

**IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL
COMMISSION**

Date of hearing: 06.05.2022

Date of Decision: 05.07.2022

FIRSTAPPEAL NO. 359/2017

IN THE MATTER OF:

1. **DR. R. SINGH**
DHMS (MEDICAL DIRECTOR)
MAVI HOSPITAL PVT. LTD.
B-2/11, NEHRU VIHAR,
KARAWAL NAGAR ROAD,
DELHI - 110094

2. **DR. DEEPALI BISHT**
M.D. (GYNAECOLOGIST)
W/O DR. SHYAM SINGH BISHT
R/O B-3/189, YAMUNA VIHAR,
DELHI

ALSO AT:-
MAVI HOSPITAL PVT. LTD.
B-2/11, NEHRU VIHAR,
KARAWAL NAGAR ROAD,
DELHI - 110094

...APPELLANTS

VERSUS

SMT. SHABANA
W/O SH. ZAFAR ALI, R/O C-78, GALI NO. 1 ,
MUNGA NAGAR ,
DELHI - 110094

...RESPONDENT

CORAM:

HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)
HON'BLE SH. RAJAN SHARMA, MEMBER (JUDICIAL)

Present: Sh. Pankaj Chauhan, Counsel for the appellant.
Sh. Zareef Ahmad Hasmi, Counsel for the Respondent no. 1.
Sh. R. K Tripathi, Counsel for the insurance company.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL,
PRESIDENT

JUDGMENT

1. The facts of the case as per the District Forum record are:

“As per complaint complainant went to OP1 hospital where she got treated by OP2. As per advice of OP 2 after regular checkups and medicines she was admitted in OP1 hospital on 20.02.2012. On 21.2.2012 at about 12:00 hours she gave birth to a child, through operation. Thereafter at about 2:30 PM one staff nurse, namely Menaz, gave metro 100 injection to her, intramuscular and not intravenous. After some time complainant's hand started getting swelling and innumerable pain. On complaint various medicines were given, by OPs to her, but with no result. Rather condition of the hand kept on deteriorating day by day, inspite of OPs' false assurances to cure the same, on one pretext or the other. Finding no way out complainant had to visit another doctor to whom she could not produce treatment records, as OPs didn't provide the same to her, despite approaching them several times, on the false excuse that the documents being with senior doctor, on leave, report could not be prepared. Notice dated 01.10.2012 to OP2 for requiring the same was also not responded to by OP2. Even police complaint with copies thereof to ACP and DCP concerned had no bearing on OPs. Despite severe unbearable pain and

swelling in the hand of the complainant treatment record has not been provided to her. In this manner due to negligence of OPS, life of the complainant has spoiled and ruined. She is not able to do household chores from her hand and has become totally dependent upon others. Pleading negligence, deficiency in service, unfair trade practice and consequent harassment, mental pain and agony complainant has prayed for grant of compensation in a sum of Rs. 18,00,000/- beside Rs. 15,000/- as litigation cost.”

2. The District Forum after taking into consideration the material available on record passed the judgment dated 31.05.2017, whereby it held as under:

“13. Taking into consideration both the medical opinions, cause of the problem in hand could be due to displacement of cannula as well as extravasation of drug being administered i.e. the intravenous fluids being flown out of the veins. OPs' own admission of disturbance in the cannula supports the opinion of medical experts. OPs only defence is that the patient was of a restless nature and she was asked to take care which she didn't. It is rather strange, even if we go alongwith OPS for a moment, can we accept that the doctors and nursing staff have taken adequate or proper care of the patient? Was it not the duty of treating doctors and nurses to periodically check or atleast check on giving any intravenous drug as to whether the drug were going on into the veins of the complainant as it was supposed to in that special condition. Was it not the duty of doctors and nursing staff, to take special care particularly, when they were aware that the patient is of a restless nature and extravasation of any drug could lead to gangrene if flown out of veins? In that case in our opinion the duty of care was greater. by Not only this as stated complainant herself, at the time of arguments, that while giving Metro 100 injection she complained stiffness and severe pain in

the hand and arm but the nurse giving injection took it lightly and continued without bothering to check if everything was alright. Rather told the complainant that it is normal thing. It appears that doctor and nursing staff were negligent while the complainant was a helpless victim of this negligence. If the medication had been given properly and inside the veins and the doctor and nurse were not negligent the injury would not have happened and the gangrene could not have set in the hand, its fingers and the arm and the same could have been saved. It is a case of gross negligence on the part of doctors and nurses of the OP hospital to allow this to happen.

