

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION-II, VISAKHAPATNAM**

Date of Registration of the Complaint: 03.11.2020

Date of Final hearing: 31.07.2024

Date of Pronouncement: 11.09.2024

CONSUMER CASE No.188/ 2020

In the Matter of:

Shri Motamarri Ravi Teja, son of Shri M.S.S.L.N. Kumar, Hindu, aged 29 years, Event Manager, residing at D.No.53-16-39, Petrol Bunk, Maddilapalem, Visakhapatnam.

(Through: Sri J. Prithvi Raj)
... Complainant

Versus:

1. The Chairman & Managing Director, L.V Prasad Eye Institute, Kollam Anjireddy Campus, L.V. Prasad Marg, Road No.2, Banjara Hills, Hyderabad-500034, State of Telangana.
2. Dr. Merle Fernandes, Director, L.V Prasad Eye Institute, G.M.R Varalakshmi Campus, 11-113/1, Hanumanthawaka Junction, Visakhapatnam-530040.
3. Dr. Keerthi Ballala, Ophtalmologist, L.V Prasad Eye Institute, G.M.R Varalakshmi Campus, 11-113/1, APMC/FMR/8122, Hanumanthawaka Junction, Visakhapatnam-530040.
4. Dr. Annapoorna, Ophtalmologist, L.V Prasad Eye Institute, G.M.R Varalakshmi Campus, 11-113/1, Hanumanthawaka Junction, Visakhapatnam-530040.
5. Shri Kombathula Ravi, son of Shri K. Suryanarayana, Hindu, aged 28 years, Naval Architect, residing at Flat No.202, Krishna Brindavan Apartments, Yendada, Visakhapatnam.

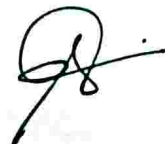
(Through: Sri Saka Rajendra Prasad for Opposite parties-1 to 4
& Opposite party-5 is Exparte)
... Opposite Parties

CORAM:

Smt. G.Venkateswari, M.Sc, LLB., President, Smt. P.Vijaya Durga, B.Com, B.L., Women Member., Sri Karaka Ramana Babu, M.Com, M.B.A., LL.B., Member.

P r e s e n t:

1. Smt. G Venkateswari, M.Sc, LLB.,
President
2. Smt. P Vijaya Durga, B.Com, B.L.,
Women Member
3. Sri Karaka Ramana Babu, M.Com, M.B.A., LL.B.,
Member



JUDGEMENT**(As per Smt G. Venkateswari, Honourable President, on behalf of the Bench)**

1. The present complaint is filed under Section-12 of Consumer Protection Act, 1986 seeking an order to direct the opposite parties:
 - i. To pay an amount of Rs.30,00,000/- (Rupees Thirty Lakhs only) to the complainant jointly and severally towards compensation for medical negligence which includes compensation for pain and sufferance;
 - ii. To pay the costs of the petition and such other relief or reliefs as the commission deems fit and proper in the circumstances of the case.

Factual Matrix:**Version of the Complainant:**

2. The complainant while chit chatting with his friend Mr. Maddhila Avinash, the 5th opposite party and playing with Air Rifle at Doctors Plaza, one of the pellets from the Air Rifle touched the left eye of the complainant and as a result he sustained bleeding injury. He was immediately shifted to Visakha Eye Hospital, Visakhapatnam for treatment. The doctors expressed their inability to give treatment, as there is no proper equipment and advised him to go to the 2nd Opposite Party hospital.
3. Accordingly, he was taken to the 2nd opposite party hospital where the 3rd opposite party by name Dr. Keerthi Ballala, ophthalmologist attended the complainant as she was duty Doctor at 2nd opposite party and instructed one, Alekhya Muggu, the optometrist to check the injury. Later, upon observation the complainant was sent to the 4th opposite party Dr. Annapoorna, who diagnosed that the left eye of the complainant is having 'Open Globe Injury-Zone 1, Slit Lamp Photography was conducted for the injury. On examination they found defective vision following the injury with gun pellet (Aluminium particle) and found sub conjunctival hemorrhage + full thickness corneal tear from 12o' clock limbus towards inferiority in Y shape – indo dialysis with indo dialysis and iris prolapse through the wound – vitreous prolapsed along with lens prolapsed noted through the wound-vitreous hemorrhage. After discussion, the 2nd opposite party conducted the Medico Legal Case and SLP was



done, and shielded the eye of the complainant. The 4th opposite party deferred with B-Scan and prescribed tablets CIPLOX 500 Mg. BD. The complainant was advised surgery - primary globe integrity and was explained risk of Endophthalmitis, Sympathetic ophthalmitis and Retinal detachment. After explaining the condition, advice for management operation corneal tear was given.

4. The complainant was admitted in the hospital for surgery. Though Ciplox 500 mg BD tablets were prescribed those were not given. He was given only Dolo 650 mg twice a day for one day. The surgery was conducted on 20.02.2019 and he was discharged on 21.02.2019. The 2nd opposite party did not prescribe antibiotic doses from 19.02.2019 to 21.02.2019. The B scan was conducted only on the next day of operation and was not conducted prior to the operation or on the date of operation though the 2nd opposite party signed on that bill dated 19.02.2019, that she attended the patient at 06:30 pm but she did not attend the patient.

