IN THE STATE COMMISSION: DELHI

(Constituted under Section 9 of the Consumer Protection Act, 1986)

Date of Decision: 25.11.2016

Complaint Case No. 525/1993

In the matter of:

1. **Uday Kant Jha**

S/o Late Sh. G.L.Jha

R/o 1359, Lodhi Road Complex

New Delhi-110003

(for self and on behalf of Complainant No. 2 & 3)

1. **Uma Shanker Mishra**

S/o Sh. Parmanand Mishra

C/o U.K.Jha

R/o 1359, Lodhi Road Complex

New Delhi-110003

(through Complainant No.1)

1. **Master Deepanshu Mishra**

Aged 5 Months

S/o Late Mrs. Anjana Mishra (deceased)

and Sh. Uma Shanker Mishra

C/o Sh. U.K.Jha

R/o 1359, Lodhi Road Complex

New Delhi-110003 **.....Complainants**

Versus

1. **MoolchandKhairati Ram Hospital**

Lajpat Nagar-III

New Delhi-110024

through its Director Sh. Shiva Kumar Mishra

R/o A-503, SwasthyaVihar Apartments,

1. **Dr. (Prof.) Sadhna Kala**

Consultant Obstetrician &Gynaecologist

R/o 87, ZakirHussainMarg

New Delhi

1. **A.K.Gupta**

R/o A-2/167, Safdarjung Enclave

New Delhi

Both OPs No. 2 & 3

C/o MoolchandKhairati Ram Hospital

Lajpat Nagar-III

New Delhi-110024

through its Director Sh. Shiva Kumar Mishra

R/o A-503, SwasthyaVihar Apartments,

Delhi **.....Opposite Parties**

CORAM

N P KAUSHIK - Member (Judicial)

1. Whether reporters of local newspaper be allowed to see the judgment? Yes

2. To be referred to the reporter or not? Yes

N P KAUSHIK – MEMBER (JUDICIAL)

JUDGEMENT

1. Complainants No. 1 & 2 are the father and husband respectively of the deceased Smt. Anjana Mishra who was 22 years old when she went to MoolchandKhairati Ram Hospital Delhi (in short the OP hospital), on 12.04.1993 for delivering a baby. Complainant No. 3 Master Deepanshu Mishra is a baby born to the Smt. Anjana Mishra since deceased on 12.04.1993. He was five months old when the present complaint was filed in this Commission on 14.09.1993. Smt. Anjana Mishra died in the OP hospital on 22.04.1993. Present complaint is directed against the OP hospital and Dr. (Prof.) Sadhna Kala Consultant Obstetrician and Gynaecologist (OP-2) and Dr. A.K.Gupta Nephrologist (OP-3) both then working in the OP hospital. Complainants have alleged medical negligence against the OP hospital and the aforesaid doctors. The whole complaint is broadly a chain of events that took place in the treatment of the deceased Smt. Anjana Mishra from 12.04.1993 to 22.04.1993.
2. Deceased Smt. Anjana Mishra was under the pre-natal care of Dr. Sadhna Kala (OP No.2) since November 1992, for her first delivery. Besides visiting the OP hospital she also visited Dr. Sadhna Kala's private clinic at B-316, Chitranjan Park New Delhi-110019 in November 1992. She was examined by Dr. SadhnaKala in the OP hospital on 30.03.1993. She was advised to come in case of labour pain or any other problem. On 12.04.1993, Smt. Anjana Mishra went to the OP hospital with her father (complainant no.1) and her mother. Nurse on duty informed them that Dr. Sadhna Kala was in the labour room. Nurse performed FST (Foetal Sound Test). She informed that the test was normal. Now it was revealed that Dr. Sadhna Kala was at her home and not in the hospital. Smt. Anjana Mishra telephoned Dr. Sadhna Kala who reached the hospital and told the complainant that the foetal water had come out. Membrane had been ruptured. Baby was getting choked. Operation had become necessary. Dr. Sadhna Kala allegedly inserted her hand mercilessly and forcibly inside the vagina. It was unbearable. Foetal water allegedly had come out thereafter. Now the patient was taken to the operation theater. Caesarian operation was performed. Patient was compelled to sign certain papers. Dr. Sadhna Kala came out of the operation theater at about 02:25 pm and informed that the operation was over. A nurse informed that a male baby was born. Dr. Sadhna Kala also informed that a lot of bleeding took place as she had to cut seven

