

Case No.129/12

DISTRICT CONSUMER DISPUTES REDRESSAL FORUM-II
Udyog Sadan, C-22 & 23, Qutub Institutional Area
(Behind Qutub Hotel), New Delhi- 110016
Case No.129/12

Meenu Vaid

W/o Shri Rajinder Vaid
R/o 15, Model Eye Hospital
Lajpat Nagar-II
New Delhi-110024.

....Complainant

VERSUS

Shri Mool Chand Khairati Ram

Hospital And Ayurvedic Research Institute
Lajpat Nagar-III
New Delhi-110024
Through its Medical Superintendent.

Prof. (Dr.) Uma Rai

Shri Mool Chand Khairati Ram
Hospital And Ayurvedic Research Institute
Lajpat Nagar-III
New Delhi-110024.

The United India Insurance Co. Ltd.

60, Skylark Building
Nehru Place, New Delhi-110019.

The Oriental Insurance Company Ltd.

Divisional Office X
15-16, Scindia House,
New Delhi-110001.

....Opposite Parties

Coram:

Ms. Monika A Srivastava, President
Ms. Kiran Kaushal, Member
Sh. U.K. Tyagi, Member

ORDER

Date of Institution:02.04.2012
Date of Order :16.08.2023

President: Ms. Monika A Srivastava,

The present case was initially decided by this Commission vide order dated 08.08.2005 and was remanded back to this Commission by the order of the Hon'ble State Commission vide order dated 13.01.2009.

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The complainant has filed the present complaint seeking Rs. five lakhs as damages for physical loss for permanent disablement, mental pain and agony, expenses on nursing and hospital charges, deprivation from the service as a wife to her husband, deprivation of service as a mother to her child. It is stated by the complainant that she is a working woman and had been working for reputed companies till she was diagnosed with gynaecological problems.

1. It is stated that she developed a cyst in her left ovary and in this regard contacted OP-2 i.e. Prof. Dr. Uma Rai from Moolchand Khairati Ram Hospital with all her previous reports including ultrasound test done on various dates by various radiologist and diagnosis of other doctors.
2. It is stated that OP-2 advised the complainant to get her cyst operated and fixed date as 17.02.2011 for laproscopic cystectomy, also advised to get her urine and blood test and was advised to bring the report on the day of operation. A photocopy of the prescription of OP-2 is placed on record as Annexure-A.
3. Complainant visited OP-1 i.e. Moolchand Khairati Ram Hospital early in the morning on 17.02.2011 with all the relevant papers and reports and got herself hospitalised after depositing the requisite fee with OP-1.
4. On 17.02.2011, the consent of the husband of the complainant was taken for removal of left ovarian cyst from the left ovary for which the operation was advised to be necessary. It is further stated that OP-1 charged Rs.15,650/- for the surgery done and for the biopsy after performance of the said operation of Endoscopic Ovarian Cystectomy. In this regard, the copy of the receipt issued and cash memo dated 17.02.2011 is placed on record and annexed as Annexure-C.
5. It is stated by the complainant that due to the negligence of OP-2 the right ovary of the complainant was removed instead of operating the left ovarian cyst. It is further stated that the OP in their reply to the legal notice of the complainant replied as under

"...the left ovary of the complainant was already missing. The big cyst had developed on the right ovary (para 5) ..In fact there was no left ovary in the complainant's body at the time she approached the

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respondent for treatment. The presence of cyst on the left side does not mean and imply that the left ovary had developed the cyst. As already stated above, the cyst was on the right ovary and gone to pouch of Douglas towards left side (para 7)... The left ovary was found to be missing and the right ovary was not at all removed ...(para 8)".

