

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 3304 OF 2012

(Against the Order dated 30/04/2012 in Appeal No. 999/2008 of the State Commission Punjab)

1. DR. RAJENDER MANCHANDA

S/o Mr jagir lal Manchanda R/o House No-124,Vikas Vihar
Phase-I
Ferozepur
Punjab

.....Petitioner(s)

Versus

1. CHHINDER KAUR & 8 ORS.

W/o Late Sh Baj Singh R/o Village Changali Qadeem tehsil
Ferozepur
Punjab

2. M/s Amandeeo Kaur,D/o Late Sh Baj Singh

R/o Village Changali Qadeem tehsil
Ferozepur
Punjab

3. Ms Sandeep Kaur, D/o Late Sh Baj Singh

R/o Village Changali Qadeem tehsil
Ferozepur
Punjab

4. Ms Gurjeet Kaur, D/o Late Sh Baj Singh

R/o Village Changali Qadeem tehsil
Ferozepur
Punjab

5. Ms Surjit Kaur (Since Deceased), Mother Late Sh Baj Singh

R/o Village Changali Qadeem tehsil
Ferozepur
Punjab

6. Guru Ram Dass Hospital

Outside Zira Gate
Ferozepur
Punjab

7. Dr. Jagmeet Kaur W/o Dr Harbinder Singh

Guru Ram Dass Hospital
Ferozepur
Punjab

8. New India Insurence Co

Ferozepur, Through Division Officer, Malwa Road
Ferozepur
Punjab

.....Respondent(s)

REVISION PETITION NO. 3395 OF 2012

(Against the Order dated 30/04/2012 in Appeal No. 993/2008 of the State Commission Punjab)

1. GURU RAM DASS HOSPITAL

.....Petitioner(s)

Through its In Charge/Owner Dr Harbinder Singh Outside Zira
Gate
Ferozepur
Punjab

Versus

1. CHHINDER KAUR & 9 ORS.
W/o Late Sh Baj Singh R/o Village Changali Qadeem Tehsil
Ferozepur
Punjab
2. Amandeep kaur, D/o Late Sh Baj Singh
R/o Village Changali Qadeem Tehsil
Ferozepur
Punjab
3. Sandeep Kaur, D/o Late Sh Baj Singh
R/o Village Changali Qadeem Tehsil
Ferozepur
Punjab
4. Gurjeet Kaur, D/o Late Sh Baj Kaur
R/o Village Changali Qadeem Tehsil
Ferozepur
Punjab
5. Gurdas Singh, S/o Late Sh Baj Singh
R/o Village Changali Qadeem Tehsil
Ferozepur
Punjab
6. Surjit Kaur, (Since Deceased) W/o Late Sh Mangal Singh
,Through LRsR/o Village Changali Qadeem Tehsil
Ferozepur
Punjab
7. Dr Rajinder Manchanda,
Civil Hospital ,Ferozepur City
Ferozepur
Punjab
8. New India Assurence Co ltd
Through its Manager Legal, Malwal Road,
Ferozepur
Punjab
9. Punjab Helath Syster Corporation
Through Civil Surgeon
Ferozepur
Punjab
10. Dr Jagmeet Kaur, W/o Dr Harbinder Singh,
Guru Ram Dass Hospital Outside Gate.
Ferozepur
Punjab

.....Respondent(s)

REVISION PETITION NO. 4582 OF 2012

(Against the Order dated 30/04/2012 in Appeal No. 999 & 993/2008 of the State Commission Punjab)

1. NEW INDIA ASSURANCE CO. LTD.

Through its Divisional Manager) Delhi Regional Office-I
Level-IV, Tower-II Jeevan Bharti Building Connaught Circus
NEW DELHI - 110001

.....Petitioner(s)

Versus

1. CHHINDER KAUR & 9 ORS.

W/o Baj Singh, Village Changali Qadeem, Tehsil
FEROZEPUR

PUNJAB

2. Amandeep Kaur, D/o Baj Singh.

Village Changali Qadeem, Tehsil
FEROZEPUR

PUNJAB

3. Sandeep Kaur, D/o Baj Singh,

Village Changali Qadeem, Tehsil
FEROZEPUR

PUNJAB

4. Gurjeet Kaur, D/o Baj Singh,

Village Changali Qadeem, Tehsil
FEROZEPUR

PUNJAB

5. Surjit Kuar (Since Deceased), M/o Baj Singh,

Village Changali Qadeem, Tehsil
FEROZEPUR

PUNJAB

6. Guru Ram Dass Hospital

Outside Zira Gate, Changali Qadeem Tehsil,,
FEROZEPUR

PUNJAB

7. Dr. Rajinder Mandchanda

Civil Hospital

FEROZEPUR

PUNJAB

8. Dr Jagmeet Kaur,, W/o Dr.Harbinder Singh Guru,

Ram Dass Hospital,

FEROZEPUR

PUNJAB

9. Punjab Health Systems Corporation

Through Civil Surgeon

FEROZEPUR

PUNJAB

.....Respondent(s)

