

# DR. ADIT DEY v. SRI DURGA CHARAN SHEE & 2 ORS.

DR. ADIT DEY

...Appellant

SRI DURGA CHARAN SHEE & 2 ORS.

...Respondent

Case No: REVISION PETITION NO. 1974 OF 2017

Date of Judgement: 24.08.2022

Judges:

DR. INDER JIT SINGH  
PRESIDING MEMBER

For Appellant: MS. SURBHI ANAND, ADVOCATE

For Respondent: MR. ASHISH YADAV, ADVOCATE

**Facts:**

*Complainants' mother was admitted to OP1 Hospital under treatment of OP2 Doctor for right femur fracture. She had earlier undergone failed hip replacement surgery at another hospital. OP2 performed total hip replacement surgery on May 7, 2012. After 10-12 days, infection and pus discharge was seen at surgery site. OP2 did wound debridement but discharged patient forcefully on June 29, 2012 against medical advice. Patient had to be readmitted on July 14, 2012 as her condition deteriorated. She passed away on July 28, 2012. Complainants filed complaint against OP1 Hospital and OP2 Doctor alleging negligence. District Forum found them guilty and allowed the complaint.*

**Arguments by Parties:**

**Petitioner (OP2 Doctor):**

*Patient was discharged on request in stable condition, infection developed later. OP2 performed successful surgery, infection and re-admission 15 days after discharge was unrelated. Cause of death was septicemia, unrelated to treatment by OP2. OP2 can't be singled out when multiple doctors treated patient. Non-joinder of other doctors not considered.*

**Respondents (Complainants):**

*OP2 was negligent in undertaking surgery without properly reviewing past medical history. Post-op care was deficient. Infection spread from surgery site leading to septicemia and death within months after discharge. Life span decreased due to negligence. Complaint doesn't fail due to non-joinder of other doctors.*

**Court's Observations and Conclusions:**

*The District Forum and State Commission gave factual findings against the OP2 Doctor establishing negligence and deficiency in duty of care based on medical records and evidence presented. Key observations were:*

*OP2 undertook surgery without properly informing patient of risks, considering past failed surgery and medical history. Post-operative care was lacking – infection was not properly monitored and prosthesis not removed to control infection as required by standard medical protocol. Essential components of negligence: duty, breach of duty, resultant damage were clearly present. Burden of proof had shifted to OPs to establish there was no negligence once complainant showed prima facie negligence and deficiency. OPs failed to discharge this onus. Cause of death was septicemia resulting from uncontrolled post-op infection – finding of negligence against OP2 Doctor was justified.*

**Applicable Laws and Principles:**

*Consumer Protection Act 1986 – Provides remedy against medical negligence and deficiency in service. Savita Garg v. Director National Heart Institute – Once prima facie case is made out, onus shifts to hospital/doctor to show no negligence. Res ipsa loquitur (matter*

*speaks for itself) – Leaves room for inference of negligence where cause of damage lies within control of defendant. The Court ultimately upheld orders of the lower fora and dismissed the revision petitions filed by the Petitioner Doctor finding no reason to interfere with their concurrent findings.*

**Case Laws Referred:**

*No case laws were referred in the order.*

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**Court**

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**Full Text of Judgment:**

1. The present Revision Petitions (RPs) have been filed by the Petitioner ( OP No. 2 before the District Forum) against Respondents ( Complainants before the District Forum) as detailed above, under section 21 of Consumer Protection Act 1986, against the common order dated 12.05.2017 of the State Consumer Disputes Redressal Commission West Bengal (here in after referred to as the 'State Commission'), in First Appeal (FA) No.A/1181 and 1245 of 2014 in which order dated 20.08.2014 of Kolkata Unit – II District Consumer Disputes Redressal Forum (here in after referred to as District Forum) in Consumer Complaint (CC) no. 378 of 2012 was challenged, inter alia praying for setting aside the orders of the Fora below.

2. Notice was issued to the Respondent(s) on 21.09.2017. Petitioner and respondent no.1 and 2 filed their Written Arguments / Synopsis. However, respondent no.3 did not file its Written Arguments / Synopsis.

