

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 2210 OF 2018

(Against the Order dated 13/07/2018 in Complaint No. 176/2016 of the State Commission
Punjab)

1. DR. JANAK RAJ ARORA & ANR.

2. JANAK SURGICARE

.....Appellant(s)

Versus

1. JAPINDER SINGH & 3 ORS.

S/O. GURDEV SINGH, VILLAGE KAKRALI TEHSIL
CHAMKAUR SAHIB

ROPAR

2. JASHAN DEEP KAUR MANGAT

3. DILKIRT SINGH

4. DR. AJATA SHATRUKAPOOR

.....Respondent(s)

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.), PRESIDING
MEMBER**

FOR THE APPELLANT :

FOR THE APPELLANTS : DR. SK. KHATRI, ADVOCATE
ANIHATA KAUR PUNIA, ADVOCATE

FOR THE RESPONDENT :

FOR THE RESPONDENTS
NOS. 1 TO 3 : MR. D.P.S DAGAR, ADVOCATE
MR. P.P SINGH, ADVOCATE

FOR RESPONDENT

NO. 4 : DR. AJATA SHATRU KAPOOR, IN PERSON

Dated : 31 January 2024

ORDER

1. The Appellant filed the instant Appeal under section 19 of the Consumer Protection Act, 1986 ("the Act"), against the Order dated 13.07.2018 passed by the State Consumer Disputes Redressal Commission, Punjab ("State Commission") in CC No. 176 of 2016, wherein the State Commission partly allowed the Complaint.

2. For Convenience, the parties in the present case referred to as position held in Consumer Complaint before the State Commission. Japinder Singh along with his two minor children namely, Jashan Deep Kaur and Dilkrit Singh are identified as the Complainants (Respondent No. 1 to 3). While Dr. Janak Raj Arora is identified as OP-2 (Appellant No. 1), Janak Surgicare - a private nursing home is referred to as OP-1 (Appellant No. 2) & Dr. Ajata Shartu Kapoor is identified as the OP-3 (Proforma-Respondent).

3. On 11.06.2014, Kamaljit Kaur, the spouse of Complainant No. 1 and the mother of Complainants No. 2 and 3 ('patient' or 'deceased'), aged 38 years, sought medical attention at OP-1-Janak Surgicare Hospital. She was examined by OP-2 Dr Janak Raj Arora, who diagnosed her with *Ch. Cholecystitis and Cholelithiasis*. Dr Arora recommended laparoscopic Chole/Open Chole and certain biochemistry tests and abdominal ultrasound. On 12.06.2014, an ultrasound of her abdomen revealed 5 mm multiple stones in the gallbladder. Later, the patient was admitted to OP-1-Hospital in Patiala, as directed by OP-2 and a laparoscopic cholecystectomy was scheduled on 13.06.2014 at 05:30 AM. The procedure was performed in OP-1 Hospital by OP-2, with assistance from OP-3- Dr. A.S. Kapoor. It was alleged that, during the surgery, she suffered a cut injury to the portal vein, requiring conversion of laparoscopic surgery to an open procedure. Portal vein injury resulted in leakage of blood into her abdominal cavity, leading to severe deterioration in her condition. Due to lack of facilities, she was taken in ambulance to PGI, Chandigarh for vascular repair, accompanied by two OT Assistants. In transit, her condition worsened, prompting a decision to admit her to Fortis Hospital, Mohali where a vascular surgeon performed surgery to rectify the portal vein injury. Due to delay in vascular repair and significant blood loss she died on 14.06.2014.