BEFORE:

HON'BLE DR. S.M. KANTIKAR,PRESIDING MEMBER

HON'BLE MR. BINOY KUMAR,MEMBER

For the Petitioner :

For the Respondent :

Dated : 15 Mar 2023

ORDER

Appeared at the time of arguments

For Dr. Rajender Manchanda : Mr. Rakesh Mukhija, Advocate with
Mr. Ananya Singhal, Advocate

For New India Assurance Co.Ltd. : Dr.Sushil Kr. Gupta, Advocate with
Ms. Sunita Gupta, Advocate and
Ms. Aakriti Goel, Advocate

For Guru Ram Dass Hospital : Mr. Anoop K.Kaushal, Advocate with
Ms. Atishaya Kaushal, Advocate alongwith Petitioner

For Chhinder Kaur & Ors. : Mr. B. R. Arora, Advocate

Pronounced on: 15th March 2023

ORDER

Dr. S. M. KANTIKAR, PRESIDING MEMBER

1. This order shall decide these three Revision Petitions filed under Section 21 of the Consumer Protection Act, 1986 (for short, the 'Act 1986') against the Order dated 30.04.2012 passed in the First Appeal No. 999/2008 & 993/2008 passed by State Consumer Dispute Redressal Commission, Punjab (for short, the 'State Commission').

2. For the convenience the parties are referred to as in the Consumer Complaint No. 472 of 2006 filed before the District Forum, Ferozepur. The facts are drawn from the RP/3304/2012.

3. Brief facts are that in September, 2003, deceased Baj Singh (for short, the 'patient') was examined by Dr. Harbinder Singh, the owner of Guru Ram Dass Hospital (for short, the 'Hospital / OP- 1'). It was diagnosed as suffering from gall bladder stone and surgery was advised, accordingly on 11.10.2003, he got admitted in the hospital. It was alleged that on 12.10.2003, at about 7.00 am, the patient was taken in the Operation Theatre (OT). Dr Rajinder Manchanda (OP-3) has not done pre-anaesthetic check-up and gave an IV Inj. of Pentothal Sodium without test dose. The patient began trembling immediately. Thereafter, Dr. Harbinder Singh pushed the Pentothal injection in one stroke and the condition of patient worsened. The relatives present near OT were asked to go out of the room. It was alleged that the relatives noticed that the three doctors were in confusion and panic, running in and out of the OT. The oxygen cylinder and other equipment were arranged from some other hospital and during the said emergency, the doctors from outside were also called. Thereafter, two hours later, the Complainant and relatives were informed that the patient expired. It was alleged that the Complainant No. 1 came to know from the para-medical staff of the hospital that patient died within a few minutes after the administration of anesthesia but the OPs No. 1, 2 and 3 have not disclosed it intentionally. The doctors in OT did not do any efforts to revive the patient. In the OT, the

Cardiopulmonary Resuscitation (CPR) facilities were not available. There was no Ventilator, Defibrillator, Cardiac Monitor etc. in the OT. Therefore, the hospital and both the doctors were negligent. The Complainant further submitted that the Anaesthetist – Dr. Manchanda (OP-3) was serving in Civil Hospital, Ferozpur City and on that day, he was in hurry to return to his duty at Civil Hospital. Therefore, he hurriedly administered IV anaesthesia without any pre-test. As per Government Rules, OP- 3 was not authorized to visit a private hospital for administering anesthesia. The relatives of deceased filed an FIR at police station under Section 304/34 IPC but the Police recorded only DDR in the roznamcha. The Post mortem was conducted on 12.10.2003, but the board of doctors did not disclose the cause of death with malafide intention, under garb that that it will be declared after the receipt of lab reports from Chemical Examiner and Pathologist. The news of negligence was also published ‘Punjab Kesari’ newspaper on 13.10.2003. The SSP did not register FIR despite requests. Later on, the Complainant procured xerox copy of report dated 02.11.2004 of the Pathology Departments and came to know that the death was due to Cardio Respiratory Arrest because of drug reaction. On the basis of the said report, he filed criminal complaint against the OPs-1 to 3 before the Court of CJM, Ferozpur. He filed the Consumer Complaint for alleged medical negligence against the OPs, before the Consumer Forum, Ferozpur and prayed compensation of Rs. 18,00,000/- and Rs. 1,00,000/- for not providing the relevant documents.

