

Vs.

Smt. Renu (Deceased)
Sh. Sanjay Kumar and Others

STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND,
DEHRADUN

Date of Admission : 27.11.2018

Date of Final Hearing : 08.05.2025

Date of Pronouncement : 30.05.2025

SC/5/A/180/2018

Dr. Manoj Singh S/o Late Sh. Mahindra Singh
D.M.R.D. M.D.
Haridwar Scan Centre, 408 Awas Vikas,
Opposite to Vinayak Hotel, Ranipur Mor, District Haridwar
(Through: Sh. V.P. Tiwari & Sh. R.K. Devliyal, Advocates)
.....Appellant

VERSUS

1. Smt. Renu (Deceased)
1/2. Sh. Sanjay Kumar S/o Sh. Raghunath Singh
1/3. Master Arnav Kumar (minor son)
1/4. Master Aarav Kumar Singh (minor son)
All residing at H. NO. 263, Type-2, Sector-1, BHEL, Ranipur Mor,
District Haridwar - 249403
(Through: Sh. Sandeep Gupta, Advocate)
.....Respondent Nos. 1/2 to 1/4

Coram:

Ms. Kumkum Rani,
Mr. C.M. Singh,

President
Member

ORDER

(Per: Ms. Kumkum Rani, President):

This appeal under Section 15 of the Consumer Protection Act, 1986 has been directed against judgment and order dated 31.10.2018 passed by the learned District Consumer Disputes Redressal Forum, Haridwar

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(hereinafter to be referred as the District Commission) in consumer complaint No. 576 of 2014 styled as Smt. Renu vs. Dr. Manoj Singh, wherein and whereby the complaint was allowed directing the opposite party to pay Rs. 8,00,000/- as compensation and Rs. 3,50,000/- towards mental and physical agony, total sum of Rs. 11,50,000/- together with interest @ 6% per annum from the date of filing of consumer complaint, i.e. 17.10.2014 till the date of actual payment alongwith Rs. 10,000/- towards cost of litigation.

2. The facts giving rise to the present appeal, in brief, are as such that the complainant gave birth to a child on dated 22.04.2014 in Himalayan Hospital, Jolly Grant. After the birth, she found that the child had significant abnormalities including absence or severe under development of Fetal Femur Length, lumbar and sacrum. These anomalies resulted in child's inability to sit, stand or move the lower part of the body independently. On inquiring from the doctors, it was found that this type of abnormalities are deducted in ultrasound before birth, for which the doctors get ultrasound done for pre-natal birth. The complainant too had got ultrasound at the opposite party's clinic on dated 14.10.2013 prior to the birth of her child. According to the report provided by the opposite party, the foetus was measured to be of 8 weeks and 4 days old. All the findings were indicated as normal. The complainant underwent to subsequent ultrasound examinations at opposite party's clinic on dated 19.12.2013 and 03.03.2014 and later on 26.03.2014, i.e. just prior to the delivery. In each of these reports, the clinic reported that the foetus was developing normally and did not indicate any abnormalities. Following the birth of her child, the complainant obtained a MRI at Himalayan Hospital, Jolly Grant on dated 23.04.2014. The MRI revealed that the child's lower lumbar spine and sacrum was either absent or severally underdeveloped. The doctors indicated that such anomalies are detectible during three

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months of pregnancy. Despite undergoing the multiple ultrasound examinations at opposite party's clinic during her pregnancy, the complainant was informed that the foetus was developing normally with no abnormalities reported. Following the refusal for further treatment at Himalayan Hospital, Jolly Grant, she shifted her child to AIIMS Hospital, New Delhi on dated 19.05.2014 seeking appropriate medical care. There the doctors also indicated that the above disability was due to absence or severally underdeveloped Lower Lumbar Spine and Sacrum and that the opposite party had committed gross negligence and gross deficiency in providing medical services. On getting the child examination in AIIMS Hospital, Rishikesh on dated 07.07.2014, the doctor there also indicated that the opposite party did not give correct ultrasound report at the right time and informed very belatedly about physical disability of the child due to which the child is unable to sit, stand or move the lower part of the body independently and he was physically handicapped. As a result of above mentioned actions by the opposite party, the complainant has faced significant mental, physical and financial distress. The failure to deduct and communicate such abnormalities during the ultrasounds constitutes serious breach of medical duty. This is indicative of gross medical negligence and deficiency in standard of care expected from medical professionals. Subsequently, the complainant lodged a complaint before the District Commission seeking relief and compensation for hardship due to gross medical negligence and deficiency in providing medical services by the opposite party.