4. In addition, OPs erroneously communicated that no vascular surgeon was accessible in Patiala. Contrary to this, they contended that such facilities were in fact available at Amar Hospital, Patiala. The OPs were negligent in not referring the patient to Amar Hospital or engaging a doctor from said hospital. Further, the negligence of OPs during the surgery resulted in the occurrence of the portal vein injury, a fact acknowledged by the OPs before the Medical Board. Being aggrieved with the negligence and deficiency in service by OPs, the Complainants being legal heir of the deceased filed CC No. 176 of 2016 before the State Commission and prayed as under:-
 - i. ***To pay to the complainants Rs. 50,00,000/- (Rupees fifty lakhs) as compensation along with interest; and***
 - ii. ***Any other relief deemed fit and proper in the peculiar facts and circumstances of this complaint.***

5. In their reply, the OP-1 & 2 raised a preliminary objection that the consumer complaint is not maintainable. They contended that there was no negligence in treating her. Emphasizing qualifications and competence of their staff, they asserted possessing necessary skill and experience, and that the duties were performed diligently with the assistance of competent medical staff. The treatment of the patient, according to the OPs, was executed with the utmost care, caution, skill, devotion, and dedication, maintaining that the procedure adopted was in the best interest of the patient.

6. The OPs further contended that the Complainants are not "consumers" as per Section 2(1)(d) of the Act. There is no privity of contract between them. The complaint is not maintainable as no consideration was ever paid to the OPs for the services rendered. The complaint is flawed due to non-joinder and mis-joinder of necessary parties, with no cause of action against them. OPs also alleged that the Complainants approached the Commission with unclean hands, suppressing true and material facts and filing the complaint with mysterious motives to harass and humiliate them with sole motive of the complainants is to extract money.

7. On merits, the complaint was denied by OPs No. 1 & 2 and contested the timeline of events, refuting their assertion that an ultrasound was conducted on 12.06.2014, and instead argued that the examination took place on 11.06.2014. OPs further asserted that the patient was accompanied by her father, Parduman Singh, and not the Complainants. The admission date is contested, with OPs claiming it occurred on 12.06.2014, not 13.06.2014. While admitting that consent was obtained from Parduman Singh for laparoscopy/ open surgery, OPs further denied negligence in procedure, asserting that the conversion to open surgery was necessitated by frozen adhesions in Calot's Triangle, making laparoscopy infeasible. OPs explicitly denied any negligence or deficiency in service.

8. The learned State Commission partly allowed the Complaint with following Order:-

“....59. (i) to pay Rs.40,00,000/- (Rupees forty lakh only), as compensation, in lump sum for loss of mother, her love, affection, future care, mental agony, harassment etc. to complainants Nos.2 and 3; being her minor children and for loss of love and affection, mental agony and harassment to complainant No.1; being her husband including the medical expenses incurred by them on the treatment of the patient and including litigation expenses.

60. The opposite parties are directed to comply with this order within a period of two months from the date of receipt of certified copy thereof jointly and severally. The opposite parties are further directed to deposit Rs.15,00,000/- (Rupees fifteen lakh only), each, in the shape of FDRs in a nationalized Bank, in favour of the minor complainants i.e. complainant Nos.2 and 3, which may earn maximum interest and complainants Nos.2 and 3 shall be entitled to withdraw the amount of interest accrued on the said FDRs, from time to time, for their daily pursuits, through their guardian. They shall be entitled to withdraw the entire outstanding amounts of the

FDRs, when they will attain the age of 21 years. The rest of the amount of Rs.10,00,000/- shall be paid to complainant No.1 within the above said period of two months.”

9. Being aggrieved by the impugned order of State Commission, the OP-1 & 2 filed this present Appeal no. 2210 of 2018 seeking:

“It is therefore respectfully prayed that under abovementioned circumstances appeal filed by the appellant may kindly be allowed and the impugned judgment Dated 13.7.2018 passed by the State Consumer Disputes Redressal Commission Punjab at Chandigarh, may kindly be set aside. Pass any other order or direction which in the fact and circumstances this Hon'ble Commission deems appropriate.”

