

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

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VOLUME – XXXVII

AUGUST 2025

ADVANTAGE - VIII

Queries & Answers through the Web

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Medical negligence established, based on lack of appropriate pre-operative tests and post-operative care, and hence penalised.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI

REVISION PETITION NO. 3109 OF 2017

(Against the Order dated 16/06/2017 in Appeal No. 338/2017 of the State Commission)

DR. A.K. RAI

C/O SHYAMA HOSPITAL S-8/34 2KA, AIRPORT ROAD SHIVPUR,
VARANASI

.....Petitioner(s)

Versus

PRADEEP KUMAR SINGH

S/O SRI KALPANATH SINGH R/O D-64/47, A-2, MADHOPUR SHIVPURA,
VARANASI

.....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER

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

Dated : 15 January 2025

ORDER

AVM J. RAJENDRA, AVSM, VSM (RETD), MEMBER

1. This Revision Petition is filed under Section 21(b) of the Consumer Protection Act, 1986 (the Act) challenging the U.P. State Consumer Disputes Redressal Commission, Lucknow ('State Commission') order dated 16.06.2017 vide which the State Commission partly allowed the Appeal No.338/2017, reduced the rate of interest to 5% per annum and upheld the remaining part of the District Consumer Disputes Redressal Forum, Varanasi ('District Forum') order dated 17.01.2017.

2. As per the report of the Registry, there is 3 days delay in filing this Revision Petition. For the reasons stated in IA/14890/2017, the delay is condoned.

3. For convenience, the parties in the present matter are being referred to as mentioned in the Complaint before the District Forum. Pradeep Kumar Singh is complainant (Respondent) whereas Dr. A.K. Rai Shayama Hospital is the Opposite Party (OP - Petitioner).

4. Brief facts of the case, as per the complainant, are that he brought his mother, Smt. Phool Kumari, to the opposite party's (OP) clinic for treatment of a fractured upper left leg. As per OP's advice, his mother was admitted to the clinic on 05.07.2004, and the surgery was performed on 08.07.2004 wherein an implant plate was fixed in her leg. On 17.07.2004, she was discharged stating that everything was fine, and OP instructed the complainant to bring her for a follow-up check on 27.08.2004. He diligently followed all instructions. After a few days of the surgery, his mother began experiencing severe pain, swelling and discomfort in the operated area. He immediately brought her back to the OP and informed about her condition. OP reassured the complainant, stating that the plate would adjust itself over time and prescribed pain relief tablets. However, his mother did not find relief. On 23.04.2005 the X-ray conducted revealed that the plate implanted in her leg had broken. Despite this finding, the OP did not perform any corrective treatment or remove the broken plate. Instead, she was continually prescribed pain relief tablets. Her condition worsened, and she began experiencing other health complications due to prolonged use of painkillers. In August 2005, she developed swelling, pus and unbearable pain in her leg. On 27.08.2005, the OP advised hospital admission, and on 28.08.2005, she underwent another surgery to remove the broken plate. This surgery was done without adequately addressing the swelling, pus, and infection. Post-surgery, her condition deteriorated further. On 30.08.2005, blood tests revealed that she was suffering from severe jaundice. The tests held on 02.09.2005 indicated elevated serum urea levels. Yet no proper treatment was given. Despite her deteriorating condition, the OP conducted another surgery without stabilizing her health. These led to severe damage to her liver and kidneys. On 02.09.2005, she slipped into a coma. The OP then referred her to BHU Hospital. Despite six dialysis sessions, her condition did not improve, and she passed away on 22.09.2005. According to doctors at BHU, her death was due to improper implantation of DHS plate in the femur fracture by OP. The OP failed to provide proper treatment, relied excessively on pain relief medication and conducted surgeries without adequate care. He thus filed a CC before the District Forum.

