

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

Date of Institution: 03.10.2017

Date of hearing: 25.05.2023

Date of Decision: 12.01.2024

COMPLAINT CASE NO.- 1676/2017

IN THE MATTER OF

COL. JEETENDRA GULATI (RETD.),
S/o LATE DR. B.M. GULATI,
R/o C-1/30, MIANWALI NAGAR,
ROHTAK ROAD,
NEW DELHI – 110087.

(Through: Mr. Vaibhav Kalra, Advocate)

...Complainant

VERSUS

- 1. MAX SUPER SPECIALITY HOSPITAL,**
THROUGH ITS MANAGING DIRECTOR,
FC-50, C & D BLOCK,
SHALIMAR BAGH, NEW DELHI – 110088.
- 2. DR. VINEET ARORA,**
M.D. (MED.),
SR. CONSULTANT PHYSICIAN & CARDIO-DIABETIOLOGIST
MAX SUPER SPECIALITY HOSPITAL
FC-50, C & D BLOCK,
SHALIMAR BAGH,
NEW DELHI – 110088.
- 3. MAX SUPERSPECIALITY HOSPITAL**
MEDICAL SUPERINTENDENT
MAX SUPERSPECIALITY HOSPITAL
SR. CONSULTANTL PHYSICIAN & CARDIO-DIABETIOLOGIST
FC-50, C & D BLOCK,

SHALIMAR BAGH,
NEW DELHI – 110088.

4. MAX SUPERSPECIALITY HOSPITAL
OPD CO-ORDINATOR
MAX SUPER SPECIALITY HOSPITAL
FC-50, C & D BLOCK,
SHALIMAR BAGH,
NEW DELHI – 110088.

(Through: Mr. Puneet Kumar, Advocate)

...Opposite Parties

CORAM:

HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)

HON'BLE MS. PINKI, MEMBER (JUDICIAL)

HON'BLE MR. J.P. AGRAWAL, MEMBER (GENERAL)

Present: Mr. Vaibhav Kalra, Counsel for the Complainant.
Mr. Puneet Kumar, Counsel for OP.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL
(PRESIDENT)

JUDGMENT

1. The present complaint has been filed by Mr. Jeetendra Gulati (patient) alleging deficiency in service and medical negligence on the part of the Opposite Parties with respect to the delay in admitting the patient and not providing timely medical treatment which resulted in suffering from seizure and falling unconscious in the hospital right outside the Emergency room on a wheelchair.
2. Brief facts of the case are that the Complainant, who is a retired Colonel from Indian Army, visited Max Super Specialty Hospital, Shalimar Bagh with complaint of disorientation and loss of control of left hand. Upon investigation and CT scan,

he was diagnosed with bleeding inside the brain and changes in density of the brain tissues and was suggested further investigations such as MRI and Venography. A perusal of the CT scan showed that the condition of the brain was not normal and needed immediate attention and admission for treatment/surgery but the staff & doctors took no further action and did not take any steps for providing immediate medical aid to the Complainant despite repeated requests by the Complainant's wife and family members. Due to negligent conduct of the Opposite Party, the condition of the Complainant worsened and he suffered a seizure in the Reception area, which could have been avoided had the Opposite Parties taken proper and timely action. When the complainant suffered a seizure and become unconscious outside the Emergency Room on a wheelchair, the Opposite Parties eventually admitted him and gave him treatment after a delay of four hours. Due to delay in admitting and providing proper medical care to the Complainant, he suffered from paralysis on the left side of the body and even now suffers from the problem of seizures for which he has to undergo treatment for the rest of his life. The Complainant has submitted that due to inaction, negligence and deficient services of the Opposite Parties, he has not only suffered physical & mental agony but also financial loss as he was earning more than Rs 1,00,000/- salary prior to this incident and now rendered jobless at the age of 51 due to his condition. Aggrieved by the facts stated above, the complainant has approached this Hon'ble Commission and has prayed the following reliefs:

- a) *“Allow the present Complaint and declare the conduct of the Opposite Parties amounting to medical negligence and declare they have rendered ‘deficient services’ and;*
- b) *Direct the Opposite Parties to pay a lump sum of Rs. 75,00,000/- towards loss of income from 2015 till 2041 by the Opposite Party No. 1*

to the Complainant for providing deficient services and being negligence;

- c) Direct the Opposite Parties to pay a sum of Rs. 10,00,000/- towards compensation for the mental harassment and emotional stress caused to the Complainant;*
- d) Levy interest of 18% per annum on Rs. 75,00,000/- from the date of incident till the realization;*
- e) Direct the Opposite Parties to pay the legal costs of Rs. 1,00,000/- for pursuing the present Complaint; and*
- f) Pass any other or further orders which this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case."*

