

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

Date of Institution: 20.04.2023

Date of hearing: 01.12.2025

Date of Decision: 17.04.2026

FIRST APPEAL NO.- 166/2023

IN THE MATTER OF

**1. DR. RAJNISH SHARMA,
S/O SH. K. C SHARMA,
B-37, EAST JYOTI NAGAR,
LONI ROAD, SHAHADARA,
DELHI-110093.**

**2. MANAGEMENT,
K K SURGICAL & MATERNITY HOSPITAL,
B-37, EAST JYOTI NAGAR,
LONI ROAD, SHAHADARA,
DELHI-110093.**

(Through: Mr. Bineet Pandey, Advocate)

..... Appellants

VERSUS

**MOHD. SAMEER,
S/O MOHD. JAMIL,
R/O H. NO.: 56-A, GIRI MARKET,
LONI ROAD. GHAZIABAD,
UTTAR PRADESH,**

(Through: Mr. Sadiq Ali, Advocate)

...Respondent

CORAM:

HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)
HON'BLE MS. BIMLA KUMARI, MEMBER (FEMALE)

Present: Mr. Bineet Pandey, Counsel for the Appellant.
None for the Respondent.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL,
PRESIDENT

JUDGMENT

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

“The Complainant has filed the present complaint under Section 12 of the Consumer protection Act, 1986 against Opposite Party No.1 i.e. Dr. Rajnish Sharma, the surgeon and the proprietor of K.K. Surgical & Maternity Hospital i.e. Opposite Party No.2. 1. The case of the Complainant as revealed from the record is that the Complainant was diagnosed Ureteric Calculus of right side kidney after KUB and X-ray on 10.04.16 and after various tests, the complainant was advised for open Ureter Lithotomy Surgery in GTB hospital but due to non-availability of decided to get treatment at surgeon in GTB hospital, the DISP Opposite Party hospital. The complainant further that the Opposite Party asked Rs. 32,000/- from Complainant and on 11.07.16 the surgery was performed. Allegedly, instead of Ureter Lithotomy Surgery, the Opposite Party No:1 had implanted RT DJ stenting and informed the complainant that it was a guaranteed method of stone removal, The Complainant was discharged on D 13.07.16 and asked for second observation on 12.08.16. On 12.08.16, when the Complainant visited Opposite Party hospital, after examination and second KUB X ray Complainant was asked to deposit Rs. 3,500/- and he was admitted again. The Opposite Party performed second surgical process and discharged Complainant on next day. The opposite

party informed the complainant that since the stone was little bigger so the second operation was necessary. The Complainant was asked to revisit on 23.08.16. On 23.08.16, when the Complainant visited the hospital Opposite Party No.1 removed all the stents implanted and asked him to revisit on 15.09.16. Accordingly, on 15.09.16, the Complainant revisited hospital and reported to the opposite party that he did not felt any relief even after second operation. The complainant was told by the Opposite Party No. 1 that it will take time. The Complainant further submitted that as he did not find any relief, he consulted another doctor and ultra sound and KUB X ray were conducted again. After comparing the new tests with the old reports, the Complainant was informed that stones have not been removed and it has been enlarged and grown in size. When the ES REC Complainant again visited the Opposite Party No.1, he was told that his operation was a successful operation and the opposite party 1 had removed the existing stone completely. The complainant was further told that he was already warned of re-occurrence of stone and this stone of 17.5 mm has re occurred in the span of just four months. The Complainant was asked to deposit Rs. 40,000/- again so that second operation of lithotomy RT can be done. The Complainant stated that he had borrowed money for his first operation and he had no more ore recourses left for their demand and he is suffering from severe pain due to his health conditions. Hence this show deficiency on the part of Opposite Party. Complainant has prayed compensation of Rs. 2,00,000/- for non-performance of appropriate surge and Rs. 2,00,000/- for mental harassment. He has also prayed for Rs. 25,000 as litigation charges.

