if the stitches opened up in the night, the patient could not have waited till next day afternoon to visit the hospital. The complainant was overweight, obese and she herself informed that her stitches opened up when she was relieving herself in the morning. Thus it was due to the abdominal pressure coupled with her weight the stitches were loosened or broken.

11. I have perused the record, it is evident that the patient was suffering from heavy menstrual cycles due to fibroid uterus. Her hysterectomy operation was performed on 02.10.1993 and thereafter she suffered on 12.10.1993 noticed stitches of operative wound were opened. The OP under local anaesthesia put the fresh stitches and discharged her on the same day. The OP then removed the stitches once they were dry. The patient did not complain at that time. She was under follow-up till 22.01.1994 without any complaint of incisional

hernia. Due to her physical status she was not recommended to perform Namaz and she was advised to use abdominal binder. Thereafter, she did not visit the OP.

12. In my view, the mode of treatment and approach of the OP was as per the accepted standard of practice. I do not find any fault in performing the hysterectomy operation. The post-operative (after 10 days) the gaping of surgical wound is known complication in the Obese patient and due to increased abdominal pressure at the time of passing stool or urine. Therefore, opening of stitches or bust abdomen shall not be construed as medical negligence. It is evident that the patient approached Government hospital wherein she was advised for operation for correction of incisional hernia but she did not opt for it, which in my view it was her carelessness. Therefore, the incisional hernia remained throughout her life, for which the OP was not liable. I would like to rely upon the observations made by Hon'ble Supreme Court. In *C.P. Sreekumar (Dr.), MS (Ortho) v. S. Ramanujam*<sup>[3]</sup>, the Hon'ble Supreme Court held that the Commission ought not to presume that the allegations in the complaint are inviolable truth even though they remained unsupported by any evidence. The Hon'ble Court held as under:

"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."

Recently, Hon'ble Supreme Court observed the same in the case **Bombay Hospital & Medical Research Centre v. Asha Jaiswal and Others**<sup>[4]</sup>.

13. I do not find any error apparent or material irregularity in the Orders passed by the District Forum (majority) and the State Commission. Same are affirmed.

14. The Revision Petition is dismissed as devoid of any merit. However, there shall be no orders as to the costs.

<sup>[1]</sup> AIR 1969 SO 128

<sup>[2]</sup> C.C. 221/2010 Order dt.16.05.2016 NCDRC

<sup>[3]</sup> (2009) 7 SCC 130

<sup>[4]</sup> AIR 2022 SC 204

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**DR. S.M. KANTIKAR**  
**PRESIDING MEMBER**