10. The Appellants/OP-1 & 2, mainly raised the following grounds:

- a. The State Commission wrongly inferred that the portal vein injury was caused negligently. The PGI Medical Board has clearly mentioned in their opinion that Portal vein injury is a known, albeit a rare complication of cholecystectomy.
- b. The State Commission wrongly inferred that the injury to portal vein occurred during laparoscopic procedure. It was only at the end of the open cholecystectomy, when the gall bladder was almost been removed, the injury occurred. The State Commission overlooked the experience of the Appellant no. 1 in saying that he could not recognize variations in anatomy.
- c. The State Commission wrongly inferred that the time taken for surgery was too long, so it was Dr. Ajata Kapoor who was doing the surgery. In fact, the time taken for surgery was not longer than usual. It was Dr Janak Arora who operated and Dr. Ajata Shatru Kapoor assisted him. However, Dr. Ajata Shatru himself is a super specialist in surgery from PGI, Chandigarh with over 15 years of experience in his field of expertise.
- d. The injury to the portal vein was recognized immediately. To treat the injury, the complainants decided to get her operated at Fortis Hospital against the advice (LAMA) to get operated at PGI Chandigarh.
- e. The report of Fortis Hospital mentioning other injuries in patient death summary alleging that they occurred at Janak Surgicare is misleading. No such injuries were observed when she was referred to Fortis Hospital. They are answerable to the injuries.
- f. The State Commission wrongly held that no anaesthetist was present during the surgery as operation notes of Dr. Janak did not mention her name. Dr. Janak Arora's operation notes clearly indicate the presence of the anaesthetist.
- g. The State Commission wrongly termed negligent while the medical board report clearly stated "Portal vein injury is a known, albeit, a rare complication of cholecystectomy." 'Per operative complication' can never be termed as 'negligence'.
- h. Res ipsa loquitor was wrongly applied in case of injury to adjacent structures. The injury was not caused by any misuse of cautery or sharp instrument, or inexperience of

the surgeon in using them; as presumed by Ld. Commission.

- i. It was wrongly concluded that report of Medical Board of Civil Surgeon, Patiala was not based on reasoning and record. The PGI medical board did not mention anything about deviation from standard of care/procedure. Further, State Commission wrongly ignored the well-informed consent by patient's father, only on the ground that husband's consent was not taken.

11. In response to the notice on Appeal, the Respondents/ Complainants filed a reply mainly asserting the following:

- a. The Respondents denied the Appellants' assertions, contending that the Appellants failed to raise objections to the findings of Fortis Hospital and opinion of medical board of PGI, Chandigarh during the proceedings before the State Commission.
- b. The Appellants' acknowledgment that the portal vein injury occurred during the surgery itself serves as proof of medical negligence and deficiency in service by Appellant No. 1.
- c. Discrepancies in the anesthesia notes provided by the Appellants are highlighted, with the Respondents asserting that these notes do not align with the actual condition of the patient.
- d. The Respondents emphasize that while portal vein injuries are rare, lack of necessary resources to handle such emergencies indicate negligence on the part of OPs. In the absence of being adequately equipped to address emergencies, they should not have proceeded with the operation.
- e. A valid consent was not obtained from the patient, who was reportedly fully conscious at the time of the operation. This further point to allegation of negligence against the Appellants.

12. The Respondents thus contended that the Appellants' actions amounted to medical negligence and deficiency in service, pointing to specific instances, including the acknowledging of the portal vein injury during surgery and the absence of patient's valid consent.

13. In his arguments, the learned counsel for Appellants reiterated the grounds of appeal. He argued that there was no negligence on part of the appellants. The portal vein injury is a known albeit a rare occurrence during laparoscopic cholecystectomy. It happened during open part of the procedure and not during the laparoscopic. The injury is a common event at the hands of the most experienced surgeons in the field. Just because an unexpected injury during an operation does not make the surgeon automatically negligent. After the injury they took due medical care to an extent which they could by clamping the vein and achieving haemostasis. There was no delay in referring the patient to PGI Chandigarh and nothing was concealed while referring her. The fact that the Respondent went against the referral of the appellant to PGI Chandigarh shows that a false case has been made up against the appellant. Examination of death summary of Fortis Hospital reveals that death was due to failure to repair of the portal vein at Fortis Hospital. Thus, making them party to the case amounts to

