

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 1785 OF 2019

(Against the Order dated 27/02/2019 in Complaint No. 18/2016 of the State Commission
Punjab)

1. MAX SUPER SPECIALITY HOSPITAL & 2 ORS.
THROUGH ITS DIRECTOR AND HEAD. PHASE-VI.
MOHALI.
PUNJAB-160055

2. DR . MANUJ WADHWA (AT THE RELEVANT TIME),
DIRECTOR AND HEAD.
MAX ELITE INSTT. OF ORTHOPAEDICS AND JOINT
REPLACEMENT. MAX SUPER SPECIALITY HOSPITAL.
PRESENTLY AT:- #2367, SECTOR-23-C.
CHANDIGARH.
PUNJAB.

3. DR. SUDHEER SAXENA, DIRECTOR AND HEAD,
DEPARTMENT OF CARDIOLOGY.
MAX SUPER SPECIALITY HOSPITAL, NEAR CIVIL
HOSPITAL, PHASE-VI.
MOHALI
PUNJAB-160055

.....Appellant(s)

Versus

1. SHAM SINGH & ANR.
S/O. SHRI. DALIP SINGH. R/O. 3322, SEC TOR-71.
S.A.S. NAGAR.
PUNJAB

2. DR. ANURAG SHARMA, SENIOR CONSULTANT
CARDIOLOGIST, DEPARTMENT OF CARDIOLOGY.
MAX SUPER SPECIALITY HOSPITAL, NEAR CIVIL
HOSPITAL, PHASE-VI. (PERFORMA RESPONDENT)
MOHALI.
PUNJAB-160055.

.....Respondent(s)

BEFORE:

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

FOR THE APPELLANT :

FOR THE APPELLANTS : MR. RAVIKESH K. SINHA,
ADVOCATE
IN FA/1785/2019 AND
RESPONDENTS NO. 2, 3 & 4 IN
FA/2121/2019

FOR THE RESPONDENT :

FOR DR. ANURAG GUPTA : MR. ABHISHEK GROVER,
ADVOCATE WITH
MR. PARVEEN KUMAR AGGARWAL, ADVOCATE
FOR SHAM SINGH : MR. D. S. GANDHI, ADVOCATE

Dated : 31 May 2024

ORDER

DR. SADHNA SHANKER, MEMBER

1. These two appeals have been filed under Section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as “the Act”) in challenge to the Order dated 27.02.2019 passed by the State Consumer Disputes Redressal Commission, Punjab (hereinafter to be referred to as ‘State Commission’) in complaint No. 18 of 2016 whereby the complaint was allowed.

First appeal no. 1785 of 2019 has been filed by Max Super Speciality Hospital, Dr. Manuj Wadhwa & Dr. Sudheer Saxena (hereinafter referred to as the ‘hospital’ and ‘doctors’) for setting aside the Order dated 27.02.2019 of the State Commission.

Also, first appeal no. 2121 of 2019 has been filed by Dr. Anurag Sharma (hereinafter referred to as the ‘senior cardiologist’) for setting aside of the Order dated 27.02.2019 of the State Commission.