3. The Opposite Parties have filed their joint written statement denying all the averments made in the Complaint and submitted that the Complainant has intentionally tried to shift the burden on the Opposite Parties alleging delay in treatment whereas the fact is that the Complainant had come late around 11.00 am in the OPD after a number of patients and waited for his turn and after the OPD consultation with Opposite Party no. 2, the Complainant's NCCT Scan showed minimal traces of Subarachnoid Hamorrhage (hereinafter referred as SAH) and was advised admission under the neurology team at Opposite Party no. 1 Hospital. Further, the Opposite Parties have submitted that the Opposite Party no. 2 has taken all measures in providing medical treatment as per the medical protocol and there was no medical negligence on the part of the Opposite Parties as the operating doctors of the Opposite Party no. 1 Hospital has performed their duties with reasonable skill and competence.
4. The Opposite Parties have further submitted that the Complainant had concealed his medical history before this Commission as he was suffering from Paraesthesia in both the Upper Limb and he was evaluated for the same by the Opposite Party

no. 2 primarily and treatment for the same was undergoing. The Complainant was in fact showing very minimal trace of SAH which was confirmed later by the tests conducted on 01.10.2017. Hence, on account of suppression of material facts, the complaint filed by the Complainant is liable to be dismissed.

5. The Complainant has filed the Rejoinder rebutting the written statement filed by the Opposite Parties. Both the Complainant and the Opposite Parties have filed their Evidence by way of Affidavit in order to prove their averments on record as well as filed their respective written arguments.
6. We have perused the material available on record and heard the counsel for the contesting parties.
7. Before delving into the merits of the case, we deem it appropriate to refer to the law on the cause. This Commission, has in detail, discussed the scope and extent of Negligence with respect to Medical Professionals in **CC- 324/2013**, titled **Seema Garg & Anr. vs. Superintendent, Ram Manohar Lohia Hospital & Anr.** decided on 31.01.2022, wherein one of us (Justice Sangita Dhingra Sehgal, President) was a member. The relevant portion has been reproduced as below:

*“9.....The Hon’ble Apex Court, after taking into consideration its previous decisions on Medical Negligence, has consolidated the law in **Kusum Sharma and Ors. vs. Batra Hospital and Medical Research Centre and Ors.** reported at (2010) 3 SCC 480, wherein, it has been held as under:*

“94. On scrutiny of the leading cases of medical negligence both in our country and other countries specially United Kingdom, some basic principles emerge in dealing with the cases of medical negligence. While deciding whether the medical professional is guilty of medical negligence following well known principles must be kept in view:

I. Negligence is 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.

II. Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

III. The medical professional is expected to bring 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.

IV. A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.

V. In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of other professional doctor.

VI. The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence.

VII. *Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.*

VIII. *It would not be conducive to the efficiency of the medical profession if no Doctor could administer medicine without a halter round his neck.*

IX. *It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessary harassed or humiliated so that they can perform their professional duties without fear and apprehension.*

X. *The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurizing the medical professionals/hospitals particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.*

XI. *The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals.*

95. *In our considered view, the aforementioned principles must be kept in view while deciding the cases of medical negligence. We should not be understood to have held that doctors can never be prosecuted for medical negligence. As long as the doctors have performed their duties and exercised an ordinary degree of professional skill and competence, they*

cannot be held guilty of medical negligence. It is imperative that the doctors must be able to perform their professional duties with free mind.”

10. In cases wherein the allegations are levelled against the Medical Professionals, negligence is an essential ingredient for the offence, which is basically the breach of a duty exercised by omission to do something which a reasonable man would do or would abstain from doing. However, negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence and they are entitled to protection so long as they follow the same.”

(emphasis supplied)

8. In the present case also, it will be had to be ascertained whether there was any lack of skill and competence on the part of the operating doctor and/or any omission to do what was actually required in the present facts and circumstances.
9. The Complainant has not challenged the competency of the operating doctor i.e. Opposite Party No. 2, hence, ***the first part of the aforesaid para stands answered, that there was no lack of competence on the part of the Opposite Party No. 2.***
10. So far as the question of omission to do any act which was actually required is concerned, the Complainant has contended that the Opposite Parties committed negligence and delayed the process of admission due to which, the Complainant has suffered from paralysis on the left side of the body and also suffered seizure outside the reception area and even now suffers from the problem of seizures for which he has to undergo treatment for the rest of his life.
11. Therefore, in order to check whether there was any negligence on the part of Opposite Parties, we have carefully perused the medical records filed by the Complainant and found that the Complainant with the issue of disorientation and loss of control of left hand, visited the OPD of Opposite Party no. 1 hospital on