4. The District Forum partly allowed the complaint and awarded a sum of Rs. 3,60,000/ with the following observation:

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From the above noted facts and circumstances, it is made out that administration of Anaesthesia drug to the patient, though there is plea that pre-test was conducted before administering Anaesthesia but the reaction could have been detected at the very first stage if it would have been through test dose. Since Dr. Rajinder Manchanda was silent spectator, so after administering of ten ml dose of Anaesthesiaby Dr. Harbinder Singh himself, the reaction took place. Such like reaction could have been controlled by the opposite parties, but they had no proper infrastructure. There is delay in life saving drug and consulting of medical experts. So apparently this is a case of medical negligence.

5. Being aggrieved, the Insurance Co., Guru Ramdass Hospital and Dr. Rajender Manchanda have filed the First Appeal No. 999 of 2008 and the Complainants filed Appeal No. 993 of 2008 for enhancement of the compensation. The State Commission dismissed the Appeal No. 999 of 2008 and partly allowed the Appeal No. 993 of 2008 and modified the Order of the District Forum with enhanced compensation from Rs. 3,60,000/- to Rs. 7,00,000/-, which was payable by Dr. Harbinder Singh and Dr. Rajinder Manchanda jointly and severally. The State Commission also gave liberty to the OP-1 and 3 to recover the amount from the Insurance Co. (OP-5 against their professional indemnity policies. The State Commission made certain observations on the private practice of the OP-3 as below:

It is admitted case of appellant No. 3 Dr. Rajinder Manchanda that he was working as PCMS in Civil Hospital Ferozpur City on 12.10.2003 and he was also taking NPA from the Govt of Punjab but he was also doing private practice against the instructions/rules of the Govt of Punjab, as such, he was/is not entitled for the NPA. It was also in the notice of the Civil Surgeon, Ferozpur on complaint filed by respondent No. 1 Chhinder Kaur that Dr. Rajinder Manchanda was doing private practice in the private hospitals but no action was taken by the then Civil Surgeon, Ferozpur, Even no letter was written to the Director/Secretary, Health Department to stop the NPA to Dr. Rajinder Manchanda to save Dr. Rajinder Manchanda against his duty cast by the Govt of Punjab as Civil Surgeon to control the Medical staff in District Ferozpur.

The Registry is directed to send a copy of the order to Secretary Health Department, Govt of Punjab Sector-34, Chandigarh to take action against Dr. Rajinder Manchanda and to recover the NPA from him which he was drawing illegally when he was indulged in private practice.

6. Being aggrieved, the OP-3 Dr. Rajendra Manchanda and the Insurance Co. filed the instant three Revision Petitions.

7. Heard the learned Counsel for the parties. The short delay in filing the Revision Petitions is condoned.

8. The learned Counsel for the Petitioner argued that the State Commission wrongly enhanced the compensation. The patient was not directly concerned with him, nor paid any consideration to him, therefore, cause of action does not arise against him and the payment of compensation shall not arise. He further submitted that the petitioner was working in City Hospital but he was not in duty on 12.10.2003 being Sunday. The patient was taken to OT by the staff and thereafter, the petitioner checked the OT and anaesthesia instruments, which found everything in working order. He further submitted that the govt. of Punjab, Department of Health had exonerated the petitioner from all charges.