3. As the afore mentioned RPs have been filed against the common order dated 12.05.2017 of the State Commission, parties involved are the same and issues for consideration/determination are related, these are being taken up together under this order. However, for the sake of convenience, RP No. 1974 of 2017 is treated as the lead case and facts enumerated here in under are taken from RP No.1974 of 2017.

4. Brief facts of the case, as emerged from the RPs, Order of the

State Commission, Order of the District Forum and other case records are that complainants namely, Sri Durga Charan Shee and Malay Shee got their mother admitted to OP No.1 Hospital ( S.V.S Marwari Hospital) on 25.04.2012 with complaint of fracture Interochontary Femur ( Rt.) (Communited) caused by fall in the bathroom under the treatment of OP No.2 ( Dr. Aditi Dey) being the visiting Orthopaedic Surgeon. Before admission in the said hospital, the operation of Bipolar Hip Prosthesis ( Rt.) was done upon the mother of the complainant on 11.08.2010 at R G Kar Medical College and Hospital where during the post operative period ' ball-joint affixed was removed and debridement of the wound was done'. After admission of their mother, OP No.2 Doctor performed the total hip replacement upon the mother of the complainants on 07.05.2012. According to complainants, after 10 to 12 days of such operation, when the pus was coming out from the site of the operation, they reported the said fact to the OP No.2 Doctor but Doctor did not take any care and forcefully discharged their mother on 29.06.2012. She was re-admitted to the OP No.1 Hospital on 14.07.2012 when the condition of the mother of the complainants further deteriorated. After re-admission, the mother of the Complainants was referred to ITU under Dr. Rahatgi. However, mother of the complainants expired on 28.07.2012. Being aggrieved of such act, the Complainants filed Consumer Complaint ( CC) before the District Forum and District Forum vide order dated 20.08.2014 allowed the CC. Being aggrieved, OP No.1 ( Hospital ) and OP No.2 ( Doctor) preferred an appeal before the State Commission and State Commission vide common order dated 12.05.2017 dismissed both the Appeals. Being aggrieved of the said orders of the State Commission, OP No.2 Dr. Aditi Dey has filed the present RPs before this Commission.

5. Petitioner has challenged the said Order dated 12.05.2017 of the State Commission mainly on following grounds:

i. State Commission should have correctly recorded that complainants got their mother admitted at the OP No.1 hospital with complaints of difficulty in walking, after removal of dislocated prosthesis with skeletal traction under regional anesthesia initially implanted at R G Kar Medical College and Hospital.

ii. State Commission failed to note that only after 18 days after the

operation was conducted successfully on 07.05.2012, wound detriment and secondary suturing was done by the Petitioner, the patient was discharged 'on request' by and / or on behalf of the patient on 29.06.2012 when condition of patient was recorded as 'fair', which was never challenged by and on behalf of complainants.

iii. State Commission failed to note that patient started to walk with support during her hospital stay and was advised to continue as such at the time of discharge.

iv. In the discharge certificate, there was specific advice to consult endocrinologist for diabetes mellitus, however, no evidence of compliance of such advice was produced by the complainant at any point of time.

v. State Commission ought to have ascertained whether the medical etiology for which the patient again had to be admitted on 14.07.2012 had any nexus to the development of any infection at the operated site and whether the same could have occurred from non compliance of and / or negligence to the advices recommended in the discharge certificate.

vi. State Commission did not ascertain whether the advice recommended by Petitioner in the discharge certificate was followed by the patient in the 15 days period after her discharge before she was again admitted on 14.07.2012.

vii. State Commission did not mention whether re-admission related to the operation / or any other failure of the Petitioner and there is no finding that causing of death of the patient has its genesis or was in any way related to the treatment done by and / or alleged lacking of care by the Petitioner.

viii. In view of more than one doctor being involved with regard to the treatment at different stages, Petitioner cannot be singled out for the responsibility of the same and treating doctors were not made parties in the said case and therefore, complainant ought to have been dismissed for non joinder of the parties.

ix. Operation was performed by the Petitioner jointly with Dr. Rajesh Khusuwah, which State Commission did not note.

x. No expert opinion was obtained by the State Commission as present case involve dcomplicated issue relating to medical treatment.

