

(2024) 04 NCDRC CK 0110**National Consumer Disputes Redressal Commission****Case No:** First Appeal No. 853 Of 2022

Nazia & 2 Ors

APPELLANT

Vs

Dr. Anuradha Agrawal & 3 Ors

RESPONDENT

Date of Decision: April 30, 2024**Hon'ble Judges:** Avm J. Rajendra, Avsm Vsm (Retd.), Presiding Member**Bench:** Single Bench**Advocate:** M. L. Chaudhary, Sandeep Kapoor, Suman Bagga**Final Decision:** Dismissed

Judgement

Avm J. Rajendra, Avsm Vsm (Retd.), Presiding Member

1. The Appellant filed the instant Appeal under section 51 of the Consumer Protection Act, 2019, (in short "the Act"), against the Order dated 28.09.2022 passed by the State Consumer Disputes Redressal Commission, Lucknow, U.P. (the "State Commission") in Consumer Complaint No. 123 of 2017, wherein the State Commission dismissed the Complaint filed by the Complainants (Appellants herein) against the Opposite Parties (Respondents herein).

2. There was 8 days delay in filing the Appeal. For the reasons stated in the application and interest of justice, the same is condoned.

3. For Convenience, the parties in this matter are being referred to as per position held in Consumer Complaint in the State Commission.

4. Brief facts of the case, as per the Complainants, are that on 30.08.2016, Complainant No.1 was admitted to the OPs hospital and gave birth to a male child, named Mohd. Aahil, through a full-term normal vaginal delivery (FTNVD) at 5:15 PM. The OP's hospital staff, without consulting a pediatrician or conducting a proper medical examination,

falsely informed them that the newborn required immediate treatment in the Neonatal Intensive Care Unit (NICU) to survive, despite the baby appearing normal and healthy.

5. The OP's hospital staff admitted the baby to the NICU against the parents' consent and began treatment without adequate equipment or a skilled pediatrician. Repeated requests by the parents for second opinion were refused by the hospital staff. No pediatrician or neonatologist was available at the hospital. During the baby's stay in the NICU, the staff struggled to find a vein for the I.V. drip, resulting in multiple punctures on the baby's hand. The baby's hand was tightly strapped to maintain the I.V. drip, causing the baby distress, which the staff ignored. Moreover, the hospital staff administered doses of Taxim 250 mg and Amikacin 50 mg, without accurately assessing the baby's weight and age, a clear violation of medical protocol. Despite parents persistent concerns, their access to the baby was severely restricted, and they were denied opportunity to feed him for over four days. Upon noticing black discoloration and swelling in baby's right hand on 04.09.2016, the parents were assured by the hospital staff that it would resolve on its own and discharged the baby on the same day. On 05.09.2016, they observed black discoloration on the baby's right hand worsening. They returned to OP's hospital and the staff recommended the same treatment as before, along with advising a complete blood test and the application of TBACT/ MEGHAHEL cream on the affected hand. Despite following these instructions diligently, no improvement noted. Again on 06.09.2016, Complainants consulted the hospital staff. The hospital staff issued a letter dated 06.09.2016, advising them to seek expert opinion and management from Dr. Prof. SD Pandey, a Plastic Surgeon. At this point, it became evident to them that the OP hospital was attempting to shift the responsibility and cost of treatment to another party to absolve themselves of any negligence regarding the baby's condition. However, as the condition worsened, they consulted Dr Manoj Kumar Singh at "Yamini Balya Chikitsalaya on 07.09.2016. He diagnosed 'Gangrene' in the baby's hand and referred them to another super specialty hospital for further treatment. Despite subsequent efforts at renowned hospitals, including Bai Jerbai Wadia Hospital at Mumbai and Narayana Handayalaya at Bangalore, the baby's hand could not be salvaged, necessitating amputation. Subsequently, on 31.10.2016 an additional operation for 'groin flap division and saturation' was performed in Sparsh Hospital, Bangalore. They alleged that the OPs hospital staff's negligence, incompetence, and greed led to the iatrogenic complication resulting in the loss of the baby's hand. The OPs lacked qualifications to treat newborns in NICU, negligently administered incorrect doses of medication and failed to monitor the condition of the baby properly. They filed a Consumer Complaint No. 123 of 2017 before the State Commission, seeking Rs.80 Lakhs as compensation for loss of their son's hand, as well as for mental agony, medical expenses, and consultations incurred etc.