01.10.2015. Upon examination, the treating doctor namely Dr. Vineet Arora (Opposite Party no. 2) had advised the following to the Complainant:

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MAX HEALTHCARE
Super Speciality Hospital

Max Super Speciality Hospital, Shalimar Bagh
FC - 50, C & D Block, Shalimar Bagh,
New Delhi - 110 088,
Phone: +91 11 4978 2222, 6642 2222,
Fax: 91 11 4978 2233, 6642 2233

DR. VINEET ARORA

M.D (Med.)
SR. Consultant Physician & Cardiometabolologist
M: 9810164688
Reg. no. - DMC3759

MAX SHALIMAR BAGH
011-66422222

Date: 1/10/15

OPD Schedule:
Mon - Sat 11:30 am - 3:00 pm

Diabetic Clinic:
Sat 10:00 am - 12:00 pm

Jeetendra Gulati

To R/O CVA

40% Paracathesies in both hands

?? Ingestion of Tab Mirtazipine

Act

CBC & P/S

NET for KFT

LFT

S.TSH

(1) Tab Stablon 100mg

(0) Tab Lasix 1/2

lmed

Cy Head (Brain)

(Plan) / MRI Brain

(Stroke Protocol) lmed

Max Healthcare Institute Limited
(CIN: U72200DL2001PLC111313)
Regd. Office: Max House, 1, Dr. Jha Marg, Okhla, New Delhi - 110020
Phone: 91-11-41612123, Fax: 91-11-41612155, E-mail: secretarial@maxhealthcare.com
www.maxhealthcare.in

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12. On perusal of the abovementioned OPD sheet, we find that upon examination, the Opposite Party no. 2 advised the Complainant (patient) to go through a CT scan of the brain along with other tests such as CBC, KFT, PLS, LFT and STSH in order to determine the treatment to be followed in case of any emergency. Furthermore, we discover that after reviewing the CT scan report, which revealed a minimal trace of SAH, the Opposite Party no. 2 immediately advised the Complainant to be admitted under the supervision of a Neurosurgeon at Opposite Party no. 1 hospital, Dr. Rakesh Kumar and the Complainant was admitted at around 3:30 p.m. on 01.10.2015, where further treatment was advised to the Complainant.
13. Further, even though the Complainant has not spared a word against the operating doctor in his complaint and has challenged the delay in admitting him to the hospital, but has failed to bring on record any substantial evidence, oral or documentary, in support of his contentions. It is further noted that the Complainant failed to establish that there was any breach of duty or omission to do something which a reasonable man would do or would abstain from doing or that the treatment which was given to the Complainant was not acceptable to the Medical Profession at that specific time period and also failed to examine any Expert Witness in support of his case.
14. Moreover, it was found that the Complainant had chosen Out-Patient Department (OPD) of Opposite Party No. 1 Hospital which is specifically designed for diagnosis, treatment, and care without requiring admission, catering to minor treatments and follow-up appointments. Additionally, in instances where patients face severe issues, they opt for the Emergency Ward, ensuring priority treatment for immediate medical attention.
15. Therefore, in view of the above discussion, we do not find any lackadaisical approach of the treating doctors of the Opposite Party no. 1 Hospital as no

substantial evidence has been filed by the Complainant in order to show that the Opposite Parties have delayed the treatment of Complainant due to which, the Complainant has suffered seizure in reception area of the Opposite Party no. 1 Hospital.

16. Additionally, this Commission cannot presume that the allegations in the complaint are inviolable truth even though they remained unsupported by any evidence. Our findings to this effect are substantiated by the dicta of the Hon'ble Apex Court in **C.P. Sreekumar (Dr.), MS (Ortho) v. S. Ramanujam** reported at (2009) 7 SCC 130, wherein, it has been 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.”

17. Since there exists no evidence to substantiate the submission of the Complainant, ***we are of the view that there exists no Negligence on part of the Opposite Parties in the present case.*** Consequently, the present Complaint stands dismissed, with no order as to costs.
18. Applications pending, if any, stand disposed of in terms of the aforesaid Judgment.

19. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties as well as forwarded to the corresponding E-mail address available on the record i.e. vaibhav.s.kalra@kalraco.com (Complainant) and saxena_puneet@yahoo.com (Opposite Parties).
20. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

(J.P. AGRAWAL)
MEMBER (GENERAL)

Pronounced On:
12.01.2024