

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 1018 OF 2019

(Against the Order dated 09/05/2019 in Complaint No. 68/2016 of the State Commission Rajasthan)

1. PINK CITY HEART & GENERAL HOSPITAL
PLOT NO 34/35, VKI AREA, ROAD NO 1, SHANKAR
NAGAR, MURLIPURA
JAIPUR
RAJASTHAN

.....Appellant(s)

Versus

1. BANARSI DEVI & 2 ORS.
W/O. (LATE) SHRI JAI SINGH, R/O. 128, PARAMHANS
COLONY, BANDHU NAGAR MURLIPURA, SIKAR ROAD
JAIPUR
RAJASTHAN

2. DANA SHIVAM HEART AND SUPER SPECIALITY
HOSPITAL
PLOT NO 2, OPP TIMES SQUARE SECTOR 2,
VIDYADHAR NAGAR
JAIPUR

3. HEART AND GENERAL HOSPITAL
7, VIVEKANAD MARG, C-SCHEME SANGRAM COLONY
ASHOK NAGAR
JAIPUR

.....Respondent(s)

FIRST APPEAL NO. 1036 OF 2019

(Against the Order dated 09/05/2019 in Complaint No. 68/2016 of the State Commission Rajasthan)

1. DANA SHIVAM HEART & DUPER SPECIALITY
HOSPITAL
THROUGH ITS DIRECTOR DR SUNIL KUMAR GARSSA,
2, OPP TIMES SQUARE CENTRAL SPINE SECTOR 2,
VIDYADHAR NGAAR
JAIPUR
RAJASTHAN 302023

.....Appellant(s)

Versus

1. BANARSI MEENA & 2 ORS.
W/O. LATE JAI SINGH MEENA R/O. 128, PARAMHANS
COLONY BANDHU NAGAR MURLIPURA SIKAR ROAD
JAIPUR
RAJASTHAN

.....Respondent(s)

2. PINKCITY HEART & GENERAL HOSPITAL
THROUGH ITS DIRECTOR DR BHARAT BHUSHAN
LATH, MURLIPURA SIKAR ROAD OPP VKI AREA ROAD
NO 1
JAIPUR
RAJASTHAN 302013

3. HEART & GENERAL HOSPITAL

(A UNIT OF CARDIAC CARE & ALLIED HEALTH PVT LTD) THROUGH ITS DIRECTOR DR PRAKASH CHANDWANI, 7, VIVEKANAND MARG C-SCHEME JAIPUR RAJASTHAN 302001

BEFORE:

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

For the Appellant :

For the Respondent :

Dated : 20 Mar 2023

ORDER

Appeared at the time of arguments:

For Pink City Hospital : Mr. Ajatshatru Mina, Advocate

Ms. Apeksha Tiwari, Advocate

Ms. Aishwarya, Advocate

Mr. Kartikey Sahai, Advocate

For Dana Shivam Heart Hospital : Mr. Vizzy Agarwal, Advocate

For Banarsi Devi : Mr. Avnish Dave, Advocate

Mr. Parmod Kumar Vishnoi, Advocate

Pronounced on: 20th March 2023

ORDER

1. This Order shall decide both the Appeals arising from the Order dated 09.05.2019 passed by the State Consumer Disputes Redressal Commission, Rajasthan (hereinafter referred to as the "State Commission") in Consumer Complaint No. 68/2016, wherein the State Commission allowed the Complaint.

2. For the convenience, the parties are being referred to as mentioned in the Complaint before the State Commission. The facts are drawn from First Appeal No. 1036 OF 2019.

3. Brief facts relevant to dispose of both the appeal are that the Complainant's husband Jai Singh (since deceased, hereinafter referred to as the 'patient') was hospitalized to the general ward of the Pink City Heart & General Hospital (OP-1) on 14.02.2016 for the complaints of severe chest pain and excessive perspiration. Dr. B.B. Lath started the treatment. It was alleged that an ECG and Sonography test were performed. The patient was administered antibiotics and anti-allergic medicines under presumption of lung infection up to 16.02.2016. In the evening of 16.02.2016, the patient was sent to Heart & General Hospital (OP-3) for 'Doppler ECHO study' as that facility was not available in OP-1 Hospital, but the condition of patient deteriorated because of delayed report from OP-3.