5. When there was no improvement in the injured eye, upon advice of his family Doctors, the complainant visited Aravind Eye Hospital at Coimbatore, Dr. Sarvanan, Ophthalmologist suggested the complainant to go for CT Scan of Brain and both orbits immediately. It was found by the CT scan consultant radiologist that a "foreign body is seen, of measure 2.2cm posterior to the level of superior orbital rim optic nerve is not delineated due to artefacts from the foreign body." The doctors of the Arvind hospital opined and advised the complainant oral and topical cortico steroids and nil intervention for foreign body and had been kept under observation. The complainant was enlightened that 2nd operation cannot be done to remove the pellet.

6. As they expressed their non-intervention he was taken to Jubilee Main Hospital, Trissur, Kerala where Dr. M. Rajeev Rao found that antibiotics were not given for the patient. Therefore, he advised antibiotics on 23.02.2019 since there was infection spreading to the right eye and its other parts. Upon advice of Dr. M. Rajeev Rao the complainant was taken to Aster Medcity Hospital at Cochin for treatment under Dr. Dilip Panikar, Ms.M.Ch., Department of Neuro Surgery and Spine Surgery, on 24.02.2019, who conducted preliminary investigation of the record produced by the complainant and advised him to join in Aster Medcity Hospital on 26.02.2019 to



conduct surgery to remove the pellet from left eye of the complainant. The surgery was conducted and the complainant was discharged on 02.03.2019. The complainant was further advised to go to Giridhar Eye Institution of Cochin for further evaluation for vision. Dr. Anubhav of said institution examined and issued a Certificate No. GEI/MC/701340/AB/798/19 dated 04.03.2019 wherein he was advised only observation and guarded visual progresses and periodic follow-up as he had undergone eye surgery recently, as suggested regular follow up for eye check up the complainant approached Visakha Eye Hospital on 11.03.2019 and 20.04.2019.

7. When there was no improvement in the vision he was once again advised to the 1st opposite party and therefore approached to meet Dr. Prasant Garg who expressed his inability to give any further evaluation or treatment. He suggested the complainant to go for Oculoplasty. After consulting various Doctors the complainant finally had gone to Dr. Usha Kim who also finally advised Oculoplasty on 29.08.2019 and also issued a certificate to that effect.

8. Under inevitable circumstances the complainant went for Oculoplasty as he lost his sight permanently due to deliberate negligence of opposite parties-1 to 4, therefore sustained unexplained irrecoverable loss. Due to disfiguration of face he is unable to move freely in the society, more particularly in social gatherings as well as in his family and with others. The complainant has to work dawn to dusk but he is unable to work like before. Though he spent huge amount of rectification of the injured eye by moving pillar to post, all his efforts became futile. The negligent acts committed by the opposite parties caused permanent disability, moreover they did not show any interest to re-succinate immediately by taking the help of renowned experts, as a result he lost the eye which is highly illegal and inhumane. Therefore, the opposite party 1 to 4 are liable to compensate for the loss caused.

9. There is no possibility of getting vision coupled with continuous threat to his life. The complainant is aged about 28 years and he is having a long span of life and the artificial eye is affected, he will lose another eye also and he cannot do his routines. As it is a complete and permanent disability, opposite parties-1 to 4 are liable for their negligence and hence the complaint.



Version of the Opposite parties:

10. Per contra, the opposite parties 1 to 4 filed their written version stating that the complaint is totally false, baseless and devoid of merit and filed with a motive of extracting money for unlawful gain. That opposite parties 1 to 4 state that L.V Prasad Eye Organization is a non-profitable organization governed by two trusts i.e., the Hyderabad Eye Organization and the Hyderabad Eye Research Foundation. That it is providing/rendering its noble service to its society and served over 15 million people with more than 50% services provided free of cost regardless of complexity.

11. That the complainant complained of defective vision in left eye since 30 minutes following an injury with an air gun bullet. He informed that the pellet grazed his eye and eye did not come into direct contact with the pellet. After considering the information and initial observations shown, there was significant bleeding from the eye. The Complainant reported that he was not unconscious after injury nor did he sustain any head injury, he was seen and examined in an emergency service. His vision was 20/20 in the right eye and there was no perception of light in the left eye. On slit lamp bio microscopic examination, he was noticed to have subject conjunctival hemorrhage with full thickness invested Y shaped corneal tear extending from the 12 o' clock limbus inferiorly to the limbus, with irido dialysis, iris prolapse, vitreous and lens prolapse and vitreous hemorrhage in left eye. Ultra sound B scan was deferred to after the surgery due to extreme globe hypotony. The complainant was diagnosed to have "OPEN GLOBE INJURY" PENETRATING TYPE-ZONE-I. After explaining the risk of multiple surgeries namely Endophthalmitis, Sympathetic ophthalmitis and Retinal detachment, the doctors of L.V Prasad Eye Institution followed the standard prescribed procedure and had taken all clear and diagnosis evaluating and treating the complainant by giving global repair in such situations as it is the immediate priority.