or eight tumors in or around the uterus. At about 03:00 pm, the labour room boy came out and informed that profuse bleeding was taking place and there was nobody to attend to Smt. Anjana Mishra. Complainant No.1 telephoned at the residence of Dr. Sadhna Kala. At about 05:00 pm, Dr. Sadhna Kala came to the labour room. After fifteen minutes, she informed the complainant no.1 that Smt. Anjana Mishra had not gained consciousness. She asked for calling the husband of Smt. Anjana Mishra from Bombay immediately. Attendants were asked to arrange for one unit of blood. Smt. Anjana Mishra was shifted to ICU in an unconscious condition. Dr. Sadhna Kala and other associate doctors at about 11:00 pm, informed the mother of the deceased that there was no hope. At 12:30 am in the midnight, two units of blood and fresh frozen plasma from the Institute of Hepatology, Pusa Road Delhi were brought by the attendants on the directions of the doctors. They were informed that Smt. Anjana Mishra had been kept on artificial breathing. On 13.04.1993, Smt. Anjana Mishra was found in semiconscious state and bleeding from nose. Dr. Sadhna Kala informed the attendants that the patient had got jaundice after profuse bleeding and for that reason her liver was not functioning. She was shifted to Room no. 38 Wardno. 8 on 14.04.1993 when she was not breathing properly and still bleeding from the nose. On 15.04.1993, her face and body started swelling. She was not passing urine. On 16.04.1993 ultrasonography of kidney was done. Two x-rays were done, one on 12.04.1993 and another on 16.04.1993. Dr. Sadhna Kala contacted Dr. A.K.Gupta Nephrologist (OP no. 3) who came very late at about 09:30 pm. Doctors decided to go for dialysis. On 17.04.1993,dialysis was done by Dr. A.K.Gupta but there was no improvement. All medicines and sixteen bottles of bloods as prescribed were handed over to Dr. Sadhna Kala. On 17.04.1993 Dr. A.K.Gupta directed the nurse to give water with glucose and salt to Smt. Anjana Mishra, orally. It was given on 18.04.1993 at 07:00 pm. Transfusion of intravenous glucose and blood was done. Nurse fed 'khichdi' and water during blood transfusion. Smt. Anjana Mishra was not accepting either of them. On 18.04.1993 at 08:00 pm, Dr. A.K.Gupta came for examination. Nurse on duty informed him that Smt. Anjana Mishra was feeling uneasy since when the blood transfusion started. Nurse asked Dr. A.K.Gupta whether to continue with the blood transfusion. Dr. A.K.Gupta directed not to stop since the remaining portion of the blood was protein only. Complainant No. 1 reminded the doctor of his earlier version of not giving protein as the patient was having jaundice with renal failure. Dr. A.K.Gupta became angry. He directed the nurse to take away the treatment chart and keep it in the almirah. On 18.04.1993 at 11:30 pm, Smt. Anjana Mishra had a severe heart attack. She was shivering and groaningwith pain. Dr. Sadhna Kala was informed who reached at 02:00 am. The patient was shifted to ICCU. CT Scan was done when the patient was unconscious. On 19.04.1993 complainant No. 1 was informed that the patient had gone into coma. Smt. Anjana Mishra was kept in ICCU but the doctors were tightlipped. On 21.04.1993, Dr. A.K.Gupta again put Smt. Anjana Mishra on dialysis in a comatose stage. Attendants asked the reason of doing dialysis irregularly. Upon this, Dr. A.K.Gupta got annoyed and stopped dialysis midway. He removed the catheter and guidewires etc. Patient was put on a trolley by the ward boy and ruthlessly brought to ICCU. On the night of 21.04.1993 complainant No. 1 insisted for a second opinion. Dr. Sadhna Kala suggested the name of one Dr. B.N.Tandon. Dr. B.N.Tandon visited the patient at 09:30 am on 22.04.1993. Dr. B.N.Tandon after discussing the case with other doctors stated, ***"it would have been beneficial had he been consulted earlier".*** He further remarked, ***"thedoctors don't allow second opinion due to ego problem.It is not good for patients".*** Dr. B.N.Tandon informed the Complainant No. 1 that what was being done was a futile exercise and there was no hope. Dr. Sadhna Kala and Dr. A.K.Guptawho were in ICCU, secretly left leaving the patient unattended. Complainant No. 1 went inside the ICCU and found all apparatus, oxygen/ventilator etc. disconnected. Smt. Anjana Mishra was fully covered.

Nurse on duty was tightlipped. Complainant No. 1 insisted Dr. Sadhna Kala to tell him the condition of the patient. Dr. Sadhna Kala informed that Smt. Anjana Mishra was no more.