4. It was alleged that on 17.02.2016, the OP-1 performed an ECG, which revealed “Myocardial Infraction / Heart Attack” and in haste, the OP-1 referred the patient to Dana Shivam Heart & Super Specialty Hospital (OP-2) without ambulance. After lapse of 24 hours, in the evening of 18.02.2016, Angiography was performed, which revealed two blockages, therefore, Angioplasty was performed. Post-Angioplasty, infection was noted at canulla site in the patient’s left leg. Thereafter, on 01.03.2016, the patient was taken to Santokba Durlabhji Memorial Hospital (SDMH) in critical condition and admitted in ICU, but he expired on 15.03.2016. Being aggrieved by the death of the patient due to negligence of OPs - 1 to 3, the Complainants filed Consumer Complaint before the State Commission.

5. The OPs- 1 & 3 filed their respective written versions, denied their negligence during treatment of the patient. The OP-2 was proceeded against ex-parte.

6. The OP-1 raised the preliminary objection on maintainability of Complaint for non-joinder of the parties as the SDMH and the Insurance co. were the necessary party (ies). After admission, Dr. B. B. Lath examined the patient and immediately treatment was started, he was admitted in General Ward having cardiac monitors and essential equipments. The relevant investigations were performed and proper medicines were administered. The OP-1 further submitted that the basic facilities for preliminary tests were available with OP-1. However, to avoid misdiagnosis, ECHO- Doppler study was performed at OP-3 Hospital by an expert Dr. Prakash Chandwani. The patient remained in OP-1 from 14.02.2016 to 17.02.2016. It further submitted that the patient died in SDMH on 15.03.2016 i.e. 28 days after discharge from the OP-1 Hospital. The complaint against OP-1 was filed on baseless ground.

7. The OP-3 submitted that in the evening on 16.2.2016 at 6.45 pm, the patient was brought to their hospital for ECHO-Color Doppler test. The report was issued to the complainant (Annx.1 &2). It was submitted that the patient was brought to the OP-3 only for the aforesaid test because said test facility was not available with OP-1.

8. The State Commission, upon hearing the parties and considering the facts and the circumstances, of the case, ordered as below:

“As such if we see the principles laid down by the Hon'ble Supreme Court and Hon'ble National Commission it was a case of heart attack. Jai Singh has come in the OP No. 1 Hospital on 14.2.2016 and lungs' treatment has been given to him and he was not admitted in ICU and hospitalized in OP No. 3 for test which indicates that either test facilities were not available with OP No. 1 or doctor of OP No. 1 was incompetent. Whatever was the situation the OP No. 1 has not followed medical protocol towards the serious heart attack, if it was not possible for OP No. 1 then in that situation he should have referred to Advance Center but did not refer and sent to OP No. 2 under pressure of family members of Jaisingh. OP No. 1 neither adopted any cautiousness nor exercised due care & skill. It appears that no Specialist was with the OP No. 1 of disease of Jaisingh and kept him with it for no reason resultantly his condition became more critical. Hence OP No. 1 has not been successful in proving her defense.

Since patient remained hospitalized with OP No 1 from 14 to 17th where his condition became more serious and no proper treatment was given to him and referred with delay and no Ambulance was there for sending him to OP No. 2 and also no ICU was. Similar position was of OP No. 2 who conducted test of Jaisingh with delay, wrongly conducted his Angiography. due to which is leg became insensitive and also condition of Jaisingh became more critical due to wrongful Angiography. It was the duty of the OP No.2 that in eventuality of not giving treatment to Jaisingh to refer him for any advance center but did not do so. No rebuttal of OP No.2 is before the Commission. Serious negligence and carelessness of OP No.2 has been in this case and OP No.2 too did not exercise due care and skill and later he was taken to Heart and General Hospital where his condition became stable.