12. That the complainant was not advised to undergo B scan or CT scan since the priority was to conduct globe integrity and stop the bleeding and B scan globe would further hampered the injured eye. Since, the eyeball was completely distorted after injury and pressure by the B-Scan probe whenever it damaged further, the procedure



was done the next day after repairing the globe. Attributing the negligence on part of the opposite parties as B Scan was not done before operation is baseless, as it was not done as CT Scan would cause immense strain on the exposed portion of the eye and since the complainant himself was certain that his eye did not come into contact with the pellet and it only grazed his eye. Even if the said scan was taken the surgery plan would remain unchanged.

13. The surgery was performed as per internationally accepted practice with due care and concern and the bleeding from the complainant's eye was successfully stopped on the scheduled day of February, 2019 for globe integrity under general anaesthesia by opposite parties-1 to 4. There was no fault or negligence in the surgery as per the accepted medical standard.

14. That the treatment post procedure was duly prescribed and explained to the complainant and there is no iota of truth that medication was not given by opposite parties-1 to 4. The complainant could have given a written complaint and immediately brought the same to the notice of the higher authorities. In absence of such pleading, alleging a complaint against the opposite parties is an afterthought which cannot be countenanced. That the complainant was seen for post-operative examination on 21.02.2019 when his visual acuity in the left eye was no perception of light he had lid edema, conjunctival chemosis + subconjunctival hemorrhage. There was a corneal edema with 16 sutures/ stitches, present tissue adhesive was in place but there was no bandage, contact lens which was deemed unlikely to stay in place due to chemosis, Anterior Chamber was formed and no lens was visible. An ultrasound B scan was performed which showed high reflective organized vit echoes seen at posterior pole. A high reflective membrane was seen inferiorly and suspected to be a retinal detachment. The remaining retina was on. He also had choroidal thickening with sub Tenon's fluid and a peripheral choroidal detachment. An opinion from the Retina consultant was taken. He was on topical steroids, antibiotics and oral steroids. Following the discussion with the retina team it was decided to observe the Complainant's state as he had vitreous hemorrhage, retinal detachment with sub retinal hemorrhage, with sub Tenon's fluid. The Complainant was advised Left Eye Milflox



Eye Drops 8 times a day, Pred Forte Eye Drops every one hour, Tab Dolo when needed, Tab Chymoral Forte Thrice a day, Tab Wysolone 20 MG, after food 3 Tabs once a day, TAB Rantac, 15 min before food, Twice a day, Tab SHELCAL 1500 mg once a day, Lacrigel Eye Gel thrice a day over the infero temporal area of sub-conjunctival hemorrhage. He was discharged and was asked to review on Tuesday. The Complainant did not follow up as advised and did not visit the L.V. Prasad Eye Institute, Visakhapatnam branch even once after the Surgery and did not contact the L.V. Prasad Eye Institute, Visakhapatnam with any complaints whatsoever. As such the Complainant having not followed the advice cannot now attribute negligence on the part of the opposite parties-1 to 4.

15. That the opposite parties-1 to 4 did not forward the Medico Legal Case (MLC) to the concerned police station at the request of the complainant since the respondent-5 was his close friend and did not want any harassment from the police to his friend and the incident was purely accidental. That the Opposite parties never exceed to request of this nature but on persuasion of the complainant who was severely injured made an exception. That the complainant having profusely requested not to refer the case to the police cannot now turn around and claim that there is negligence on part of the L.V Prasad Eye Institute in referring the case to the concerned police station.

16. Opposite parties-1 to 4 state that they have taken standard care in the procedure, treatment for treating the corneal tear with iris, vitreous and lens prolapse as per the accepted standard practice and all throughout the entire consideration treatment prognosis and diagnosis were as per international standards without their being any semblance of negligence on part of the opposite parties.

17. That the complainant chose to visit multiple hospitals as per his whims and fancies and did not believe the doctor's advice that the ultrasound B scan done after the procedure did not reveal about the following body lodged in the eye. That the complainant flouted the advice of the doctors and did not follow up thereafter. Hence, further no other investigations would be performed. That the correct standard of care and procedure since the eyeball was completely distorted after the injury and pressure by the B Scan probe would have been damaged further.

18. That the opposite parties-1 to 4 are no way concerned with the treatment taken by the complainant elsewhere. That the surgery was performed at L.V Prasad Eye institute was par excellence and there was no spread of infection to the other eye nor any reports thereafter of others of that evidence.