xi. Principle of 'Res Ipsa Lquitur' is not applicable as decided by Hon'ble Supreme Court in V. Krishna Rao Vs. Nikhil Super Speciality

Hospital and Anr. Decided on 08.03.2010,

xii. State Commission ought to have noted that Petitioner cannot be held negligent particularly after discharge from the hospital in fair condition on the request by and / or on behalf of the patient on 29.06.2012, upon fresh admission 15 days thereafter with complaints of medical etiology and dying 29 days thereafter.

xiii. State Commission has not recorded what indication made it incumbent for removal of prosthesis from the operated site to check infection, when after debriment and suturing on 25.05.2012, the patient became fairly well and even started walking with support before being discharged from OP No.1 upon fresh admission, 15 days thereafter with complains of medical etiology.

xiv. State Commission failed to note that after discharge on 29.06.2012, despite instruction for attending OPD after 2 weeks / SOS, no contacts whatsoever was made or no information was delivered to the Petitioner at any point of time before 14.07.2012 when the patient was admitted in the same hospital.

xv. State Commission has travelled beyond the jurisdiction to decide of its own that prosthesis is required to be removed from operated site and non-removal of the same was instance of improper care by doctor and unilaterally held without any evidence that patient had infection and same was caused for non-removal of the prosthesis.

6. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

6.1 Counsel for the Petitioner apart from repeating the points which have been stated in para 5, grounds for challenging the order of the State Commission argued that State Commission failed to consider that the cause of death of deceased and as recorded in the Death Certificate was because of Cardio Respiratory failure in case of Septicemia, IHD with T2DM and Dyselectrolytemia and same had no iota of relation with operation conducted by the Petitioner and his fellow doctor. Further, the cause of death was recorded to be 'natural'. Petitioner was not even a treating doctor in the last days of the deceased and that last treating doctor had never passed any adverse comments about the Petitioner regarding the deceased. Counsel further

argued that complainants did not disclose the exact age of the deceased which plays an important role for the knowledge of the treating doctor and that complainants were not ignorant about the health of the deceased.

6.2. It is further argued that respondent no.3 had already paid an amount of Rs.1,00,000/- to the complainants and same has been duly accepted by them. Further, it is argued that consent was taken by the Petitioner and Dr. Khusuwah before performing the operation and risk bond was also signed by the complainants.

6.3. It is further contended by counsel for the Petitioner that without examining the Petitioner, State Commission came to the conclusion that Petitioner used two stage revision of uncemented arthroplasty for revision total hip replacement. Further, complainants failed to prove any negligence on the part of the Petitioner.

Reliance has been placed on the following judgments of the Hon'ble Supreme Court and National Commission :

- a. Tanveer Jahan Vs. All India Institute of Medical Science and Anr. Manu/CF/0321/2020
- b. S.K.Jhunjhunwala Vs. Dhanwanti Kumar and Ors. 2015 SCC Online NCDRC1190.
- c. Kusum Sharma and Others Vs. Batra Hospital and Medical Research Centre and Ors.(2010) 3 SCC 480.
- d. Jacob Mathew Vs. State of Punjab and Anr. (2005) 6 SCC 1
- e. Dr. Harish Kumar Khurana Vs. Joginder Singh and Ors. (2021) 10SCC 291
- f. Bombay Hospital & Medical Research Centre Vs. Asha Jaiswal 2021SCC Online SC 1149
- g. Dr. ( Mrs. ) Chanda Rani Akhoury Vs. Dr. M.A.Methusetupathi 2022 Livelaw ( SC) 391

6.4. Counsel for respondent no.1 and 2 argued that negligence and deficiency on the part of the Petitioner is well proved and life span of the mother of the complainants was decreased due to negligent and defective manner of operation done by the Petitioner. The petitioner did not pay due diligence and care in administering the treatment without consulting and analyzing the huge prescriptions in respect of previous operation of treatment by doctors of R G Kar Hospital and

Petitioner did not give fair, reasonable standard of care and competency to the patient and death was caused due to Septicemia. It is further submitted that argument of non joinder of parties do not arise. Further, doctor has not been able to prove by any documentary evidence that Petitioner informed mother of the complainants about the probable side effects of the operation in question, which goes against the standard medical protocol.

