

# Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

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ADVANTAGE - IX

## Queries & Answers through the Web

([www.advantageconsumer.com](http://www.advantageconsumer.com) is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

## Ordinary negligence and Gross negligence differentiated, and the relief accordingly moderated.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI

FIRST APPEAL NO. 389 OF 2022

(Against the Order dated 21/12/2021 in Complaint No. 114/2013 of the State Commission Delhi)

LIFELINE LABORATORY & 4 ORS.

C/O H-11, GREEN PARK EXTENSION,

NEW DELHI

.....Appellant(s)

Versus

ANJANA AGRAWAL & ANR.

R/O D-40, GULMOHAR PARK , NEW DELHI-110049

.....Respondent(s)

### **BEFORE:**

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

**Dated : 06 June 2023**

### **ORDER**

1. The Appellant has filed the instant Appeal under section 51 of the Consumer Protection Act, 2019 (in short "the Act"), against the Order dated 21.12.2021 passed by the State Consumer Disputes Redressal Commission, Delhi (hereinafter referred to as the "State Commission") in Consumer Complaint No. 114 of 2013, wherein the State Commission partly allowed the complainant and held OPs negligent.

2. For the convenience, the parties are being referred to, in the instant Appeal, as position held in Consumer Complaint before the State Commission. The Complainant No. 1- Anjana Agrawal was a prospective kidney donor for her husband Sunil Agrawal (Complainant No.2). The Opposite Parties (OPs) are Lifeline Laboratory (OP-1) and its four doctors (OP-2 to 4).

3. The issue involved in the instant case that due to alleged wrong blood group report of the Kidney donor, the proposed renal transplantation had to be cancelled. Therefore, the Complainants incurred huge financial loss and mental agony.

4. Brief facts that the Complainant No. 2 was a case of chronic kidney disease (CKD), advised to undergo renal transplant. His wife Anjana wanted to donate her kidney, for which, she underwent certain laboratory investigations at OP-1 including her blood group. The lab reported her blood group as 'O Positive'; therefore, she was in a position to donate her one kidney to her husband. For the proposed Kidney transplant, she got admitted in Indraprastha Apollo Hospital on 17.10.2012 and prior to transplant it came shock to the Complainants that the blood of Anjana was wrongly reported as 'O' Positive' instead of 'B Positive'. Therefore, knowing the wrong blood group the kidney transplant had to be cancelled. Her blood group 'B Positive' was reconfirmed from Lal Path Labs on 20.10.2012. The Complainants alleged that due to wrong blood group it would have resulted complications to her husband and his death also. Being aggrieved due to negligence of OPs, both the Complainants have filed the instant Complaint seeking compensation of Rs.50 lakhs for putting their lives in danger and also claimed Rs.2,74,919/- being the sum spent by the Complainants for various tests and surgery etc.

5. The State Commission partly allowed the Complaint with following observation:

"...25. The facts of the case are self-evident that the negligence on the part of the Opposite Parties is gross, Since the consequences ensued on the basis of the inaccurate reporting could have been much worse if further examination was not undertaken, whereby, Complainant No. 1 would have got her kidney removed for transplantation, to later realize that the same could not be transplanted to Complainant No. 2. Moreover, if the Opposite Party would have ensured the duty of care, which they are expected to, and issued the accurate report disclosing the actual Blood Group, the Complainants would have searched for some other donor and could have easily avoided the wasteful expenditure."

6. Being aggrieved by the impugned Order of the State Commission, the OPs/ Appellants have filed the instant Appeal.

7. Heard the arguments from the learned counsel for the parties. There was a delay of 131 days in filing the instant Appeal. For the reasons stated in the application, the delay is condoned. I have perused the material on record and the literature on blood groups.

8. The learned Counsel for the Complainants reiterated the facts. He vehemently argued that due to incorrect test report it could have led to complications and even the death of Complainant No. 2. The complainants relying upon the blood group took further steps as per renal transplant protocol. The contention of Complainants that in order to donate kidney to her husband the ovarian cyst removal was necessary. Perhaps it could have been avoided if transplant was not decided.

9. The learned counsel for the OPs vehemently argued that prior to renal transplant, on 24.08.2012 during Gynaec. check-up she was diagnosed as bilateral ovarian cysts. Thus, her fitness for kidney donation was delayed. On 15.09.2012 she underwent her ovarian cyst removal in Apollo Hospital. Her blood group was reported as 'O Positive' at Apollo Hospital. For major surgeries invariably blood Grouping and cross-matching was to be done as there are chances of blood transfusion during major surgeries.

