

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 3375 OF 2017

(Against the Order dated 01/08/2017 in Appeal No. 307/2015 of the State Commission Bihar)

1. RAM KUMAR PRASAD

S/O. RAMASHISH PRASAD MOHALLA MANSHA PANDEY
BAGH, (HIRA NIWAS JALPURA KOTHI) POLICE STATION
ARA TOWN

DISTRICT-BHOJPUR

BIHAR

.....Petitioner(s)

Versus

1. MAHAVIR CANCER SANSTHAN (MCS)

THROUGH ITS DIRECTOR, PHULWARI SARIF PATNA,
DISTRICT-PATNA

BIHAR

.....Respondent(s)

BEFORE:

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

HON'BLE MR. BINOY KUMAR, MEMBER

For the Petitioner :

For the Respondent :

Dated : 16 Jan 2023

ORDER

Appeared at the time of arguments

For the Petitioner : Mr. Punit Vinay, Advocate

For the Respondent : Mr. Ajay Shekhar, Advocate

Pronounced on: 16th January 2023

ORDER

DR. S. M. KANTIKAR, PRESIDING MEMBER

1. This Revision Petition has been filed under section 21 of the Consumer Protection Act, 1986 by the Petitioner Ram Kumar Prasad (hereinafter referred to as the "Complainant") against the impugned Order dated 01.08.2017 passed by Bihar State Consumer Disputes Redressal Commission (for short "the State Commission") in Appeal No. 307/2015 for setting aside the impugned Order dated 01.08.2017, wherein the State Commission allowed the Appeal filed by the OP – Hospital and set aside the Order dated 04.09.2015

passed by District Consumer Disputes Redressal Forum, Patna (for short the 'District Forum') in Consumer Complaint No. 180/2008.

2. The facts in brief are that the Complainant got her mother Hiramani Devi (hereinafter referred to as the 'patient') admitted at the OP- Hospital on 28.05.2007 for the complaint of abdominal pain. It was diagnosed as an abdominal cancer. She was operated by the Respondent (hereinafter referred to as the 'OP') on 13.06.2007, but she never regained consciousness after operation. Subsequently she died on 15.06.2007. The Complainant alleged that his mother died due to overdose of anesthesia and transfusion of high volume of blood during surgery. He further alleged that the Complainant could not receive original treatment papers from the OP. Being aggrieved, the Complainant filed the Consumer Complaint before the District Forum, Patna.

3. The OP, in its reply, denied negligence during treatment. It was submitted that the attendant of patient has taken away all treatment file but the Opposite Party asserted that "all investigation report related to the patient are preserved in the software of Mahavir Cancer Sansthan, therefore any misuse of the original treatment file will make the Complainant liable for criminal prosecution".

4. The District Forum held that the OP has committed deficiency in treatment of mother of the Complainant and allowed the Complaint. It awarded compensation of Rs. 7,00,000/- plus Rs. 50,000/- as litigation charges to the Complainant.

5. Being aggrieved, the OP- Hospital filed the First Appeal before the State Commission.

6. The State Commission allowed the Appeal and set aside the Order passed by the District Forum with the following observations:

“6. We have considered the case of the parties, material on the record as also impugned order. The District Forum has passed the order on the basis of report of the Civil Surgeon. However, on perusal of the report it would appear that is a report presumptive report as it is stated that the required documents were not made available and as such held requiring large quality of blood transfusion in a day necessitates re-exploration at the wound site which was not done. It further appears from the reply of the appellant that on his request Medical Board Bound agreed to visit the Hospital for inspection and verify the treatment given as recorded in the system since the manual record of the treatment was reported to have taken away by complainant / relatives. The Medical Board did not visit to the Hospital. Be that as it may it is not in dispute that the relevant materials were not available with the Medical Board the appellant as it appears made a request before the District Forum refer and obtain report from specialised Superior Medical Board which was not done as mentioned in notes of Argument. The appellant has annexed the detail opinion of Dr. (Professor) U.P. Singh retired H.O.D of General surgery Patna medical college Hospital having long experience of 46 years, who has explained in detail with respect to surgical aspect of the matter for our consideration. Dr. Singh in his opinion did not find any negligence either on the part of Surgeon of Authentic who were complainant doctor.

7. District Forum mainly relied upon report by the Civil Surgeon, Patna but as noticed above the report is not based upon relevant material. In such circumstance for want of adequate material the report could not be acceptable evidence / material for holding medical negligence and deficiency in service on the part of the appellant Hospital doctors in question.