7. In this case, there are concurrent findings of both the Fora below against the Petitioner Doctor herein. Extract of relevant paras of orders of the State Commission is reproduced below:

"The Written Statement filed before the Ld. District Forum concerned by the OP No. 1-Hospital available in the records of A/1181/2014, reveals that the mother of the Respondents/Complainants was admitted to the OP No.1 – Hospital under the OP No. 2-Doctor with complaint of 'fracture Interochontary Femur (Rt.) and the OP No. 2-Doctor performed the operation in question without informing the mother of the Respondents/ Complainants about the possibility of infection which may culminate in the death of the mother, as is indicated in the absence of proof in this respect behalf of the OP No.2 – Doctor. It is also revealed from the materials on records that the OP No. 2-Doctor did not take proper care owed to the mother of the Respondents/Complainants as is indicated in non-removal of prosthesis from the operated site to check the infection and formation of pus contrary to the standard medical protocol. Further, the OP No. 2-Doctor has not proved with evidence whether or not he used the standard medical protocol for two-stage revision to a uncemented arthroplasty as referred to in a publication in the Journal of Pain and Joint Surgery, Vol. 82-BN05, July 2000 under the heading 'Two-stage uncemented revision hip arthroplasty for infection'. Such breach of duty is one of the components of medical negligence as was held by the Hon'ble Supreme Court in Jacob Mathew Vs. State of Punjab & Anr, reported in (2005) 6 SCC 1. The aforesaid discussion clearly indicates deficiency in service on the part of the OP No. 2-Doctor and hence, the OP No. 1-Hospital is also vicariously liable for deficiency in service on the part of the OP No. 2-Doctor as was held in Smt.Savita Garg Vs. The Director, National Heart Institute (supra). The aforesaid facts and

the discussion lead to the conclusion that three essential components of medical negligence, i.e. "duty", "breach' and 'resultant damage' as observed in decision of the Hon'ble Supreme Court in Jacob Mathew Vs.State of Punjab & Anr. (supra) are present in the case on hand and hence, the order impugned deserves affirmation"

8. District Forum has given a very detailed order. Extract of relevant portions of order of the District Forum is reproduced below:

"Further fact is that first operation was done on the patient on 28-09-2010 on R.G.Kar Medical Hospital under the direct supervision of Dr. N. Heera associated professor and Dr. J.N.Pal associated professor and on 29-09-2010 bi-polar hip prosthesis was done on G.A. thereafter post operative wound was infected for which wound debriment was done on 11-10-2010. Thereafter, further debriment was made but it was detected that the body system did not accept the prosthesis so prosthesis was removed on 02-02-2011 and skeletal traction was made only to avoid persistent discharge and repeated debriment and thereafter, the said two doctors including other doctors further examined and treated her on 13-10-2011 at R.G. Kar Hospital and it was found that the infected part was healed up and would be cured when doctors advised ultimately on 16-01-2012 that it is impossible to place any foreign article for communicating the fracture and finally the doctors of R.G. Kar Hospital opined that there is no other alternative but to continue her life without any further operation and considering that those medical certificate issued by R.G. Kar Hospital it is clear from 28-09-2010 to 16-01-2012 complainants' mother Renuka Shee actually aged about 75 years ultimately did not get relief for her fracture and, in fact, she became physically stable but she had no capacity to walk but otherwise she was physically 'OK' and if all the above treatment sheets of R.G. Kar Hospital are monitored and taken into consideration it can safely be said that expert doctors of Orthopaedic Department of R.G. Kar Hospital finally came to a conclusion that there is or was no scope to place any foreign body for giving her a support to walk by operation and, in fact, they attempted much to keep the prosthesis but so long the prosthesis was intact inside the body wound did not heal up rather continuously the wound place was damaged even after continuous debriment, no fruitful result was achieved by the doctor for which