3. In written statement, the opposite party stated that the facts presented by the complainant are fabricated and wrong. The answering opposite party stated that the complainant was referred to him by BHEL, Haridwar for examination of fetal well being of baby through basic 2D ultrasound for fetal well-being. The opposite party also stated that he had an agreement

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with BHEL Hospital to conduct 2D basic ultrasound as a part of empanelment arrangement. According to opposite party, the ultrasound was correct because it is not clear to tell about the abnormalities of the Lumbar and Sacrum in basic 2D ultrasound. The opposite party also stated that when the MRI was done at Himalayan Hospital, Jolly Grant on dated 23.04.2014 after the delivery, the MRI report showed that the femur, lumbar and sacrum bones of child were under developed. MRI was not done by him neither was any instructions given by the BHEL Hospital to conduct any test other than 2D ultrasound in respect of the complainant. He has no instructions regarding the child's fetal biophysical profile level II ultrasound / anomaly scan/3D/4D ultrasound which would have provided detailed information about the child growing in the foetus. The opposite party has agreement and instruction for conducting 2D ultrasound only. The opposite party has stated that he saw the movement and growth of the child in the foetus of the complainant through 2D ultrasound which were normal. The opposite party further stated that BHEL Hospital, Himalayan Hospital Jolly Grant, AIIMS New Delhi have not been made party in this complaint. The opposite party contended that the complainant has not submitted any evidence indicating that any doctor from any hospital indicating / reported any error or deficiency in the examination conducted by the answering opposite party. The opposite party further stated that he has conducted 2D ultrasound as per modern medical techniques and has not committed any negligence. Therefore, the complaint is liable to be dismissed with cost.

4. The District Commission after hearing both the parties and after taking into consideration the facts and evidence on record, has passed the impugned judgment and order on dated 31.10.2018 whereby the District Commission has allowed the complaint in the above terms.

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5. Having been aggrieved by the aforesaid judgment and order of the District Commission, the opposite party has preferred the present appeal.

6. In the appeal, the learned counsel for the appellant – opposite party has contended that the impugned judgment and order of the Commission below is against law, facts and merits of the case; the Commission below has not considered the written statement and evidence filed by the appellant. Because the District Commission has not taken into consideration the reply, evidence and report constituted by the Chief Medical Officer, Haridwar. That the District Commission has ignored the fact that the appellant neither committed any negligence in conducting ultrasound nor due to such ultrasound report any harm was caused to the respondent or her child. The respondent has also failed to submit any expert report or any affidavit from any doctor which proves any carelessness or negligence on the part of the appellant. On the contrary, the finding of the report of the committee constituted by the Chief Medical Officer, Haridwar no negligence or malice was found against the appellant. The District Commission has also ignored the fact that the respondent was suffering from diabetes during her pregnancy and the treating doctors Dr. Sangeeta Singhal and Dr. Sharda Swaroop of BHEL Hospital, should have recommended / prescribed for higher level diagnostic test, such as level II ultrasound / anomaly scan / 3D/ 4D ultrasound / MRI to know the status of foetus. Instead the appellant was directed to conduct 2D (fetal well being) ultrasound test on all occasions, i.e. on 14.10.2013, 19.12.2013, 03.03.2014 & 26.03.2014. It is important to note that the appellant contractual agreement with BHEL was only for providing 2D (fetal well being) ultrasound and did not have any contract regarding the 4D and level II or any other higher level test. The District Commission has ignored the important fact that the basic 2D ultrasound test may not deduct the anomalies in the lumbar or sacrum. Advance imaging techniques such as