non-impleadment of parties which is fatal to the case. The death summary also shows history of cardiac arrests at Janak Surgicare which never occurred. She was referred to PGI Chandigarh for repair of the portal vein specifically by a vascular surgeon, but instead she was taken to Fortis Hospital, despite the fact that there was no vascular surgeon and she was operated upon by a general surgeon. Contrary to the affidavit by OTA, the death summary also shows that the patient was received in an unconscious state by Fortis Hospital. Further, the summary is not in consonance with its own bill which shows charges for removal of the gall bladder, which was already removed at Janak Surgicare, for removal of a stone from CBD which never existed. The patient died after 16 hours of her stay at Fortis Hospital and they tried to shift the onus of the death on the appellant to get rid of the liability. The Complainants failed to prove any direct nexus between the suffering of the patient and medical aid she received to prove negligence on the part of the doctor. The learned Counsel asserted that the injury in this case did not happen due to inexperience but was an unfortunate complication. The report of Fortis Hospital referring to other injuries in the death summary alleging that the same occurred at Janak Surgicare is misleading. No such injuries were observed when the patient was referred to Fortis Hospital and Fortis Hospital is answerable to those injuries. The Commission termed Calot's triangle as 'No go area', while no such area exists for a surgeon. The report of the PGI Medical Board does not mention anything about deviation from standard of care or negligence on part of the appellant. He asserted that the State Commission did not frame any issues or gave any reasons to its findings in the order thus making it a non-speaking one. The maxim of *res ipsa loquitur* has been applied without giving any reasons or explanations. The State Commission wrongly ignored the well-informed consent given by the patient's father just because her husband's consent was not taken. The State Commission wrongly fixed an exorbitantly high compensation of Rs. 40,00,000 well beyond the appellants paying capacity. The compensation is particularly unjustified because Janak Surgicare is not a corporate hospital and they followed all standard procedures and protocols while operating on patient and during the post injury management. Nothing was concealed and nothing was charged from the patient for the above said procedure. The learned Counsel relied on the following judgements to support their claims:

- a. **Judgement for medical negligence** – *Kusum Sharma & Ors. vs Batra Hospital and Medical Research Centre & Ors.*, (2010) 3 SCC 480.
- b. **Judgement for non-presumption of allegations as inviolable truth even if unsupported by evidence** – *C.P. Sreekumar (Dr), MS(Ortho) vs S. Ramanujan*(2009) 7 SCC 130.
- c. **Judgement for significance of a reasoned and speaking order** – *M/s Kranti Asso. Pvt. Ltd. & Anr. Vs Masood Ahmed Khan & Ors.* (2010) 9 SCC 496.

14. The learned Counsel for the Respondent No. 1 to 3/ Complainants reiterated the key facts presented in the Complaint and the affidavit of evidence submitted before the learned State Commission. Based on the available facts, circumstances, and material on record, as well as considering the balance of probability, it is asserted that the Appellants committed gross negligence during the surgery on the deceased, resulting in a deficiency in service. The counsel contends that the judgment under challenge in the present appeal is well-reasoned, addressing every aspect of the matter. Consequently, it is argued that the appeal lacks merit, is frivolous, and should be dismissed by this Hon'ble Commission. The learned Counsel for Complainants/R-1 to 3 relied on the following judgements to support his arguments:

- a. *V. Kishan Rao Vs. Nikhil Superspeciality Hospital and Another (2010) 5 SCC 513.*
- b. *Baidyanath Chakraborty (Doctor) Vs. Chandi Bhattacharjee (2014) CPJ 601 (NC).*
- c. *Manika Roy Vs. B.L. Chitlangia (Doctor) & Ors. (2016) CPJ 348 NC.*
- d. *S.P. Gupta & Anr. Vs. Sukhdev Raj Kaushal & Anr. 2016 law suit (CO) 1133.*
- e. *Appllo Hospital and Others Vs. Bhagwan L. Moorjani Manu (CF) 0155/2018.*
- f. *Manmohan Kaur Vs. Fortis Hospital & Anr. Manu/CF/0453/2018*
- g. **Arun Kumar Manglik Vs. Chirayu Health and Medicare Pvt. Ltd. & Ors. Manu /SC/0202/2019.**
- h. **Paula Thomas Vs. Paul Curley (2013) EWCA CW 117.**