ultimately Board of Doctors came to a conclusion that prosthesis should be removed otherwise she would die. So, prosthesis was removed and thereafter, complainant's mother recovered from her wound and physically and mentally she became fit only she lost her capacity to walk. Anyhow, the said doctors advised for support from outside for movement and that has been continued by that lady as patient. So, it is clear that the Board of Doctors of R.G. Kar Hospital took all sorts of steps for giving her proper relief so that she may recover from such sort of continuous post operative wound infection and finally came to a conclusion that there is no scope to place any foreign body i.e. (prosthesis) in her body. Invariably after giving much importance over the above documents we have gathered that under any circumstances, there was no scope for placing any foreign body like hip joint ball or anything on the fractured portion of the lady patient and ultimately the doctors of R.G. Kar after curing her from her wound and infection the patient took support from outside help and to move within house area. Most interesting factor is that those documents were invariably examined by the present doctor OP2 but he did not consider that time position of the patient and for some greed asked the complainant to bring her and assured the complainant that his mother shall be cured and shall be able to walk and in such a situation invariably complainant was very much happy to know that his mother shall have to walk after operation but fact remains that the present doctor did not note down in any portion of the prescription or the discharge certificate that there is or was no scope for her mother to walk and there is every chance of removal of the hip joint ball if any infection is found. Further from the discharge certificate it is not ascertainable whether the present doctor OP2 noted down the previous or past history of his first operation and the result, on the ground the present doctor is not more qualified than that of the doctors of R.G. Kar Hospital then it is clear that OP2 doctor did not disclose the past history with intention so that in future if any complication would be found in that case he may defend himself by saying that it was his first operation but scope was not there on the part of the OP2. In view of the fact the operation which was done by the OP2 was earlier done by R.G. Kar doctors so there are sutures. Another factor is that in the discharge certificate or in other

prescription there is no note actually on which date the complainants sustained such sort of fracture injury. Practically, that is also suppressed by the OP2 and the OP1 hospital also. Further factor is that after 2nd operation done on 25-05-2012 no further examination was done to ascertain what is the position of the said hip joint ball what is the position of its fitment and further fact is that doctor admitted in his evidence in chief and written statement that complainants' mother wound was found infected and in this regard OP2 has tried to convince that it was the fault of the complainants because the patient was not properly dressed and treated after post operative stage but such sort of defence on the part of the OP2 is proved a false story but fact remains when their mother was admitted with such infection on the operated portion the doctor had not treated her but handed over to another doctor who practically failed to cure the same but scope was there on the part of the OP2 to save the life of the patient from her immediate death if the hip joint ball would be removed because after thorough treatment for two years at R.G. Kar Medical College & Hospital the Board of Doctors came to a finding that no foreign body can be placed in her fractured portion as her body system did not accept it and for which her previous prosthesis was removed. If the present doctor OP2 had his any medical ethics he ought to have considered the medical certificates issued by the R.G. Kar Hospital in this regard and invariably it was the duty of the OP2 to consider whether the 2nd operation would be fruitful if foreign body is placed to support the fractured portion but that had not been done and any reasonable and prudent doctor before second time operation must have to consider the first time operational result and the condition of the patient and the reasons of any suffering for any operation but in this case OP2 has not considered the same that is no doubt a negligent practice on the part of the OP2. At the same time OP2 also did not consider the fact that this lady was under constant treatment of board of doctors of R.G. Kar Medical College for about 2 years from 28-09-2010 to 16-01-2012 but ultimately the doctors of R.G. Kar Hospital failed to give her good result in respect of fractured injury and for which prosthesis was removed and thereafter, continuous wound on the operated area was cured and this vital factor ought to have been considered before operating the patient lady but that was