Case of the Opposite Parties

2. The Opposite Parties contested the case and filed written statement. The Opposite Parties, while taking preliminary objections, submitted that the present

complaint is liable to be dismissed because the Complainant has no grievances on account of medical negligence or fault by the Opposite Parties. The complaint has been filed to extort money from the Opposite Parties. On merits, it has been contended by the Opposite parties as follows:

- a) On 11.07.2016, the Complainant patient was admitted with diagnosis of RT. Ureteric Calculus and was taken up for RT. URS with DJ stenting. Only DJ stenting was done.*
- b) On 11.08.2016, the Complainant was readmitted and RT. URS with lithotripsy of stone was done and the Complainant was satisfactorily and successfully discharged on 12.08.2016.*
- c) On 03.09.2016, X-ray KUB was done which showed No evidence of stone, DJ stent seen in SITU. The Complainant was called after 7 days i.e. on 10.-9.2-016.*
- d) Thereafter, on 15.09.2016, the DJ stent was removed in OPD and the Complainant was sent home with no complaint from the side of Complainant or his relatives against the Opposite parties about medical negligence.*
- e) . The Opposite Party No.1 has conducted his duties/services with all care and precautions, hence, has no liability jointly or severally towards the Complainant.*

Rejoinder to the written statement of Opposite Parties

3.The Complainant filed the rejoinder to the written statement of Opposite Parties wherein the Complainant has denied the pleas raised by the Opposite Parties and has reiterated the assertions Complainant. The denied that any x-ray was on 03.09.2016 as placed on record by the Opposite Parties. The Complainant has alleged that the said document is fake and has been filed to mislead this forum.

Evidence of the Complainant

4. *The Complainant in support of his complaint filed his evidence by way of affidavit wherein he has supported the averments made in the complaint.*

Evidence of the Opposite Parties

5. *In order to prove their case, Opposite Parties has filed affidavit of Shri Dr. Rajnish Sharma, At:-B-37, East Jyoti Nagar, Loni Road, Shahdara, Delhi-110093 on behalf of both the opposite parties wherein the averments made in the written statement of Opposite Party have been supported.*

Arguments & Conclusion

6. *We have heard the Ld. Counsel for the Complainant and Opposite Party in person. We have also perused the file and the written arguments filed by Parties.*

7. *The case of the Complainant is that Complainant was diagnosed Ureteric Calculus of right side kidney and surgery was performed by the Opposite Party No. 1. Allegedly, instead of Ureter Lithotomy Surgery, the Opposite Party No.1 had implanted RT DJ stenting and informed the Complainant that it was a guaranteed method of stone removal. It is also alleged that the Opposite Party performed second surgical process and informed the Complainant that since the stone was little bigger so the second operation was necessary. It was also teel alleged that the Complainant did not felt any relief even after second Si operation and suffered. Therefore, the Complainant consulted another doctor and ultra sound and KUB X-ray were conducted again. After comparing the new tests with the old reports, the Complainant was informed that stones have not been removed and it has been enlarged and grown in size. The complainant was allegedly told by the Opposite Party that his operation was a successful operation and the Opposite Party had removed the existing stone completely and the stone of 17.5 mm has re occurred in the span of just four months. The Complainant is suffering from severe pain due*

to his health conditions. The non-performance of appropriate surgery by the Opposite Party shows deficiency on their part. The Opposite Party allegedly asked the complainant to deposit Rs. 40,000/- again for second operation of lithotomy RT

8. The case of the Opposite Parties hospital is that the surgery of the Complainant was satisfactorily performed and he was successfully discharged on 12.08.2016. It is contended that on 03.09.2016, X-ray KUB was done which showed no evidence of ME SAL f stone, DJ stent seen in SITU. Thereafter, on 15.09.2016, the DJ stent was removed in OPD and the Complainant was sent home with no complaint from the side of Complainant or his relatives against the Opposite Parties about medical negligence. It is submitted by the Opposite Parties that they have conducted their duties/services with all care and precautions, hence, have no liability jointly or severally towards the Complainant.

9. It is to be noted that our predecessors had sent the complete record of the medical of treatment of the Complainant by the Opposite Party hospital to the Medical Superintendent, Lok Nayak hospital, New Delhi directing the said hospital to provide expert medical opinion. Consequently, the Medical expert opinion report dated 01.07.2019 was received. The parties were provided copy of medical opinion and none of the parties had preferred to file any objections.

10. While perusing the expert opinion, we observed that the committee was of the view that the endoscopic procedure is as good as an open procedure. The committee has also given its opinion specifically that it is a standard procedure for high grade obstruction which has been adopted by the Opposite Party. Relying on the observation made by the committee on the issue, we are of the view that the

Complainant's contention regarding the aptness of procedure cannot be accepted.