6. It is stated that OP2 realised her mistake later when the specimen was sent by OP-1 for histopathological examination to OP 1's institution. The photocopy of the histopathological report dated 20.02.2011 is annexed as Annexure-D.
7. It is stated that in order to cover up the incident of removing wrong ovary of the complainant which was highly unethical and in the light of act of criminal negligence and breach of trust, OP played a fraud. OP-2 approached the complainant and her husband and told him that since the right ovary of the complainant had already been removed in the year 1990-91 therefore OP-2 did not remove the left ovary which was having the cyst.
8. Both the husband of the complainant and the complainant was shocked and told OP-2 that she is having both the ovaries intact before the operation. It is stated that OP-2 had a prior knowledge that the complainant had gone through a minor operation in the year 1990-91 as she has developed a cyst in her left ovary, but both of her ovaries were intact and none of them was removed at that time. It is stated that the ultrasound reports of various other reports of much later dates clearly show the presence of both the ovaries separately with presence of a cyst attached to the left ovary. Photographs of ultrasound reports dated 02.11.1999, 09.02.2002, 25.08.2000 and 05.09.2000 showing the measurement of both the ovaries and presence of left ovarian cyst are collectively annexed as Annexure-E.
9. It is further stated by the complainant that OP-2 committed acts of forgery and misrepresentation of facts when she intentionally concealed the real fact of removing the right ovary and manipulated the prescription of the complainant dated 17.02.2021 and the laparoscopic Proforma dated 17.02.2001 accordingly. She mentioned in the documents that the complainant was not having a right ovary and she was operated for left ovarian cyst. Photographs of Laparoscopic Proforma dated 17.02.2001 is annexed as Annexure-F. It is stated that OP-2 wrote on the prescription dated 24.02.2001 that

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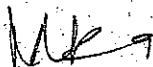
complainant "had removal of right ovary 1990-91 October" even at that time the complainant objected that her right ovary was not removed at the time of operation in the year 1990-91 as was also evident from the ultrasound reports of much later dates. Photocopy of the registration card dated 24.02.2001 is Annexure-G.

10. It is stated that the malafide intention of the OPs in concealing the facts is also revealed as OP-2 had sent the submission of (1) Endometrial curetting and (2) two right ovarian cyst and ovary biopsy to Histopathology/cytology and a report was also obtained by the complainant on 20.02.2001 wherein it was clearly indicated that it was only the right ovary which was removed and sent for histopathological test in their laboratory.

11. It is stated by the complainant that on various dates whenever she approached for regular examination and enquired from the OPs about the facts but every time OPs kept on confusing the complainant by using within medical terms and did not disclose the actual facts to her. As the problem persisted the complainant went for ovulation test study from Kharbanda's Pathological Chemical Lab Lajpat Nagar and was shocked to see the word "not localised" against the column of right ovary in the ovulation test report dated 25.05.2001. The said report is annexed as Annexure-H.

12. It is further stated that the complainant then tried to contact OP-2 but she became evasive in this regard. The complainant then went to Safdarjung Hospital on the recommendation of the doctor and got examined through ultrasound which confirmed the absence of the right ovary. The said report dated 13.08.2001 is annexed as Annexure-I. This fact was further confirmed by another gynecologist whom the complainant visited as her problem persisted and on her recommendation another ultrasound was done which confirmed the absence of right ovary and the presence of left ovary having cyst attached to it. The copy of the report dated 23.03.2002 which was replied by the OPs dated 08.04.2002 is annexed as Annexure J.

13. It is stated by the complainant that her left ovary is still intact today along with the cyst. It is stated by the complainant that such a reply from a renowned doctor and hospital authorities is mockery of the medical profession, and the complainant has very strong



apprehension that the OPs are manipulating things to hide their negligence.

14. It is stated by the complainant that on the account of deliberate, willful, and negligent act of OP-1 and OP-2 the complainant is made to suffer permanent disablement caused by the removal of right ovary which has lowered the chances of pregnancy to the minimum. Further, the complainant is spending huge amount of money on her treatment and is suffering from hormonal imbalances caused by the removal of ovary.
15. It is stated that there has been deficiency in service and unfair trade practice on the part of the OPs as they have not treated the complainant properly and removed the right ovary without any cogent reasons as part of their wrong and negligent act.
16. In their reply, OPs 1 & 2 have stated that the complaint is liable to be dismissed as no case of negligence can be made out against the OPs. It is stated that it is gross abuse of the Act and a case of deliberate harassment and an attempt to force the OPs to give in to the unreasonable and illegal demand for money.