19. That the Complainant came to the L.V. Prasad Eye Institute, Hyderabad on 3rd June 2019. He was examined by Dr. Prashant Garg. The complainant came for opinion regarding any possibility of vision restoration in left eye. There was absolutely no complaint about the vision in the right eye. On examination, left eye was found to be phthisical with no light perception. There are two loose CTR sutures, which were removed by the L.V Prasad Eye Institute, Hyderabad. The Complainant was advised for Oculoplasty consultation for cosmesis and advised protective glasses to be worn constantly. The Complainant was seen on 4th June, 2019 by the Oculoplasty consultant and was advised to continue topical medications as advised and to review after 1 month. The complainant was informed that there was no ciliary tenderness/redness he was advised plan conformer trial. The Complainant was further informed that if he suffered with ciliary tenderness or could not tolerate conformer, he was advised to undergo evisceration + implant followed by Customized Ocular Prosthesis (COP). The Complainant was also informed that he would have to reassess the left upper eyelid in case of COP and may also need ptosis correction accordingly.

20. That the disfigurement was caused by the complainant playing with an air gun which caused injury to his eye and the opposite party performed the surgery to save the eye ball in conformance with international standards and guidelines. The Opposite Party Nos. 1 to 4 have done their best for the complainant and provided the best eye care facility. The complainant concocted allegations without any semblance of truth. The injured eye was treated in accordance with the internationally accepted medical practice and the same can in no way be considered as 'recklessness and negligence'.

21. That the Opposite Party Nos. 1 to 4 submit that the alleged financial loss which the complainant has mentioned in the present speculative complaint is without any basis in fact or in law. The Complainant is not entitled to claim any compensation from the Opposite Party as the Opposite Party has performed its obligations/duty



correctly by following the prescribed standard practice and care. The allegations of wrong treatment and deficiency in service are farfetched and illusionary and had been made only on 15th February, 2021 to add colour to the false and speculative complaint.

22. That the Complainant had loss of vision in his eye when he first approached the L.V. Prasad Eye Institute, Visakhapatnam. The Complainant, blaming his loss of vision in the left eye to the Opposite Party No. 1 to 4 is preposterous to say the least, if any blame is to be casted it is to be casted on the Respondent No. 5 and Complainant who played around with an air gun despite being fully aware of its ramifications and not the Opposite Party Nos. 1 to 4. The treatment given by the Opposite parties-1 to 4 cannot be termed as 'wrong treatment.'

23. That the Complainant's alleged loss of earnings and claim for compensation are far-fetched and illusionary apart from being false and baseless and cannot by any stretch of imagination be attributed to the Opposite Party Nos. 1 to 4. The Complainant if advised should seek appropriate damages from the Respondent No. 5 alone who caused the loss of the Complainant's left eye as alleged and not the Opposite Party Nos. 1 to 4, who by virtue of their timely intervention stopped the profuse bleeding from the left eye and further prevented the infection from spreading. No cause of action ever accrued to the Complainant for filing the present complaint.

24. That the prayer of the complaint is misconceived. The compensation claimed in the prayer is vexatious and purely speculative. The contents of the said paragraph are silent as to how the Complainant reached those magical figures. In the entire complaint there is not even an iota of proof as to how there has been any alleged 'negligence' by the Opposite Party Nos. 1 to 4. That apart the entire pleadings are a bundle of frivolous allegations without any iota of proof. The Complainant has filed the present complaint only to harass the Opposite Parties and to make unlawful gain. The present complaint is devoid of merits and is untenable in law and on facts. It has been vexatiously filed, it therefore be dismissed with exemplary costs.



Records available on the file of this commission:

25. The complainant and opposite parties-1 to 4 filed their Evidence affidavits and Written arguments. Opposite party-5 remained Ex-Parte. Heard both the complainant and opposite parties-1 to 4.

26. **Ex.A-1 to Ex.A-8 are marked for the complainant.** Ex.A-1 is Medical Report of the complainant dated 19.02.2019; Ex.A-2 is Discharge Summary and report on preliminary tests conducted by the 2nd opposite party on the complainant dated 21.02.2019; Ex.A-3 is Medical Report issued by Dr. Renu Bansal of Aravind Hospital dated 22.02.2019; Ex.A-4 is Prescription given by Dr. Rajeev Rao, Jubilee Main Hospital, Trisur, Kerala dated 24.02.2019; Ex.A-5 is Discharge Summary issued by Aster Medicity Hospital, Kochi dated 02.03.2019; Ex.A-6 is Certificate No. GEI/MC/701340/AB/798/19 issued by Dr. Anubhav Goyal of Giridhar Eye Institute, Cochin dated 04.03.2019; Ex.A-7 is Certificate issued by Visakha Eye Hospital, Visakhapatnam dated 11.03.2019; Ex.A-8 is Medical Report issued by Dr. Usha Kim of Aravind Eye Hospital, Madurai dated 29.08.2019.

27. **Ex.B-1 is marked for the Opposite parties.** Ex.B-1 is Entire Medical Record of the Complainant.

Issues:

28. After going through the record placed before us, points for determination framed are:

- i. Is there any medical negligence on part of the Opposite parties?
- ii. Is there any deficiency of service on part of the Opposite parties?
- iii. Is the complainant entitled for the relief asked for?