OP No.2 is also responsible for it. OP No.3 has owed no responsibility. Jai Singh is died as a result of negligence, careless and not providing of due care and skill by the OP No. 1 and 2 therefore both OP No. 1 and 2 are liable for it.”

9. Being aggrieved, the Pink City Heart & General Hospital (OP-1) filed First Appeal No. 1018/2019 and the Dana Shivam Heart & Duper Speciality Hospital (OP-2) filed First Appeal No.1036 of 2019 before

this Commission.

10. Heard the arguments from the learned Counsel for the Parties. They reiterated their pleadings and evidence filed before the State Commission.

11. I have carefully perused the entire treatment record from OP-1, OP-2 and the SDMH and *inter-alia* Order of the State Commission.

12. The State Commission held against the Pink City Hospital (OP-1) that the patient was treated for lung infection, but not for heart problem. Due to the tablet 'Lasix' with 'Asprin' there was increased urine flow and blood thinning to the patient. It is pertinent to note that the treating doctor at OP-1 treated the patient as per the standards. It was not the tablet of Lasix but injection of Lasix 20mg was given and Tab. Aspirin was given. In my view, it was the correct line of treatment for LVF to prevent MI. Also, the other medicines were administered for reducing risk of strokes and heart attack etc. The patient was given Deriphyllin injection for wheezing and chronic bronchitis, the inj. Enoxion as anticoagulant helps to prevent acute coronary syndrome (LVF/heart attack), also Dyloop Plus to treat Chronic cardiac failure (LEVF). Sorbitrate is commonly used as coronary dilator for heart failure, oesophageal spasms, and chest pain (angina). It was not negligence from the OP-1, thus the findings of the State Commission against OP-1 were erroneous, and the same are set aside.

13. Similarly the observations of the State Commission against the OP-2, are not acceptable. It is evident from the medical record that on 17.02.2016 at 10 am, at the time of admission, the patient was kept in Medical Intensive Care Unit (MICU). The patient was immediately examined by the Cardiologist Dr. Sunil Kumar Garssa and treatment for Cardiac Stabilization for control of blood sugar was started. Other medicines like antibiotics, antacid started and Inj. Heparin, Inj. Insulin and Inj. MgS04 and Kesol were also administered. It was the reasonable standard of care at OP-2.

14. Secondly, the State Commission held that the OP-2 delayed the treatment and the Angiography was carried out in a wrongful manner. It was done through wrong access; therefore the condition of patient was deteriorated. On careful perusal of medical record of OP-2, it is clear that on 18.02.2016, the patient regained cardiac stability, his blood sugar was under control and BiPAP could be taken off. Admittedly the patient had Coronary Artery Disease (CAD), Acute Coronary Syndrome, Left Ventricular Ejection Fraction (LVEF) / Congestive Heart Failure (CHF). At OP-2 Dr.Garassa made provisional diagnosis of Myocardial Infarction (MI) with Left Ventricular Failure (LVF) and Diabetes Mellitus Type II (DMT2). The patient and the attendants thereof were apprised about the nature of diseases as well as poor prognosis. In the instant case, the Chief Interventional Cardiologist, Dr. Sunil Kumar Garssa performed Angiography as well as Angioplasty access route through the **Right Radial Artery Route** and **not through** the Femoral Artery. Therefore, the finding of State Commission is totally erroneous that Angiography and/or Angioplasty were performed through leg (Femoral Artery Route) and the patient's foot developed loss of sensation. It was just presumption of State Commission. I do not find any evidence either to the effect that patient had lost sensation in his foot and/or developed gangrene or would have been required to be amputated if he survived. It was hypothetical and presumptive finding of the State Commission.