It is stated that this Commission deemed it fit to refer the original films and documents in question to the expert doctors of AIIMS to ascertain the claims made by the complainant and in view of the report of the expert doctors, the stand of the OPs stands vindicated. The report of the panel of AIIMS along with letter dated 08.12.2004 is as under:

"The ultrasonologists have examined the eight ultrasound files provided to them and are of the opinion that although ultrasound films No.1 and 5 have been labeled as right ovary and measured as well, it would be difficult to ascertain the definite nature of this structure by examining the ultrasound films alone."

.....Therefore, on these films it would be difficult to opine whether the right ovary was present at the time of these ultrasound examinations.

17. It is stated that the complainant has deliberately, mischievously and with mala fide intention not filed the medical papers with regard to

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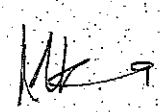
the laparoscopic surgery undertaken by her about ten years back in 1990.

18. It is stated that the complainant was referred to OP-2 by Dr. Shampa Khaitan and OP-2 was informed by Dr. Shampa Khaitan that the complainant had been operated in 1990 for ovarian cyst. In spite of being asked repeatedly by OP 2, the complainant did not furnish the discharge summary and histopathological reports and she has stated that those papers were not available, and she has misplaced them.

19. It is stated that the complainant has deliberately made an attempt to tarnish the image and reputation of OPs and particularly OP-2 who is a well-known gynecologist by making false, baseless, absurd allegations. It is stated that the complainant has wrongly stated that she developed the gynecological problems whereas she was suffering from gynecological problems even in 1990.

20. It is stated that the complainant has not produced the medical record and discharge report relating to the surgery in 1990 and these have been deliberately withheld from the Hon'ble Forum as these would have gone against the false case of the complainant. It is difficult to believe and accept that the medical record and the discharge report relating to the major operation then undergone by the complainant in 1990 are not available with the complainant or her parents. The laparoscopic operation in 1990 was a major surgical procedure and patients retain such records carefully and do not destroy or misplace the same. It appears that the said materials and the discharge report have been deliberately and intentionally withheld from the Hon'ble Forum. The complainant is guilty of concealing true, correct, and relevant facts.

21. It is stated by OP-2 that the operation of the complainant was properly performed and the cyst from the ovary was removed and at that time it was found that the right ovary was missing, and only left ovary cystectomy was done along with dilatation and curettage of endometrium biopsy but was done with the remaining left ovary which was looking unhealthy. With only one existing ovary and reoccurrence of ovarian cyst this was mandatory. It is stated that at the time of operation the entire surgery is visible to all staff including senior Anesthetist and nurses on the Television Monitor.



22. It is denied by OP-2 that instead of removing the cyst from the left ovary, the right ovary of the complainant was removed. It is further stated that the ultrasound dated 13.08.2016 six months after the surgery clearly revealed that there was no cyst in the left ovary which indicates that the cyst was removed from the left ovary. It is stated that though this has been wrongly recorded in the operation theatre book that the left ovary was found to be missing. In fact, it was the right ovary which was found to be missing and not present as is clear from the Annexure-F to the complaint and Annexure-G.
23. It is denied by the OP-2 that she realised her mistake as no mistake was committed by her. It is stated that the mention of RT in the histopathological is wrong. It is stated that this has probably happened because the Resident Doctor had wrongly recorded that cyst was removed from the right ovary (instead of left ovary) and left ovary (instead of right ovary) was missing. Similar mistake has been made by the Resident Doctor in the operation theatre book also. However, it can be seen from the ultrasound of 13.08.2001 that there was no cyst in the left ovary which was removed by OP-2.
24. It is denied by OP-2 that they have acted in a highly unethical and inhuman manner or there is act of criminal negligence breach of trust or fraud. It is stated by the OPs that OP-2 had clearly stated after the operation to everyone from the family of the complainant that right ovary was missing and that she has removed the cyst from the left ovary and which is clear from the endoscopy record form dated 17.02.2001 and private OPD card. Both the documents record operation findings of OP-2. It is further stated that the ultrasound of the complainant dated 23.03.2002 reflect reoccurrence of the cyst in the left ovary. It is stated this is the third complaint that complainant has recurrence of ovary cyst which is well documented fact in gynecology.
25. It is stated by the OPs that the complainant has concealed facts with regard to the operation in 1990 from her husband and that OP-2 operated the complainant when one of the ovaries of the complainant was already missing which is clear from endoscopic report dated 17.02.2001.