6. In reply, the Opposite Party (OP)-1 asserted her credentials as a highly qualified and experienced doctor with an MD in Obstetrics and Gynaecology from LLRM Medical College, Meerut. She graduated as gold medallist in July 1999 and authored several research papers. As a gynaecologist, she admitted the Complainant/patient under her care for delivery. She refuted allegations against the Hospital as regards the Hospital infrastructure and facilities by Complainant as reckless, stating that relevant information would be provided by OP-2 & 3. OP-1 clarified that Mrs. Nazia was admitted on 30.08.2016, for delivery, and subsequently delivered a male child weighing 3.5 kg at 5:15 PM on the same day. The delivery notes indicated the occurrence of "Shoulder Dystocia", a known complication, leading to a difficult delivery and mild asphyxia of the baby. Despite these challenges, the delivery was successfully conducted, and the newborn was promptly transferred to the Neonatal Intensive Care Unit (NICU) under paediatric care, deemed necessary due to the delivery's complexities. Moreover, the patient's case sheet demonstrated the administration of appropriate treatment in accordance with medical protocols, with all details duly recorded. Moreover, the patient, along with her husband, provided consent, as evidenced by the executed consent form. OP-1 further stated that the baby received continuous care from the paediatrician in the NICU, with paediatrician's advice and diagnoses were documented separately. Any issues, such as slight swelling over the fingers, were promptly addressed as per medical norms. The baby was given to the mother on 01.09.2016 and thereafter discharged on 04.01.2016. The subsequent follow-ups indicated the baby was taking feed and progressing well. However, on 05.09.2016, after nearly 36 hours from discharge, the baby was brought back for a follow-up, and appropriate tests were advised, along with the application of TBACT cream for the hand swelling. On 06.09.2016, the patient was referred to Dr. Prof. SD Pandey, a Plastic Surgeon, for expert management, as admitted by the Complainant. OP-1 highlighted that the colour Doppler report from 19.09.2016, indicated no evidence of venous thrombosis, but rather, acute thrombotic occlusions in the radial and ulnar arteries. This complication was attributed to factors such as birth asphyxia, septicaemia, and maternal hypertension, rather than any negligence in treatment. OP-1 refuted claims of medical negligence and emphasized that the treatment administered was appropriate and well-documented. The hospital's well-equipped facilities and experienced medical staff were cited as evidence against the allegations. OP-1 asserted that the complaint lacked merit and requested its dismissal with costs.

7. In reply, OP-2, Dr Anup Agarwal, and OP-3 Sushrut Hospital Maternity-Trauma Centre, supported the detailed statement of OP-1, who was the treating gynecologist in the case. The Sushrut Hospital Maternity-Trauma Centre is described as a well-organized medical institution with highly qualified staff providing a comprehensive range of medical services, including childbirth and infant management. Mrs Nazia was admitted on 30.08.2016 for delivery and delivered a male child weighing 3.5 kg at 5:15

PM the same day. The delivery was complicated by shoulder dystocia and asphyxiation of the baby, which necessitated immediate transfer to the Neonatal Intensive Care Unit (NICU) under paediatric care. The baby received continuous care from the paediatrician, with recorded timely interventions in the case sheet. Appropriate treatment, including I.V., fluids, antibiotics, and other drugs, was administered to both the mother and the baby as per standard medical protocol. Any slight variations in baby's condition were promptly addressed, with referrals made for expert opinions when necessary. The Colour Doppler report dated 19.09.2016, showed no evidence of venous thrombosis but indicated acute thrombotic occlusions in the radial and ulnar arteries, which were attributed to factors such as birth asphyxia and septicaemia, rather than any negligence in treatment. OP-2 asserted that only reasonable and appropriate payments were charged, and the treatment was carried out by highly experienced and skilled doctors, including Dr. Anuradha Agrawal and Dr. KP Singh, the paediatrician. They asserted that the baby received round-the-clock care from Dr. Anuradha Agrawal and the hospital staff. The hospital's facilities and services were described as top-notch, with no evidence of medical negligence.