11. We further observed that the committee had expressed its concern regarding "not finding OT notes describing the operative findings" and our predecessors vide order dated 27.01.2020 directed the Opposite Parties to file complete SA details of OT procedure done by them on the Complainant in view of the observation made by the medical board. We observed that the Opposite Parties filed the certain documents in compliance of the above order after unreasonably long gap of more 2.5 years. Moreover, those documents cannot be relied upon since they have not been proved by the Opposite Parties.

12. The Opposite Parties have contended that the surgery was done satisfactorily and filed an X-ray report dated 03.09.2016 in support of their contention which showed no evidence of stone, DJ stent seen in SITU. The Complainant has alleged that the said document has been faked by the Opposite Party. It is noticed that the said contention has not been rebutted by the Opposite Party. The perusal of the case file also reveals that neither the Opposite Party has filed any evidence corroborating that report such as accompanying X-ray film nor any affidavit of the concerned doctor issuing the said report testifying the document. The expert committee has also remarked on the said document that the said document has been contested by the Complainant and the Opposite Party has not corroborated the said document. In view of the above facts and discussion, we are of the view that the said report dated 03.09.2016 cannot be accepted as the document is not proved.

13. The Complainant has contended that the said stone was not removed because the new reports of ultra sound showed that the stone of 17.2 mm in the same region while the Opposite Opposite Party says in rebuttal that the stone of 17.2 mm has re-occurred because the surgery was done by

them satisfactorily and the stone was removed. On perusal of record, it is revealed that the stone removal was done on 12.08.2016 and the ultra sound report dated 30.11.2016 shows the "Calculus measuring about 17.2mm is seen at right UV junction". It shows that the last test was conducted just after 3.5 months from the date of surgery which reports the stone of bigger size grown in the same region. The Opposite Party has contended that the said stone has reoccurred. Since, they have not proved this fact that stone of such size can reoccur in a period of 3.5 months as they have not produced any authentic literature on the point nor any independent expert opinion, we are inclined to reject the said contention as unworthy of reliance.

14. The Opposite party has not been able to prove this fact that stone of such size can reoccur in a period of 3.5 months and the X-ray report dated 03.09.2016 relied upon by them showing that the stone had been removed completely, has also been questioned as fake which the Opposite Party has not rebutted, so, cannot be relied upon."

2. The District Commission after taking into consideration the material available on record passed the order dated 14.03.2023, whereby it held as under:

"15. Keeping in view the above discussion and the evidence on record, preponderance of probability and inferences, we are of the considered view that the Complainant has been able to prove his case of deficiency in service and medical negligence against Opposite Parties. Therefore, the Opposite negligence in this case.

16. Accordingly, we allow the complaint and direct the Opposite Parties to pay to the, Complainant the compensation of Rs. 1,00,000/- along with interest @ 6% further p.a. from the date of institution of the complaint. The Opposite Parties are further directed to pay Rs.15,000/- towards litigation cost to be paid within a period of 4 weeks from the date of receipt of order. In case of delay in the

payment beyond 4 weeks Opposite Party will be liable to pay interest @ 6% p.a. for the delayed period.”

3. Aggrieved by the aforesaid order of the District Commission the Appellant has preferred the present appeal contending that the District Commission has ignored medical evidence showing that residual fragments and stone recurrence are common, occurring in up to 38% of cases. It is submitted that the procedure followed by the Appellant was in line with the "standard management". Secondly, it is submitted that as per the medical research, patients undergoing ureteroscopy require a second procedure to fragment the kidney stone and stone recurrence is common after management of urinary stones. Thirdly, it is submitted that a failed treatment does not automatically equate to professional negligence. Lastly, it is submitted that District Commission ignored the findings of the Expert Committee and therefore has erred in establishing deficiency on the part of Appellant. Pressing the aforesaid contentions, the Appellant has prayed for setting aside the impugned order.
4. The Respondent has filed the reply to the present appeal denying all the contentions and submissions of the Appellant 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 impugned judgment. Pressing the aforesaid submissions, the Respondent has prayed that the Appeal be dismissed with heavy costs.
5. Written Arguments has been filed by the parties and the same have been given due consideration.
6. We have perused the material available on record.
7. The ***only question*** for consideration before us is ***whether the District Commission erred in carving out negligence on the part of the Appellant.***
8. It is the primary contention of the Appellant that the District Commission failed to take into consideration the Expert Medical Opinion wherein the Appellant is exonerated and wrongly held the Appellant liable for negligence. On the other

hand, the Respondent had alleged that Open Ureter lithotomy was advised in the GTB hospital but an endoscopic procedure was conducted at the Appellant hospital and the Appellant failed to remove the stone as is reflected in the test reports followed by the surgery, therefore the District Commission rightly held the Appellant negligent.