Law & Analysis:

29. The case of the complainant is that the complainant's left eye sustained bleeding injury on 19.02.2019 at 3:00 p.m. accidentally while playing with his friend with an air gun and immediately he was taken to Visakha Eye Hospital, Visakhapatnam where the doctors expressed their inability to give treatment and advised to go to Opposite party-2 hospital. As the complainant was taken to the opposite party-2 hospital the 3rd opposite party by name Keerthi Ballala,

Ophthalmologist the duty doctor instructed one Alekhya Muggu who is the optometrist to check the metrist injury. Accordingly, the complainant was sent to the 4th opposite party, Dr. Annapoorna who diagnosed that the complainant was having ***“Open Globe Injury-Zone 1. Slit Lamp Photography was conducted for the injury. On examination they found defective vision following the injury with a gun pellet (Aluminum particle) and found sub conjunctival hemorrhage”*** vide Ex.No.A-1/B-1.

30. On 20.02.2019, corneal tear repair surgery was conducted at Opposite party-2 hospital vide Ex.No.A-2. Later, when there was no improvement upon advice of his family doctor, the complainant visited Dr. Renu Bansal at Aravind Eye Hospitals, Coimbatore where USG B Scan was done which showed ‘ Left Intra Orbital Retro Ocular foreign body measuring about 1 x 0.76 x 0.7 cms seen in the lateral aspect of left orbit close to/ within lateral rectus muscle vide Ex.No.A-3.’ The said doctor advised nil intervention as optic nerve is not delineated due to artefacted from the foreign body and was kept under observation. Ex.A-4 is the consultation with Dr. M. Rajeev Rao, M.S, Thrissur for reference to Aster medcity, to take up the case of the complainant from Thrissur the complainant had gone to Aster medcity, Kochi to take treatment at Dr. Dileep Panikar who diagnosed that a foreign body is there in the left eye as per Ex.No.A-5. As per the investigations at Aster Medcity, the observation is ***“CT BRAIN AND ORBITS done on 26/02/2019:***

- ***Hyperdense metallic foreign body (bullet) seen-10 x 7 x 6.5 mm in the left orbit, in the lateral aspect of the intra-conal space, between the left lateral rectus and the optic nerve.***
- ***The adjacent left zygomatic bone, the left greater wing of the sphenoid are intact. No definite satellite fragments seen.”***

31. As per the discharge summary dated 02.03.2019 which is filed as Ex.No.A-5 the course in hospital discloses that ***“He was diagnosed to have Foreign body in the left eye. He underwent Left lateral orbitotomy and retrieval of foreign body (Airgun pellet) under GA on 27/02/2019. He tolerated the procedure well. Post operatively he was started on analgesics, antibiotics and was put on neuro observation. His***



condition improved and then was gradually shifted to the ward. Ophthalmology consultants assessed him and advice followed. He was mobilized independently and he is being discharged in a stable condition.”

32. After the neuro surgery the complainant had gone to Giridhar Eye Institute, Cochin on 04.03.2019 for ophthalmic examination and upon examination it was suggested/ advised that since the complainant had undergone the surgery he should be under observation at present and guarded visual prognosis. Later, the complainant visited Visakha Eye Hospital on 11.03.2019 for follow up review vide Ex.No.A-7. Finally, the complainant visited Aravind Eye Hospitals, Madurai and got done Oculoplasty vide Ex.No.A-8 on 29.08.2019.

33. A lengthy hearing of the complainant was focused on the following main points:

- B Scan was not done/ deferred at L.V Prasad Eye Hospital prior to the surgery primarily for globe integrity which led to the wrong diagnosis and treatment of the accident thereby resulting in loss of eyesight to the complainant.
- Foreign body was left in the eye which led to infection of the eye due to the negligence of the opposite parties-1 to 4.
- Complainant had to go for oculoplasty and suffer disfiguration because of the negligence of the opposite parties.
- Opposite parties-1 to 4 did not lodge any Medico Legal Case (MLC).

34. In **Poonam Varma Vs. Ashwin Patel and Ors (1996) 4 SCC 332** the question of medical negligence was considered in the context of treatment of patient, and it was observed as under: *“negligence has many manifestations - it may be active negligence, collateral negligence, comparative negligence, concurrent negligence, continued negligence, criminal negligence, gross negligence, hazardous negligence, active and passive negligence, willful or reckless negligence or negligence per se.”*

35. *“Deriving its strength from the landmark pronouncements of Jacob Mathew vs. State of Punjab, (2005) 6 SCC 1 and Kusum Sharma vs. Batra Hospital (2010) 3 SCC 480, the Apex Court penned down the three essential ingredients in determining an act of medical negligence. Those are: (1) a duty of care extended to*

the complainant, (2) breach of that duty of care, and (3) resulting damage, injury or harm caused to the complainant attributable to the said breach of duty. However, a medical practitioner will be held liable for negligence only in circumstances when their conduct falls below the standards of a reasonably competent practitioner, the Bench recorded.” The point for consideration before us is whether there exists any medical negligence as per the above guidelines of the Hon’ble Supreme Court of India.