3. All the OPs filed a joint reply (written version) to the complaint. OPs submitted that the patient Smt. Anjana Mishra came to the OP hospital first on 06.11.1992 for her pregnancy checkup. She consulted Dr. Sadhna Kala, Senior Consultant Gynaecologist. She thereafter too came to the hospital several times forcheckup. The due date of delivery was 09.04.1993. Patient came to the hospital on 30.03.1993 and was examined by Dr. Sadhna Kala. She was informed that she could go in for labour pain at any time. She was asked to come on start of the labour pain or in case of any problem. She was also asked to come to the hospital after one week in case she did not have the labour pains. She hadcome only on 12.04.1993 complaining of swelling on foot. She also stated that the foetal movements were much less than before. Keeping in view her condition, patient was shifted to labour room and a message was sent to Dr. Sadhna Kala. Dr. Sadhna Kala was not in the labour room.Without wasting any time they examined the patient. The patient was put on Non Stress Test (NST). NST report revealed foetal distress (Slow Fetal Heart). Dr. Sadhna Kala after reaching the hospital saw the NST report and explained the position to the patient and her family members. Consent form was got signed. Examination revealed that the mouth of the uterus was open and the bag of membrane was bulging out.Dr. Sadhna Kala placed her two fingers in the vagina of the patient and found the discharge,meconium stained.Dr. Sadhna Kala performed ARM(Artificial Rupture of the Membrane).Thick meconium came out.Urgent caesarian operation was required. Patient was taken to operationtheater. Operation was performed successfully. During operation it was noticed that the bleeding was slightly more than the normal one and the patient was oozing from all cut ends. This indicated that the patient might be suffering from some blood disorder or some liver disorder. Dr. A.K.Gaur physician, Dr. Sadhna Kala and Dr. Bhattacharya Senior Anaesthetist observed the patient. Patient was having some breathing problem. She was put on ventilator. Blood transfusion was given during operation and again immediately thereafter at 03:00 pm. Patient did not show any symptoms of blood disorder or weak liver. Physical examination of the patient did not reveal any symptoms of blood dysfunction or weak liver. On shifting the patient to ICU, blood reports showed that the liver was weak. Opinion of Dr. Khosla a specialist of liver diseases was taken. He advised a detailed liver function test (LFT). He also advised that the patient should be given frozen plasma. The same was given. Husband of the patient was explained that the patient had a pre-existing liver problem which had aggravated.Breathing, blood pressure and pulse were normal. Urine was also normal. Now she was shifted to the room. She was given ‘khichdi’. She passed motion. On 15.04.1993, the urine output was slightly less than the normal. IntravenousLasix was tried initially in small dosages to increase the urine output. On the advice of Dr. V. Langer,patient was referred to a kidney specialist on 16.04.1993. Dr. A.K.Gupta examined the patient and diagnosed renal failure. Opinion of Dr. (Prof.) PDGulati was taken who agreed with the line of treatment of Dr. A K Gupta. Patient was put on dialysis after obtaining consent in the proforma. Decision of dialysis was taken keeping in view the urine output, biochemical parameters and the physical condition of the patient. Blood urea level came down. Urine output increased. In the night intervening 18/19.04.1993, the patient had convulsions at 01:00 am. Patient was put on ventilator in the ICU. CT Scan of the brain was done. It was found normal. Tests were also done to see if the patient was suffering from cerebral malaria.

4. On 20.04.1993 patient was again put on dialysis. Blood pressure fell considerably. Dialysis was discontinued. Blood pressure returned. Patient was shifted back to ICU. Blood pressure again fell. It improved with medicines. Patient was suffering from acute liver failure and acute renal failure. Patient continued to be on ventilator. Dr. BNTandon was called on the request of the complainants’ family members. Dr. BNTandon concurred with

the diagnosis and treatment given by the OP hospital. Dr. BNTandon confirmed that the patient was suffering from multiorgan disorder/failure. In the afternoon, patient had cardiac arrest and was declared dead at 02:30 pm. Death was on account of multiorgan failure.

5. OPs denied if Dr. Sadhna Kala had cut seven or eight tumors in and around the uterus. They stated that Dr. Sadhna Kala had to cut bands of tissue called 'adhesions' to get to the uterus in order to take the baby out. OPs admitted that the patient was kept on ventilation subsequent to surgery. OPs stated that initially there was some bleeding from the nose. It was taken care of by Senior ENT Surgeon. OPs admitted that Dr. AKGupta advisedblood transfusion to continue inspite of it having protein. Protein level in the body of the patient was very low. It was, therefore, beneficial to the patient to receive whole blood. OPs denied if Dr. BNTandon suggested that the treatment being given was a futile exercise. They also denied that Dr. Sadhna Kala and Dr. A KGupta secretly left the ICU leaving the patient unattended. OPs submitted that the jaundice was in a pre-clinical stage and there were no apparent outward symptoms which could have been noticed by Dr. Sadhna Kala. Jaundice does not appear clinically when serum bilirubin is below 3 mg%. OPs further submitted that the abdomen was closed after securing complete Haemostasis. Bleeding had stopped. There was no indication for doing Hysterectomy at that time as uterus was well contracted and there was no postpartumHaemorrhage.

6. In their rejoinder complainants reiterated the averments made in the complaint and denied the defence raised by the OPs. They submitted that the patient had no complaint whatsoever before ARM. It was evident from the fact that a healthy baby was born. Patient reported to the OP hospital on 12.4.1993, 10 th & 11 th April being holidays. Smt. Anjana Mishra was also not feeling labour pain. She went to the OP hospital on her own on 12.04.1993.