8. In reply, OP-4 - the Insurance Company, asserted that no cause of action had accrued against it. It deemed the claimed amount to be excessive and without any basis, denying liability under the terms and conditions of the policy. According to the policy's terms and conditions, the insured is obligated to provide notice as soon as practicable of any claims against them and furnish all additional information required along with related documents. The Complainant neither provided a copy of the policy nor informed them about the claim. OP-4 is not liable to pay any claim to either the complainants or to indemnify the insured. OPs 1 to 3 failed to inform them of the claim, which breached the policy's terms and conditions. Consequently, OP-4 declared that it was not liable to indemnify the insured. The complaint lacks merit and not maintainable in law and sought dismissal with costs.

9. The learned State Commission vide its order dated 28.09.2022, dismissed the Complaint with following observations: -

“So from all the facts and circumstances of the case and also going through various articles of medical literature, we have come to the conclusion that there is no deficiency of service on the part of the opposite parties 1 to 3 and there is no medical negligence on their part. The peasant complaint is liable to be dismissed.

ORDER

The complainant is dismissed with cost.”

10. Being aggrieved by the impugned order dated 28.09.2022 by the learned State Commission, the Complainant (Appellant herein) filed this present Appeal No. 853 of

2022 with the following prayer:

“a. Allow the present appeal of the appellants; and

b. Set aside the impugned judgment dated 28/09/2022 passed by the State Consumer Disputes Redressal Commission, Lucknow, U.P. in CC No. 123/2017 titled as Smt. Nazia & Ors. versus Dr. Anuradha Agrawal & Ors.; And/ or

c. Pass any other and/or further order(s) which this Hon’ble Commission may deem fit and proper in the interest of justice, equity and good conscience.”

11. In the appeal, the Appellant mainly raised the following issues with respect to negligence and inadequate treatment provided by OPs:

a. The State Commission failed to recognize the clear case of gross negligence and careless by the OPs which resulted in amputation of the Appellant's hand and substantial treatment expenses.

b. The admission of the baby NICU occurred without the opinion or advice of any paediatrician/neonatologist, and the NICU was ill-equipped and lacked skilled paediatricians/neonatologists.

c. Respondents 1 & 2 are not specialized in paediatrics/ neonatology refused repeated requests to involve super specialist paediatricians/ neonatologists in the treatment.

d. Respondents 1 & 2 punctured the muscles and veins of right hand of Appellant No. 3 numerous times during treatment, leading to bleeding and strapping of IV drip needle caused restlessness.

e. Despite the continuous insistence, Respondents 1 & 2 discharged the baby hastily on 04.09.2016, without addressing discolouration and swelling in the hand. The discharge sheet did not mention the blackish discolouration and swelling, indicating negligence in diagnosis and treatment by Respondents 1 & 2.

f. The medicines prescribed, included high dose of certain injections and TBACT/MEGAHEAL ointment/cream, which are unsuitable for the baby's age and weight and against medical ethics. Despite the lack of improvement, no advise for consulting a specialist was given till the condition had worsened considerably.

g. The Appellant subsequently consulted specialists who advised amputation due to gangrene, leading to substantial medical expenses and the unfortunate outcome of amputation.

h. The State Commission failed to consider these critical facts and neglected its duty to address negligence and shortcomings and the Appellant sought setting aside the State Commission order.

12. Upon notice on the memo of appeal, the Respondents / OPs filed respective written submissions in support of the order of the learned State Commission.