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level II ultrasound / anomaly scan / 3D/ 4D ultrasound / MRI are often necessary for accurate diagnosis of such conditions. The responsibility for determining the appropriate disease lies with the treating doctor. The Sonographer / Radiologist performs the ultrasound examination as prescribed by the treating doctor. The Sonographer / Radiologist are not authorised to independently conduct the examination without a referral / prescription from the treating doctor. That the respondent has not made BHEL, Hospital a party to the suit which is a necessary party. The District Commission over looked the fact that the respondent must have gone multiple pre-natal test including ultrasound prior to the delivery procedure. Despite this evaluation no fetal deformities were deducted at that time. It was only after delivery through the MRI scan – a more advanced diagnostic technique – when the deformation was identified. Notably, the respondent has not submitted any ultrasound or related reports conducted prior to the operation. The District Commission below ignored the fact that abnormalities in lower lumbar and sacrum is seen in only one patient out of 75000 to 100000 and are not detected by 2D ultrasound, i.e. first level test. The District Commission has ignored that the respondent is neither a consumer of the appellant and nor she falls under the category of consumer because the respondent got her treatment done in BHEL Hospital and did not make any payment to the appellant. Any charges incurred by the complainant, if applicable, were paid to the BHEL Hospital. The appellant operates under the contractual agreement with BHEL Hospital wherein BHEL pays the amount to the appellant on a monthly basis. The District Commission has also ignored the fact that according to the established medical guidelines Level II ultrasound / anomaly scan / 3D/ 4D ultrasound / MRI are conducted between 20 to 24 weeks of pregnancy because it provides to assess all parts of foetus including brain, face, spine, heart, stomach, bowel, kidneys & limbs etc. The District Commission has also overlooked the fact that the respondent has filed a complaint against the

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appellant with the BHEL, Hospital, however BHEL Hospital did not take any action as the allegations made against the appellant were found unsubstantiated. The District Commission has passed the impugned judgment and order on the basis of surmises and conjectures. Hence, the appeal be allowed and the impugned judgment and order is liable to be set aside.

7. Learned counsel Sh. V.P. Tiwari & Sh. R.K. Devliyal for the appellant have appeared and learned counsel Sh. Sandeep Gupta for respondent Nos. 1/2 to 1/4 has appeared alongwith respondent No. 1/2 Sh. Sanjay Kumar.

8. We have heard learned counsel for both the parties and perused the pleadings, evidence & documentary evidence available on record.

9. During the course of the arguments, learned counsel for the appellant stated that the appellant performed only 2D ultrasound examination as prescribed by the doctors of BHEL Hospital. This was in accordance with agreement between the appellant and the BHEL Hospital, which authorises the appellant to conduct 2D ultrasound only. The appellant adhered the medical protocol and procedure, therefore, there was no medical negligence on the part of the appellant.

10. In support of the his contention, learned counsel for the appellant has cited the following case laws, which are as under:-

- 1. Hemlata Vs. Dr. Vipin Premi, IV (2004)
CPJ 694, Uttaranchal State Consumer Disputes
Redressal Commission, Dehradun**
- 2. Senthil Scan Centre Vs. Shanthi
Sridharan & Anr., III (2011) CPJ 54 (SC)**

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11. In the case of **Hemlata Vs. Dr. Vipin Premi (supra)** the Commission concluded that ultrasound report should not be considered conclusive proof of internal organ conditions. Such diagnostic tools are interpretative and should be corroborated with additional evidence to establish definite conclusions.

12. In the case of **Senthil Scan Centre (supra)** the Hon'ble Apex Court has held that the "Ultrasound is not a perfect depiction of foetus and scan result cannot be 100% conclusive. Further at para No. 3 of this judgment, the Hon'ble Apex Court has observed in **Martin F. D' Souza v. Mohd. Ishfaq 2009(3) SCC 1**, this Court had adopted the above test as applicable to cases of medical negligence in this country. This Court relied upon the following passage from **Hunter v. Hanley 1955 SLT 213**, which deals with the tests applicable for establishing negligence in diagnosing or treatment on the part of a doctor:

"In the realm of diagnosis and treatment there is ample scope for genuine difference of opinion and one man clearly is not negligent merely because his conclusion differs from that of other professional men.... The true test for establishing negligence in diagnosis or treatment on the part of a doctor is whether he has been proved to be guilty of such failure as no doctor of ordinary skill would be guilty of if acting with ordinary care...." Applying the above test recognized by precedent in this country to the case at hand we are of the view that the State Commission and so also the National Commission fell in error in holding that there was deficiency in service in as much as the centre had failed to detect the deformity with which the respondent gave birth to her child. What is significant is that the respondent-complainant had not led any expert evidence to controvert the case of the centre that the doctor who conducted the ultrasound was highly qualified and that the ultrasound was done with due care and diligence. There was also no evidence to show that the failure to detect the deformity

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was out of any negligence on the part of the doctor conducting ultrasound.”
Negligence not proved.

The principle laid down in both the citations is applicable to the case in hand.

