

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 739 OF 2021**

(Against the Order dated 26/02/2021 in Complaint No. 243/2013 of the State Commission Delhi)

1. MATA CHANAN DEVI HOSPITAL  
THROUGH ITS DIRECTOR/CMD, C-1JANAKPURI,NEW DELHI, THROUGH  
MEDICAL UPERINTENDENT

.....Appellant(s)

Versus

1. SAJJAN SINGH  
EX-PETTY OFFICER(UW-1),NO.160790-H, R/O HOUSE NO.RZ-368,DURGA  
VIHAR PHASE-1,GALI NO. 16, NAJAFGARH, NEW DELHI-110043

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER  
HON'BLE DR. SADHNA SHANKER,MEMBER**

FOR THE APPELLANT :

MR. S. C. BUTTAN, ADVOCATE WITH  
MR. OJASVI ANNADI SHAMBHU, ADVOCATE

FOR THE RESPONDENT :

MR. SATISH KUMAR, ADVOCATE

**Dated : 10 October 2024**

**ORDER**

**DR. SADHNA SHANKER, MEMBER**

1. This appeal has been filed under section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as the 'Act') in challenge to the Order dated 26.02.2021 of the State Commission in complaint no. 243 of 2013 whereby the complaint was partly allowed.

2. We have heard the learned counsel for the appellant (hereinafter referred to as the 'hospital') and the learned counsel for the respondent (hereinafter referred to as the 'complainant') and perused the record, including *inter alia* the impugned order dated 26.02.2021 and the memorandum of appeal.

3. The brief facts of the case are that on 16.01.2011, the complainant met with railway accident at about 0435 hours within the jurisdiction of Police Station Sarai Rohilla and since it was a case of an emergency and accident, at around 0515 hrs, the complainant was taken to the Base Hospital, Delhi Cantonment, New Delhi. At 0530 hours after few checks and queries, the medical officer on duty informed the complainant's wife, relatives and neighbors that the complainant being an ex service man cannot be treated in Base Hospital and that the specialist doctors were not available in Hospital but first aid was provided to the complainant by medical officers on repeated requests of Police Personnel and the complainant's relatives and the complainant was referred to the hospital at about 0725 hours. It is also alleged that the Base Hospital had refused to provide Ambulance Service for taking the complainant to the hospital on the ground that the ambulance service cannot be provided to Ex-service men. It is alleged that the statements made by the medical officer on duty of the Base Hospital that an ex-service man cannot be treated in Base Hospital and the specialist doctors were not available and that an ex-service man cannot be provided ambulance service were completely contrary to the guidelines provided in Ex-servicemen Contributory Health Scheme (ECHS) Guidelines. It is alleged that the Scheme clearly provides that ambulance of ECHS will be provided within municipal limits of the city, if medical condition of the patient requires so. It is further alleged that one of the police staff called 102 and requested for ambulance and finally the complainant reached the hospital at about 0800 hrs. in emergency ward where the complainant was attended by Dr. A. K. Jain of the hospital, who confirmed that amputation is required for both legs (maximum by one or one and half inches for artificial limbs). The grievance of the complainant is that the complainant was admitted on 16.01.2011 at about 0800 hrs. but doctors of the hospital did not start the treatment immediately and the treatment could only started the next day i.e. 17.01.2011 at about 1600 hrs. and the delay in treatment resulted in amputation of both the legs of the complainant. It is alleged that on 17.01.2011 at 1500 hrs. the doctors of the hospital shifted the complainant to operation theatre for operation/surgery. After the operation, the complainant's relatives came to know that the doctors had actually amputated the complainant's left leg with around 08 inches and right leg by 11 inches below the knee joint, which was contrary to what was informed earlier and the same could have been avoided by providing timely treatment to the complainant, but the negligence approach of the doctors of Base Hospital and the hospital towards the complainant resulted into amputation of the legs of the complainant by more length than it was assured by the doctors earlier. It is further alleged that on 18.01.2011 at about 1800 hrs. the doctor of the hospital shifted the complainant from post operative to general ward although he was recuperating then. However, on 19.01.2011 onwards the complainant suffered high fever. The further allegation of the complainant is that even after the complainant having fever, the complainant was discharged by the doctor on 20.01.2011 without any investigation. The further allegation is that since the complainant was suffering from fever, the doctors of the hospital could have extended the complainant's stay and treatment in the hospital, which led to inconvenience and unnecessary expenditure due to the negligence on the part of the doctors of the

hospital. Further, the complainant visited the hospital on 22.01.2011 when the doctors told the complainant to first get fresh approval from ECHS Polyclinic for further treatment. This caused further suffering to the complainant and all due to the negligence act of the hospital and the Base Hospital, the complainant's both legs had been amputated. As the complainant did not get relief from the pain nor he was able to walk, the complainant approached Dr. B.P. Yadav, when he came to know that the doctors of the hospital had not performed the operation following the required protocol. As per the X-ray report, the fibula was found longer than Tibia of left leg. It is further alleged that to confirm the opinion expressed by Dr. B.P. Yadav, the complainant approached Rockland Hospital, Delhi where the negligence on the part of the hospital was confirmed. In these circumstances, the complainant had to again undergo revision of surgery on 19.07.2012 under Dr. (Prof.) PK. Dave for which he had to spend further Rs. 5,59,000/- causing financial hardship apart from mental agony.

4. Alleging medical negligence on the part of the Base Hospital and the hospital (Mata Chanan Devi Hospital) and their doctors, the complainant filed a consumer complaint before the State Commission.

5. The hospital contested the complaint by filing written statement stating that the complaint is barred by limitation. It is stated that the patient was admitted on 16.01.2011 and had undergone all tests for finding fitness for operation but his reports shows that the sugar level was 220 and in no case, he could be operated unless sugar level brought to normal level and there was no delay on the part of the hospital in giving treatment to the patient. It is further stated that the amputation of legs was already done at Base Hospital after they were cut in the accident on the accident spot and at this stage, the hospital had nothing to do to save the legs of the complainant. The statement of the complainant in the FIR confirms the same. It is further stated that the hospital had gone ahead with the operation after obtaining informed consent and with full knowledge about his clinical reports and all risks and responsibility. It is further stated that no specification was ever given by the doctors as to how much amputation is required for artificial limbs. The amputation was performed at musculotendinous junction of Gastrosoleus to provide good stump for the fitting of artificial limb and the amputation was essential to save the remaining legs of the patient. It is further stated that having fever after operation is very normal and all checkups were done before discharging the complaint from the hospital. It is further stated that the complainant again visited the hospital with infection, which was caused due to carelessness in after-operation care at home. He was given perfect treatment for removing the infection and was discharged in good condition. It is further stated that the hospital is a super speciality hospital and is well equipped for handling all types of cases with modern machines and surgical instruments. It is further stated that the hospital had provided treatment as per the established norms in the line of medical sciences and as per international standard and the doctors are well qualified with vast experience in their fields and there is no deficiency in service on the part of the hospital or on its doctors and the complaint is liable to be dismissed.

6. The State Commission, vide its order dated 26.02.2021, allowed the complaint in part and directed the hospitals (Base Hospital and Mata Chanan Devi Hospital) to pay equally a compensation of Rs. 10 lakh with interest at the rate of 3.5% from

the date when the cause of action arose till its realisation to the complainant.

7. Being aggrieved by the order dated 26.02.2021, the hospital has filed the instant appeal before this Commission.
8. The main issue arises in this appeal is as to whether there was deficiency in service on the part of the hospital and its doctors in treating the patient.
9. Learned counsel for the hospital has argued that the complainant met with the accident on 16.01.2011 and the complaint was filed in 2013 after expiry of limitation period, therefore, the complainant is barred by limitation. He further argued that at the time of admission in the hospital, the blood sugar of the complainant was very high and was found to be 222 mg., therefore, the operation was postponed. He further submits that the further management was required to get the legs enabled to bear the load and also to wear the artificial limb and an operation had to be conducted which could not be conducted till the time the blood sugar was brought under control. He further submitted that it is the operating doctor, who could be better in a position to find the support at what point and therefore, amputation for that portion is essential and if length is little bit increased to give proper strength to the muscles / bone to bear the weight of the artificial limb, it would be causing no harm to the complainant. He further argued that the complainant was discharged from the hospital after full satisfaction. It is further argued that the complainant was re-admitted in the hospital on 22.01.2011 due to B/L B/K amputation with stamp infection with Septicemia and was discharged on 28.01.2011 and the treatment given was as per international standard. He further argued that the complainant got an opinion from BAMS (VAID), who is not well versed with Allopathic medicine treatment, therefore, his opinion holding the hospital and its doctors negligent is not reliable. He further argued that the complainant had given remarks of excellency for the services provided to the patient, therefore, it can be said that the treatment given to the complainant was proper and as per international standard. He further argued that there is no record to prove that the complainant was not suffering from fever after the operation but before the discharge and he was re-admitted not only due to fever but due to suffering from septicemia.
10. Learned counsel for the complainant has argued that the appeal filed by the appellant is not maintainable as it is barred by limitation. He further argued that the Base Hospital had provided only the first aid to the complainant and there was no operation for amputation at Base Hospital and hospital (Mata Chanan Devi Hospital) had wrongly stated that the first operation for amputation was conducted Base Hospital. It had been reflected from the reply vide letter No. 743/Complaint/ECHS dated : 17.03.2012 that "as there was no beds available in ICU, he was advised to go empanelled hospital after necessary first aid". He further argued that the medical officer on duty informed the respondent's wife and relatives that the complainant being an ex-service man cannot be treated at the Base Hospital and also that the specialist doctors were not available at the Base Hospital and such refusal of medical treatment to an ex-service man is contrary to the guidelines provided to an Ex-servicemen Contributory Health Scheme (ECHS) Guidelines. He further argued that the complainant was informed that amputation for both

the legs (maximum by one or one and half inches for artificial limbs) is required but the doctors cut the left leg by 08 inches and right leg by 11 inches without informing the complainant and taking the consent therefor, which amounted to negligence on the part of the hospital and its doctors. He further argued that the complainant was admitted in the hospital on 16.01.2011 at 08.00 hrs. in an emergency but the doctors conducted operation on 17.01.2011 at about 4.00 p.m. knowing well that it was an emergency case, hence, there was a delay in conducting the surgery of the patient, which is a clear deficiency in service on the part of the hospital. He further stated that the hospital had taken a wrong plea that the surgery was postponed due to high sugar of the patient but the complainant or his relatives never informed about the test reports showing high sugar level and if for the sake of argument, it is considered that the blood sugar level was high, still any kind of emergency surgery can be performed. Blood sugar random 222 mg. is not high in life saving case and can be controlled very easily by giving tablet or injection in next 30 minutes. He further argued that the doctors knowing well that the complainant was suffering from fever, negligently discharged him without conducting any lab investigation with few prescriptions on discharge slip and the act of discharging the complainant while he was having fever, amounted to medical negligence on the part of the hospital. It is further submitted that the local doctor report dated 20.01.2011 reported high fever to the complainant. Additionally, the discharge slip 28.02.2011 shows that when the patient was re-admitted on 22.01.2011, complainant was suffering from fever for the last two days. He further argued that when the complainant did not get any relief from the pain, he approached Dr. B.P. Yadav, MBBS, MS (Ortho), DPMR (Denmark) and came to know that the hospital had not followed the international standard, as all the required investigation to be done before the surgery as per medical protocol and to confirm the opinion expressed by Dr. B.P. Yadav, MBBS, MS (Ortho), DPMR (Denmark), the complainant approached Rockland Hospital, Delhi where the negligence was confirmed on the part of the hospital.

**11.** As regards the point of limitation is concerned, the complainant was admitted in the hospital on 16.01.2011 and discharged on 20.01.2011 and thereafter on 22.01.2011 and discharged on 28.02.2011. Thereafter the complainant took treatment from Rockland hospital, therefore, there was a continuing cause of action. Therefore, the contention of the learned counsel for the hospital that the complaint is barred by limitation cannot be entertained.

**12.** The principles of what constitutes medical negligence is now well established by number of judgments of this commission as also the Hon'ble Supreme Court of India, including Jacob Mathew vs. State of Punjab [(2005) 6 SSC 1] and in Indian Medical Association Vs V.P.Shantha [(1995) 6SSC 651]. One of the principles is that a medical practitioner is expected to bring a reasonable degree of skill and knowledge and must also exercise a reasonable degree of care and caution in treating a patient.

**13.** It is not in dispute that the complainant had been admitted in the emergency in the hospital on 16.01.2011 at about 10.10 a.m. It is also not in dispute that the operation was conducted on 17.01.2011 at 04.00 p.m. i.e. after about 32 hours from the date and time of the admission. The bone of contention of arguments of learned counsel for the hospital is that as the complainant

was having blood sugar 222 mg., therefore, the operation was not conducted immediately but from a perusal of the medical record, it does not reflect from any documentary evidence that the blood sugar of the complainant was very high. It is pertinent to note that in the medical record, including discharge summary, there is no mention of blood sugar. Therefore, in the absence of any evidence, the contention of the learned counsel for the hospital cannot be accepted. As regards the point that the complainant was discharged on 20.01.2011 while he was having fever, although the discharge summary dated 20.01.2011 does not mention but the prescription slip dated 20.01.2011 given by BAMS (Vaid), clearly shows that the complainant was suffering from fever. In addition to this, the discharge summary dated 28.02.2011 clearly shows that the patient was admitted on 22.01.2011 and the chief complaint of the complainant was fever for the last two days, meaning thereby that the patient was suffering from fever from 20.01.2011 i.e. from the date of discharge itself. This clearly shows negligent act on the part of the doctors of the hospital. As regards the remarks of excellence of services provided to the complainant, it is clearly written by handwriting that the 'doctors in the hospital are careless. This patient was operated after 33 hrs. after post admission in the hospital (admitted at 08.00 hrs. on 16.01.2011 & operated on 17.01.2011 at 1500 hrs.) and the patient was discharged from hospital on 19.01.2011 15.00 hrs.'

**14.** From a perusal of the medical record of the Base Hospital, it does not appear that the Base Hospital had conducted any operation. It had given only first aid to the complainant. Therefore, the contention of the learned counsel for the hospital that the operation was conducted at Base Hospital is rejected.

**15.** The hospital has not given any plausible reason to explain why the operation was conducted on 17.01.2011 after about 32 hours from the date and time of admission in emergency. The negligence in this case on the part of the appellant hospital is evident from the elapse of time from when the patient was admitted in emergency and the 32 hours that elapsed before he was taken in for surgery. No evidence has been brought on record to explain the reason for delaying the emergency surgery. It is also borne out from the record that the patient was discharged while he had high fever. Even if the Vaid may not be relevant to comment on treatment received, he does have the requisite skill to record temperature of a patient before him. It has been recorded on 20.01.2011 as being 102 Fahrenheit, this being the date on which he was discharged. It is also not in dispute that he was re-admitted with septicaemia in his operated limbs on 22.01.2011.

**16.** As regards the surgery, it has not been disputed by the appellant hospital that the patient was advised and underwent revision surgery on account of his lower end fibia being longer than the tibia, which should be shorter to make the stump conical. The surgery at the appellant hospital did not make his amputation fit to wear an artificial limb, which was the intent of the amputation as per the averments of the appellant hospital. He had to undergo further surgery to correct the situation. The overall treatment and outcome of the patient in the appellant hospital is clearly evident of negligence at all stages. From admission, to outcome of surgery, and a hasty discharge while the patient was suffering from fever.

17. In view of the above, we are of the view that the State Commission has passed a well-reasoned order that warrants no interference.

18. The appeal being without merit is dismissed. All pending applications, if any, stand disposed of.

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**SUBHASH CHANDRA**  
**PRESIDING MEMBER**

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**DR. SADHNA SHANKER**  
**MEMBER**