13. In his arguments, the learned counsel for Appellant/Complainant reiterated the case facts and grounds of the Appeal and argued that Appellant No. 3 received no treatment from any paediatrician or neonatologist at the hospital of Respondents 1, 2 & 3, hence there are no records of such treatment. Moreover, Respondents 1 & 2 were not qualified to decide on the admission of Appellant No. 3 to the NICU, casting doubt on legitimacy of their actions. Respondents 1, 2 & 3 presented a false defense claiming that Appellant No. 3 was under the care of Dr. Kali Prasad Singh, a paediatrician, from the beginning. However, there is no evidence for this claim and the prescription provided lacks essential details such as the doctor's name, degree, registration number, stamp and date. The alleged treatment by Dr. Kali Prasad Singh was never proven or examined before the State Commission, thus weakening the credibility of Respondents' defense. In these circumstances, he concluded that the treatment by Respondents 1, 2 & 3 amounted to gross negligence and carelessness, as they were not qualified to treat a newborn baby or address the specific condition of blackish discolouration and swelling in his hand.

14. The learned Counsel for the Respondents/OPs No. 1, 2 & 3 reiterated the facts of the case and asserted that there was no deficiency in service or medical negligence in diagnosing and treating both the Complainant and the newborn baby. Regarding the unfortunate incident of amputation of the baby's finger, he asserted that there was no connection with the treatment by the Respondents while the baby were under their care. He emphasized that the patient never returned to them after 06.09.2016. There was considerable gap in the medical care provided between 07.09.2016 and 19.09.2016 as evidenced by the lack of records during that period, with significant impact on the complications subsequently arose. He stressed that entire facts of the case and evidence were examined by the State Commission, which also delved into detailed medical literature on **Shoulder Dystocia and Asphyxia Neonatorum** and also examined the medications, concluding that they were given in appropriate doses and not overdosed. He reiterated that the medical papers from Jaslok Hospital & Research Centre, Mumbai dated 22.09.2016 were not mentioned by the Complainant, indicating their own negligence in seeking medical care during certain periods. He asserted that the OPs discharged the Complainant on 04.03.2016, and advised her to visit a plastic surgeon. Instead, she chose to visit Mumbai and Bangalore. There was no record of her visiting any hospital or doctor during the intervening period. He contended absence of any deficiency in service or carelessness on the part of the Respondents. He relied on the following judgments in support of his arguments:-

a. Martin F. D'Souza versus Mohd. Ishfaq, Civil Appeal No. 3541 of 2002 1(2009) CPJ 32(SC).

- b. Kusum Sharma & Ors. Versus Batra Hospital & Medical Research, Civil Appeal No. 1385 of 2001.
- c. Bombay Hospital & Medical Research Centre Vs. Asha Jaiswal & Ors., Civil Appeal No. 2322 of 2010.
- d. Dr Harkanwaljit Singh Vs. Gubax Singh, 2003(1)CPR 256 (NC).
- e. Sethuramasubramanuiam Vs Triveni Nursing Home 1997(2) CPR 144.
- f. Dr S Gurunathan(dead) Vs Vijay Health Care 2003(1)CPR222 (NC)

15. The learned Counsel for OP-4 argued that the insurer was added subsequently and no allegations of deficiency in service were made. As Complainants are not consumers of OP-4, no claim is feasible. He elaborated the scope of Professional Indemnity Policy that it is always on a reimbursement basis and is not a statutory liability. He supported the State Commission's decision and sought dismissal of the Appeal.

16. I 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.

17. The primary issue in the case is whether there was medical negligence or deficiency in service on the part of OPs-1 to 3 that had led to amputation of the finger of the newborn baby (Appellant No. 3). This includes examining the propriety of the treatment provided by OPs-1 to 3, whether they were qualified to administer such treatment, and whether they adhered to the standard protocols and practices in the neonatal care.