5. In the written version before District Forum, the OP denied the allegations, stating that the patient, a 70-year-old woman, had come with a three-month-old leg fracture. The DHS plating was performed appropriately on 08.07.2004. However, as the complainant's brother, Sunil Singh, was murdered on 17.07.2004, he sought early discharge of the patient. The OP contended that the implant plate broke due to the patient's fall from a small stool, as informed on 23.04.2005 by her family. The necessity for corrective surgery was explained to them and his relatives, but they expressed financial constraints. As a result, OP continued prescribing pain relief medication. Later, after obtaining consent from the complainant, on 28.08.2005 a reoperation was performed. During the surgery, blood was required, and his relatives procured it from M/s Vivek Pathology instead of IMA, leading to complications. Subsequent tests revealed haemolytic jaundice, allegedly caused by the wrong blood transfusion. The OP claimed that they referred the patient to BHU Hospital when her condition worsened. There was no medical negligence on their part. The complainant is misrepresenting facts to seek undue compensation. They provided all possible care, and the complications arose due to external factors, including the patient's fall, financial constraints of the family, and issues with the blood provided by Vivek Pathology. Therefore, the OP requested the dismissal of the complaint.

6. The District Forum, vide Order dated 17.01.2017, allowed the complaint and directed the Opposite Party as under:

ORDER

Present complaint is admitted. Opposite party is directed to pay Rs.1,50,000/- (One Lac Fifty Thousand) to the complainant from the date of this order as compensation and Rs.5,000/- (Five Thousand) litigation cost and pay total amount Rs.1,55,000/- (One Lac Fifty Five Thousand) to the complainant from the date of complaint till the date of actual payment.

(Extract from translated copy)

7. On appeal by the OP, the State Commission, vide order dated 16.06.2017, partly allowed the Appeal, reduced the rate of interest to 5% per annum and upheld the remaining part of the order dated 17.01.2017 of the District Forum with the following observations:

“Indisputably blood test report dated 30.08.2005 shows that the patient was having severe jaundice. It has been contended by learned Counsel for appellant that the jaundice is effect of transfusion of infected blood which had been brought by complainant and his family members. I have considered argument of learned Counsel for appellant. As mentioned above appellant has conducted second operation of mother of complainant on 28.08.2005 without getting test report of blood, sugar, urine etc. Her blood test has been conducted on 30.08.2005 after operation dated 28.08.2005 and in this test severe jaundice has been detected. There appears no sufficient ground to hold that the patient has contacted jaundice due to infected blood transfusion.

District Consumer Forum has referred judgment of Hon'ble National Commission rendered in the case of B.Shreekanth V/s Dr. H.N. Shiv Kumar reported in 2010 (1) CPR Page 1 (NC): The facts of present case is identical to the facts of above case decided by Hon'ble National Commission and the District Consumer Forum has rightly followed on facts of present case.

It has been contended by learned Counsel for the appellant that no expert opinion has been produced by respondent/ complainant to prove medical negligence of appellant. As such the finding recorded by the District Consumer Forum against appellant regarding his medical negligence is without evidence.

The facts discussed above are sufficient to show that the appellant has committed negligence in treatment of mother of complainant and the District Consumer Forum has rightly recorded finding that the appellant has committed negligence in treatment of complainant's mother on the principle of res-ipsa-loquitur.

As mentioned above there is no sufficient ground to believe that the mother of complainant has contacted jaundice due to infected blood transfusion. As such the present complaint cannot be said to be defective for non impalement of Vivek Pathology.

In view of discussion made above after having gone through pleadings of parties as well as evidence on record I am of the view that the District Consumer Forum has rightly held that the appellant is negligent in treatment of complainant's mother. As such the District Consumer Forum has rightly ordered appellant/ opposite party to pay compensation to respondent/ complainant. The amount of compensation awarded by District Consumer Forum appears proper but the rate of interest awarded by the District Consumer Forum is high. It should be reduced to five percent per annum.

In view of conclusion drawn above appeal is allowed partially. Rate of interest awarded by the District Consumer Forum is reduced to five percent per annum and judgment of District Consumer Forum is modified accordingly. Remaining part of judgment and order passed by the District Consumer Forum is upheld.

Parties shall bear their own cost in appeal.”

