

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 85 OF 2020

(Against the Order dated 14/11/2019 in Complaint No. 381/2011 of the State Commission
Delhi)

1. M/S. KOHLI NURSING HOME & MATERNITY CENTRE
18-19/F-18, SECTOR-8, NEAR FOUNTAIN CHOWK,
ROHINI,
DELHI-110085

.....Appellant(s)

Versus

1. SONIKA KAPOOR - THROUGH LRS
R/O 193, BANNU ENCLAVE,
PITAMPURA,
DELHI-110034

.....Respondent(s)

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER,MEMBER**

FOR THE APPELLANT : MR. SANDEEP KAPOOR, ADVOCATE

FOR THE RESPONDENT : MR. DHARMENDRA KUMAR, ADVOCATE

Dated : 01 January 2024

ORDER

DR. SADHNA SHANKER, MEMBER

1. This appeal has been filed under section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as the 'Act') in challenge to the Order dated 14.11.2019 of the State Commission in complaint no. 381 of 2011, whereby the complaint of the complainant was partly allowed and the appellant – opposite party was directed to pay a compensation of Rs. 20,00,000/- with interest at the rate of 9% p.a. from the date cause of action arose till the date of payment.

2. Heard the learned counsel for the appellant – hospital (hereinafter referred to as the 'hospital') and the learned counsel for the respondent – legal heirs of the complainant (hereinafter referred to as the 'complainant') and perused the record including the State Commission's impugned Order dated 14.11.2019 and the memorandum of appeal.

3. The facts of the case are that the complainant, since deceased (hereinafter referred to as the 'deceased patient'), who was in the family way, got admitted on 31.12.2009 for delivery in the hospital on the assurance that they are a well equipped Nursing Home to take care of any complication that may arise during the course of delivery. Due to some complications in the

normal delivery the original opposite parties no. 2 and no. 3 recommended the deceased patient and her family to go for delivery by caesarean for which the husband of the deceased patient consented. The caesarean operation was performed by the opposite party no. 2 and no. 3 and a baby boy was born to the deceased patient on 01.01.2010.

4. The grievance of the legal heirs of the complainant is that after the delivery, the deceased patient had continuously complained of recurrent pain in her abdomen to the opposite party no. 2 and she visited the opposite party no. 2 and the opposite party no. 2 prescribed pain killers including tablets and injections without examining her as required under the protocol. On some occasions, opposite party no. 3 advised her that she was having stomach infection and gastroenteritis and accordingly prescribed medicines for the said purpose and the opposite party no. 2 also opined that the deceased patient may be having stone in her abdomen but the opinion was without undertaking any test or subjecting her to an examination. Later the deceased patient developed unbearable pain in her left abdomen and as a consequence thereof she consulted some other doctors for diagnosing the problem. It is alleged that her health had also deteriorated and her weight dropped from 66 kg and 44 kg in about 3 months after the delivery. CT scan was advised which was conducted on 27.04.2010 at Spectrum Imaging & Diagnostic Centre wherein presence of foreign body inside the stomach of the complainant was diagnosed. The grievance of the complainant is that the opposite party no. 2 prescribed medicines without advising or conducting the tests and has breached the professional obligation as is required that the doctors must ensure that no such negligence much less gross medical negligence takes place, which if not detected on time could have become fatal for the deceased patient and life long agony and sorrow for the family members of the deceased patient including the new born child.

5. The deceased patient filed a complaint before the State Commission alleging medical negligence on the part of the opposite parties no. 1, no. 2 and no. 3 and prayed for compensation of Rs. 52 lakhs towards compensation along with litigation cost of Rs. 11,000/-. Unfortunately, during the pendency of the complaint, patient died.

6. The opposite parties no. 1, no. 2 and no. 3 have contested the complaint by filing written version stating that the complainant never visited the opposite party no. 2 with the complaint of abdominal pain. It is admitted that the patient was admitted and delivered a baby boy at 2.25 a.m. on 01.01.2010 and was discharged on 03.01.2010. It is further submitted that at the time of cesarean section all surgical instruments, gauges, swabs and mops were duly counted by the operation theatre nurse and duly displayed on the board in the operation theatre and after securing bleeding point and controlling bleeding, the instruments and gauges were duly counted by the scrub nurse and only after confirmation from the scrub nurse, the abdomen was closed in layers. It is also stated that no cause of action arose against the hospital and the doctors.