18. The learned State Commission examined various critical issues pertaining to the case, including the qualifications of doctors involved, medical conditions like Shoulder Dystocia and Asphyxia Neonatorum, as well as the administration of specific medications like Taxim 250 mg and Amikacin 50 mg intravenously. By considering a range of medical literature, the State Commission concluded that the principle of Res Ipsa Loquitur (the thing speaks for itself) was not applicable and that there was no deficiency of service or medical negligence on the part of Respondents No. 1 to 3. The learned State Commission observed: -

Issue No. 1:- Qualifications of concerned Doctor

“Now we come to the facts of the case. We have seen the qualification of the concerned doctors. They are well qualified doctors and nothing adverse has been put before us showing that they do not have the required experience or required degree as per the details filed by them, we are convinced that they are qualified doctors in their field. It is alleged by the complainant that no pediatrician was called for the baby. We have seen the discharge in which on 03.09.16 there is note of pediatric call. There is a

prescription of Dr. K.P. Singh who is pediatrician. So it is clear that there was pediatrician for the treatment of the child and it is wrong to say that no pediatrician was called for the treatment of the baby.

Issue No. 2:- Shoulder Dystocia and Asphyxia Neonatorum

“So it is clear that shoulder dystocia is a serious obstetric emergency. It is more common in the case of the vaginal birth. The complainant has pleaded in his complaint that the opposite parties want to extort money and they wanted cesarean operation but as the baby born normal they managed to extort money by one way or the other. This allegation is totally false as per medical literature. The seizure operation would be a better option in this case if knew the condition of the baby. The next issue is concerned with asphyxiated baby.

“So asphyxia neonatorum occurs in about 4 out of every 1,000 full-term live births in the United States. We have seen the delivery notes of the opposite party no 1 dtd 04.09.16 , where it has been written “swelling on hand”. On the case sheet of 02.09.16 it is written “swelling noted over hand” and it is also written “sumag dressing given” on this date the baby was taking mothers feed and burping. The baby has been given to the mother on 01.09.16 at 10 PM. The complainant was discharged on 04.09.16 and on that date it has clearly been mentioned that there is swelling on the hand. On 06.09.16 the complainant was advised to consult Dr Prof SD Pandey (Plastic Surgeon). The complainant has stated that she visited Dr Prof SD Pandey but he did not want to involve himself in this case, then she visited Dr Manoj Kumar Singh on 07.09.16 who referred the case to SIPS. After this the complainant went to Mumbai and admitted her baby in Bai Jerbai Wadia Hospital. Here she was till 25 September 2016. Thereafter she went to Narayaana Hospital of Narayana Handayalaya Ltd at Bangalore and got her baby admitted on 03.10.2016. Now it is not clear that between 07.09.16 till 25.09.16 what action was taken by the complainant, as she did not go to SIPS but she went to Mumbai. Again there is no account of the baby for the period 25.09.16 till 03.10.16 . It is really surprising that during such a long period she did not visit any hospital or she did not take any step for her baby.”

Issue No. 3:- Administration of Taxim 250 mg and Amikacin 50 mg I.V.

“As per opinion of the doctor and pediatrician the above mentioned medicines were given and it cannot be said that it was given in overdoses. So from all the facts we are of the opinion that in this case res ipsa loquitur is absent. No negligence has been shown by the opposite parties no 1 to 3. One thing is also needs clarification. It is very difficult to find the veins of a newly born baby and to make it conspicuous the hand is patted gently to find the vein for IV drip. So it has no force that they were puncturing the muscle of the hand of poor baby. How to find a vein to Draw Blood? First, palpate the patient's arm for a vein. Most veins are not visible to the naked eye, and touching

may be the only way to find a problematic vein. Trying to feel what is a viable vein or not is a critical skill for a phlebotomist. Palpate means examination by pressing on the surface of the body to feel the organs or tissues underneath. So it is wrong to allege that the opposite parties 1 & 2 were puncturing the muscle of the hand. We have seen the photographs of the baby and it is really shocking and we have full sympathy with the baby but as far as medical negligence is concerned, in this particular case we do not find any medical negligence on the part of the opposite parties.”