(Extract from translated copy)

8. Being dissatisfied from the impugned State Commission order, the Petitioner/OP filed the instant Revision Petition.

9. The learned Counsel for the Petitioner/OP reiterated the grounds of the present Revision Petition. He contended that the impugned order was passed by a single-member bench comprising only the President of the learned State Commission, which contravenes settled statutory provisions under the Consumer Protection Act, 1986. He further argued that the respondent failed to produce any expert opinion from a doctor or hospital to substantiate allegations of medical negligence against the petitioner. It was emphasized that the for a below overlooked the fact

that the patient developed renal complications after blood sourced from Vivek Pathology was transfused during the operation. The petitioner adhered to medical norms by recording the batch number, blood group, and issue date as certified on the blood bottle. The infection caused by contaminated blood cannot be termed as medical negligence on the part of the petitioner. Further, Vivek Pathology is a necessary party in this case, and the complaint is liable to be dismissed on the grounds of non-joinder of a necessary party. The learned Counsel also argued that the respondent delayed taking appropriate action after discovering the DHS plate was broken. The X-ray confirming the plate's condition was done after unreasonable delay, which constitutes negligence on the part of the complainant/respondent. The petitioner cannot be held liable for this delay. The Counsel pointed out that the respondent never approached any other doctor or hospital for a second opinion if he was dissatisfied with the petitioner's treatment. Also, the second surgery was performed with due care and diligence. The Counsel submitted that the complaint filed by the respondent was frivolous and vexatious, and the orders of the for a below suffer from material irregularities. The matter pertains to a civil dispute, and the respondent's remedy, if any, lay before a Civil Court. By filing a consumer complaint, the respondent bypassed the appropriate legal remedy. The learned for a below failed to dismiss the complaint at the threshold, leading to unjust, improper, and arbitrary orders. He sought the present Revision Petition to be allowed, and the orders of the State Commission and District Forum be set aside. He relied on the judgment of the Hon'ble Supreme Court in *Siemens Engg. & Mfg. Co. of India Ltd. vs. Union of India* (AIR 1976 SC 1785), where it was held:

"...Requirement of reasons is that a person affected by an adverse order is entitled to know why the decision has gone against him or her. The decision might be perfectly right, but the person against whom it was made was left with the real grievance that he was not told why the decision had been made."

10. In his arguments, the counsel for the Respondent/Complainant reiterated the facts of the complaint and argued in favour of the concurrent findings of the Fora below. He asserted that the patient, Smt. Phool Kumari, suffered Acute Renal Failure and was taken to Sir Sunderlal Hospital, BHU for further treatment. Despite undergoing several tests, dialysis, medication, and treatment, she succumbed on 22.09.2005 while undergoing treatment. The Medical Certificate of Death issued by Sir Sunderlal Hospital, BHU, dated 22.09.2005, states the cause of death as "POST DHS IMPLANT (FOR FRACTURE FEMUR) ACUTE ON CRF (Corticotropin-Releasing Factor)." The entire treatment records, test reports, and death certificate, filed as Annexure 1 to Annexure 19 before the District Consumer Forum, were relied upon by the Respondent. In contrast, the Revisionist only filed one document, a bail order, and did not produce any other supporting evidence before the District Consumer Forum. He submitted that it is an admitted fact that the Revisionist, Dr. A.K. Rai, is an orthopaedic surgeon engaged in private practice in Varanasi. It is also undisputed that Smt. Phool Kumari, the mother of the Respondent, received treatment from the Revisionist, including consultation, surgery, and related services, for which fees were paid. Relying on various judgments of the Hon'ble Supreme Court and Hon'ble National Commission, it is established that a patient receiving treatment from a private medical practitioner is a 'consumer' under the Consumer Protection Act. No valid consent was taken from the patient, Smt. Phool Kumari, or from the Respondent/Applicant. At the time of surgery, the patient was an adult and conscious, and no medical emergency existed that could justify bypassing her consent. Relying on *Samira Kohli v. Prabha Manchanda (Dr.)* [(2008) CPJ 56 (SC)] and subsequent judgments such as *Dhanwanti Kaur v. S.K. Jhunjhunwala (Dr.)* [(2010) CPJ 300 (NC)] and *Pushpa Namdeo v. Vimal Golcha (Dr.)* [(2010) CPJ 222 (NC)], consent from a relative is not considered valid in non-emergency situations. Further, in *Nizam Institute of Medical Sciences v. Prasanth S. Dhananka* [(2009) CPJ 61 (SC)], the absence of written consent invalidates the consent process. He further argued that the Revisionist failed to demonstrate the expected level of knowledge, skill, and adherence to standard medical protocols while treating Smt. Phool Kumari. Essential pre-operative and diagnostic tests were not conducted prior to the second surgery. In *B. Srikanth v. Dr. H.K. Shivakumar* [(2010) CPR 1 (NC)] and *Manu V.S. v. Dr. Akhilesh Kumar* [(2015) CPR 443 (NC)], it was held that failure to follow medical protocols constitutes negligence. Further, the National Commission in *B.S.R. Cancer Hospital v. Smt. B. Jagdamba* [(2015) CPR 892 (NC)] emphasized the importance of pre-anaesthetic checks and adherence to medical protocols. In *Swaran Bai v. National Insurance Co.* [(2019) CPR 472 (NC)], it was clarified that DUTY, BREACH, and RESULTING DAMAGE are the three essential components of medical negligence. The Revisionist also failed to produce essential documents and evidence, which were in his possession, at the appropriate stage. The