not considered by the OP2 and no doubt the doctor OP2 did not properly diagnose before operation about the fate of the operation if it would be done for the 2nd time but only for the monetary gain she was operated but same incident happened and for which she suffered from septisemia and it is also proved that septisemia was the direct cause for the death of the lady and due to septisemia heart of the lady affected and for which the doctor issued such death certificate stating cardiac respiratory septisemia but prior to said operation the lady was quite OK since the first operation was done on and from 28-09-2010 and till the date of 2nd operation 07-05-2012 except her movement was restricted as fracture was not properly united as the doctors of R.G. Kar failed to give such relief as body system of the lady did not accept any foreign articles/limbs that means in the second occasion for introducing foreign body i.e. hip joint ball again operated portion was infected and persistent discharge of pus and blood was continued even repeated debriment was done but condition of the lady was found deteriorated and ultimately the lady died on 28-07-2012 and this time is too short because 2nd operation was done on 25-04-2012 and she died on 28-07-2012 i.e. within one month and in the meantime debriment was made but persistent discharge of pus and blood and other caused the septisemia that means 2nd post operative stage OP2 did not render proper service for which complainants' mother suffered from septisemia and ultimately cardio respiratory failure is the common word in case of death of any person or even in the case of cancer and other also but due to septisemia the heart was affected, lung was affected and then she died but it is proved beyond any manner of doubt that septisemia started only for severe infection caused on the 2nd operated portion made by the OP2 and after operation no proper treatment was made or care was given which is proved from the prescription also. Considering the above facts and circumstances and materials we are convinced to hold that the decision of 2nd operation for the person of the of the deceased (patient) by the OP2 is completely illegal and against the principle of medical science and at the same time in the present case post operative care of the patient was not at all taken by the OP2. In fact, due to negligence of the present OP2 doctor and the hospital the infection spread rapidly on the operated portion and to protect the patient no safety was taken by the

OP2 or OP1 and considering the above materials on record we are convinced to hold that there was gross negligence on the part of the OP2 the doctor and fact remains for his wrong decision of operation further the patient suffered from persistent infection and discharge from that infection just after her discharge from hospital on 29-06-2012 and she died on 28-07-2012 i.e. within one month from the date of her release from the said hospital. No doubt, the doctor is attached with the OP1, the OP1 received payment against the admission and all other charges and even the doctor's fee was paid personally by the complainants but now, the OPs are trying to convince that there was no fault on their part. Moreover, for introducing and setting artificial limb (hip joint ball) caused further infection and for which practically complainants' mother suffered from septicemia within short period from the discharge from the said hospital and that is the cause of her death and no doubt it has shortened the life span of the lady and entire decision for second operation on the part of the OP2 is no doubt a decision of an unskilled doctor may be he has MS degree and practically for his negligent manner of decision negligent manner of operation, negligent manner of post operative care complainants' mother suffered from septicemia and that is the root cause of her death and for which ultimately she died on 28-07-2012 in the OP's hospital but most interesting factor is that no attempt was made to remove his hip joint ball to save her and if it would be removed by OP2 in that case lady maybe saved from her immediate death because in the earlier occasion Board of Doctors of R.G. Kar Hospital were satisfied that without removing prosthesis her life cannot be saved and ultimately that was removed by the said doctors. So, it is clear in the present case the negligence and deficiency on the part of the OP2 is well proved and fact remains life span of the mother of the complainants was decreased due to negligent and deficient manner of operation done by the OP2 and also careless attitude of the OP2 at pre and post operative stage and in the present case when complainants claim is that he has possessing special skill and knowledge then it was his duty to the patient to apply with due caution in undertaking treatment when in the present case OP2 accepted the responsibility and undertook a treatment then invariably it is the liability of the OP2 to prove for what reason before second operation he did not pay due

diligence care and knowledge and skill and caution in administering the treatment without consulting the huge prescriptions in respect of previous operation treatment by the Board of Doctors of R.G. Kar Hospital and in the present case no doubt OP2 did not give a fair, reasonable standard of care and competence to the patient and practically the patient's death was caused due to septicemia for the OP2's indolence and carelessness. At the same time after considering the entire materials on record it is found that the doctor OP2 adopted a reckless method in undertaking the treatment and for the death the doctor is liable for adopting reckless procedure in undertaking the 2nd operation knowing fully well that in previous occasion for two years he suffered from such operation and for which his foreign limbs which was placed by the doctors of R.G. Kar Hospital was removed and, thereafter, the patient recovered from his sufferings from infection on the operated portion and, in fact, as claimed as skilled doctor it was his duty to take care of the entire past and back history etc. in deciding whether further operation would be made and any fruitful result would be achieved or not. But anyhow, after considering the entire materials on record and document it is found that the present OP2 did not exercise a reasonable degree of care and for which ultimately the lady suffered from septicemia and died within one month from the date of release from the present hospital so the case of the complainants and the allegation as made by the complainants is well proved. No doubt the OP2 is attached with the OP1. OP1 was paid for admission and for other purposes by the complainants OP1 has not denied that fact so OP1 is also responsible for deputing such doctor who without issuing any bill received more than 1 lakhs and whereas the hospital authority also received more than Rs.1,25,000/- for treatment and service. So, in the eye of law both are equally responsible and liable for the loss of life of the mother of the complainants and no doubt it is a full proof case of medical negligence and deficiency on the part of the OPs."