13. Learned counsel for respondent Nos. 1/2 to 1/4 has stated that the appellant has conducted four ultrasounds during the complainant’s pregnancy, but the appellant failed to deduct any fetal anomalies. This omission on the part of the appellant reflects breach of his duty amounting to medical negligence.

14. On perusal of the record, it is admitted that the appellant has conducted four ultrasound tests on dated 14.10.2013, 19.12.2013, 03.03.2014 and 26.03.2014. The prescription / referral schedule of ultrasound examinations conducted on dated 14.10.2013 and 19.12.2013 are not available on record. However, the ultrasound reports to this effect indicates that the complainant was referred to the appellant by the BHEL Hospital (paper Nos. 26 & 27). Further these reports indicates that the Foetus was 8 weeks & 4 days old on dated 14.10.2013 and 18 weeks & 5 days old on dated 19.12.2013 respectively.

15. The prescription / referral schedule for ultrasound conducted on dated 03.03.2014 and 26.03.2014 are available on record. (Prescription / referral schedule dated 25.02.2014 paper No. 28 and prescription / referral schedules dated 26.03.2014 paper No. 30). These prescription / referral schedule were for diagnose complete Fetal Profile and for Fetal well-being. These prescription / referral schedules established that the complainant was referred to the appellant by BHEL Hospital for ultrasound for fetal well-being. The appellant performed 2D ultrasound examination as per directions of the doctors of BHEL Hospital. That the appellant was

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empaneled by the BHEL Hospital to conduct lower abdomen in pregnancy for fetal well being & fetal weight (paper No. 32) and the appellant was not authorised or empaneled for conducting MRI and child's fetal bio-physical profile II ultrasound/ anomaly scan/3D/4D ultrasound. This empanelment was further renewed for a period of one year on dated 03.04.2014 (paper No. 33). It is also admitted that the complainant was suffering from high BP and diabetes during the pregnancy. It is further admitted by the complainant (paper No. 43) that Dr. Sangeeta Singhal of BHEL Hospital kept insisting the complainant as treating doctor till the end that the child was normal and healthy, therefore, in our opinion she should be impleaded as a necessary party to the complaint case but the same was not done.

16. We have also perused the finding of the report of Committee doctor consisting by the Chief Medical Officer, Haridwar (paper No. 46) which states that the complainant was suffering from Congenital Abnormality, which is a rare disease, probability of which is one case in 75000 to 100000 and its probability increases further in mothers suffering from diabetes. As per report, the detection rate of this disease by 2D ultrasound (normal ultrasound) is only 15 to 20%. The report states that the complainant was referred by BHEL Hospital for normal ultrasound and was neither asked nor referred for level II / 4D ultrasound. The report further states that the BHEL Hospital should have refer the complainant for Level II ultrasound / 3D/ 4D ultrasound examination keeping in view High Blood Pressure in previous pregnancy and risk caused by diabetes during this pregnancy. The Committee concluded that the investigation conducted by the appellant was without malice and did not constitute negligence. Thus, above expert report does not reveal that there was any medical negligence on the part of the appellant. Moreover, the complainant has not filed any such expert report wherein it was observed that the appellant was negligent in conducting the ultrasound and making his report. It is also pertinent to mention that the

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MRI was conducted of the child of the complainant after the birth of the child and no such report was filed on record by the complainant that any fetal deformity was detected in pre-natal test including ultrasound prior to the delivery procedure.

17. In view of above we find no merit in the complaint. The respondent Nos. 1/2 to 1/4 have failed to substantiate their claim by adducing cogent and trustworthy evidence that there was any deficiency in service on the part of the appellant. Accordingly, we are of the considered opinion that the impugned judgment and order passed by the District Commission lacks adequate reasoning and fails to account for relevant facts, evidence of the case. The impugned judgment and order is perverse and it has suffered from illegality and irregularity in passing of the same, thus, the impugned judgment and order is liable to be set aside and the appeal is also to be allowed.

18. Accordingly, the appeal is allowed. Impugned judgment and order dated 31.10.2018 passed by the District Commission, Haridwar is hereby set aside. Consumer complaint shall stand as dismissed. No order as to costs of the appeal.

19. Statutory amount, if any, deposited by the appellant be returned to the appellant.

20. 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. The copy of this order be sent to the concerned District Commission for record and necessary information.

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

(Ms. Kumkum Rani)
President

(Mr. C.M. Singh)
Member

Pronounced on: 30.05.2025