9. To resolve the aforesaid controversy, we deem it appropriate to refer to the Expert Opinion dated 01.07.2019 by the doctors at GTB hospital reproduced hereunder as:

- a) The Court has asked for opinion of a qualified Urologist, whereas none of the committee members are MCh or DNB in Urology. However, the members have been managing patients of ureteric stone.*
- b) The complainant has stated that an Open Ureter lithotomy was advised in GTB hospital, but an endoscopic procedure was done in KK Surgical & Maternity hospital. The committee is of the opinion that an endoscopic procedure is as good as an open procedure. An endoscopic procedure (URSL) is the de facto standard in managing lower ureteric stones.*
- c) The complainant has stated that a DJ stent was placed first, followed later by the actual procedure. This is the standard procedure for high grade obstruction, to let the kidney recover from obstruction before going for stone fragmentation and removal.*
- d) The committee did not find discharge record or OT notes of the URSL describing the operative findings.*
- e) The stent was removed in the 2nd week after URSL, which is the standard of management.*
- f) The respondent has submitted an X-ray report dated 03.09.2015, which shows no stone in the region of concern. This X-ray report is contested by the complainant. The committee has noticed that the patient name on the X-ray report is slightly different from the complainant's name.*
- g) The complainant got another ultrasound 3 months after URSL, which shows a stone in lower part of ureter of same side*

h) If the X-ray and Ultrasound both are correct, then it may be a case of recurrent stone. However, it is unlikely that a 1.5cm stone will form in 3 months.

i) No other document is available to corroborate the last Ultrasound report provided in file

10. A perusal of the aforesaid opinion makes it clear that the Expert Committee had opined *that it is unlikely that a 1.5cm stone will form in 3 months*. The Committee had further opined that no other document was made available to corroborate the last Ultrasound report provided in file. Here, we deem it appropriate to refer to the decision of the the Hon'ble Apex Court in the *Martin F. D' Souza vs Mohd. Ishfaq AIR 2009 SC 2049, wherein it was observed as follows:*

“123. The courts and Consumer Fora are not experts in medical science, and must not substitute their own views over that of specialists. It is true that the medical profession has to an extent become commercialized and there are many doctors who depart from their Hippocratic oath for their selfish ends of making money. However, the entire medical fraternity cannot be blamed or branded as lacking in integrity or competence just because of some bad apples.”

11. A perusal of the aforesaid decisions makes it clear that expert opinion plays a crucial role in adjudication of medical negligence cases as Consumer Commissions are not experts in medical science, and must not substitute their own views over that of specialists. A perusal of the record divulges that the committee did not find discharge record or OT notes of the URSL describing the operative findings. It was further noticed that the patient name on the X-ray report is slightly different from the complainant's name and that no other document was made available to corroborate the last Ultrasound report provided in file. Keeping in view the aforesaid observations, the Committee finally opined that it is unlikely that a 1.5cm stone will form in 3 months.

12. The Respondent/Complainant has contended that the said stone was not removed because the reports of ultra sound showed that the stone of 17.2 mm has grown in

the same region. On the other hand, it is the submission of the Appellant that the stone of 17.2 mm has re-occurred since the earlier stone was removed via surgery. However, on a bare perusal of the record, it is revealed that the stone removal was carried out on 12.08.2016 and the ultra sound report dated 30.11.2016 reflects "*Calculus measuring about 17.2mm is seen at right UV junction*". Here, it is abysmally surprising to note that merely after 3.5 months from the date of surgery, a stone of greater dimension has grown in the same region. Though the Opposite Party has contended that the said stone has reoccurred, the Expert Opinion leaves no room for doubt that it is unlikely that a stone of such size can reoccur in a period of 3.5 months, therefore, in the absence of any proof to the contrary, we are constrained to reject the submissions of the Appellant as unworthy of reliance.

13. ***Consequently, the present appeal stands dismissed with no order as to costs.***
14. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.
15. The Judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.
16. File be consigned to record room along with a copy of this Judgment.

**(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT**

**(BIMLA KUMARI)
MEMBER (FEMALE)**

**Pronounced On:
17.04.2025**

L.R.-G.P.K