26. It is stated by the OPs that the complainant had informed OP-2 that in 1990 she had undergone major laproscopic surgery however, she did not produce any copy of any report including discharge summary report and therefore it is manifest that the right ovary of the complainant was already removed before she was operated by OP-2.
27. It is stated by the OPs that the complainant concealed and true and real facts and is making defamatory and reckless allegations. It is denied by the OPs that OP-2 has manipulated documents like prescription and laproscopic performa dated 17.02.2001. It is stated that right ovary of the complainant may have been removed earlier in 1990-91 and it is wrong to state that ultrasound reports prove and establish presence of both the ovaries. It is stated that ultrasound tests cannot be taken as conclusive proofs that both the ovaries existed. It is stated that ultrasound tests have their own limitations and needs to be co-related clinically.
28. It is denied by the OPs that they are trying to confuse the issue, it is stated that as explained earlier the mistake has happened in view of the wrong notings by the Resident Doctor in the register of the operation theatre wherein it is mentioned that the left ovary found to be missing instead of right ovary. It is stated in the reply to legal notice that the mistake is bonafide, inadvertent unconscious and not relevant.
29. It is denied by the OPs that the complainant has developed any psychological/hormonal imbalance because of removal of ovaries. It is further denied by the OPs that they have manipulated the records or tried to confuse the issue. It is also denied by the OPs that there is deficiency of service or any unfair trade practice on the part of the OPs.
30. In the rejoinder, the complainant has mostly denied the averments made by the OP. It is stated by her that in the year 1990 she had developed a cyst in the left ovary and had undergone a minor surgery with OP-1 thus none of the ovaries was removed then and in fact both the ovaries were intact when she came to OP-1 and 2 for diagnosis of her gynecology problem in 2001.

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31. It is stated by her that present case is covered under the maxim "*res ipsa loquitur*" i.e. the things speaks for itself. It is stated that the complainant did not have the record of 1990 and it was not also found relevant by the OPs at the time of surgery in the face of the notings and records prepared by them and that is why before performing the surgery, the same were not asked for in the light of various tests and ultrasound reports.
32. It is stated by the complainant that OPs are knowingly and deliberately trying to confuse the Commission. It is reiterated and affirmed that the ultrasound reports clearly proved and established that the complainant had both the ovaries before she was operated by OP-2. It is denied by the complainant that a mistake has been made by the Resident Doctor in the operation theatre book. It is also denied by her that OP-2 had informed the family of the complainant after the surgery that right ovary was missing, and that the cyst was removed from the left ovary. It is denied by the complainant that she is making any false, defamatory statements against the OP and it is reiterated by her that OP-2 manipulated papers like prescription and laparoscopic proforma dated 17.02.2001.
33. This case was initially decided vide order dated 08.08.2005 however it was then set aside by the State Commission vide order dated 13.01.2009 and the matter was remanded to this Commission for decision on merits after dealing with all the reports of ultrasonography and with the advice to obtain fresh opinion from the experts of AIIMS.

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It was on the basis of the reports of the experts of AIIMS and the affidavit of Dr. Bagga the District Forum came to the conclusion that it cannot be said definitely that the right ovary was present at the time when the complainant was operated upon by the respondent or not. The District Forum also observed that the same time the copies of treatment records show that the respondent removed cyst only from the left ovary as the right ovary was already missing. It is not understandable as to how in the prescriptions dated 16.02.2011 without there being any report of ultrasound as well as the tests the right ovary was stated to be already missing.

Counsel for the appellant has also referred to the respondent's Histopathology report which has also not been referred to by the

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District Forum. These documents show that the right ovary was removed and sent for biopsy.

The foregoing reasons persuade us to allow the appeal, set aside the impugned order and send back the matter to the district Forum for deciding it afresh on merits....

Moreover, para-5 of the reply of the respondent to the legal notice issued by the complainant is not also taken into account by the District Forum which is as under-

"During the operation it was noticed that the left ovary of your clientess was already missing. The big cyst had developed on the right ovary and had gone on the left side and was lying in the pouch of Douglas. Prof. (Dr.) Uma Rai accordingly and correctly removed the cyst on the right ovary and sent it for biopsy test. In view of the location of the cyst the absence of the left ovary was not visible in the earlier ultrasound. Large masses can appear sonographically contiguous."

34. Both the parties have filed their respective evidence affidavits as well as written arguments. It is seen that OP 3 is United India Insurance Co. Ltd. and OP 4 is Oriental Insurance Co. Ltd. It is seen that in the old case an affidavit was filed on behalf of Oriental Insurance Co. Ltd. which is the insurance Co. for OP2 confirming that their company had issued a professional indemnity policy bearing no. 2122 00/2001/748 to OP2 for a period of 28.06.2000 till 27.06.2001. After the matter was referred back from the State Commission notices were again issued to both OPs 3 and 4 however, none appeared on behalf of OP 4 i.e Oriental Insurance Co. Ltd.

35. This Commission has gone through the entire material on record including the ultrasonography reports of different years filed by the complainant as well as expert opinion received from *Safdarjung Hospital* along with letter dated 13.03.2019 which was sought by this Commission when *AIIMS* requested that such matters should not be

sent to them for opinion. It was opined by Safdarjung Hospital as under:

"there appears to be a contradiction between the histopathology report of right ovarian cyst wall and intra operative findings of right ovary missing.

The following are the ultrasound findings of the case:-

*on the basis of preoperative ultrasound dated 02.11.1999, 9.2.2000, 25.8.2000, 25.9.2000 both ovaries were seen with the cyst measuring 11*9*8 mm in the left Ovary in the last ultrasound on 25.09.2000.*

The sequential post-operative ultrasound dated 13.8.2001, 23.03.2002, right ovary was not seen, left Ovary was seen with the presence of 35 mm sized cyst in the last ultrasound dated 23.03.2002.

36. The complainant has filed on record and ultrasound report dated 02.11.1999 provided by Dr. Sandeep Sharma wherein it is stated

*Right ovary measures 27 * 20 mm*

Left Ovary shows a system measuring approximately 35 mm

No definite adnexal mass lesion or free fluid is seen in cul-de-sac.

Another report dated 09.02.2000 again provided by Dr. Sandeep Sharma states

*Left ovary measures 18 * 24 mm.....*

*Right ovary measures 21 * 27 mm.....*

No definite adnexal mass lesion or free fluid is seen in cul-de-sac.

Another report dated 25.08.2000 provided at another imaging centre known as Advanced Imaging Research Studies states as under

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*The right ovary is normal and measures 23 * 21 * 22 m across and 5.53 ml in volume*

*The left ovary measures 44 * 34 * 53 m across and 40.48 ml in volume and shows multiple corpora lutea.*

There is no free fluid in the pelvis.

Another report related to 05.09.2000 given by the same centre reads as under

*The right Ovary is normal and measures 27 * 19 * 20 m across and 5.61 ml in volume. The left ovary measures 42 * 19 * 16 mm across and 6.7 ml in volume. It shows multiple 07-22 mm thin walled clear cystic area....."*

This Commission has also seen prescription provided by OP 2 which shows over writing, left ovary cyst is made as right ovary cyst and overwriting is also seen in another part of the prescription where L is cut and R is written but the important part is that it still mentions cystectomy and not removal of right ovary.

The histopathology report dated 17.02.2001 reports as under:

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Specimen 1. endometrial curettings

2. Right ovarian cyst wall and ovarian biopsy

Although OP 2 has given an explanation that it is on account of the mistake of resident doctor that the left ovary is mentioned as right ovary yet this fact is inexplicable in view of the fact of sonography reports of the complainant pertaining to the years prior to the surgery of the complainant conducted at OP1 in the year 2001.



Hon'ble Supreme Court in the case of *Jacob Mathew vs. State of Punjab and Ors.* (2005)6 SCC 1 it was held that "Negligence is a breach of duty caused by omission to do something and Commission or doing something which is prudent and reasonable man would not do. So long as the doctor followed the practice acceptable to the medical profession of that day he cannot be held liable for negligence.