36. The opposite parties strongly contend that it is upon the information given by the complainant and that since the complainant was certain that his eye did not come into contact with the pellet and only grazed his eye, they did not suggest for B Scan before going for the surgery and that their primary objective was to protect the globe integrity depending on the preliminary investigations. In support of their contention the opposite parties filed Ex.B-1/ A-1 which is the entire medical record of the complainant. The 2nd page of Ex.B-1/ A-1 which is the medical report reveals that the opposite parties diagnosed the injury as “Open globe injury - penetrating type - Zone 1.” The penetrating injury sustained by the patient indicates it was due to the accidental incident. An expert must suspect/ expect a foreign object in the eye and examine thoroughly before proceeding for the further treatment. The Slit Lamp Photography upon examination revealed “*OD WNL, OS, NPL, SUB conjunctival hemorrhage +, full thickness corneal tear from 12 o'clock limbus towards inferiorly in y shape, Iridodialysis with iridodialysis and iris prolapse through the wound, Vitreous prolapse along with lens prolapse noted through the wound, Vitreous hemorrhage +.*” This means that the injury is straight into the cornea through the centre of the eye. Moreover, Chief complaint as per the report is ‘*history of eye bleeding since 30 mins following an injury with a gun bullet (aluminum particle).*’ Definitely, investigations must be done in detail with a senior faculty. The first and foremost standard that an expert is expected to proceed with is to confirm whether a foreign body is there in the eye, remove the foreign body from the eye after explaining the prognosis of the surgery to the patient and prescribe sufficient dosage of antibiotics to reduce the chance of infection in the eye.

37. Referring to a series of cases, the Hon'ble Supreme Court held in *Arun Kumar Manglik v. Chirayu Health and Medicare Private Ltd and Anr.* that *"In practise of medicine, there could be varying approaches to treatment. There can be a genuine difference of opinion. However, while adopting a course of treatment, the medical professional must ensure that it is not unreasonable. The threshold to prove unreasonableness is set with due regard to the risks associated with medical treatment and the conditions under which medical professionals function. This is to avoid a situation where doctors resort to 'defensive medicine' to avoid claims of negligence, often to the detriment of the patient. Hence, in a specific case where unreasonableness in professional conduct has been proven with regard to the circumstances of that case, a professional cannot escape liability for medical evidence merely by relying on a body of professional opinion."*

38. The Hon'ble NCDRC also recently held that medical professionals must adopt reasonable methods of treatment despite availability of different medical approaches in *Manju Dadu v. Fortis Escort Heart Institute and Research Centre C.C No.326/2012 decided on 07/08/2024.*

39. The word graze means a light abrasion or a slight scratch. Grazing gun pellet which grazes an eye ball will not cause bleeding for such a long period and a penetrating injury (SLP). Upon the diagnosis and investigation revealed from Ex.A-1/B-1 it is clear that the posterior chamber, vitreous cavity and retina of the eye is damaged because of which the inner blood vessels got ruptured due to deep injury and blood splashed through the eye. The expert cannot rely on the statement given by the patient who will be generally in shock or in the fear of MLC, the reports must be relied upon. There is a difference between a decision of a lay man and an expert. The immediate plan of an expert should be to localize the foreign body, because in such cases the foreign body, if retained in the eye, may lead to infections and spread to other parts of the body which may lead to sepsis.

40. The opposite parties in Paragraph No.11 of their counter admitted that "the eye ball was completely distorted after the injury and took it as a defense for not going for a B Scan, reasoning that it would further damage or cause immense strain on the



exposed portion of the eye.” CT scans are routinely obtained for detecting open-globe injuries. CT findings that suggest open-globe injury include a change in the globe contour, intraocular air and blood presence, and intraocular foreign bodies. CT/ B Scan for a single time in an emergency of investigation shall not be avoided.

41. As per the Ex.No.A-1/B-1 in the 3rd page of the medical report, the plan of treatment was

“Patient (Pt) wants to get admitted, MLC done, SLP done, shield the eye, Injunction, TT taken one week back, B Scan deferred, TAB CIPLOX 500mg BD, TAB DOLO BD”

“OS wound exploration with corneal tear repair under GA Surgery is primarily for globe integrity and not vision explained, about multiple surgeries might be required, risk of endophthalmitis, sympathetic ophthalmitis, Retinal detachment explained, nil by mouth explained.”

42. The complainant in paragraph No. III (b) of his complaint stated that after discussing with 2nd opposite party conducted MLC, recorded Medico Legal Case and SLP done, but at the same time in Paragraph No.III (g) alleged that the opposite parties-1 to 4 had acted very negligently and recklessly in not forwarding the matter to Medico Legal Case, had they referred to MLC, their negligent acts of them would have been come into light. In the same way, the opposite parties also in their counter version replied that on the insistence of the complainant only they have not referred the case to the concerned police station as the 5th opposite party is the friend of the complainant, but at the same time the report which is filed vide Ex.A-1/ B-1 shows that the MLC was conducted. Both the parties approbate and reprobate at the same time on the same issue. Therefore, this commission is not inclined to touch the same issue.

43. The opposite parties argue that the complainant did not come for review to their institute. Moreover, that when the Opposite Parties conducted B Scan after surgery, no foreign body was traced out. It is pertinent to mention that the said B Scan reports are not filed before the Commission. This fact may lead to a presumption that

the opposite Parties are concealing a vital evidence which is necessary and maybe in favor of the Complainant.