9. We have given our thoughtful consideration. Perused the evidence on record, the medical record and the relevant literature. From the record, we note Dr. Harbinder Singh (Surgeon) took detailed history of the patient and checked the vitals. He himself had done pre-operative check-up, gave pre-operative orders and medication as recorded in the bed-head ticket. As per the submission of Dr. Harbinder Singh, he was competent to give anaesthesia as he did his house job in Anaesthesia at DMC, Ludhiana. He called Dr. Manchanda (OP-3) at 7.00 am to give general anaesthesia to the patient. It is evident and an admitted fact that Dr. Harbinder Singh himself prepared injection Pentothal sodium. While induction of anaesthesia, 100% oxygen was given by Dr. Manchanda through mask and instructed Dr. Harbinder Singh to inject Pentothal sodium upto 2.5% slowly. Initial 2ml was injected slowly and the remaining 10ml was injected as per the instructions of Dr. Manchanda, but the reaction was developed. It is also evident that before operation, no ECG, no informed consent was taken. We have perused the consent form, which appears to be signature on the dotted lines. Only one signature of Guru Charan Singh was seen, however, all the spaces with respect to name, sex, age, type of operation, name of doctor etc. was left blank. It is pertinent to note that Dr. Harbinder Singh, during his cross-examination, admitted that ECG Machine, Cardiac Monitor, Defibrillator were not available in the hospital before the operation, but the same were made available by Dr. Dhir, who reached in the hospital after the call by Dr. Harbinder Singh at 8.00 a.m. in the OT. Both the fora have observed that Dr. Rajendra Manchanda was a silent spectator, whereas Dr. Harbinder Singh injected 10ml of anaesthetic Pentothal sodium, which evoked severe reaction. In our view, such reaction could have been controlled by the doctors in the OT, but they failed due to lack of infrastructure and waited for Dr. Dhir.

10. We have perused the report of Medical Board constituted by the Deputy Commissioner, Ferozepur consisting Balwinder Singh, ACS (M.D. Anesthesia), Dr. O.P. Baghi, M.D. Medicine and Dr. Harsh Bhola, M.S. The board opined that there was no negligence during the treatment given by the OPs.

11. The submission of OP-3 was that he visited the hospital as a courtesy call on the asking of Dr. Harbinder Singh for help. The grouse of OP-3, Dr. Rajendra Manchanda that State Commission has exceeded its jurisdiction and power by directing the Registry of the State Commission to send the copy of the impugned order to the Secretary, Health Department, Government of Punjab, Sector 34, Chandigarh for action against OP-3 and to recover the N.P.A. from him, which he was drawing illegally when he was indulged in private practice. However, the Government of Punjab, Department of Health has exonerated the OP-3 from all charges. Therefore, how the said issue is not under consideration.

12. Admittedly, Dr. Rajinder Manchanda was called by Dr. Harbinder Singh on 12.10.2003 in the morning only, when the patient was lying in the OT. Dr. Harbinder Singh, in his cross examination, stated that no test dose of Pentothal Sodium was given to the patient, but he himself injected Pentothal sodium without proper monitoring, though he was not competent. Even the patient's ECG was not done immediately to detect cardiac arrest, but OP-1 waited 30 minutes for Dr. Dhir to come.

13. As per the statement of Dr. Dinesh Dhir, he was called at 8 am through messenger to bring the ECG machine. He performed ECG at 8.10 am. He also brought the Cardiac Defibrillator. This proves beyond doubt that the vital instruments ECG machine and Cardiac Defibrillator were also not available in OT. The opinion of medical board did not find any negligence during treatment given by Dr. Harbinder Singh, Dr. Rajinder Manchanda and Dr. Jagmeet Kaur. In our view, it was biased and erroneous opinion of the board to protect the doctors. The Complainants have filed an opinion on affidavit of Dr. M.P. Monga (Ex. C-22), which was acceptable.

14. In the present case there are concurrent finding of the facts and the revisional jurisdiction of this Commission is limited. We do not find any illegality, material irregularity or jurisdictional error in the impugned Order passed by the State Commission warranting our interference in revisional jurisdiction under

Section 21(b) of the Consumer Protection Act, 1986. We would like to rely upon the decision of the Hon'ble Supreme Court in the case of '*Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd.*[\[1\]](#).

15. Similarly, in the recent judgement of the Hon'ble Supreme Court in '*Sunil Kumar Maity vs. State Bank of India & Anr.*'[\[2\]](#), it was held that the revisional Jurisdiction of this Commission is extremely limited by observing as under:-

“9. It is needless to say that the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity. In the instant case, the National Commission itself had exceeded its revisional jurisdiction by calling for the report from the respondent-bank and solely relying upon such report, had come to the conclusion that the two fora below had erred in not undertaking the requisite in-depth appraisal of the case that was required.”

16. Respectfully following the principles laid down by the Hon'ble Supreme Court *supra*, we do not find any merit in the present Revision Petitions and the same are dismissed. Considering the facts, in our considered view, the award of State Commission is just and proper. Consequently, the impugned Order passed by the State Commission is upheld. Keeping in view the facts and circumstances of the present case, there shall be no order as to costs.

[\[1\]](#) 2011 11 SCC 269

[\[2\]](#) Civil Appeal No. 432 / 2022 Order dated 21.01.2022

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DR. S.M. KANTIKAR
PRESIDING MEMBER

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BINOY KUMAR
MEMBER