

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 67 OF 2020

(Against the Order dated 28/11/2019 in Appeal No. 223/2016 of the State Commission
Maharashtra)

1. DIRECTOR ADMINISTRATION, P.D. HINDUJA
NATIONAL HOSPITAL & MEDICAL RESEARCH
CENTRE

V.S. MARG, MAHIM,
MUMBAI-400016
MAHARASHTRA

.....Petitioner(s)

Versus

1. HARSHA ASHOK LALA
B/23, GANGA BHAVAN J.P. ROAD, VARSOVA
ANDHERI WEST, MUMBAI
MAHARASHTRA-400061

.....Respondent(s)

BEFORE:

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

For the Petitioner :

For the Respondent :

Dated : 08 Jul 2021

ORDER

Appeared at the time of arguments through video conferencing

For the Petitioner : Mr. Shekhar B. Prabhavalkar, Advocate

For the Respondent : In-person

Pronounced on: 8th July 2021

ORDER

Patient Safety aims to prevent and reduce risks, errors and harm that occur to patients. The “Deny and Defend” approach of the hospital/doctor had a significant impact on patient safety. Unfortunately, when hospital staff and administrators do not keep their hospitals well organized or the supporting staffs make careless mistakes, innocent lives could be at risk. When protecting the institution is the primary goal, poor practices are excused and justified, and patients remained at risk of injuries.

1. This Revision Petition has been filed against the Order dated 28.11.2019 passed by the State Consumer Disputes Redressal Commission, Maharashtra (hereinafter referred to as the “State Commission”) in First Appeal No. 223/2016, whereby the State Commission dismissed the Appeal with costs of Rs. 25,000/- payable by the Petitioner and the Order of the District Consumer Disputes Redressal Forum, Central Mumbai (hereinafter referred to as the “District Forum”) was modified directing the Petitioner to pay Rs. 3,51,000/-.

2. Briefly stated facts are that the Complainant Smt. Harsha Ashok Lala (hereinafter referred to as, ‘patient’) came to the P.D. Hinduja National Hospital - the Petitioner / Opposite Party (hereinafter referred to as the “Hospital”) on 9.10.2012 at around 1.15 PM for follow-up checkup after her spinal surgery in the last week of September 2012. It was alleged that she was very rashly and negligently wheeled from hospital corridor, on the ramp by an un-identified security guard without putting the seat belt, as a result of which she suffered ‘head on fall’ from the wheelchair and sustained fracture of left (ankle) lower end fibular tip. She further alleged that immediate first aid was not given, and she was made to stand in que for payment of X-Ray charges which caused further pain and agony. It was further alleged that the incidence was reported immediately to the Hospital authorities but no avail. The Hospital willfully avoided informing the police about such serious accident in their premises. It was gross negligence & deficiency in service from the supportive staff at the hospital. Being aggrieved by the negligent care and conduct of the Opposite Party, she filed the Consumer Complaint before the District Forum and claimed compensation of Rs.16,00,000/-. She also filed one Criminal Complainant - FIR in the concerned Police Station.

3. The Opposite Party filed its written version. It was submitted that, the Complainant was old patient of their hospital. The Opposite Party admitted the fall of the patient from the wheelchair on 9.10.2012. The junior doctor attended her immediately and provisional diagnosis mentioned as undisplaced fracture of lower end of left tibia. The treating doctor, Dr. Sanjay Agarwal, examined her and ruled out any fracture or any dislocation of left ankle joint and mentioned, it was only swelling around the ankle joint. A Sugar tong splint was given which was to be removed after 5 days and Air Cast splint was advised to be worn after 5 days. The patient was treated as per standards. Therefore, the Complainant was not entitled for any compensation and/or refund of previous treatment expenditure. The claim of Complainant was imaginary and highly exaggerated.

4. The District Forum partly allowed the complaint and directed the Petitioner Hospital to pay Rs. 1,00,000/- as compensation and Rs. 10,000/- towards cost of legal proceedings to the Complainant.
5. Being aggrieved from the order passed by the District Forum, the petitioner approached the State Commission by way of an appeal no. A/16/223. The State Commission dismissed the appeal with costs of Rs. 25,000/- on the Petitioner with modification of the Order of District Forum that the Hospital was directed to pay Rs. 3,51,000/- to the Complainant within one month from the date of the order failing which, the amount was to carry interest at the rate of 9% per annum.
6. Being still aggrieved, the Petitioner is before this Commission by way of this Revision Petition.
7. The case relates to deficiency in service and an act of omission from the hospital staff.
8. Heard arguments from both the sides. The Respondent/ Complainant argued the matter in person. Perused the material on record, including *inter alia* the Order dated 30.11.2015 of the District Forum, the impugned Order dated 28.11.2019 of the State Commission and the Revision Petition.
9. In my view, the State Commission has recorded the concurrent finding of fact and passed a well-appraised reasoned Order. The revisional powers of the National Commission are derived from Section 21 (b) of the Act, and have been discussed by Hon'ble Supreme Court in **Rubi (Chandra) Dutta Vs. United India Insurance Co. Ltd.** – (2011) 11 SCC 269 and **Lourdes Society Snehanjali Girls Hostel and Ors. Vs. H & R Johnson (India) Ltd. and others**, (2016) 8 Supreme Court Cases 286.
10. The Hon'ble Supreme Court laid down the ingredients of medical negligence in its various judgments, none of which are found in the instant case. In my view, *prima-facie*, this case does not fall strictly in medical negligence.
11. Wheelchairs are usually thought of a medical device that is meant to help those who are injured or have physical challenges; they can also be a source of injury when not properly used. Most wheelchair injuries that happen in a medical setting due to the negligence of medical staff and such could be easily prevented by hospital or nursing home.
12. As a word of caution, in my view, the Hospital authority should make systemic improvement in their administration and their grievance redressal mechanism to ensure the patient's safety and to maintain good Doctor-Patient relationship.
13. In the instant case, having regard to the fact that patient underwent mental agony and physical trauma and the quantum of award made by the State Commission appears just and equitable in the facts of the case. No palpable crucial error in appreciating the evidence by the two fora below, as may cause to require *de novo* re-appreciation in revision, is visible. No jurisdictional error, or legal principle ignored, or miscarriage of justice, is visible. Nothing warrants interference with the impugned Order of the State Commission in the exercise of the revisional jurisdiction of this Commission.

14. Based on the forgoing discussion, the Revision Petition is dismissed.

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