15. The Learned Counsel for the Respondent No. 4/ OP-3- Dr. A. S Kapoor argued that he patient underwent laparoscopic Cholecystectomy (Lap Chole), a procedure performed by Dr. Janak Arora, with Respondent No. 4 only assisting. Despite the occurrence of a complication involving a portal vein injury, the learned Counsel asserted that this doesn't automatically imply negligence on the part of the treating surgeon. He emphasized that there was no delay in referring the patient to a higher medical facility, specifically PGI, Chandigarh. The portal vein injury was promptly recognized, and appropriate measures, including clamping and achieving haemostasis, were taken. The counsel contends that nothing was concealed during the referral process, and the portal vein injury was explicitly mentioned in the referral slip.

16. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by learned counsels for both the parties.

17. The primary issue is centered on whether the allegations of medical negligence and deficiency in service leading to the death of the patient are established. And if so, whether the compensation awarded is appropriate.

18. The Appellants contested that the injury was out of a known complication, challenged the timeline of events, and raised concerns about the authenticity of documents. On the other hand, the Respondents maintained that the Appellants' actions amounted to medical negligence, pointing to discrepancies in anesthesia notes and the lack of proper consent. The central focus is on determining whether the State Commission's decision is justified in holding the Appellants responsible for the alleged negligence and if the awarded compensation is appropriate.

19. Notwithstanding minor difference with respect to dates, it is an undisputed position that the patient was admitted in OP-1 Hospital and OP-2 assisted by OP-3 and other staff performed the procedure to remove her gallbladder by laparoscopic cholecystectomy. During the procedure, it was converted into open surgery. It is also an admitted position that during the procedure, she sustained portal vein linear cut injury, and it started bleeding into the system. The OPs clamped the injury and attempted to stop bleeding but could not repair and the bleeding persisted. As it was beyond OP-1 hospital to handle the situation that has emerged and the condition of the patient started deteriorating, she was referred to PGI Chandigarh. On the way, her condition further deteriorated, and she was admitted in the

nearest Fortis Hospital, Mohali. There, a team of doctors led by a vascular surgeon performed the surgery. However, the patient died the very next day due to delay in bringing her to the hospital and excessive bleeding sustained in the OP-1 hospital. The main issue is whether portal vein linear cut injury caused to the patient is a known and recognized complication of the surgery, which was explained to her and the patient was prepared, or a deviation from the standard medical care which resulted into medical negligence and death.

20. As per records, to remove the gallbladder, the surgeon frees it from the liver by clipping and cutting the cystic duct and the cystic artery, the main blood supply to the gallbladder. Clipping and cutting of the common bile duct is not part of the procedure and, if not repaired, it will result in serious harm to the patient. It is undisputed that OP-2 is the surgeon who performed both laparoscopy and open cholecystectomy and the other staff of OP-1 assisted him, within the scope and course of their employment. Thus, liability, vicariously applies to OP-1. It is the contention of the Complainants that by causing such injury, OPs who owed a duty to conduct a proper and safe surgical procedure with reasonable professional competence and care, failed in that duty and, thereafter failed to take effective and timely steps to control the loss of blood. As a consequence, a person who went to OP-1 hospital to undergo a routine operation such as the present case ended up with losing life the very next day.