2. The relevant brief facts of the case are that on 11.08.2014, the complainant’s wife, Smt. Salwinder Kaur, (hereinafter referred to as the ‘patient’) feeling pain in her knees from 06 months, visited the hospital and the doctor after check-up told the complainant that the patient had advanced osteoarthritis of both the knees and suggested surgery for replacement of both the knees and placing a rod in the right leg of the patient. It is informed by the doctor that as both knees of the patient were in advanced stage of Osteoarthritis, it was mandatory for them to get Bilateral Total Knee Replacement. Following the advice given by the doctor, the complainant got the patient admitted in the hospital. The pre-operative tests were conducted on the patient. It is alleged that on 19.08.2014, Dr. Amit Gupta conducted Echo Test upon the patient and as per the report, left ventricular Ejection Fraction (LVEF) was recorded to be 35% and as per the medical jurisprudence, the doctors are not supposed to conduct Knee Replacement Surgery of a patient with 35% LVEF otherwise the surgery could be fatal for the patient. Despite this fact, the doctors got conducted 2D Color & Doppler Echoardiography test on the same day, which shows LVEF = 60%, which is medically impossible and is wrong being manipulated / doctored by the doctors in order to conduct the surgery against the health condition of the patient. It is alleged that on 20.08.2014, the Bilateral Total Knee Replacement of the patient was conducted. It is further alleged that the X-ray knees and X-ray Chest PA/AP was conducted on 19.08.2014 and the report was given by Dr. Monica Chhabra and Dr. Ambreen Jyot Sidhu on 21.08.2014 and 22.08.2014, respectively whereas the surgery was conducted one day before i.e. on 20.08.2014 even without perusing the X-ray reports of the knees and chest of the patient by the doctors. It is alleged that X-ray of chest AP view report of the patient shows Cardiomegaly, a state where Cardiac of the deceased was shown as enlarged. It is alleged that on 23.08.2014 when the condition of the patient was deteriorating, she was shifted to ICU and then on 25.08.2014 to SICU and the patient was kept on ventilator in SICU till 08.09.2014. On 09.09.2014, the doctor referred the patient to Cardio Dr. Sudheer Saxena in CCU and Angiography was done and the report came out to be normal but patient’s condition was worsening day by day. On 10.09.2014, Dr. Saxena conducted angiography test and the report came out to be normal, therefore, the patient was discharged despite her critical condition. It is alleged that on 11.09.2014 the condition of the patient became very critical at home and the family of the

complainant called Max Hospital Ambulance and took the patient to the doctor in an emergency but the doctor refused to admit the patient back and then the patient was taken to Fortis Hospital, which also refused to admit the patient. Thereafter, the complainant took the patient to SGHS Hospital, Sohana where the patient was admitted in ICU and remained there till 23.09.2014 and on 24.09.2014 she was put on ventilator and unfortunately, on 01.10.2014, the patient died.

It is alleged that as the patient was not taken care of as per medical protocol before and after the surgery, she got infection/sepsis and remained on invasive mechanical ventilator for approximately one week. It is also alleged that the death summary report also shows that the patient had swelling in both the knees. Hence, alleging medical negligence on the part of the hospital and the doctors and the senior cardiologist, the complainant filed a complaint before the State Commission.

3. The hospital and doctors contested the complaint by raising preliminary objections that the complainant had no cause of action to file the complaint. And that the Max Super Speciality Hospital, Mohali is a tertiary Care Hospital, engaged in providing state of art service in a very transparent and compassionate manner. It is also stated that all the pre-operative tests were conducted and after fully confirming that the patient is fit to undergo surgery, clearance for conducting surgery was given by the concerned doctor of the hospital. It is also stated that the contention of the complainant that LVEF was only 35% is totally incorrect as 2D Colour and Doppler Echo done on 19.08.2014 clearly shows that the LVEF of the patient was more than 60% which was within the normal parameters. It was further stated that the patient was not having any complaints of breathlessness or chests pain and there is no medical negligence on the part of the hospital and the doctor and the senior cardiologist and the complaint is liable to be dismissed.

4. The State Commission, vide its Order dated 27.02.2019, allowed the complaint and directed the hospital and the doctors to pay Rs. 25,00,000/- as compensation to the complainant, along with interest at the rate of 8% per annum from the date of filing of the complaint till realization and litigation expenses of Rs. 33,000/-.

5. Being aggrieved by the impugned order dated 02.08.2018, the hospital and the doctors and the senior cardiologist have filed the instant appeals before this Commission.

6. Learned counsel for the hospital and the doctors has argued that the 2D Color and Doppler Echo Cardiography Test report shows that the Left Ventricular Ejection Fraction (LVEF) was 60% and only after satisfying that the ECHO Report was normal, the clearance was given for surgery. Pre-Anesthesia Check (PAC) was also conducted on the patient and the clearance was given for surgery, which has been overlooked by the State Commission. He further argued that the ECHO test was conducted on the patient on 26.08.2014 but inadvertently the date in the report was mentioned as 19.08.2014, which stood corrected on 26.08.2014. He further argued that another ECHO test and DL Scopy were done and the patient was extubated on 08.09.2018 and the patient was shifted to Cardiology Department due to ECG Atrial Fibrillation and Bigemini Changes and on 09.09.2014, an angiography was conducted on the patient and the report was found to be normal and the patient was discharged on 10.09.2014 when the patient was fully conscious, oriented, thermodynamically stable afebrile, TLC (WBC) Count within normal unit. He further argued that on 11.09.2014,

the patient was brought to the hospital in an emergency but her condition was found to be normal, therefore, the patient was not admitted. He further argued that no expert witness was produced to prove medical negligence on the part of the hospital and doctors. He further submits that X-ray Knee and X-Ray Chest reports had been prepared subsequently but the same were shared with the treating surgeon on 19.08.2014. Therefore, there is no negligence on the part of the hospital and doctors and the complaint is liable to be dismissed.