National Commission in *National Insurance Co. v. S.K. Alingir* [(2016) CPR 177 (NC)] ruled that such evidence cannot be introduced belatedly. He further argued in favour of the concurrent findings of fact by the District Forum and the State Commission cannot be reassessed at the revisional stage unless there is a jurisdictional error, material irregularity, or miscarriage of justice. In *Oriental Insurance Co v. Rishikesh Sahdeep Kale* [(2018) CPR 43] and *Mrs. Rubi (Chandra) Dutta v. United India Insurance Co.* [(2011) Scale 654], the Hon'ble Supreme Court held that revisional powers should not be exercised merely to take a different view of the same set of facts. In *Lourdes Society Snehanjali Girls Hostel v. H&R Johnson (India) Ltd.* [(2016) SCC 256], it was clarified that the revisional authority cannot overturn concurrent findings unless jurisdiction was exceeded or exercised illegally. He submitted that the orders passed by the District Consumer Forum, Varanasi, and the State Consumer Dispute Redressal Commission, Lucknow, are well-reasoned and based on facts, evidence, and legal precedents. There is no material irregularity, jurisdictional error, or miscarriage of justice to warrant interference by this Hon'ble Commission. Therefore, the Revision Petition is liable to be dismissed with costs throughout. The Respondent prayed for the dismissal of the Revision Petition with costs.

11. We 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.

12. As regards the contention against a single Member passing the impugned order, perusal of the Order dated 16.06.2017 passed by the learned State Commission in F.A. No. 338/2017 reveals that the same was heard by learned President of the State Commission and the Order passed on 16.06.2017 bears the signature of the learned President. The learned Counsel argued that a Member of the State Commission sitting singly does not have the jurisdiction to decide matters under the Consumer Protection Act. It was argued that a jurisdiction issue can be raised at any point and since the jurisdiction of the State Commission comprising of a single Member Bench was no longer res Integra, the impugned order should be set aside being without jurisdiction and thus void ab-initio.

13. Examination of the same reveals that the order was passed by the learned Rajasthan High Court in Divisional Manager NIC Ltd., Jodhpur Vs. Rajasthan State Consumer Disputes Redressal Commission and Ors in SB Civil Writ No. 1972/ 2012 on 25.10.2018. It has been specifically made effective prospectively. The same issue in Appeal was upheld by the Hon'ble Supreme Court in SLP (C) No. 4969 of 2020 in State of Rajasthan & Ors. Vs. Kamal Travels and Ors., decided on 30.09.2021. The order of the learned Rajasthan High Court is, therefore, effective from 25.10.2018. In the present case, however, the order was passed by the State Commission in F.A. No. 338/2017 was on 16.06.2017. Therefore, the contention of the Petitioner in this regard is untenable.