10. In the instant case, admittedly the surgery for removal of ovarian cyst was performed almost after five months in the Apollo Hospital. There also blood group of Complainant No.1 was reported as O+ve. Surprisingly, Complainants have neither made Apollo Hospital as a party nor a witness to support their allegations.

11. I have perused the entire material on record *inter alia* the order of the State Commission. The chronology of events revealed that based on blood group report as "O +ve", Complainant No. 1 was given clearance to proceed with the kidney donation, subject to clearance from Gynaecology Department. Subsequently, the Complainants, relying solely on this report, followed the renal transplant protocol. However, during the examination at the Gynaecology Department on 24.08.2012, it was advised that Complainant No. 1 undergo surgery to remove an ovarian cyst before proceeding with the kidney donation. As a result, Complainant No. 1 underwent the cyst removal surgery on 15.09.2012. Once all clearances were obtained, the Complainants were admitted to Apollo Hospital for the Renal

Transplant Surgery on 17.10.2012. Before the operation, a pre-operative blood sample was taken from Complainant No. 1 which revealed her actual Blood Group was B +ve and not O +ve. This led to the cancellation of the scheduled renal transplant.

12. For renal transplant, clearance was necessary. In the instant case, the kidney donor (Complainant No.1) was detected Ovarian cyst which was turned out to be Benign Cystic Teratoma (Dermoid Cyst) which could be dangerous in her future life. Thus, she underwent operation for removal. On one hand she was benefitted. In my view, it was **'blessing and disguise'** for the Complainant No.1.

13. From the record, admittedly, in the OP – lab, the blood grouping was done by Cell and Serum typing (Forward & Reverse method). Thus, the OP laboratory and the Pathologist have followed the universally accepted standard procedure for blood grouping. It is known that in some instances due to weak agglutinins the blood group often mistakenly reported. It was not construed as negligence of the Pathologists. They were not to be held liable simply because things went wrong by mischance or misadventure or through an error of judgment. Moreover, it is pertinent to note that no transplantation of the kidney shall take place solely and exclusively on the basis of blood group. There are panel of several pre-transplant tests, which are necessary for fitness of the donor. Moreover, viral testing (hepatitis, CMV, EBV and HIV) and the histocompatibility tests are required to assess donor and donee compatibility to each other.

14. Adverting to the compensation, in my view, no harm was caused to the Complainants due to wrong blood group, except the proposed renal transplant was deferred. It caused mental, physical agony and financial loss. The State Commission erred to hold it as a "Gross negligence" and awarded unjustifiable compensation. In my view it was not a case of Gross negligence.

15. There is a distinction between the two terms "ordinary negligence" and "gross negligence" which frequently appear in medical negligence cases. It is the degree of care (or lack thereof) exercised. The **'Ordinary negligence'** is generally restricted to unintentional conduct that led to an injury. Ordinary negligence is the failure to use reasonable care to prevent harm to someone. You can be negligent if you do something that a reasonably prudent person would not do in similar circumstances. You can also be negligent if you fail to do something that a reasonable person would do. The **'Gross negligence'** as defined, is a much more nebulous and complicated concept. It is the extreme indifference to or reckless disregard for the safety of others. It is wilful behaviour done with extreme disregard for the health and safety of others. It is conduct likely to cause foreseeable harm. In both cases, the fundamental disregard for responsibility must directly cause harm to another person, another person's property, or both.

16. The Complainant has to prove the presence of **4 Ds**, the main elements of negligence, including **Duty**, **Dereliction** (Breach), **Direct Causation** and **Damages** sustained. If these four elements are present, the injured party may have a valid reason to claim compensation for medical bills, lost wages and other damages.

17. The contention of Complainants is not acceptable that due to incorrect test report it could have led to complications and even the death of Complainant No. 2. In the instant case neither blood was transfused to the patient nor did any major mishap happen. It should be borne mind that it was deficiency and a case of failure in duty of care. Therefore, the OP laboratory has to be saddled with the liability to pay reasonable compensation for the hardship, agony and pain suffered by the complainants. In my view, the compensation awarded (more than 20 lakh) by the State Commission seems to very high and unjustifiable as it was based on **"ifs and buts"** a just hypothetical presumption. Admittedly, the prospective Kidney Donor was rejected after a long wait for 5 to 6 months and renal transplant was deferred or cancelled. The couple (kidney donor and recipient) have suffered mental agony; physical strain shall entitle for certain compensation.

18. Therefore, to meet the ends of justice, in my view a lump sum compensation of Rs. 4 lakh is just reasonable. In addition, Rs. 10,000/- be paid towards the costs of litigation. The Opposite Parties are directed to pay total amount of Rs. 4.1 lakh to the Complainants within 4 weeks from today, failing which it will carry 7% interest per annum till its realisation.