7. Complainants stated in their rejoinder that Dr. Sadhna Kala never diagnosed any liver problem as was being alleged by her now. It was infact a postoperation problem which arose due to the operation having been performed by the unskilled hands and wrongdoing of ARM. The precarious condition of the deceased was due to irreversible shock because of extreme blood loss at the time of operation which was ignored at that time and it resulted into multiorgan failure. Complainants reiterated that Dr. BNTandon had remarked that it would have been beneficial had he been consulted earlier. OPs submitted that on the insistence of the complainant No. 1, OPs continued the treatment and four-five bottles of blood were brought in the night of 12/13.04.1993. On 13.04.1993 at 10:00 am, Dr. Sadhana Kala and her team informed the complainant no. 1 that there was no hope of survival. Complainants submitted that in the 'death summary' Dr. Sadhana Kala had falsely mentioned that the patient had convulsions on the night of third postoperative day when infact the patient had convulsions only in the midnight of 18.04.1993 which was a 7 th postoperative day.

8. Parties placed on record their respective affidavits in support of their contentions made in the pleadings. They also filed written arguments way back in the year 2003. This Commission vide a detailed judgment dated 13.6.2003 held that there was no negligence on the part of the OPs No. 1,2& 3. On an appeal preferred by the complainants, the Hon'ble National Commission passed the following orders:

> ***"Counsels for the parties are agreed that the impugned order be set aside and the case be remitted to the State Commission to decide it afresh after permitting the parties to cross-examine the witnesses produced by either of them.***

Parties through their respective counsel are directed to appear before the State Commission on 18.02.2010."

1. In pursuance to the orders passed by the Hon'ble National Commission, complainants cross examined Dr. Sadhna Kala as OP No. 2.
2. Before proceeding further, I find it relevant to reproduce **experts' opinion** given by the Medical Board and dated 14.02.2011 (received vide letter dated 04.03.2011), **death summary** of the deceased Smt. Anjana Mishra and the **relevant excerpts from the cross examination of Dr. Sadhna Kala.**

Report of Medical Board

The following faculty members constituting the medical board, have individually and collectively studied the case records provided and submit the following report pertaining to the details of hospital stay and management of patient Anjana Mishra admitted in Mool Chand Khairati Ram Hospital (MCKR) from 12.04.1993 to 22.04.1993 (Dates of admission and expiry respectively).

1. *Dr. Gita Radhakrishnan* *Chairperson*

   Director-Professor of Obst.&Gynae.,

   UCMS & GTBH

1. *Dr. O.P.Kalra* *Member*

   Professor of Medicine and Head,

   Div. of Nephrology

   UCMS & GTBH

1. *Dr. R.S.Rautela* *Member*

   Director-Professor of Anaesthesiology

   UCMS & GTBH

Anjana Mishra 23 yrs old primigravida admitted on 12.04.93 at MCKR Hospital as a case of postdated pregnancy (40wks+3days), for induction of labor.

Examination by the treating consultant detected a Fetal Heart Rate (FHR) of 110/mt and Non-Stress Test (NST) tracing showed decreased variability. Artificial Rupture of Membranes (ARM) was done which revealed frank meconium stained liquor. Patient underwent an emergency Lower Segment Cesarean Section (LSCS) under General Anesthesia in view of postdated pregnancy with fetal distress. During surgery, more than average bleeding and oozing from operative sites were observed and patient had an episode of hypotension in the immediate post-operative period.

Patient was reintubated and managed in the ICU with ionotrops, I/V fluids, blood replacement and transfusion of blood components alongwith broad spectrum antibiotics. Patient became hemodynamically stable after fluid and blood replacement, but developed epistaxis with deranged coagulation and liver functions.

She was managed by a team of doctors including consultations by Cardiologist, Hepatologist, Gastroenterologist, Nephrologist, Neurologist and Otorhinolaryngologist as and when indicated.

With Possible septicemia setting in, there was progressive deterioration of liver and renal functions and altered coagulation parameters. She was managed with blood component therapy, ventilator support and hemodialysis as and when required. Subsequently multisystem dysfunction and Disseminated Intravascular Coagulation (DIC) rendered the patient unresponsive to therapy and she could not be revived from the cardiac arrest which occurred on 22.04.1993.

A summary of sequence of events:

. *LSCS for postdated pregnancy with fetal distress.*

. *Postoperative hypotension requiring ventilator support and*

ICU stay.

. *Fluid replacement, blood transfusion and blood component therapy for correction of her hemodynamic instability.*

a. *Possible septicemia, progressive liver and renal dysfunction, DIC, multisystem failure, not responding to supportive*
c. *Myocardial dysfunction and cardiac arrest 10 days after*

surgery from which the patient could not be revived.