19. The evidence on record reveals that the baby was born as normal delivery and, however, with shoulder dystocia, which is also normal during such deliveries. Shoulder dystocia is however a serious obstetric emergency. Post delivery of the Complainant, due to identified complexity of shoulder dystocia and mild asphyxia, the baby was appropriately referred by the OP-1 to 3 for admission to the NICU for evaluation by paediatrician/ neonatologist. The educational qualifications and experience of relevant doctors were considered by the learned State Commission and nothing adverse revealed and they are qualified doctors in their field. As regards allegation that no pediatrician was called for the baby, the discharge record of 03.09.2016 revealed the note of pediatric call and a prescription of Dr. KP Singh who is pediatrician. The delivery notes of the OP-1 to 3 doctors dated 04.09.2016 revealed recording of “swelling on hand”. The case sheet dated 02.09.2016 reveals recording of “swelling noted over hand”. The Complainant and the baby were discharged on 04.09.2016 clearly mentioning the swelling on the hand. Therefore, clearly, pediatrician examined the baby and the allegations of the Complainants in this regard are baseless. On 06.09.2016 the Complainant was advised to consult Dr Prof SD Pandey (Plastic Surgeon). As per the Complainant, Dr Pandey did not want to involve himself. Thus, she visited Dr Manoj Kumar Singh on 07.09.2016 who referred the case to SIPS. After this the Complainant went to Mumbai and admitted the baby in Bai Jerbai Wadia Hospital. Thereafter, she went to Narayaana Hospital at Bangalore and got her baby admitted on 03.10.2016. The details as to the medical attention to the child between 07.09.2016 till 25.09.2016 and again from 25.09.2016 to 03.10.2016 are unclear.

20. As regards the allegation with respect to dosage of medicines administered to the baby, these were as per the opinion of the treating doctor and pediatrician, and it cannot be said to be given in overdoses, without anything substantial to the contrary being brought out. No negligence has been revealed in the treatment by OPs-1 to 3. Further, as regards allegations of damage to the veins of the child causing infection and further complications, it is evident that it is very difficult to find the veins of a newly born baby. To make the vein conspicuous, the hand is patted gently to find the vein for IV drip. Touching may be the only way to find a problematic vein and to administer the treatment. Therefore, it is untenable to accuse that treating doctors and staff punctured the muscle of the hand.

21. The Hon'ble Supreme Court had laid down certain duties for the treating doctor. In the case of Dr. Laxman Balkrishan Joshi Vs. Dr. Trimbak Bapu Godbole and Anr., AIR 1969 SC 128 it was held that:

"The duties which a doctor owes to his patient are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties, viz., a duty of care in deciding whether to undertake the case, a duty of care in deciding whether treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient. The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged. In the light of the particular circumstances of each case is what the law requires.

22. The Hon'ble Supreme Court in Jacob Mathew v. State of Punjab, (2005) 5 SCC (Cri) 1369 which followed the Bolam's principles and 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."

"25.....At times, the professional is confronted with making a choice between the devil and the deep sea and he has to choose the lesser evil. The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Which course is more appropriate to follow, would depend on the facts and circumstances of a given case. The usual practice prevalent nowadays is to obtain the consent of the patient or of the person in-charge of the patient if the patient is not be in a position to give consent before adopting a given procedure. So long as it can be found that the procedure which was in fact adopted was one which was acceptable to medical science as on that date, the medical practitioner cannot be held negligent merely because he chose to follow one procedure and not another and the result was a failure."

23. In a recent case, the Hon'ble Supreme Court case, **Devarakonda Suryasesha Mani v Care Hospital, Institute of Medical Sciences IV** (2022) CPJ 7 (SC), it was held as below:

“..2. Unless the appellants are able to establish before this Court any specific course of conduct suggesting a lack of due medical attention and care, it would not be possible for the Court to second-guess the medical judgment of the doctors on the line of medical treatment which was administered to the spouse of the first appellant. In the absence of any such material disclosing medical negligence, we find no justification to form a view at variance with the view which was taken by the NCDRC. **Every death in an institutionalized environment of a hospital does not necessarily amount to medical negligence on a hypothetical assumption of lack of due medical care.**”

24. In view of the aforesaid discussions and precedents, I find no reason to interfere with the well reasoned order of the learned State Commission dated 28.09.2022 and as a result, the instant Appeal No. 853 of 2022 is dismissed.

25. Considering the facts and circumstances of the case, there shall be no order as to costs.

26. All pending Applications, if any, also stand disposed of accordingly.