19. The Opposite Parties are at liberty to recover the said amount from the Insurance Co. as per law, if they, during the said period, were covered under Professional Indemnity Policy.

20. The instant Appeal is partly allowed with above modification. ■

*Modi Government's poll promise to the senior citizens is getting implemented. This is most welcome as the Health Insurance premium for the senior citizens is quite high and progressively shooting up, making it a great burden for all those opting for it (less than 20%). A big relief indeed for 80% of this category, who do not have any health cover.*

-B. Vaidyanathan

### **Senior citizens aged 70 and above to get free treatment up to Rs. 5 lakh under Ayushman Bharat PM-JAY: Here's how it works for you**

- **Anonna Dutt**

With the Cabinet clearing the extension of the scheme, Rs 5 lakh annual coverage per family will be provided to all citizens aged 70 years and above.

With the Union Cabinet expanding the Ayushman Bharat Pradhan Mantri Jan Arogya Yojana (AB PM-JAY) to provide health coverage to people aged 70 years and above, regardless of their income level, public healthcare, as we know it, is expected to undergo a sea change. It also eases the anxieties of India's rapidly growing ageing citizens, who find it difficult to manage their disease burden given the high cost of medical care, drugs and therapies without a social security net.

Currently, the scheme is income-based and provides Rs 5 lakh shared annual coverage to all members of eligible families — estimated to comprise the bottom 40 per cent of the population economically — irrespective of their age. With the Cabinet clearing the extension of the scheme, Rs 5 lakh annual coverage per family will be provided to all **citizens aged 70 years and above**. An additional 6 crore people in this age group, from 4.5 crore families, are expected to benefit, according to a government statement. The eligible beneficiaries will be issued a new card under PM-JAY.

## **CAN ALL 70-YEAR-OLDS BENEFIT FROM THIS SCHEME?**

The government says that senior citizens aged 70 and above, belonging to families already covered under AB PM-JAY, will get an additional (shared) top-up cover up to Rs 5 lakh per year for themselves.

Those already availing benefits of other public health insurance schemes such as Central Government Health Scheme (CGHS), Ex-Servicemen Contributory Health Scheme (ECHS), Ayushman Central Armed Police Force (CAPF) may either continue their existing scheme or opt for AB PM-JAY. Senior citizens of 70 years and above, who are under private health insurance policies or Employees' State Insurance Scheme, will be eligible to avail benefits.

## **DOES THE SCHEME COVER EVERY SENIOR CITIZEN IN A FAMILY?**

As Union Information and Broadcasting Minister Ashwini Vaishnaw explained, the health coverage in such a scenario will be shared by the eligible beneficiaries of a family. "If there are two senior citizens (70 years+) in a family, then the Rs 5 lakh coverage will be shared between them. This is a big step towards ensuring the social security of senior citizens, especially as India transitions to nuclear families," he said.

## **WHY IS THIS SCHEME SIGNIFICANT?**

While the Ayushman Bharat scheme was geared towards universal health coverage, this will be the first age cohort to receive complete coverage.

## **WHAT WILL IT COST THE GOVT TO ROLL OUT THIS HEALTH SHIELD?**

The initial outlay of the scheme will be Rs 3,437 crore. "This is a demand-based scheme; as the demand goes up, the coverage will also be increased," said Vaishnaw.

Sources said while most states will foot 40 per cent of the bill, 90 per cent of the cost is likely to be borne by the Centre for states in hilly regions and the Northeast. "The nitty-gritty will be worked out later. It will happen at the stage of implementation, once the decision has been taken," said a senior official.

Experts have estimated the cost of expanding the coverage to all persons over 70 years would be higher than that for covering the poorest 40 per cent across all age groups.

## **WILL THE HEALTH COVER MINIMISE THE DISEASE BURDEN?**

India's population over the age of 60 years is estimated to increase from 8.6 per cent in 2011 to 19.5 per cent by 2050, according to the Longitudinal Ageing Study in India (LASI). In terms of absolute numbers, it means that the 60 plus population is set to triple from 103 million in 2011 to 319 million in 2050. Health coverage in this age group is currently about 20 per cent, according to the India Ageing Report 2023.

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*Courtesy: The Indian Express*



## Be a Smart Consumer

### Details to be checked on every pre-packaged commodity:

- Name and address of the Manufacturer / Packer / Importer
- Common or Generic name of commodity
- Net quantity
- Month and year of Manufacture / Packaging / Import
- Maximum Retail Price (MRP)
- Consumer care details
- Country of origin
- Month and Year after which commodity may become unfit for human consumption



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