14. Not only this though, as per OPs own contentions, complainant was discharged against medical advise, as per wish of complainant herself. But there is nothing on record to show why complainant after treatment of this, problem for so many days continued to attend outpatient department after her discharge, for receiving treatment/dressing.

15. In this case when the patient as alleged, if found, rowdy and irritable and when hospital has been administering medication which could cause injury if not properly administered, the principal of res ipsa Loquitur applies. The principle of res ipsa Loquitur is explained in Ashish Kumar Majumdar v/s Aishi Ram Batra Charitable Hospital Trust II (2014) CPJ-V (SC) in para 8 & 9 of this judgement Hon'ble Supreme Court has held "(8) the maxim res ipsa Loquitur in its classic form has been stated by Erle C.J. in Escort V/S London and Katherene Docks Co. (1885) 3 H&C 596.

'.....Where the thing is shown to be under the management of the defendant or its servant, and the accident is such as in the ordinary course of things doesn't happen if those who have the management use proper care, it affords reasonable evidence of

explanation by the defendants, that the accident arose from want of care.'

The maxim applies to a case in which certain facts proved by the plaintiff, by itself, would call for an explanation from defendant without the plaintiff having to allege and prove any specific act or omission of defendant.

16. In Shaym Sundar V/S State of Rajasthan 1974 ACJ 296 (SC) it has been explained that the principal function of maxim is to prevent injustice which would result if the plaintiff was invariably required to prove the precise cause of accident when the relevant facts are unknown to him but are within the knowledge of defendant. It was also explained that the doctrine would apply to a situation when the mere happening of the accident is more consistent with the negligence of the defendant than with other causes"

17. In V. Krishna Rao V/s Nikhil Super Speciality hospital III (2010) CPJ 1 (SC) Hon'ble Supreme Court observed - Michael Jones in his treatise on medical negligence has explained the principle of res ipsa Loquitor as essentially an evidential principle and opined that the said principle is intended to assist a claimant who, for no fault of his own, is unable to adduce evidence as to how the accident occurred. In this case treatise also has referred the same principle as explained in scott case (supra) and has verified and gave illustrations where principles of res Ripsa Loquotor have been made applicable in case of medical negligence. The illustrations inter alia provide where gangrene developed in complainant arm following an intra muscular injection.

In this case also gangrene had developed in complainant hand and the arm following and intravenous injection where the extravasation of drug was ruled by the medical opinion. Therefore, it was for the OPS to prove the absence of any

*negligence and due care and attention on their part.
in which they have failed.*

18. On the basis of above findings we are of the view that though OPS do have required professional skill and competence but their conduct fell below the standards of care, required from a reasonably competent doctor. Thus, there is clear cut negligence on the part of OPS. Due to which even after best efforts the problem in arm, hand and fingers of the complainant could not be cured and has become permanently disabled while still she has a long life to pass and responsibility of her children and she has been left only as a helpless victim of OPs' negligence.

Therefore, holding OPs guilty for, deficiency in service as well as, adopting unfair trade practice we direct both the OPs to pay to complainant, jointly and severally;”

3. Aggrieved by the aforesaid judgment of the District Forum, the Appellant has preferred the present appeal contending that the District Forum failed to appreciate the two medical opinions, whereby the appellants were exonerated from any kind of medical negligence. The appellants submitted that District Forum failed to appreciate that there was no evidence which shows that Metro 100 injection was given intramuscular to the respondent, due to which the damage was caused to the respondent. The counsel for the appellants further submitted that no documents was placed on record by the respondent which would show the actual disability of doing daily chores.
4. The Respondent, on the other hand, denied all the allegations of the Appellants and submitted that there is no error in the impugned judgment as the entire material available on record was properly scrutinized before passing the said judgment.

5. We have perused the Appeal, Reply of the Respondent and Impugned Judgment.
6. During the course of proceedings, the appellant no. 1 filed an application for impleading the Oriental Insurance Company in the present appeal as the appellant no. 1 is fully covered under the insurance policy. He further submitted that the impleadment of insurance company before the District Forum could not be done due to the fault of his previous counsel. Since no relief has been claimed by the appellants against the insurance company in the present appeal, we do not see any reasons to implead the insurance company as necessary party. Consequently, the application for impleadment of insurance company in the present appeal stands dismissed.
7. The only question of consideration before us is *whether the Appellants are guilty of medical negligence in treating the respondent*. To comment on this issue, we would first like to understand the law on medical negligence as promulgated by the Apex Court. The Hon'ble Apex Court in **C.P. Sreekumar (Dr.), MS (Ortho) vs. S. Ramanujam** reported at (2009) 7 SCC 130, has held as under:

“37. We find from a reading of the order of the Commission that it proceeded on the basis that whatever had been alleged in the complaint by the respondent was in fact the inviolable truth even though it remained unsupported by any evidence. As already observed in Jacob Mathew case [(2005) 6 SCC 1: 2005 SCC (Cri) 1369] the onus to prove medical negligence lies largely on the claimant and that this onus can be discharged by leading cogent evidence. A mere averment in a complaint which is

denied by the other side can, by no stretch of imagination, be said to be evidence by which the case of the complainant can be said to be proved. It is the obligation of the complainant to provide the *facta probanda* as well as the *facta probantia*.”