44. In C.P.N. Ashish Kumar Chauhan (Retd.) Vs. Commanding Officer and Ors. 2023 Livelaw (SC) 826, the Hon'ble Supreme Court held that *"where medical negligence is evident, burden of proof shifts to hospital."* In paragraph No.67 of the said judgment the Hon'ble Supreme Court discussed about the law on negligence and the same is reproduced here. 67. In India, medical negligence is said to have been established by an aggrieved plaintiff or complainant when it is shown that the doctor or medical professional was in want of, or did not fulfill the standard of care required of her or him, as such professional, reasonably skilled with the science available at the relevant time. In other words, a doctor is not negligent if what he has done would be endorsed by a responsible body of medical opinion in the relevant speciality at the material time. This test is known as the Bolam test-54 and has gained widespread acceptance and application in Indian jurisprudence. It finds resonance in several decisions. Recently, in Arun Kumar Mangalik v Chirayu Health and Medicare Ltd.55, this court outlined that though Bolam has been the bulwark principle in deciding medical (and professional negligence) cases, it must adapt and be in tune with the pronouncements relating to Article 21 of the Constitution and the right to health in general: *"41. Our law must take into account advances in medical science and ensure that a patient-centric approach is adopted. The standard of care as enunciated in the Bolam case must evolve in consonance with its subsequent interpretation by English and Indian Courts. [.]"*

45. The paragraph No.71 speaks about the principles of res ipsa loquitur which reads as follows - 71. *The principle of res ipsa loquitur has been described in Charlesworth & Percy on Negligence-59 in the following terms:*

"6-25. It has been said that "a prima facie case" should be the preferred terminology. It means essentially a case which calls for some answer from the defendant and will arise upon proof of: (1) the happening of some unexplained occurrence; (2) which would not have happened in the ordinary course of things without negligence on the part of somebody other than the claimant; and (3) the



circumstances point to the negligence in question being that of the defendant, rather than that of any other person.”

6-26 The third requirement is usually fulfilled by showing that the instrument causing the damage was in the management and control of the defendant at the time of the occurrence, but this is not essential. Where an object which causes an accident has, at all material times, been under the control of the defendants and there is no evidence to show how the accident happened, the presumption of negligence cannot be displaced by evidence of the general care that has been taken.”

This court has, on several occasions in the past, particularly in cases involving allegations of medical negligence, invoked the principle of res ipsa loquitur (“the thing speaks for itself”). In V. Kishan Rao vs Nikhil Super Speciality Hospital & Anr.60, it was observed:

“In a case where negligence is evident, the principle of res ipsa loquitur operates and the complainant does not have to prove anything as the thing (res) proves itself. In such a case it is for the respondent to prove that he has taken care and done his duty to repel the charge of negligence.”

46. As already discussed above, B Scan was not done on the pretext that it will cause strain to the eye though the doctors knew that it was a penetrating injury and proceeded for surgery and only Ciplox 500 mg tablets were prescribed apart from it no other antibiotics were prescribed as per Ex.B-1/ A-1. Whereas, the counsel for the opposite parties argued that it might have been given in the form of injection. Auromoxi Injection was prescribed on 20.02.2021 but only a single one. For an injury of such an intensity infection is anticipated and antibiotics of sufficient dosage are to be prescribed which is not seemed to be done.

47. The complainant filed Ex.No.A-3 to A-8 in support of his argument to prove that the gun pellet is left in the eye. Aravind Eye Hospitals gave a medical report that a foreign body existed in the eye and the optic nerve is not delineated due to artifacts from the foreign body vide Ex.No.A-3. For reference to the best doctor who can operate the optical nerve the complainant has to visit the doctors at Thrissur vide




Ex.No.A-4 and again the foreign body was confirmed at Aster medcity, Kochi where he got operated by Dr. Dileep Panikar vide Ex.No.A-5 and the details of the surgery are discussed supra. Ex.A-6 to Ex.A-8 are the expert examination and review opinions of the left eye of the complainant which confirm that a primary globe repair was performed without tracing out the foreign body and about the reviews.

48. Therefore, Ex.No.A5 to A8 reveal that the opposite parties did not choose the apt tests to be performed at the right time for the diagnosis and the prognosis and plan of surgery to be followed for the patient as per the standards which an expert is expected to follow. If at all it was done, the pellet would not be left in the eye and the complainant might not have had to roam around different hospitals for better diagnosis and treatment. It is the contention of the complainant that due to the negligence of the opposite parties, the complainant had lost sight permanently due to deliberate negligence and therefore sustained irrevocable loss, had to face disfiguration and is unable to move freely in the society.