8. For the reasons and discussions above we are unable to sustain the order under appeal. It is thus set aside.

9. In the result appeal stands allowed.”

7. Being aggrieved, the Complainant filed the instant Revision Petition.

8. Heard the learned Counsel for both the sides. Perused the material on record *inter alia* the orders of both the fora below.

9. The learned Counsel for Complainant submitted that the hospital did not provide the medical record and investigation reports to the medical board despite the same having been preserved by it in its computer software. Rather, the OP took lame excuse that the records were stolen by the Complainant.

10. We have perused the opinion of Medical Board, it is reproduced as below:

“Patient Hiramani Devi, Regn no. MCS/66522, M/O Shri Ram Kumar Prasad. Complainant reported to Mahavir Cancer Sansthan, the opposite party on 28.05.2007. She was having abdominal lump with pain. After investigation, she was admitted on 30/05/07. Provisional diagnosis was Malignant Ovarion Tumor and seeing the size of the Tumor Cutoreductive Surgery was planned.

She was operated on 13.06.2007 between 10 am to 2 pm. The patient went into shock at 5:30 pm repeated blood transfusions - 14 units as per complainant and 8 units as per opposite party's versions - were made. Finally the patient expired on 15/06/2007 at 5:30 am.

The opposite party could not show the hospital record - saying that they were stolen by the complainant - seems quite convincing. Besides needing blood transfusion in such large nos. (8 as per opposite party and 14 units as per complainant) in a day -necessitates re-exploration at the wound site-which the opposite party did not do.

There is deficiency in service as negligence on the part of the opposite party.”

11. It is evident from the affidavit of the treating doctor that the patient was under Dr. B. V. Pandey, Dr. Arun Giri and Dr. Navneet Jain. After investigations, the patient was diagnosed as a case of ‘malignant ovarian tumour’. The further line of treatment was decided after discussion in the tumour board to perform cytoreductive surgery. In the instant surgery, whole tumour, ovaries, uterus and lymph nodes were to be removed. The tumour board decision was informed to the patient and her attendants, who consented for the aforesaid surgery. After informed consent, the operation was started, which consumed four hours and 2 units of blood was transfused. The OPs denied that 40 units of blood were transfused in the Operation Theatre and the haemoglobin was zero. After the operation, the patient was haemodynamically stable till 5.30 pm on 13.06.2007, then she went into shock and there was fall in blood pressure. The diagnosis reactionary haemorrhage was suspected and attendants were asked to arrange the blood, but the patient further went into irreversible brain damage and she could not recover despite further 4 units of blood transfusion and subsequently died on 15.06.2007.

12. We have carefully perused the record. In our considered view, the malignant ovarian tumour with involvement of other organs needs extensive major cancer surgery. There are inherent risks and complications involved. The hospital adopted correct policy to treat the malignant tumours with discussion from the tumour board. Thus, it shows the duty of care was appropriate from the treating doctors and the hospital. It was the accepted standard of practice. Moreover, there is an expert opinion of Dr. U. P. Singh, who was the Head of Department of Surgery in the Buddha Institute of Dental Sciences, which substantiates the cancer treatment of the patient.

13. Admittedly, both the lower fora have observed that after death of patient, the attendant took away the treatment file on 22.06.2007 with ulterior motive. It was clearly mentioned in the hospital register that it further observed that the case be sent to a superior board with a direction that the members of the board must be expert in the field of surgery of these type of cases, so that the actual facts should be revealed because the report neither discloses the names of the members nor the field of their expertise.

14. The Hon’ble Supreme Court in **Jacob Mathew’s case**[\[1\]](#) exhaustibly discussed about medical negligence. It was also observed that

“When a patient dies or suffers some mishap, there is a tendency to blame the doctor for this. Things have gone wrong and, therefore, somebody must be punished for it. However, it is well known that even the best professionals, what to say of the average professional, sometimes have failures. A lawyer cannot win every case in his professional career but surely he cannot be penalized for losing a case provided he appeared in it and made his submissions.”

15. Based on the foregoing discussion, we don't find any error apparent in the Order of State Commission. The Revision Petition is without merit and it is dismissed.

The parties to bear their own costs

[\[1\]](#) (2005) SSC (CrI) 1369

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DR. S.M. KANTIKAR
PRESIDING MEMBER

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BINOY KUMAR
MEMBER