15. Thirdly, the State Commission held that the patient ought to have been referred to a Higher Centre and prior telephonic information was to be given to the referral hospital and OP-2 has not arranged ambulance while shifting the patient. In fact on 24.02.2016, the OP-2 allowed the patient's attendants were provided the case-summary and reports, to seek opinion from outside. On the same day they have consulted Dr. Manohar Gupta, D.M. (Pulmonary Medicine) at SDMH. As the patient's attendants were desirous to continue treatment at OP-2, but again they wanted to seek second opinion from another hospital, therefore fresh Case Summary along with all reports was issued. Thereafter, the Patient's attendants desired to get the Patient discharged in the evening of 29.02.2016, on which they were explained the need of the Patient requiring ICU care and treatment. They gave the LAMA Request Note as below:

We have been very well explained the serious condition of our patient Jai Singh s/o Suva Lai. We have been informed that the patient is having lot of difficulty in breathing and patient is on BiPAP machine. We have been informed that the patient requires ICU care and treatment by the Doctor about the serious condition of our patient. We want to take our patient of our own free will. We shall

be responsible for the good or bad condition of our patient after taking him away from this Hospital and not of Hospital Administration, Doctor or any Nursing Staff.

In my view, the acts of OP-2 were neither deficiency nor failure of duty of care. The patient's attendants gave a cheque of Rs.90,000/- towards the part-payment of bill of OP-2, but the said cheque got dishonored due to insufficient funds.

16. On careful perusal of medical record of SDMH, it revealed that the patient was admitted at 6.00 pm on 01.03.2016 with the complaints of shortness of breath, altered sensorium and generalised weakness. The doctors examined the patient and diagnosed as ACS / Post PTCA done outside. The central line was started at 8.30pm. The doctors further suspected pulmonary oedema with pneumonitis, septicaemia and Acute Kidney Injury (AKI). As the patient was in hypotension, he was shifted to MICU-I and intubated and put on ventilatory support. The ejection factor was 35%. On 15.03.2016 at 9.00 pm, the patient suffered bradycardia and hypotension. Injection atropine 1 amp was given and the poor prognosis was explained to the family members. Despite CPR and other efforts, the patient expired on 15.03.2016 at 10.35pm. Thus, I don't find any lapses during treatment at SDMH also.

17. Adverting to the Compensation of Rs. 44 lakh awarded by the State Commission appears to be on sympathetic consideration. It was not clear about the basis or method of computation adopted by the State Commission to arrive such huge award.

18. The Hon'ble Supreme Court in the case of **Bombay Hospital and Research Medical Centre vs. Asha Jaiswal & Ors** [1] observed that:

if the patient was in a critical condition and he could not survive even after surgery, keeping that in mind the blame cannot be passed on to the Hospital and the Doctor who had provided all possible treatment within their means and capacity to diagnose the patient of this illness. The family may not have coped with the loss of their loved one, but the Hospital and the Doctor cannot be blamed as they had provided the requisite care at all given times.

Thus, every death of a patient cannot, on the face of it, be considered as death due to medical negligence, unless there is material on record to suggest to that effect. In the **Jacob Mathew v. State of Punjab**[2] case, the Hon'ble Supreme Court laid down the 'test' for establishing medical negligence that '[It] is clear that in every case where the treatment is not successful or the patient dies during surgery, it cannot be automatically assumed that the medical professional was negligent'.

19. In the instant case, I note that apart from the allegations, the Complainant failed to bring on record the appropriate medical evidence to prove medical negligence. Moreover, as discussed above, the conclusion reached by the State Commission appears to be assumptive without the scientific analysis and lack of supportive medical evidence.

20. Based on the discussion above, I find that the findings recorded by the State Commission, holding both the Hospitals guilty of medical negligence, are not sustainable in law. The whole approach of the State Commission is erroneous. Consequently, both the present Appeals are allowed. The order passed by the State Commission is set aside. Consequently the Complaint is dismissed.

21. If any amount deposited by the Appellants before this Commission or the State Commission, the same shall be released with accrued interest, if any, to the respective Appellants after 6 weeks from today.

[1] 2021 SCC OnLine SC 1149

[2] (2005) 6 SCC 1

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DR. S.M. KANTIKAR
PRESIDING MEMBER