7. Learned counsel for the complainant has argued that ECHO test of the patient conducted by Dr. Amit Gupta on 19.08.2024 shows LVEF as 35% and as per medical protocol, no surgery could be done and if done, it could be fatal to the life of the patient. He further argued that the report of 2D Colour & Doppler Echocardiography is forged one and no 2D Colour & Doppler Echocardiography was conducted. He further argued that the doctors conducted the surgery on 20.08.2014 without waiting for the report of the X-ray knee and x-ray chest, which amounted to medical negligence on the part of the hospital and doctors. He further argued that at the time of discharge, the patient was not well but the doctors forcibly discharged her. He further argued that when the patient came in emergency on the next day, the hospital and doctors refused to admit and treat her, which amounted to deficiency in service on the part of the hospital and doctors.

8. Heard learned counsel for the appellants – hospital and the doctors, the learned counsel for senior cardiologist and the learned counsel for the complainant – Mr. Sham Singh and perused the record including the State Commission's impugned Order dated 27.02.2019 and the memoranda of appeals.

9. The question for our consideration is as to whether there was medical negligence on the part of the hospital and the doctors.

10. In so far as the contention that the wrong date has been mentioned in the ECHO test report, from a perusal of ECHO report, it seen that the report was prepared by Dr. Amit Gupta on 19.08.2014. The perusal of log at page 499 makes it clear that on 19.08.2014 the hospital issued two requisitions bearing No. 254126 and 254127 and the requisition no. 254126 relates to ECHO while requisition no. 254127 relates to PFT/Spirometry test. The dates mentioned in the requisition and the ECHO test report are same i.e. 19.08.2014. Therefore, it cannot be said that a wrong date has been mentioned in the ECHO report.

Further, the bill issued by the hospital at page 501 shows that the hospital has charged Rs. 1100/- for conducting Echo test, which was conducted on 20.08.2014. The hospital has further charged Rs. 1100/- for another Echo-Bedside, which was conducted on 23.08.2014. The hospital and the doctor had not produced any credible evidence to show that the Echo test was conducted on 26.08.2014 as mentioned by them. Therefore, the contention of the opposite party that wrong date has been mentioned is rejected and it is clear that the ECHO report of 19.08.2014 shows LVEF as 35% is the correct one.

11. In so far as the question that the report of 2D Colour & Doppler Echocardiography is fabricated or forged, the hospital and the doctors have failed to produce any requisition or any bill to show that the said test was conducted. Therefore, the report of 2D Colour & Doppler Echocardiography cannot be accepted.

12. It is apposite at this stage to read the relevant part of ECHO test report dated 19.08.2014, which reads as under:-

“Interpretation Comments

Global LV hypokinesia, more in LAD territory, LVEF = 35%

Moderate to severe MR

Mild TR and an estimated PA Systolic pressure 30 mm Hg

IVC normal sized, complete inspiratory collapse”

13. It is seen that the LVEF was 35% on 19.08.2014 i.e. one day before surgery.

As mentioned by the complainant, as per the medical jurisprudence, Bilateral Total Knee Replacement (BTKR) is not advisable and the doctors are not supposed to conduct Knee Replacement Surgery of the patient when LVEF is 35%. The appellants have filed three documents on LVEF. The first explains LVEF in detail and as per that LVEF between 30 to 40% is categorized as moderately abnormal. The second is three successful case study of three geriatric patients with low LVEF who underwent total knee replacement under combined spinal epidural anaesthesia. The third is an article on the America Society of Anaesthesiologists physical status classification.

In this case, the appellant has not controverted the assertion that conducting a surgery with LVEF of 35% is not advisable. Further, it has not been clarified if the operation was done under general anesthesia or spinal anesthesia to be covered by the case studies submitted.