49. The counsel for the opposite parties argued that the complainant did not come for review to their institute, that the complainant lost vision at the first instance of his visit to their hospital and it is not the opposite parties-1 to 4 who caused a disfiguration and loss of sight and if at all the complainant has to file any complaint it is on the opposite party-5 and not on the opposite parties-1 to 4. We don't see any medical negligence on part of the opposite party-5 and if the complainant wishes to file any case against him for loss of vision, he is at liberty to file a criminal case at a proper court of law. The counsel further argued that opposite party-2 is a non-profitable organization which works for a good cause of the society. But, the services given to the complainant by Opposite Parties-1 to 4 were admittedly for consideration.

Conclusion:

50. A review of the record, hearing of the both parties and broadend view of the above quoted judgments leads to the following conclusion.



51. *The Apex Court in the case of Dr.Laxman Balakrishna Joshi vs. Dr. Trimbak Babu Godbole AIR 1969 SC 128, defined the duties of a medical practitioner -*

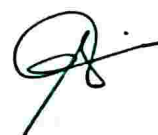
- i. He owes a duty of care in deciding whether to undertake the case,*
- ii. He owes a duty of care in deciding what treatment to give and,*
- iii. He owes a duty of care in the administration of that treatment.*

A breach of any of these duties gives a right of action for negligence to the patient, the judgment said.

52. Ex.No's. A-1/B-1 to A-8 clearly depict that the opposite parties have not followed the due care which has to be followed by an expert at the right time. Viewed from any angle, opposite parties-1 to 4 have not fulfilled the guidelines set by the Apex court in *Dr.Laxman Balakrishna Joshi vs. Dr. Trimbak Babu Godbole AIR 1969 SC 128* and *Kusum Sharma Vs. Batra Hospital (2010) 3 SCC 418*.

53. Irrespective of the recovery of vision, the Exhibits placed on the file of this Commission and the treatment report filed by the opposite parties prima facie speak that the present case is '*res ipsa loquitur.*' The first instance of decision making to proceed for the surgery without proper investigations and tests proves negligence on part of the opposite parties-1 to 4 which falls within the guidelines of the above quoted precedents, rather the opposite parties-1 to 4 failed to abide by their duties as per the guidelines set by the Honourable Supreme Court. Therefore the opposite parties-1 to 4 are at liability for medical negligence, thereby deficiency of service and the complainant is entitled for compensation for mental agony, and sufferance.

54. It is a well-known saying in Telugu - "సర్వేంద్రియాణాం నయనం ప్రధానం". Therefore, such a part of the body/ an eye should be attended with utmost care. The Complainant had to roam around pillar to post searching for a specialist/expert who was not referred by the Opposite Parties-1 to 4 which was their duty to do so and spend a lot of money with a hope of recovery of vision and ultimately had to go for oculoplasty and incur lots of financial loss and sufferance which could have been



avoided if the treatment at 2nd opposite party hospital was done in an right manner at the right time. Thus, I answered all points for determination.

Result:

55. In view of the above, we dispose of the complaint partly with the following directions:

- i. The opposite parties-1 to 4 are jointly and severally directed to pay an amount of Rs.15,00,000/- (Rupees fifteen lakhs only) towards compensation for medical negligence which includes compensation for pain and sufferance;
- ii. To pay Rs.10,000/- (Rupees ten thousand only) towards costs of the complaint;
- iii. Rest of the claim is dismissed;
- iv. Time for compliance of this order is 45 days from the date of receipt of this order.

56. Applications pending, if any, stand disposed of in terms of the aforesaid judgement.

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

58. File be consigned to record room along with a copy of this judgement.

Dictated to the Stenographer, and transcribed by him, corrected and pronounced by us in the Open Commission, the 11th day of September, 2024.


 11/9/24
 Smt. G. Venkateswari
 President

Appendix of Evidence

For the Complainant:

No.	Date	Description of Documents	Remarks
Ex A-1	19.02.2019	Medical Report of the complainant	Original
Ex A-2	21.02.2019	Discharge Summary and report on preliminary tests conducted by the 2 nd opposite party on the complainant	Original
Ex A-3	22.02.2019	Medical Report issued by Dr. Renu Bansal	Original

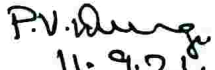
		of Aravind Hospital	
Ex A-4	24.02.2019	Prescription given by Dr. Rajeev Rao, Jubilee Main Hospital, Trisur, Kerala	Original
Ex A-5	02.03.2019	Discharge Summary issued by Aster Medicity Hospital, Kochi	Original
Ex A-6	04.03.2019	Certificate No. GEI/MC/701340/AB/798/19 issued by Dr. Anubhav Goyal of Giridhar Eye Institute, Cochin	Original
Ex A-7	11.03.2019	Certificate issued by Visakha Eye Hospital, Visakhapatnam	Original
Ex A-8	29.08.2019	Medical Report issued by Dr. Usha Kim of Aravind Eye Hospital, Madurai	Original

For the opposite parties:

No.	Date	Description of Documents	Remarks
Ex B-1	----	Entire Medical Record of the Complainant	Photostat Copies


11/9/24.
Smt. G. Venkateswari
President


11/9/24
Sri Karaka Ramana Babu
Member


11-9-24
Smt. P Vijaya Durga
W. Member

Pronounced on: 11/09/2024

//BN//