7. Learned counsel for the hospital submitted that the hospital is a well equipped and registered centre with the appropriate government authorities and the doctors are highly qualified and experienced doctors in their respective fields. He further submitted that there was no medical negligence on the part of the hospital and the doctors and the deceased patient never visited them with the complaint of abdominal pain and that had she visited the hospital, she would have been properly treated. It is further submitted that only in the month of April, 2010

she visited for insertion of intra-uterine contraceptive device and the complaint has no merit and the same is liable to be dismissed.

8. Learned counsel for the legal heirs of the complainant submitted that the deceased patient was under continuous treatment of Dr. Mrs. Raj Kohli, opposite party no. 2 and regularly visited for checkup and consultation. He further argues that it was the solemn duty of the opposite parties no. 2 and 3 to perform the operation with utmost sincerity, devotion and carefulness and ensure that no foreign body was left inside her abdomen during the operation and after the CT scan finding of foreign body in the abdomen of the deceased patient, she was admitted in City Hospital on 29.04.2010 with a case of intermittent pain in left upper abdomen. He further submits that the deceased patient was operated on 30.04.2010 at Sir Ganga Ram Hospital and a foreign body (abdominal sponge) was retrieved from her abdomen by the doctors. He further argues that the hospital has not taken any defence that the swab has not been left in the abdomen.

9. The main question for consideration is whether there was any negligence on the part of the hospital and the doctors.

10. Firstly, we would like to quote the report of the Delhi Medical Council on the matter dated 02.01.2012 which reads as under:

“In light of the observations made hereinabove, it is the decision of the Delhi Medical Council that Dr. Raj Kohli failed to exercise reasonable degree of skill, knowledge and care which is expected of an ordinary prudent doctor, in the treatment of the patient Smt. Sonika Kapoor. The Delhi Medical Council, therefore, directs that the name of Dr. Raj Kohli be removed from State Medical Register of Delhi Medical Council for a period of one month.

The Delhi Medical Counsel, however, clarifies that the acts or omissions on the part of Raj Kohli in the management of this patient were not reckless or patently wanton to invite criminal liability.

The Delhi Medical Council further holds that no act of negligence can be attributed on the part of Dr. Vijay Kohli, Medical Superintendent, Kohli Nursing Home and Maternity Centre.

It is observed that the decision of Delhi Medical Council holding the above named doctor guilty of medical negligence is final, however the order directing the removal of name from the State Medical Register of Delhi Medical Council shall come into effect after 30 days from the date of the order.”

(As per State Commission’s Order dated 14.11.2019)

As per the legal heirs of the complainant, this was upheld by the Medical Council of India in its Order dated 01.06.2012.

11. Considering the facts that the deceased patient was taking the treatment regularly for pre-natal; prior to that, the deceased patient had no problem of abdominal pain and it occurred only after the cesarean operation; also the fact that the hospital has not produced any cogent evidence to prove that the swab was not left at the time of cesarean operation and has not given any specific reply to the said allegation and also considering the report of Delhi Medical Counsel, we are of the view that the hospital and doctors have failed to exercise reasonable degree of skill, knowledge and care which is expected of an ordinary prudent doctor in the treatment of the deceased patient.

12. As far as the quantum of compensation is concerned, it is seen that the lady was a software professional. After the delivery she underwent abdomen pain and distress on account of health. It is averred in the written statement of the hospital that “although no direct association can be linked to the death of the complainant during the pendency of the complaint on 16/9/2016 as the complainant or her family members had never thought that she would die as a consequence of the negligence of the respondent/appellants, but in fact she had died as a result of her collapsing due to sudden fall in blood pressure and never regained consciousness. Thus, her death was indirectly a consequence of the negligence of the respondent doctors/appellants as she was gripped with various ailments during the above said period.”

13. In view of the above, we are of the view that the compensation granted by the State Commission is just and reasonable and we find no illegality or infirmity in the Order dated 14.11.2019 of the State Commission warranting our interference.

14. The appeal fails and the same is dismissed. Pending I.A., if any, stands disposed of with this Order.

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**SUBHASH CHANDRA
 PRESIDING MEMBER**

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**DR. SADHNA SHANKER
 MEMBER**