9. From the above, it is clear that District Forum has gone into all the details of the case and after duly evaluating the evidence before it, has given a well-reasoned order. We tend to agree with the observations and findings of the District forum, which have been

upheld by the State Commission also.

10. In *Savita Garg v. Director, National Heart Institute*, (2004) 8 SCC 56, the Hon'ble Supreme Court has observed that-

"10. The Consumer Forum is primarily meant to provide better protection in the interest of the consumers and not to short circuit the matter or to defeat the claim on technical grounds..... We cannot place such a heavy burden on the patient or the family members/relatives to implead all those doctors who have treated the patient or the nursing staff to be impleaded as party..... In fact, once a claim petition is filed and the claimant has successfully discharged the initial burden that the hospital was negligent, as a result of such negligence the patient died, then in that case the burden lies on the hospital and the concerned doctor who treated that patient that there was no negligence involved in the treatment. Since the burden is on the hospital and the concerned doctor who treated that patient that there no negligence involved in the treatment....."

11. In *Nizam Institute of Medical Science v. Prasanth S. Dhananka & Ors.* 2009(3) CPR 81(SC), the Hon'ble Supreme Court has observed that-

"32. We are also cognizant of the fact that in a case involving medical negligence, once the initial burden has been discharged by the complainant by making out a case of negligence on the part of the hospital or the doctor concerned, the onus then shifts on to the hospital or to the attending doctors and it is for the hospital to satisfy the Court that there was no lack of care or diligence."

12. In *Jacob Mathew v. State Of Punjab & Anr.* (2005) 6 SCC, the Hon'ble Supreme Court as observed that-

"The essential components of negligence, as recognized, are three: "duty", "breach" and "resulting damage", that is to say:-

1. The existence of a duty to take care, which is owed by the defendant to the complainant;

2. The failure to attain that standard of care, prescribed by the law, thereby committing a breach of such duty; and

3. Damage, which is both causally connected with such breach and recognized by the law, has been suffered by the complainant."

3. .... To fasten liability in Criminal Law, the degree of negligence

has to be higher than that of negligence enough to fasten liability for damages in Civil Law..... Where 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..... In civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the Court, as a reasonable man, beyond all reasonable doubt. "48. (5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution. (6) The word 'gross' has not been used in Section 304-A IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash or negligent act' as occurring in Section 304-A IPC has to be read as qualified by the word 'grossly'."

13. As was held by the Hon'ble Supreme Court in Rubi Chandra Dutta Vs. United India Insurance Co. Ltd. [(2011) 11 SCC 269] that the scope in a Revision Petition is limited. Such powers can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order. In Sunil Kumar Maity Vs. State Bank of India & Ors. [AIR (2022) SC 577] held that "the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity."

14 The Hon'ble Supreme Court in Rajiv Shukla vs Gold Rush Sales And Services Ltd. Civil Appeal No. 5928 of 2022, decided on 8th September, 2022, held that:-

"13. As per Section 21(b) the National Commission shall have jurisdiction to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. Thus, the powers of the National Commission are very limited. Only in a case where it is found that the State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise the jurisdiction so vested illegally or with material irregularity, the National Commission would be justified in exercising its revisional jurisdiction.

14. In exercising of revisional jurisdiction the National Commission has no jurisdiction to interfere with the concurrent findings recorded by the District Forum and the State Commission which are on appreciation of evidence on record. Therefore, while passing the impugned judgment and order the National Commission has acted beyond the scope and ambit of the revisional jurisdiction conferred under Section 21(b) of the Consumer Protection Act."

15. We find no illegality or material irregularity or jurisdictional error in the order of the District Forum and State Commission, hence the same are upheld. Accordingly, both the Revision Petitions are dismissed.

16. The pending IAs in the cases, if any, also stand disposed off.