Opinion of the committee

1. *LSCS was justified in view of postdated pregnancy with fetal distress.*
2. *Postoperative complication of hemorrhagic shock was managed appropriately by intensive monitoring in the ICU with all supportive care.*
3. *Patient became hemodynamically stable. However progressive deterioration of liver & kidney functions alongwith coagulopathy necessitated several blood transfusions and blood component therapy alongwith hemodialysis as indicated, and consultation from experts from various specialties was taken as and when required.*
4. *With initial response to all supportive therapy, progression to multiorgan failure occurred possibly due to worsening septicemia despite an adequate coverage with broad spectrum antibiotics and she could not be resuscitated from the cardiac arrest which occurred on 22.4.93.*

Conclusions of the board

The medical board after a detailed study of the case and academy deliberations concludes that there has been no medical negligence on the part of the treating doctors of MCKR Hospital with respect to the management of Mrs. Anjana Mishra.

Sd/- Sd/- Sd/-

Dr. Gita Radhakrishnan Dr. O.P.Kalra Dr. R.S.Rautela

Chairperson Member Member

Death Summary dated 21.07.1993

Mrs. Anjana Mishra, aged 22 years, was admitted in the hospital on 12 th April 1993 at 1215 hrs as a case of postdated primi-gravida for induction of labour. She developed acute Foetal distress for which emergency Lower Segment Caesarean Section (LSCS) was done. A healthy male baby was delivered at 2.25 pm on 12 th April 1993.

During Caesarean Section it was found that the patient had a continuous ooze of blood from the operative site and had tachycardia post operatively. She was given one unit of fresh blood and put on Cardiac monitoring on the advice of the Cardiologist and Chief Anaesthestist. Liver Function Test, Serum electrolyte and other relevant tests were carried out. The results revealed the presence of pre-existing Liver dysfunction for which she was referred to Gastroenterologist.

The patient responded to the treatment and passed motion on the third postoperative day. She was in her room and was on soft diet.

Mrs. Mishra developed generalized convulsions on the night of 3 rd postoperative day. Neurologist's opinion was taken, and CT Scan was done. She was shifted to ICCU.

The patients conditions did not improve and her urine output was reduced. The Nephrologist was consulted and repeat Renal Function test were done. The patient required emergency dialysis and was put under cover of broad spectrum antibiotics.

The operative wound was found to be health at the time of change dressing.

The daily monitoring of Serum Electrolyte, Liver Function Test and Renal Function Test, were carried out as per the line of management jointly decided in consultation with the cardiologist, gastroenterologist, nephrologist and neurologist who were involved in the treatment of the patient. She was also administered frozen plasma and cryo-precepitates, as advised, to improve her hepatic functions. At this stage Haematologist was also consulted.

However, the status of liver functions did not improve, indicating diagnosis of Hepato-Renal Failure due to fulminating hepatitis or pre-existing G.I.Tract infection was made.

Besides the consultants involved in the management of the case Dr. (Col.) K.L. Chopra, Cardiologist and Dr. P.D.Gulati, Nephrologist were also consulted from time to time.

Dr. B.N.Tandon (Ex. Professor, AIIMS) was called by the relatives of the deceased for second opinion. On perusing the line of management and discussing the case, Dr. Tandon concurred with the diagnosis and line of management of the case.

The relatives of the deceased were explained the diagnosis and progress of the patient from time to time.

The patient developed severe tachycardia on 22/4/1993 at 2 pm and had a cardiac arrest. Despite all possible resuscitative measures she could not be revived and was declared dead at 2.30 pm on 22/4/1993 due to Hepato-Renal Failure possibly due to either Fulminating Hepatitus or Pre-existing G.I.Tract Infection.

Sd/-

Dr. Sadhna Kala

Relevant excerpts from the cross examination of Dr. Sadhna Kala

Ques: Are you aware that your authorization for medical or surgical treatment exhibited as exhibit OP-2/C4 mandatorily requires that authorisation must be signed by the patient herself if she is mentally sound?

Ans: No. I was not aware of the legal position. volunteered. The patient was in agony due to labour pain and distress due to less fetal movement and for that reason she called her father.

The test for bleeding time and clotting time (BTCT) was not done in the present case, because in routine this test is not done before doing LSCS.

Did not get the patient checked up for LFT. Protocol for LSCS requires routine test of hoemoglobin, blood sugar fasting and p.p., TSH, VDRL, ABORH, Urine Routine. The LFT therefore was not got done.

Ques: I put it to you that as per your version there was no complaint of liver?

Ans: The patient never complained of any liver problem. volunteered. She complained of palpitation and we got ECG done by her examination from gynaecologist who do ECG.

Ques: Please refer to para 22 of the written version, written version exhibited as exhibit OP-2/C1?

Ans: My statement in Para 22 of my reply where it states "in the night intervening of 18.04.1993 and 19.04.1993 the patient had convulsion at 01:00 am is right.

Ques: Is it correct that according to you the patient had convulsions for the first time on the intervening night of 18.04.1993 and 19.04.1993. I put it to you that you are lying on oath before this court as you have already stated in exhibit OP-2/C1 (written version). In your document dated 21.07.1993 (death summary) you stated that the patient developed general convulsion in the night of 3 rd postoperative date?