8. We also deem it appropriate to refer to the dicta of the Hon’ble Apex Court, in **Harish Kumar Khurana vs. Joginder Singh and Ors.** reported at **AIR 2021 SC 4690**, being the latest pronouncement on the cause, wherein, the Hon’ble Supreme Court, while taking into consideration its previous pronouncements in **Jacob Mathew v. State of Punjab and Anr.** reported at **(2005) 6 SCC 1**, and **Martin F. D’Souza v. Mohd. Ishfaq** reported at **(2009) 3 SCC 1**, has held as under:

*“14. Having noted the decisions relied upon by the learned Counsel for the parties, it is clear that in every case where the treatment is not successful or the patient dies during surgery, it cannot be automatically assumed that the medical professional was negligent. To indicate negligence there should be material available on record or else appropriate medical evidence should be tendered. The negligence alleged should be so glaring, in which event the principle of *res ipsa loquitur* could be made applicable and not based on perception.”*

9. From the aforesaid dicta of the Hon’ble Apex Court, it is clear that only the failure of the treatment is not prima facie a ground for Medical Negligence and in order to attract the *principle of res ipsa loquitur*, Negligence i.e. *the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human*

affairs, would do, or doing something which a prudent and reasonable man would not do, should be clearly evident from the record.

10. Returning to the facts of the present case, though the respondent submitted that Metro 100 injection was given intramuscular and not intravenous by the nurse of the appellant no. 1, however, she has failed to bring on record any substantial evidence, oral or documentary, in support of her contentions. Even the material available before us does not show that the said injection was given intramuscular to the respondent and the same had caused damage to the respondent. Therefore, this Commission cannot presume that the allegations in the complaint are inviolable truth even though they remained unsupported by any evidence.
11. It is clear from the record that a '*Cannula*' (a thin tube inserted into a vein or body cavity to administer medication, drain off fluid, or insert a surgical instrument) was inserted in the right hand of the respondent on the very day of her admission. After about 4-5 hours of the uneventful birth of child thorough C-sec, the respondent complained of acute swelling and pain over her right hand around cannula. It is noted that the respondent was attended by the appellant no. 2, immediately cannula was removed from the right hand and placed on the left hand of the respondent. Moreover, an anaesthetist and orthopaedic surgeon was called for opinion by appellants. It is further noted that the appellants gave appropriate treatment for '*Compartment Syndrome*' to the respondent free of cost, which includes daily dressing and medication even after her discharge from the hospital but the respondent visited the appellants regularly only

for 5-6 days after discharge and thereafter, stopped visiting the appellants. Looking into the aforesaid events, it is clear that the appellants had exercised due care and caution in treating the respondent.

12. Perusal of the medical opinion dated 30.01.2013 reflects that swelling in the right hand of the respondent was possibly due to extravasations of some drug given intravenously and the actions taken by the appellants were appropriate. Another medical opinion dated 16.03.2015 passed by Delhi Medical Council also exonerated the appellants from any medical negligence and observed that the swelling in the right hand was due to accidental displacement intravenous cannula and extravasations of intravenous fluids, which is known to be a post- surgical complication. None of the two medical opinions suggested that the swelling in the right hand was due to any injection administered intramuscular to the respondent. It is further noted that neither any document is available before us, which could verify that the respondent is not capable of doing daily chores from her hand and became dependent on others nor any disability certificate is produced by the respondent from a competent hospital.
13. In view of the forgoing, we hold that there exists no negligence on the part of the appellants as they had exercised due care and caution in treating the respondent and the treatment given by them was proper and acceptable at that point of time.
14. Consequently, we set aside the judgment dated 31.05.2017 passed by the District Consumer Disputes Redressal Forum, North East, Delhi- 110093. No orders as to cost.

15. Application(s) pending, if any, stands disposed of in terms of the aforesaid judgment.
16. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
17. File be consigned to record room along with a copy of this Judgment.

**(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT**

**(RAJAN SHARMA)
MEMBER (JUDICIAL)**

Pronounced On:
05.07.2022