14. The next central issue is whether the petitioner, Dr. AK Rai, adhered to the standard of care expected from a medical professional while treating the patient, Smt. Phool Kumari, and whether there was a breach of duty amounting to medical negligence. Additionally, the question arises whether the orders of the District Forum and State Commission suffer from any jurisdictional error, material irregularity, or miscarriage of justice.

15. It is an established principle that for medical negligence to be proved, three essential components must be satisfied: Duty, Breach, and Resulting Damage. The duty of care implies that the doctor must exercise reasonable skill and care, adhering to the standards expected of a medical professional in similar circumstances. A breach occurs when this duty is not fulfilled, and resulting damage refers to harm caused directly due to the breach. While the complainant asserted negligence of the doctor, the OP contended that the same had occurred due to fall from the stool.

16. As regards the issue of consent, the Respondent/Complainant has relied on authoritative judgments, including *Samira Kohli v. Prabha Manchanda* (2008), where the Hon'ble Supreme Court held that valid consent must be informed and obtained directly from the patient unless there exists a medical emergency. The petitioner has not provided any documentary evidence indicating that valid consent was taken from the patient, Smt. Phool Kumari, prior to the surgical procedure. Further, it is observed that the petitioner failed to conduct essential pre-operative tests and post-operative care as per established medical protocols. In *B. Srikanth v. Dr. H.K. Shivakumar* (2010) and *Manu V.S. v.*

Dr. Akhilesh Kumar (2015), it has been categorically held that failure to follow standard pre-operative procedures constitutes negligence.

17. Regarding the allegation of contaminated blood transfusion sourced from M/s Vivek Pathology, the petitioner argued that the infection cannot be termed as negligence on its part. However, it is a well-settled principle that a doctor is responsible for ensuring that all materials, including blood products, used in medical procedures are safe for the patient. The absence of due diligence in verifying the safety and quality of transfused blood raises questions regarding the petitioner's adherence to standard protocols.

18. As regards alleged delay in seeking subsequent medical treatment and X-ray examination, it is noted that the respondent's conduct does not absolve the petitioner from its primary responsibility of adhering to the standard of care during and after the surgical procedure. The contention regarding non-joinder of Vivek Pathology as a necessary party does not hold merit in this case. The primary duty of care lies with the treating doctor, and the contributory negligence, if any, by an external agency does not exonerate the doctor from his responsibility.

19. The concurrent findings of the learned District Forum and the learned State Commission are based on proper appreciation of evidence, supported by valid reasoning, and are consistent with established legal principles. There is no jurisdictional error, material irregularity, or miscarriage of justice warranting interference at this stage. In *Rajesh Kumar v. National Insurance Co. Ltd.*, Petition(s) for SLP(C) No(s).2219-2220/2020 decided on 17.12.2024, *Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd. (2011) 11 SCC 269*, *Sunil Kumar Maity Vs. SBI &Anr.*, CA No. 432 of 2022, dated 21.01.2022 and *Rajiv Shukla Vs. Gold Rush Sales and Services Ltd. (2022) 9 SCC 31*, the Hon'ble Supreme Court has emphasized that revisional jurisdiction cannot be exercised merely to reassess or re-appreciate evidence unless there are glaring errors.

To be concluded in the next issue.....

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Editor : **Sri B Pradhan**

Editorial Committee : Sri P.Ravi Krishnan
Sri Rajib Ku. Nayak
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Sri Sanjay Kumar Pradhan

Circulation Manager : Sri Amitava Thakur

Remittance for subscription may be sent to the Secretary, Consumer Protection Council, B/90, Sector-7, Rourkela-769003, through crossed D.D/M.O or Cheque (local only), payable in favour of

'CONSUMER PROTECTION COUNCIL, ROURKELA'.

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Printed & Published by Sri B Pradhan, Consumer Protection Council, Rourkela at B/90, Sector-7, Rourkela – 769003
E.mail : bpradhan.cpcrkl@gmail.com
(or) vaidya@advantageconsumer.com

ADVANTAGE CONSUMER
ENGLISH MONTHLY



AUGUST 2025

To

If undelivered, please return to :
Consumer Protection Council, Rourkela
B/90, Sector-7, Rourkela -769003. Odisha