Ans. The convulsion referred to in para 22 of the written version on the night of 18 th and 19 th April, 1993 was a massive one whereas the convulsion on 3 rd postoperative day was a mild one.

Hepatorenal failure might have occured either due to fulminating hepatitis or during G I Tract infection. I cannot specifically state as to what was the basic reason of hepatorenal failure resulting into cardiac arrest. I am stating above on the basis of the reports given by other doctors.

Ques: I put it to you that you stated that you closed abdomen after securing complete haemostasis and the bleedings at a stage whereas the patient had been bleeding even after one week thereafter continuously after surgery?

Ans: During caesarean section, after delivery the baby was out, the uterus was well contracted haemostasis was secured and abdomen closed. Slight bleedings, from vagina is the normal postpartum utrine bleedings which occur for week to 10 days. 'Bleeding in this case might have been due to some other reasons as it was more than the normal utrine bleeding'.

Ques: You are wrongly stating that there was no bleeding and complete haemostasis was done whereas because of wrong performance of operation LSCS wrong cutting of the tissues and bands the patient Anjana continuously bleeded for next 7 days even from mouth, nose etc. and as well as the cutends. Refer to your own record pages 16, 16a and 18 medical notes dated 12.04.1993, 13.04.1993, 14.04.1993, 15.04.1993, 16.04.1993, 17.04.1993 and 18.04.1993 submitted by you?

Ans: During caesarean section the amount of bleeding which normally occurs is around 1000 to 1500 ml and in her case it was slightly more than normal. I have already mentioned the uterus was well contracted and there was no abnormal bleeding before closing. In the meantime there was excessive oozing from the tissue which happens if she has a bleeding disorder or abnormal liver functioning and not due to LSCS.

Ques: I put it to you that it was not oozing but excessive bleeding coupled with excessive oozing what have you to say?

Ans: It was not excessive bleeding but more bleeding. volunteered. transfusion of one unit of blood was done.

Ques: I put it to you that you are lying as it was not only one unit of blood but many units of blood on successive days as well as fresh frozen plasma it had to be transferred in the patient because of your wrong performance of LSCS?

Ans: During caesarean section the amount of bleeding was slightly more but in view of the oozing we decided to give one unit blood transfusion and two units FFP. Later on, on the advice of the liver expert further transfusion were done as the complications were the result of the liver disorder.

Ques: Are you aware that you are stating on oath and before the court?

Ans: Yes.

Ques: Are you aware that your statement is on record?

Ans: Yes.

Ques: Are you aware that you can be prosecuted for a false statement?

Ans: Yes.

Ques: I put it to that you are lying as per your own record you have given more than one unit blood before any consent of liver expert?

Ans: I have clearly said that during caesarean and post operation one schedule blood and two FFP were given. After that we have not calculated. After operation the condition was reviewed by anesthetist and Dr. A.K.Gour physician and on his instructions further three units were given, before any consent of the liver expert.

Ques: I put it to you that you are lying when you say that it was only oozing of blood whereas patient because of wrong performing of operation by you was actually bleeding from mouth as well as nasal bleeding?

Ans: I am not lying first. Second the caesarean section was performed correctly. I have mentioned the bleeding was slightly more than normal and oozing was there for which appropriate action was taken. As far as bleeding from the nose, mouth in the postoperative third, fourth day had occurred in the ICU that was because of deranged liver enzymes or weak liver for which she was already referred to physician, hepatologist and haematologist.

Ques: I put it to you that you are lying because as per your own record during LSCS excessive oozing was noticed from the cut surfaces?

Ans: I have already mentioned that the excessive oozing was there. Oozing means small artery bleeded which is taken care of during operation by pack. Does not need any extra precaution. When oozing was controlled by soft packing and complete haemostasis was secured only then the surgery was completed.

1. We are now confronted with the question,"what was the cause of death of Smt. Anjana Mishra?". Panel ofExperts opined that progression to multiorgan failure occurred possibly due to worsening 'septicemia' despite an adequate coverage with broad spectrum antibiotics. In other words, panel of experts of G.T.B.HospitalShahdaraDelhi has found 'septicemia' as a possible cause of multiorgan failure which led to cardiac arrest and the death of the deceased. On the contrary, the 'death summary' of the deceased issued by the OP hospital shows that the cause of death was hepato-renal failure possibly due to either 'Fulminating Hepatitus' or 'Pre-existing G T Tract Infection'. Nowhere in the death summary dated 21.07.1993,issue of 'septicemia' or 'possible septicemia' is referred to. In the witness box, Dr. Sadhna Kala who prepared the death summary stated that she could not tell the basic reason of hepato-renal failure resulting into cardiac arrest. Dr. Sadhna Kala is a treating doctor who was the main doctor throughout. She admittedly did the ARM and LSCS alone and attended to the patient till death.
2. A careful perusal of the case sheet shows that one Dr. R.Khosla on 14.04.1993 recorded as under:

"In view of her increasing TLC, she is most likely to be having septicemia rather than a primary hepatic pathology".