14. From a perusal of the X-ray of knee and chest reports, it is seen that the reports were prepared on 21.08.2014 and 22.08.2014 whereas the surgery had happened on 20.08.2014. Therefore, it is apparent that the surgery was conducted without seeing the reports and no evidence has been brought on record to substantiate the claim that the reports were shared with surgeon prior to the operation.

In addition to this, the expert opinion dated 17.03.2016 of the medical board constituted by Medical Superintendent, PGIMER, Chandigarh is reproduced as under:-

“• As per available records patient was a high risk case for any major surgery / detailed preoperative evaluation and risk stratification was required.

• Patient was discharged in stable and satisfactory condition as per available records. However when patient reported next day she should have been admitted, evaluated and managed as per their hospital protocol.”

15. It is seen that the expert opinion states that the patient was a high risk case for any major surgery and detailed preoperative evaluation and risk stratification was required. It is clear that the same was not done, as no evidence of the same is on record. It is also to be noted that when the patient had come to the hospital in an emergency, she should be

admitted, evaluation and managed as per their hospital protocol. The version of the hospital that the patient was found to be normal when she came to the hospital in an emergency cannot be accepted because immediately thereafter the patient was admitted in ICU in Sohana and ultimately died.

Dr. Anurag Sharma in his appeal has argued that he is a Cardiologist and had nothing do with the pre-operative assessment or of the surgery done on the patient, and he should not be held liable.

It is seen that the patient had LVEF of 35% and it was a cardiac risk. Further, when after surgery the patient's condition deteriorated she was shifted to the cardiology department on 09.09.2014 and she was discharged from there on 10.09.2014. In view of the same, as the patient was under the direct care of the cardiology department post operation for 09 days, Dr. Sharma cannot claim that he has no liability.

16. The law relating to what constitutes medical negligence has been laid down in detail by the Hon'ble Supreme Court in its judgment in **Jacob Mathew vs. State of Punjab & Anr.**, (2005) SCC (CrL.) 1369. It is based on the **Bolam Test** (1957) 2 All ER 118. The test for medical negligence is based on the deviation from normal medical practice and it has been held that establishment of negligence would involve consideration of issues regarding

1. *state of knowledge* by which standard of care is to be determined.
2. *standard of care* in case of a charge of failure to (a) use some particular equipment, or (b) to take some precaution,
3. *enquiry* to be made when alleged negligence is (a) due to an accident, or (b) due to an error of judgment in choice of a procedure or its execution. For negligence to be actionable it has been held that the professional either (1) professed to have requisite skill which he did not possess, or (2) did not exercise, with reasonable competence, the skill which he did possess, the standard of this being the skill of an ordinary competent person exercising ordinary skill in the profession.

It was further held that simply because a patient did not respond favourably to a treatment or a surgery failed, the doctor cannot be held liable *per se* under the principle of *res ipsa loquitur*. In a claim of medical negligence, it was laid down that it was essential to establish that the standard of care and skill was not that of the ordinary competent medical practitioner exercising an ordinary degree of professional skill. For negligence to be actionable it has to be attributable and three essential components of "duty", "breach" and "resulting damage" need to be met, i.e.: (i) the existence of a duty to take care, which is owed by the defendant to the complainant; (ii) the failure to attain that standard of care, prescribed by the law, thereby committing a breach of such duty; and (iii) damage, which is both causally connected with such breach and recognized by the law, has been suffered by the complainant. While distinguishing between civil and criminal negligence in cases of medical negligence, the Hon'ble Supreme Court has clearly laid down the criteria of a failure to provide the standard of care expected of a prudent doctor of reasonable skill resulting in damage.

17. In this case, we are of the view that the standard of care in a high risk patient at the pre-operative stage was not provided, as also noted by the medical board. Further, when she

was brought back in a critical condition, the hospital should have admitted her and acted as per medical protocol. The lack of standard of care provided at both the occasions in one operation constitutes medical negligence on the part of the hospital and the doctors and the senior cardiologist.

18. In view of the above discussion, we are of the opinion that the State Commission has passed a well-reasoned order, which does not require any interference by this Commission. Therefore, the both the appeals are dismissed. All pending I.A., if any, shall stand disposed of.

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SUBHASH CHANDRA
PRESIDING MEMBER

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DR. SADHNA SHANKER
MEMBER