(1) Negligence is the breach of a duty caused 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. The definition of negligence as given in *Law of Torts, Ratanlal & Dhirajlal* (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: 'duty', 'breach' and 'resulting damage'.

(2) Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.

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(3) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

(4) The test for determining medical negligence as laid down in Bolam's case [1957] 1 W.L.R. 582 holds good in its applicability in India.

In *Achutrao Haribhau Khodwa and Ors. vs. State of Maharashtra and Ors.* MANU/SC/0600/1996 the following cases were discussed

Dr. Laxman Balkrishan Joshi v. Dr. Trimbak Babu Godbole [1969]1 SCR 206, the Supreme Court observed as follows:

The duties which a doctor owes to his patient are clear, A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties, viz., a duty of care in deciding whether to undertake the case, a duty of care in deciding whether treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient. The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.

The above principle was again applied by this court in the case of *A.S. Mittal and Ors. v. State of U.P.* [1989]3SCR241.

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The Court further quoted *Street on Torts (1983) (7th Edn.)* wherein it was stated that the doctrine of *res ipsa loquitur* was attracted : "...Where an unexplained accident occurs from a thing under the control of the defendant, and medical or other expert evidence shows that accidents would not happen if proper care were used, there is at least evidence of negligence for a jury."

The latest case to which reference can be made is that of *Indian Medical Association v. V.P. Shantha and Ors.* AIR 1996 SC 550. The Court also approved a passage from *Jackson & Powell on Professions Negligence* and held that "the approach of the Courts is to require that professional men should possess a certain minimum degree of competence and that they should exercise reasonable care in the discharge of their duties. In general, a professional man owes to his client a duty in tort as well as in contract to exercise reasonable care in giving advice or performing services."

This Commission also notes that the prescription given by OP 2 apart from over writing of Lt to Rt but apart from overwriting, it is mentioned *cystectomy* and not removal of the Right ovary. This coupled with the fact that past sonography reports after the first surgery of the complainant in 1990 indicate that both the ovaries of the complainant were present whereas the later sonography reports after the surgery was performed by the OP2 in 2001 indicate that the right ovary is missing therefore, we opine that OP 2 has been negligent in conducting the surgery of the complainant based on the documentary proof filed on record. It is also noted that OP 2 in her reply of the legal notice had stated that the left ovary was already missing which is in contradiction to her averments made in her reply to the complaint. This Commission also places reliance on the expert report of Safdarjung Hospital. This leads the Commission to believe that there is definite contradiction in the statements made by OP2 relating to the presence of left/right ovary of the complainant.

Hon'ble Supreme Court in *Jacob Mathew vs. State of Punjab and Ors.* (2005)6 SCC 1 has held that "

A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or he did not exercise, with reasonable competence in the given case, the skill which he did possess.

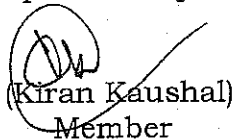
Further, as held in *Dr. Laxman Balkrishan Joshi v. Dr. Trimbak Babu Godbole* [1969]1 SCR 206 wherein it was held by the Hon'ble Supreme Court as follows :

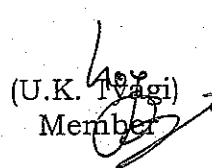
The duties which a doctor owes to his patient are clear, a person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties, viz., a duty of care in deciding whether to undertake the case, a duty of care in deciding whether treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient. The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care.

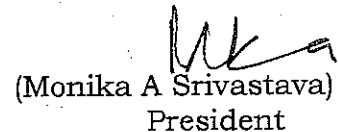
In the present case OP2 though possessed of requisite skills has not exercised the skill as per the competency therefore this Commission is of the view that OP 2 is negligent in her service as a doctor. OP 2 is directed to pay to the complainant a sum of Rs. 5 lacs as compensation along with Rs. 50,000/- as cost of litigation within three months from the date of this order failing which OP 2 shall be liable to pay an additional sum of Rs. 2 lakhs to the complainant till payment is made. It is open for OP 2 to recover this money from OP4 as a valid indemnity policy was in place at the relevant time.

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File be consigned to the record room after giving copy of the order to the parties as per rules.


(Kiran Kaushal)
Member


(U.K. Tragi)
Member


(Monika A Srivastava)
President