1. Dr. B.N.Tandon a super specialist from AIIMS was called for a second opinion, one day prior to the death of the deceased i.e. on 21.04.1993 at 10:30 am. His opinion as recorded by Dr. R.Khosla reads as under:

"Case seen by Prof. B.N.Tandon. He feels this is most likely to be septicemia with DIC and multi organ failure. The possibility of viral hepatitis is less likely. He agrees with the management".

Prior to this Dr. R.Khosla on 19.07.1993 recorded as under:

"Case reviewed. Possibilities are:

1. ***Septicemia***
2. ***Intracranial bleed***
3. ***Hyponatemia + Hypoglycemia***
4. ***Malaria***

Management discussed.

1. It doesn't stand to reason that Dr. B N Tondon did not write any note himself. Be that as it may, he has clearly ruled out 'hepatitis' and pointed out to 'septicemia with DIC' as the likely cause. Dr. R Khoslatoo has not referred to 'hepatitis' as the cause of multiorgan failure.
2. Dr. Sadhana Kala performed ARM and LSCS and thereafter treated the patient throughout in consultation with other doctors till the patient breathed her last. Observations made on page No. 16 of the case sheet read as under:

"No past h/o (history of) liver disease…."

"During LSCS, excessive oozing was noticed from all cut surfaces".

Case sheet further reveals that the patient was tested for cerebral malaria by doing CT Scan one day prior to her death. Till then diagnosis was anybody's guess. Another question arises here," why postmortem was not done on the body of the deceased to know the cause of death when it all along remained unknown?".

1. On 13.04.1993, bleeding from the nose continued, as seen from the case sheet. Patient was put on ventilator immediately after her LSCS. Ward boy had noticed profuse bleeding after the surgery and stitches when Dr. Sadhna Kala was called from her residence.
2. Coming to the credibility of the statement of Dr. Sadhna Kala, there are great contradictions in her depositions. In her written version (reply to the complaint) Dr. Sadhna Kala stated that the patient was given only one unit of blood whereas in her cross examination (reproduced above) she stated that further three units of blood were given on the instructions of Dr. A.K.Gaur Physician and after that she had not calculated. Perusal of the case sheet shows that several units of blood were given. Dr. Sadhna Kala has been evasive in her reply to the question that the patient had been continuously bleeding for seven days from the mouth and nose too as per case sheets dated 12.04.1993, 13.04.1993, 15.04.1993, 16.04.1993, 17.04.1993 and 18.04.1993. It is not the case of the OPs that such type of bleedings leading to deathare the known complications. Admittedly uterus was well contracted after the baby was taken out.As per complainant's case Dr. Sadhna Kala told the

attendants after surgery that she had to remove 7-8 tumours. In her reply (written version) Dr. Sadhna Kala stated that she had to cut 6-7 adhesions or tissue bands to reach the uterus. Perusal of the case sheet dated 12.4.1993 shows that there is no mention of either the tumours or adhesions/tissue bands which had to be cut. An attempt has been made to incorporate a writing:" nodules seen all over". Was it necessary for the doctor doing surgery to cut any abnormal growth to take the baby out or it could have been deferred? Clearly, the surgeon could have postponed dealing with any such growth. It could have been done at a later stage with an informed consent of the patient.Law has been laid down in ***Samira Kohli's*** case.

3. On finding an abnormality in the anatomy of the patient and removing the same by surgery was an important event. It ought have been made a part of the record. Omission to mention any such thing leads to an adverse inference. Now a stand of finding 'adhesions' only around the uterus has been taken. It may also be mentioned here that the case sheet was filed by the OPs in the National Commission in Appeal proceedings only.
4. Case sheet does not show that at any particular stage, only hepatic disorder was found. It was almost accompanied by renal failure. It does not support the plea raised by Dr. Sadhna Kala that the patient was having a 'pre-existing liver disease'.
5. In the case of ***Aruna Ben D. Kothari*** v. ***Navdeep Clinic,*** 1996 (3) CPR 1905, it was held that when complications and death occurred within the four walls of the operation theater, onus lies on the doctors to explain the events and the ultimate outcome. In the case of ***SavitaGarg*** v. ***Director of the National Heart Institute,*** (2004) 8 SCC 56, the Supreme Court held as under:

> ***"Once evidence is placed by the complainant to satisfy that the patient admitted for treatment after taking him to intensive care unit developed jaundice and died because of lack of proper care and negligence, then the burden shifts to the hospital and the doctor who treated the patient to satisfy that there was no negligence on the part of doctor or hospital. It would be too much of a burden on the patient or the family members to undertake searching enquiry from the hospital to ascertain the names of treating doctors or the staff and to show who was responsible for the death. The hospital, which is in better position to disclose what care, was taken or what medicine was administered to the patient."***

In the case of ***Nizam Institute of Medical Sciences*** v. ***Prasanth S. Dhananka and Ors.,*** 2009 (2) CPJ 61 (SC), the Supreme Court held as under:

> ***"Once the initial burden has been discharged by the complainant by making out a case of negligence on the part of the hospital or the doctor concerned, the onus then shifts to the hospital or to the attending doctors and it is for the hospital or the attending doctors to satisfy the Court that there was no lack of care or diligence."***

The principle was reiterated by the Supreme Court in the case of ***Malay Kumar Ganguly*** v. ***Dr. SukumarMukesh,*** 2009 (3) CPJ 17 (SC). Coming to the case in hand, as discussed above, expert's opinion, death summary and the statement of treating doctor, Dr. Sadhna Kala contradict each other. In the case of ***Malay Kumar Ganguly (supra),*** Supreme Court observed as under:

> ***"A court is not bound by the evidence of experts which is to a large extent advisory in nature. The court must derive its own conclusions upon considering the evidence which might be adduced by both sides, cautiously and upon taking into considerations the authorities on the point which he deposes."***

In the case of ***Ramesh Chandra Agarwal*** v. ***Regency Hospital Ltd. and Ors.,*** (2009) 9 SCC 709, the Hon'ble Apex Court held that the credibility of an expert depends upon the question of data and material furnished which form the basis of his conclusion. In the present case Dr. Sadhna Kala knowing fully well the opinion of the expert panel of GTB Hospital Shahdara, Delhi has given a contrary view. Both views are not supported by any scientific criteria or any data or material. Position that emerges now is that the complainants have discharged their burden. It was for the OPs to demonstrate that there was no negligence on their part. As discussed above, BTCT report was normal. Patient had no history of liver disease. No test pointed out to a 'pre-existing liver disease'. Liver disorder did not singly manifest itself. It was accompanied by renal failure.Experts' opinion, death summary and the statement of Dr. Sadhna Kala in the court have clearly contradicted each other. OPs did not file the case sheet at the outset. Case sheet does not show any abnormality in the anatomy of the patient or the doctors having been dealt with the same. It is now a case of ***res ipsaloquitor.*** Starting from ARM till surgery Dr. Sadhna Kala had not associated any doctor with her. Dr. Sadhna Kala has failed to give the reasons of profuse bleeding not only from the cut ends but also from the mouth and nose of the patient. Principal function of the maxim ***res ipsaloquitor*** is to prevent injustice which would result if the complainants are required to give the cause of profuse bleeding. Relevant facts are within the knowledge of Dr. Sadhna Kala. Happening of profuse bleeding and its non-stoppage is more consistent with the negligence on the part of Dr. Sadhna Kala. No other cause has been relied upon by the OPs exclusively. The reasons for the postmortem not getting done are not given. **Facts, therefore, speak for themselves.** I am, therefore, left with no option but to hold that it was the negligence on the part of Dr. Sadhna Kala that led to the death of a 22 year old, hale and hearty young girl. Before parting it may be mentioned here that Dr. AKGupta Nephrologist started treating the patient only when there was a renal failure. It was simply a consequence of the deteriorating condition of the patient which led to the renal failure. Dialysis was the only option and the same was done. Things had worsened to the extent that even dialysis could not save her life. There is thus no material suggesting any negligence on the part of Dr. A.K.Gupta OP No. 3. Coming to the question of performance of ARM, experts' panel of GTB Hospital has clearly observed that LSCS was justified in view of postdated pregnancy with foetaldistress. Complainants have not placed any material on record to show that ARM and LSCS could have been dispensed with. I do not want to dwell much on the point of 'consent' allegedly given by the patient. Patient Smt. Anjana Mishra was in a great difficulty when she pointed out towards her father to give the consent. It is not the case of the complainants that the father Sh. Uday Kant Jha had any interest adverse to the interest of Smt. Anjana Mishra. It is also not the case of the complainants that Smt. Anjana Mishra would have not given the consent, had she been insisted upon to give the same. Clearly the ratio of the case of ***Samira Kohli*** is not attracted.

1. In view of the discussion above, I am of the considered opinion that the Dr. Sadhna Kala committed negligence in LSCS surgery performed on the deceased Smt. Anjana Mishra.
2. Supreme Court in a landmark judgment in the case of ***Bara Ram Prasad (Dr.)*** v. ***KuanalSaha,*** IV (2013) CPJ 1 (SC) laid down the parameters for grant of paltry compensation. But in the present case, the complainants have very conservatively prayed for a compensation of Rs. 15,00,000/- inclusive of litigation charges. Present case was instituted in the year of 1993. In the circumstances, OP No. 2 Dr. Sadhna Kala is directed to pay to the complainants, a total amount of Rs. 15,00,000/- alongwith interest @ 8% p.a. from the date of institution of the complaint till the date of its realization. Amount is apportioned to all the three complainants in equal shares. Complaint is accordingly disposed of.
3. Copy of the orders be made available to the parties free of costs as per rules and thereafter the file be consigned to Records.

(N P KAUSHIK)
MEMBER (JUDICIAL)

(Fatima)