21. The OPs contested that the patient accepted the complications and risks inherent in the procedure. These were explained to her prior to the surgery and her father consented. OPs vehemently denied of any negligence on the part of the surgeon and assisting staff. The injury to the portal vein is a possible outcome during such surgery and it does not by itself constitute any negligence. It was not in dispute that the decision to remove her gallbladder by cholecystectomy procedure was correct. Complainants asserted that no one explained the nature and risks prior to her operation. While she was to undergo a laparoscopic or “laser operation”, he was surprised to know that it was unsuccessful and was converted to open surgery. During the surgery the patient’s portal vein was cut and started bleeding. The causation of the said injury was admitted by the OPs. OPs failed to control the internal bleeding, which resulted in her death within 16 hours. The report of the Fortis Hospital into the death of the patient revealed further injuries, which the OPs failed to explain, and OPs cast the responsibility for the same on the Fortis Hospital. As per Medical Board of the PGI, Chandigarh, portal vein tear/cut is a rare injury. The injury in question i.e. injury to the portal vein was caused negligently and the same could have been averted, if OP-2 and other assisting staff applied proper care, diligence, and skill of a reasonable surgeon. This injury was not noticed by OP-2 or others while the operation was in progress but may have noticed when it was being finalized. An injury caused and not recognized by the surgeon is regarded as negligence. In the present case, initially it was the duty of the Complainant to prove that the said injury to the deceased was due to negligence in giving her treatment by OPs and that there was failure on the part of OP doctors and/or other staff to adhere to ordinary level of skill and diligence possessed and exercised by them. While medical professionals are not expected to be of highest possible degree of professional skills always, but they are bound to ensure reasonable skill and care. The maxim ‘res ipsa loquitur’ is used to describe the proof of facts which are sufficient to support an inference that the OPs were negligent and to establish a prima facie case against them. It is not a presumption of law, but a permissible inference, which may be drawn, if upon all the facts, it appears to be justified. It is invoked in

the circumstances, when the known facts relating to negligence consists of the occurrence itself or where the occurrence may be of such nature as to warrant an inference of negligence. The maxim alters neither the incidence of onus nor the rules of pleading. In “**Malay Kumar Ganguly Vs Dr. Sukumar Mukherjee & Ors.**”, 2009(4) RCR (Criminal)-1(SC), Hon’ble Supreme Court dealt with the criminal negligence and civil negligence and opinion of expert witness.

22. In the present case, it is undisputed that the said injury was sustained during her admission and the course of surgery the OPs hospital and she died consequently within a day. The Complainant has been able to discharge the onus of proving on a balance of probabilities, the negligence averred against the OPs. The deceased was of 38 years of age with two children of 15 years and 8 years, at the time of her death.

23. It is established that the death of Mrs Kamaljit Kaur who sought medical attention at OP-1 Hospital on 11.06.2014 was operated upon for laparoscopic cholecystectomy on 13.06.2014 and the procedure was performed by OP-2, with assistance from OP-3- Dr. AS Kapoor. During the surgery, she suffered a cut injury to the portal vein resulting in leakage of blood into her abdominal cavity, leading to severe deterioration in her condition. She was rushed to PGI, Chandigarh for vascular repair. In transit, her condition worsened, prompting a decision to admit her to Fortis Hospital, Mohali where a vascular surgeon performed surgery to rectify the portal vein injury. Due to delay in vascular repair and significant blood loss she died on 14.06.2014. Had the surgery cholecystectomy been performed with due care and professional diligence, her portal vein would not have sustained the cut injury. Therefore, the medical negligence on the part of OP-2 and OP-1 hospital staff is substantially established. Further, the learned State Commission duly considered all necessary facts and circumstances of the case as well as the precedents for determining the compensation to be awarded to the Complainants.

24. In view of the foregoing, I find no illegality or irregularity in the well reasoned order dated 13.07.2018 passed by the learned State Commission in CC No. 176 of 2016. The FA No. 2210 of 2018 is, therefore, Dismissed.

25. There Appellants are directed to pay Rs.20,000 as costs.

26. All pending Applications, if any, are disposed of accordingly.

27. The Registry may release the Security Deposit, if any due, made by the Appellant, after the compliance of the order of the learned State Commission as well as this order.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER