

**(1997) 06 NCDRC CK 0001**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** None

Harjot Ahluwalia

APPELLANT

Vs

SPRING MEADOWS HOSPITAL

RESPONDENT

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**Date of Decision:** June 16, 1997

**Citation:** 1997 2 CPC 593 : 1997 2 CPJ 98 : 1997 3 CPR 1 : 1998 1 CLT 212

**Hon'ble Judges:** V.BALAKRISHNA ERADI , S.P.BAGLA , C.L.CHAUDHRY J.

**Final Decision:** Petition disposed of

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**Judgement**

1.HARJOT Ahluwalia, the complainant in this case is a minor aged about six years at present, having born on 11.9.1991. He has filed this complaint through his parents claiming compensation for grave physical and mental damage due to the deficiency in service/negligence on the part of the opposite party Nos. 1 and 3. The facts leading to this controversy involved may be summarised as under.

2. THE complainant is the only child of his parents having been born on 11.9.1991. On 21st December, 1993, the minor fell sick due to high fever. He was treated at Kailash Nursing Home at NOIDA till 24th December, 1993. As there was no substantial improvement, the minor was brought to M/s. Spring Meadows Hospital, East of Kailash, New Delhi opposite party No. 1 in this case on 24th of December, 1993 for treatment. The minor was examined by Dr. Promila Bhutani, Senior Consultant Paediatrician at the Hospital. On the advice of Dr. Bhutani, the minor was admitted as an in -patient on 27.12.1993 in the Hospital. On the basis of the Widal Test Dr. Bhutani came to the conclusion that the minor was suffering from typhoid. Dr. Bhutani told the parents of the minor that she had prescribed the necessary medicines for the treatment of the typhoid fever. On the same day i.e. 30.12.1993 at

about 9.00 p.m. Miss Bina Mathews, the Nurse, opposite party No. 2, asked the father of the minor to bring medicine which was to be administered intravenously to the minor. She wrote down the name of the injection - Inj Lariago - to be purchased. The father of the minor purchased the medicine from "Spring Meadows Chemists" shop. At about 9.30 p.m. the Nurse administered by intravenous injection one Ampule of the said medicine to the minor who was at that time in the lap of his mother. Immediately upon administering the injection, the minor collapsed. According to the complaint, the injection was administered to the minor by the Nurse directly without first applying a Test Dose. Also, the first dose of any sensitive injections must be administered by a Doctor and not by a Nurse to guard against any adverse reaction that an individual may have to such injection. This precaution was very necessary for the treatment of the minor child. The minor's parents immediately called for help and within 5 to 7 minutes the Resident Doctor Dr. Dhananjay came to attend to the minor. At that time, the minor was totally motionless. Dr. Dhananjay told the parents of the complainant that the child had suffered cardiac arrest. Dr. Dhananjay started to manually pump the chest of the minor in a bid to revive his heartbeat. No oxygen cylinder was available for immediate use.

Meanwhile, Dr. Anil Mehta, an Anaesthetist and a partner in the opposite party Hospital was summoned for help. He arrived about half -an hour after the minor had collapsed and started a procedure of manual respiration upon the minor by applying an oxygen cylinder and a Manual Respirator/Ventilator. According to the complainant, appropriate equipment should have been employed for the minor immediately upon his collapse which was not done till the arrival of Dr. Mehta. Thereafter Dr. Promila Bhutani also reached the Hospital. The minor was kept on a device called a manual Respirator/Ventilator. At that time the minor was having convulsions. Several monitoring devices had been attached to monitor the various physiological factors of the minor.

3. THE condition of the minor showed no improvement whatsoever and he was barely kept alive on the manual Ventilator, by which a certain respiratory rate was attempted to be maintained by physically pumping air into the lungs of the minor by some Doctor or qualified person sitting and manually pumping round the -clock. The minor was kept on the manual Ventilator from the time of his collapse on 30th December, 1993 till 2nd January, 1994. The minor's platelets count fell and on 1.1.1994 blood transfusion was required to be administered to the minor. As the condition of the minor showed no improvement. Dr. Anil Mehta suggested to the parents of the minor that the opposite party Hospital did not have the facilities

required to manage the minor/ he should be shifted to an Intensive Care Unit equipped with an Auto Respirator/Ventilator, which the Hospital did not possess. With great difficulty, the parents of the minor were able to organise bedspace for the minor in the Paediatric Intensive Care Unit of the All India Institute of Medical Sciences (for short All MS) and the minor was shifted there around mid -night on 2nd/3rd January, 1994. The minor was thoroughly examined by the Doctors of the Paediatric Department. After the detailed examination by the Doctor of AIIMS, the parents of the minor were informed that the minor was extremely critical and even if the minor was to survive, chances were that he would live in a vegetative state since irreparable damage had been caused to his brain and there was no chance of revival of the damaged parts of the brain.

4. THE minor was kept in the Paediatric Intensive Care Unit of the AIIMS and finally on 24th January, 1994 the Doctors of the AIIMS informed the parents of the minor that no useful purpose would be served by keeping the minor at AIIMS and accordingly the minor was discharged from the AIIMS. Dr. Anil Mehta and Mr. Naresh Juneja, Chief Administrator of opposite party's Hospital offered to admit the minor back at the opposite party's Hospital and to attempt to do whatever was possible to stabilise the condition of the minor and help him recover, if possible. Accordingly on 24th January, 1994 the minor was again admitted to the opposite party's Hospital.

After the occurrence of the incident, the parents and other relatives of the minor approached several practitioners of conventional and non -conventional medicine seeking any remedy available for the minor but with no success. According to the complainant, when the minor was diagnosed as suffering from typhoid, he should have been administered "Chloromphenicol " but the Nurse had instead administered "Chloroquine " (Injection Lariago being a brand name for Chloroquine). Moreover, Chloroquine had been injected abruptly whereas, even if it would have been given, it should have been given slowly by way of a drip and not by way of injection. Also the dose administered - 1 Ampule i.e. 5 ml. had been far in excess of the dose appropriate for the child. The injection of Chloroquine had resulted in irreparable damage to brain cells. Also there had been undue delay in administering oxygen to the child after the said drug was given, as a result of which any chance of preventing death of brain cells or reviving them had been jeopardised and that the Manual Ventilator/Respirator was not appropriate for use upon such a patient since it could not deliver adequate quantity of oxygen consistently to the body and the child should have been put on an Auto -Ventilator. As of the present state of medical know -how there has been no hope of the child ever recovering

from his present state. The condition of the minor appears irredeemable. The minor has suffered irreparable damage to certain brain cells. He is unable to control his vital functions; he is incapable of locomotion by himself and requires help even to turn sides; he is unable to sit up on his own since he could not hold up his head; he is unable to even recognise persons; he is existing in the state of a vegetative. According to the complainant there had been negligence and deficiency in service on the part of the Dr. Promila Bhutani in that she failed to give proper instructions/prescription regarding\* the medicine to be administered by T.V. injection to the minor and there had been negligence and deficiency on the part of Dr. Dhananjay in that he failed to take the appropriate steps when the minor collapsed by not putting the minor on a Ventilator/Respirator and oxygen cylinder etc. Also, there had been negligence and deficiency in service on the part of Dr. Anil Mehta as he failed to take appropriate steps at the time when the minor had collapsed and thereafter failed to timely advise the parents of the minor that the minor needed to be on an Auto Ventilator/Respirator for proper breathing which facilities the Hospital did not have.

5. ACCORDING to the complainant/ before the occurrence of the incident, the child was hale and hearty and could look forward for a bright and successful future. According to the complainant, as a direct result of negligence and deficiency in service on the part of the opposite parties, the minor and his immediate family members have suffered the following losses:

(a) loss of active life for the minor by reason of his having been reduced from being a bright, active and an intelligent child to a mere vegetable; (b) loss of prospective earning potential and capacity since medical opinion says that the complainant will never be able to recover from his present state; (c) loss on account of present and future expenses for bare sustenance of the minor inasmuch as the minor can only survive on elaborate medical support systems, medicines and constant medical and parental attention; (d) loss caused as a result of the mother of the complainant, who holds a Post -Graduate Degree in Business Administration, having to spend all the time attending to her only child and not being able to build a career; (e) loss on account of untold mental agony and physical torture to the father and the mother of the minor, the father of the complainant also being a Post -Graduate in Business Administration.

6. THE loss in terms of the suffering which the minor, his parents and other members of the family had undergone and have to continue to under -go, the loss of fulfilment in bringing up their only child and loss due to disharmony in the family life of the parents cannot even be fractionally compensated by any amount of wealth. However, emotional lies make it vital for the parents to look after the minor so that he spends his remaining life in minimal agony.

In these premises, the complainant had claimed compensation for loss and injuries suffered by the minor due to the negligence and deficiency in service on the part of opposite party Nos. 1 and 2 and claimed Rs. 28/- lakhs.

7. NEEDLESS to say that the claim is resisted on behalf of the opposite parties. In the written version dated 18th April, 1995 filed on behalf of the opposite party No. 1 Hospital; it is stated that the plea of the complainant that the services of the Hospital were availed of for consideration promised is not correct. The complainant firstly remained under treatment of the Hospital as indoor patient from 27th December, 1993 to 2.1.1994. The bill for Hospitalisation and treatment for this period in the sum of Rs. 19,607/- had not been paid. The complainant was readmitted to the Hospital on 24.1.1994 and he continued to be in the Hospital till date. In the absence of payment of bills for the services, the complainant is not a consumer within the definition of consumer as contained in the Consumer Protection Act. The complaint, therefore, is not maintainable. On merits, it was stated that there had been no deficiency and negligence on the part of the Doctors of the Hospital. On account of an act of omission on the part of the Nurse, attending on the minor, the minor is in the present state. The injection prescribed by the Doctor as is evident from the history sheet was "Chloramphenicol". However the Nurse misread it as "Chloroquine" and gave a slip for purchase of medicine mentioning therein the name of the injection as "Lariago" (Chloroquine). On the collapse of the child in the arms of the mother, it was the Nurse who called Dr. Dhananjay, the Resident Doctor on duty. He reached there within no time and after observing the condition of the minor, started cardio pulmonary resuscitation to revive the heart and also sent message to Dr. Anil Mehta and Dr. Bhutani. In the event of cardiac arrest, it is the cardio pulmonary resuscitation and the man performing the procedure which is more important than a ventilator machine. Dr. Anil Mehta reached the room of the minor immediately on receiving the message. It was denied that Dr. Mehta arrived about half an hour after the minor had collapsed. In the situation which developed due to collapse of the patient as a result of cardiac arrest, cardio pulmonary resuscitation is the only alternative which Dr. Dhananjay carried out. As soon as Dr. Mehta arrived, he helped Dr. Dhananjay to carry out the resuscitative measures.

Besides Dr. Bhutani, three Specialists were summoned to examine the minor. They were all of the opinion that the minor was being properly managed. There was no occasion for seeking any assistance from Dr. J.S. Nanra, the family Doctor of the complainant. There was improvement in the condition of the minor and it was on this account that the manual ventilation was continued. The impression of the parents of the minor that the minor's platelets count fell down since proper oxygen was not available were wrong and denied. A pulse oxymeter was attached on the minor which showed the state of arterial oxygen in the blood at all times. However, since the platelet count had fallen down, it was decided to administer blood. The physician attending on the complainant was Dr. Bhutani and on the request of the parents of the minor, she agreed to shift the minor to AIIMS and gave the case summary alongwith a recommendation for immediate admission. Dr. Mehta was not the attending Doctor. Before getting the complainant discharged from AIIMS, the father of the minor had called at the office of the Hospital and he conveyed to Dr. Anil Mehta the ultimate advice of the Doctors of AIIMS, and requested him to keep the child in the Hospital for few days during which period he would make alternative arrangement to look after the child at home. On sympathetic consideration, the child was readmitted in the Hospital on 24.1.1994. However, the parents of the minor failed to honour their commitment to take the child back to their home on one pretext or the other. There had been no act of negligence on the part of Dr. Bhutani. Dr. Dhananjay acted as a reasonable and prudent Doctor. He alone was instrumental in reviving life after a cardiac arrest by cardio pulmonary resuscitation which was the need of the time. The minor being a child at the age of three years, loss of prospective earning potential is too remote thing. Similarly, loss of earning/working capacity of the parents in no way is going to be impaired. To look after the child the parents can engage a full -time male or female servant. The claim of the complainant for compensation is highly excessive and exorbitant. The sole aim of the parents is to secure monetary advantage for themselves out of the suffering of the minor. In any case, the liability to pay compensation would be that of the Insurer from whom the Hospital has taken Medical Establishment Error and Omission Policy of Insurance. There was no element of negligence on the part of the Doctors of the Hospital.

8. OPPOSITE party No. 2 Miss Bina Mathew has also filed her affidavit in opposition to the complaint. In her affidavit, she contended that she was a qualified Nurse having undergone two years course of Nursing and Midwifery and before joining M/s. Spring Meadows Hospital, she had been working as a Nurse at Nirmal Nursing Home, Model Town for about one year. She joined the opposite party Hospital on

22nd December, 1992. The petitioner is not a consumer within the definition of Act as no consideration whatever has been paid and thus the petition is not maintainable. The opposite party Hospital covered the answering opposite party under Medical Establishment Error and Omission Policy which necessitates making the Insurance Company necessary party to the dispute. The petitioner tried to fasten all the liability on her while as the fact of the matter was that she had exercised all due diligence and care in the discharge other duty. The minor was not under her diagnosis, but was under the diagnosis, advice and treatment of Dr. Bhutani who only had the duty of care in deciding the treatment and a duty of care in the administration of the treatment and she was working under her control, charge and direction. A breach of such duty would be negligence of the Doctor and not of the Nurse. There has been no deficiency in service and negligence on her part. She took all due care and caution as Lariago Syrup was already being administered to the child. By mischance or slip the Chloramphenicol was comprehended and expressed as Chloroquine and Lariago injection came to be given as earlier Lariago syrup was being administered. As the patient was under care and charge of Dr. Bhutani, there was no question for her to administer test dose on the minor, which is a specialised job of the Paediatrician to do on a delicate child and as such there was no mention on the prescription/ case sheet of applying test dose before giving the injection as alleged.

The New India Assurance Company Ltd. was impleaded a party to this complaint as opposite party No. 3. The Insurance Company has filed written version contesting the claim. The defence set up by the Insurance Company is that no fault, shortcoming, imperfection or deficiency in service on the part of the Insurance Company has been alleged by the opposite party Hospital, as such provisions of the Consumer Protection Act could not be invoked against the Insurance Company. The Insurance Company issued Medical Establishment Professional Negligence Errors and Omissions insurance policy No. 4631060002724 from 30.8.1993 to 29.8.1994 to opposite party No. 1 upon opposite party No. 1 filling a proposal from dated 26.8.1993 for the said purpose. From the perusal of the policy and the terms and conditions of the policy it is evident that liability, if any, of the Insurance Company is to the extent of Rs. 12,50,000/- with normal excess of Rs. 12,500/-. The Insurance Company cannot be made liable where the liability has arisen out of criminal act or any act committed in violation of any law or ordinance, or deliberate, wilful or intention, non-compliance of any statutory provision, deliberate conscious or intentional disregard of the insured's technical or administrative management of the need to take all reasonable steps to prevent claims. In the proposal form, the opposite party Hospital had categorically stated that Doctors/ Nurses/technicians were duly licensed in accordance with the medical Acts or any other prevalent laws. After making investigations, it revealed that Miss Bina Mathew whom opposite party No. 1 Hospital had been claiming to be a qualified "B" Grade Nurse in fact was not a qualified Nurse at all and having not pursued the course of Nursing from a

recognised Institution /Board; the course done by Ms. Bina Mathew is not recognised by Indian Nursing Council and she is not even authorised to work/practise or take up employment as Nurse having not been registered with any Nursing Council of State/ India. Taking into consideration the various reports and investigation made by them, the Insurance Company came to the conclusion that by entrusting master Harjot Ahluwalia to the care of Ms. Bina Mathew, an unqualified person for performing that job and by her action the minor is in the present condition. The opposite party Hospital committee breach of terms and conditions of the policy. After detailed investigation in the matter, reasonably, bona fide and acting in good faith, the Insurance Company repudiated its liability that it was not liable to reimburse the opposite party Hospital under the policy in question in respect of the claim of the complainant. As the Insurance Company rightly repudiated its liability under the policy, there has been no deficiency in service on the part of the Insurance Company and the Insurance Company is not liable to pay any amount.

9. WE have heard the learned Counsels for the Parties and have gone through the records of the case very carefully. In order to assess the minor's condition, rehabilitation requirement and prognosis regarding the scope of further improvement in the matter of regaining his faculties, this Commission referred the matter to the Medical Superintendent, Safdarjung Hospital by the Order, dated 28th January, 1997. In pursuance to the Order, a report has been received from the Medical Superintendent, Safdarjung Hospital, New Delhi. The Minor was examined on 25th February, 1997 at the Department of Rehabilitation in the presence of the mother of the child by duly constituted panel consisting of Dr. H.C. Goyal - Consultant and Head, Dr. R. Sharma - Assistant Director, Dr. Nonica Laisram -Assistant Director. The panel also co-opted Mrs. S. Malik - T/C and Senior Occupational Therapist and Mr. A.C. Verma - Senior Psychologist. For the sake of convenience the report is reproduced below:

"REPORT ON CHILD HARJOT AHLUWALIA (MINOR) In reference to MISC. PETITION NO. 11 OF 1997 In ORIGINAL PETITION NO. 292 OF 1994 Harjot Ahluwalia (Minor) -Complainant versus M/s. Spring Meadows Hospital and Ors. -Opposite Parties 1. The child is having gross physical and mental deficits. The level of mental retardation is severe to profound, at the present the child is fully dependent for his daily needs like feeding, self care etc. 2. The child requires regular day care in a special institute dealing with patients of mental retardation and physical deficits till the time the child achieves adolescent age, with the overall goal of enhancing the physical and mental capabilities of the child and also to impart the necessary



education to me parents specially the mother and attendant to take care of the child at home. The benefit of regular institutional day care will be to help the child to get the multiple benefit and advantage of fulfilling the needs in respect of physical, mental and speech development to the maximum extent expected, because the institutional management is based on comprehensive rehabilitation management including medical services and services of psychologist, physiotherapy, occupational therapy, speech therapy, special educator and is also equipped with necessary equipments required. 3. Simultaneously a full -time attendant who will be gradually imparted training as a part of institutional day care management as mentioned at Sr. No. 2 will be required to meet the needs of the child at home. 4. In order to manage the child at home certain essential equipments are recommended (list appended at Annexure -I). 5. As regards prognosis the panel members are of the view that the child if given the proper care as recommended above may have marginal functional improvement. At the same time it is anticipated that the child shall be dependent for his daily needs for his life. Regarding the educational and vocational potentials it is anticipated that the child will not be able to pursue formal education and undertake any gainful employment. Sd/ -xxx Sd/ -xxx Sd/xxx (Dr. H.C. Goyal) (Dr. R. Sharma) (Dr. Monica Laisram) Consultant and Assistant Assistant Head Director Director Sd/xxx Sd/xxx (Mrs. S. Malik) (A.C. Verma) Sr. Occup. Therapist Sr. Psychologist"

10. THERE is no dispute that the child is suffering from brain damage. According to the complainant the present status of the child has been caused by administration of wrong medicine which was unfortunately given intravenously by the Nurse. The Nurse was duty -bound to give the intravenous injection under the direct control and supervision of a Resident Doctor. Instead she gave the injection in the absence of a Resident Doctor. This is a clear case of dereliction of duty on the part of the Nurse. The literature relating to Lariago medicine states that this medicine is highly lethal even if given in marginal overdose. It is stated that there is only a hairline division between the correct and lethal dose of this drug. The child was administered a heavy dose which inevitably led to "cardiac arrest<sup>7</sup> and other complications. According to the Hospital authorities and the Nurse, the child was admitted in the Hospital with no diagnosis and was empirically being treated with anti -typhoid and anti -malaria drugs and medicines to keep the temperature down. Prior to the investigation coming positive, the child was on one of the best drugs known for typhoid Zenocin (of loxacin) for a period of 6 days. Despite being on the said drug for six days, the temperature did not settle down and the child continued to be irritable. That emphasised that the enteric fever was of a severe variety.

Enteric (typhoid) fever is a serious disease with wide ranging ramifications. It is well-known to have complications including the brain involvement and may even result in death. The severe typhoid, which is bacteraemia leads to septicemia once the organisms do not respond to the medicines. The septicemia leads to the blockage of the very fine vessels in the brain and thereby cause a staggered involvement of the brain tissue. This multifocal involvement of the brain in this child too is the result of the septicaemia because of typhoid.

We have considered the relevant contentions of the parties on this aspect of the matter. The case -sheet of the Hospital dated 27th December, 1993 indicates that the minor suffered from moderate fever for one week which was spiking upto 102-103 FH. The minor was put on T.V. Zenocin, Metrogil and oral Chloroquine. for controlling temperature. Dr. Promila Bhutani prescribed Tbugesic Plus. She examined the child and found him to be generally healthy except temperature. On 28th December, 1993 Dr. Bhutani again examined the child and found no general, physical and neurological complications. Examination on 29.12.1993 showed improvement - appetite improved. On 30th December, 1993 the case was reviewed. The condition of the child was otherwise normal as indicated in the casesheet. On the evening of 30th December, 1993 at 8.30 p.m. Dr. Bhutani declared the cause of minor's suffering was due to enteric fever. She advised the treatment accordingly. Till that time, the child has no abnormality. She had left the child fully conscious and alert. She made this fact clear in her statement. On 30th December, 1993 at the time of administering intravenous injection, the temperature of the minor was 98.6 FH. In the written version filed on behalf of the Hospital it was not at all suggested that the minor's brain was damaged on account of septicemia. Rather in paragraph 5 (vii) it was stated that the injection prescribed by the Doctor as evident from the case-sheet was "Chloramphenicol" and the Nurse misread it as "Chloroquine" and gave a slip for purchase of medicine mentioning therein the name of the injection as "Lariago" (Chloroquine). In paragraph Nos. 5.9 and 5.10 it was stated as under:

"That the contents of para 5 (ix) of the complaint as stated are wrong and denied. On the collapse of the child in the arms of the mother, it was the Nurse who called Dr. Dhananjay, the Resident Doctor on duty. Dr. Dhananjay being within the Hospital reached there within no time and after observing the condition of the complainant started cardiac pulmonary resuscitation to revive the heart and also sent messages to Dr. Anil Mehta and Dr. Bhutani. In the event of a cardiac arrest, it is the cardio pulmonary resuscitation and the man performing the procedure which is more important than a Ventilator machine. That the contents of para 5(x) of the complaint as stated are wrong and denied. Dr. Anil Mehta and Dr. Bhutani were summoned at the behest of Dr. Dhananjay/ Dr. Anil Mehta reached the room of the complainant immediately on receiving the message. Dr. Dhananjay was well in control of the situation. On arrival. Dr. Anil Mehta alongwith Dr. Dhananjay carried on the resuscitation and in due course, the cardiac activity and the breathing was maintained manually. Allegation that Dr. Mehta arrived after about half -an -hour

after the complainant had collapsed is absolutely wrong and denied. In the situation which developed due to collapse of the patient as a result of cardiac arrest, cardio pulmonary resuscitation is the only alternative, which Dr. Dhananjay carried out promptly. As soon as Dr. Mehta arrived, he helped Dr. Dhananjay to carry out the resuscitative measures".

11. SIMILARLY , in the Affidavit filed on behalf of the Nurse, it nowhere states that the minor's brain was affected on account of septicaemia.

12. DR . Anil Mehta on 17th June, 1994 wrote to Prof. Anton regarding the case of the minor as under:

"Dear Prof. Anton, I am enclosing herewith a resume of a child of one of my friends. He had a history of Puro and was inadvertently given a dose of Chloroquine injection T/V, following which he developed cardiac arrest. Though he was revived from the arrest, he has residual brain damage. It is almost six months that he has been getting physiotherapy and symptomatic therapy, but we are not making a headway. The enclosed resume enumerates the problems being faced in the management of the child. I would appreciate if you could kindly suggest if there could be some remedy by which the brain cells could function again or the remaining brain cells could be given more stimulation for them to perform better at least to an extent that the child becomes self -reliant. With kind regards, Sincerely, Sd/-xxxxxxxxx (Dr. Anil Mehta)"

Similarly, there is also a Progress Summary prepared by the Spring Meadows Hospital wherein it is stated that on the evening of 30th December, 1993, the child was accidentally given injection Chloroquine 5 MGT.V. following which he developed hypersensitivity and cardiac arrest. He was resuscitated immediately, but required to be no long -term ventilation. The minor was also examined by Dr. Hastir on 31st December, 1993 at 10 a.m. on the request of Dr. Bhutani. In his report, he mentioned that the patient had cardiac arrest following injection of Chloroquine on 30.12.1993. Resuscitated, but patient did not regain consciousness and started having convulsions. In the case -sheet of 30th December, 1993 recorded at 9.30 p.m., it was mentioned "the child was playing in mother's lap. Baby got suddenly unconscious, pulse very much feeble, cardiac arrest, baby resuscitated". From this

endorsement, it was contended on behalf of the Hospital and the Nurse that in case the minor had suffered from cardiac arrest there was no question of feeling of the pulse. We have seen the case -sheet. Under the word "pulse very much feeble" a question mark is there and below this "cardiac arrest". Nobody has come forward on behalf of the Hospital to explain this contradiction. According to the Hospital the entry was made in the hand of Dr. Dhananjay. But, he was not produced by the Hospital authorities to explain this contradiction. Dr. Bhutani appeared in the witness -box as a Court Witness and she referred the discharge summary slip of the minor prepared by her. Therein it is mentioned that the Nurse accidentally injected Chloroquine resulting in an anaphylactic shock and cardiac arrest. The child was revived immediately and given immediate resuscitation measures but the child developed signs of cerebral edema and convulsions.

13. IN her statement also she admitted that high dose of Chloroquine could produce cardiac arrest. On behalf of the complainant, Kamaljit Singh Ahluwalia, father of the minor. Dr. A.S. Ahluwalia, grand -father of the minor. Dr. J.S. Nanra and S.K. Bhalla appeared as witnesses in support of the case of the minor. They testified that the minor had suffered from cardiac arrest and on account of that he got his brain damaged.

14. REGARDING septicaemia, it was contended on behalf of the complainant that the factum that the "decerebrate posture" took place is not disputed. It can be the result of only cardiac arrest. From the evidence on record it is clear that decerebrate posture cannot in fact occur by encephalopathy caused due to high fever. If any brain damage is caused due to encephalopathy/ it can only be local which will at most cause partial damage. It is also on record from the statements of expert Doctors that the brain damage or decerebrate rigidity cannot occur suddenly due to typhoid/septicaemia.

From the evidence placed on record by the parties we are of the firm view that the child had suffered from cardiac arrest.

15. THE next question that arises for determination is as to the cause of the cardiac arrest.

16. THE case of the complainant is that the child suffered from cardiac arrest because of the high dose of Chloroquine.

There is overwhelming evidence in support of the contention of the complainant that the minor suffered from brain damage. There was a cardiac arrest and on account of that he had suffered brain damage. From the case -sheet we find that on the evening of 30th December, 1993 at 8.00 p.m. when the minor was examined by Dr. Bhutani the child had no abnormality. It is in evidence that the child collapsed after Chloroquine injection was given to the minor. According .to the complainant, Chloroquine is highly toxic. There is narrow margin between its therapeutic and toxic dose, and as such requires extreme caution. Caution and side effects have been stressed. The complainant placed reliance on P.D.R. 47 Edition 1993 "Physicians" Desk Reference. It mentions, "Warnings": Physicians should completely familiarize themselves with the complete contents of the leaflet before prescribing Aralen (Hydrochloride brand of Chloroquine hydrochloride injection, USP). The fact of over -dose reads as under:

"Paediatric Dose: Infants and children are extremely susceptible to over dosage of parenteral ARALEN. Severe reactions and deaths have occurred. In the paediatric age range, parenteral ARALEN dosage should be calculated in proportion to the adult dose based upon body weight. The recommended single dose in infants and children is 5 mg base per kg. This dose may be repeated in 6 hours; however, the total dose in any 24 -hour period should not exceed 10 mg base per kg of body weight. Parenteral administration should be terminated and oral therapy instituted as soon as possible."

17. HIGH toxicity of Chloroquine has also been admitted in cross -examination by Dr. Aseem Katiyal, Dr. Promila Bhutani and Dr. Mehta. It is also established from the record that the dose of Chloroquine administered to the child was at least 3 1/2 times of the normal dose and as such was a high overdose. According to Dr. Mehta the dose should have been 5 to 7 mgs per kg. Dr. Bhutani admitted that the Chloroquine injection given to the minor was of a high dose and that could create a

serious condition. The father of the minor testified that the child collapsed immediately after he was given the injection of Chloroquine. From the material placed on record on behalf of the complainant it can safely be concluded that the cardiac arrest was due to the administration of the T.V. injection of Chloroquine of high dose.

18. MR . K.S. Ahluwalia deposed that Dr. Dhananjay had arrived 5 to 7 minutes after the minor had collapsed. Dr. S.K. Bhalla deposed that the minor was a child on with beating heart and irreversibly damaged brain. The records clearly pointed out the delay in resuscitation of the child after cardiac arrest. Whereas the heart could be made to beat normally even after hours of stoppage, the brain suffers irreversible damage, if not resuscitated with oxygenisation within four minutes of cardiac arrest. He further deposed that if it is not possible to revive the heart within 210 seconds the patient's brain is lost as the brain is a very sensitive organ. Similarly is the statement of Dr. Aseem Katiyal who deposed that the heart -arrest has to be revived within three minutes and after three to four minutes the brain starts undergoing permanent damage.

From the material placed on the record it is established that there was a delay in reviving the heart and on account of that delay the minor suffered brain damage.

19. THE next point for our consideration is as to whether the Hospital authorities or the Nurse were negligent in performing their functions and duties. It is in evidence that the Nurse, Miss Bina Mathew wrote out a prescription and gave to the minor's father to bring the medicine from the shop in the premises of the Hospital. It was subsequently found that instead of writing the name of the medicine "Chloramphenicol" Nurse wrote a brand name "Lariago" of the medicine "Chloroquine". The minor's father was not acquainted with either of the medicine. He brought the medicine and gave it to the Nurse. She injected the medicine intravenously. The child immediately collapsed and went into "cardiac arrest". In her affidavit, the Nurse has explained that she had taken due care and caution as "Lariago" syrup was already being administered to the child. By mischance or slip "Chloramphenicol" was comprehended and expressed as "Chloroquine" and Lariago injection came to be given as earlier Lariago syrup was being administered.

It was Dr. Bhutani who only had the duty of care in deciding the treatment and a duty of care in the administration of the treatment and she was under her control, charge and direction. The staff attending on the patient discharge their duties and work on the patient under the control, guidance and supervision of the consultant/Doctor under whose treatment/ care and supervision the patient is admitted. In para 5(vii) of the written version on behalf of the Hospital, it was stated that the Nurse by mistake read the injection prescribed as Chloroquine and it being a case of omission on the part of the Nurse who misread the injection prescribed as Chloroquine, the present controversy has arisen. In our opinion/ there was negligence and carelessness on the part of the Nurse for not properly reading the name of the medicine prescribed by Dr. Bhutani. She should have taken due care and caution to read the name of the medicine correctly. There was a clear lapse on her part. She was otherwise duty-bound to give the intravenous injection under the direct control and supervision of the Resident Doctor. Instead, she gave the injection in the absence of a Resident Doctor. There is a clear dereliction of duty on the part of the Nurse.

20. THERE is another aspect of the matter. A plea raised on behalf of the Insurance Company is that Ms. Bina Mathew, the Nurse/ was not a qualified Nurse. She was not supposed to give the injection. "Nurse" is defined in the Punjab Nurses Registration Act, 1932, "Nurse" means a person who holds a certificate in nursing from any institution recognised in the behalf by the Council or one who has been registered in Subsection (2) of Section 14.

According to Section 2 of the Delhi Nursing Homes" Registration Act, 1953 definition of "Qualified Nurse" means a Nurse registered in any State or Union Territory in India under a law for the registration of Nurses. Miss Bina Mathew got a certificate of nursing and midwifery from an institution called St. Teresa Medical Centre in Kerala. Mrs. R. Gujral, Secretary, Indian Nursing Council was examined in this case. She deposed that Miss Bina Mathew had undergone the training from St. Teresa Medical Centre, Kerala. She was not qualified as per the syllabus laid down by the Indian Nursing Council. She further deposed that the St. Teresa Medical Centre was not an institution recognised either by the State Nursing Council or by the Indian Nursing Council. The contention of Miss. Bina Mathew is that she did not know that the institution from where she got the certificate was not a recognised institution though it had been working for the last 16 years. Dr. Anil Mehta deposed that at the time of employing Miss Bina Mathew as a Nurse, he did not check her original papers and did not ask Bina Mathew to produce any certificate regarding her registration. Also placed on record is the investigation report carried out by Mr. A.V.

Thomas, which reveals that the aforesaid institution was not recognised by the Government and was a private institution. The persons running the institution did not possess a recognised qualification for running such an institution and could not issue such a certificate. From the material placed on record it is established that Bina Mathew was not a qualified Nurse. If she was not a qualified Nurse, then it was clearly negligent on the part of the Hospital to employ her and she should not have been entrusted with the care of the minor.

21. DR . Bhutani in her statement testified as under:

"When she was taking a round/ Dr. Dhananjay was there and she had given directions to him to give injection. In the Hospital there were Junior Doctors who were supposed to give the injections. The doctors give the injection or the Nurse give the injection under the direct supervision of the Resident Doctor. An injection maybe given under the direct supervision of the Doctor". From this statement it is apparent that the Nurse Bina Mathew could not administer the intravenous injection in the absence of a Resident Doctor. There was negligence on the part of the Nurse firstly in indenting for a wrong injection and secondly in herself administering the injection in die absence of a Resident Doctor.

22. DR . Mehta Medical Superintendent of the Hospital, in his statement testified as under:

"In the Hospital they have three Resident Doctors who are on duty round -the -clock. Injections given to the patients are directly given by the Resident Doctors. They are required to give injections themselves". He further testified that when the Nurse gave the injection to the minor, it was Dr. Dhananjay who was on duty. In reply to a question on behalf of the Nurse "whether he had inquired from Dr. Dhananjay as to why this injection was not given by him". He replied that after this incident occurred " I did check with him. It seems that he got busy with another patient just about that time and so he instructed the girl to go and give the injection "".

Dr. Mehta also deposed in the following words:

"As I mentioned, I did speak to Dr. Dhananjay and found out at that particular moment he got busy with another patient which happened to come as an



emergency. As I am told, Bina Mathew procured the injection and showed it to Dr. Dhananjay who said, "Fine, you can go ahead and give this injection." That is how this unfortunate thing happened."

23. THUS from the statement of Dr. Mehta/ it is apparent that Dr. Dhananjay was also negligent in the performance of his duties. He was advised by Dr. Bhutani to give the injection himself, but he allowed and permitted the Nurse to give the injection in his absence. The doctor should have been present at the time of administering the injection by the Nurse and the Nurse should have administered the injection under the care and supervision of Dr. Dhananjay. The minor had suffered on account of the negligence/ error and permission on the part of the Nurse as well as Dr. Dhananjay in professional services rendered. In our opinion, both were negligent in performing their duties. As a consequence, we hold that the minor had suffered on account of negligence of Dr. Dhananjay as well as of the negligence of the Nurse Bina Mathew. It follows that the Hospital is responsible by the acts of its employees and so negligence can be attributed to the functionaries and authorities of the Hospital and the Hospital is liable for the consequences.

24. THE next question that arises for consideration is the determination of compensation to the minor. The Rejoinder filed on behalf of the complainant stated that the sustenance and maintenance had been discussed with the Spastic Society of Northern India who had estimated the expenses as under:

(a) . Capital/One -time expenses Rs. 2,16,350/ - (b). Recurring expenses Rs. 83,825/ - per annum.

The details were mentioned in the Annexure filed alongwith the rejoinder. However/ it was stated in the Annexure that the estimate did not include the expenses for physiotherapy and occupational therapy through a private practitioner. Alongwith the report submitted by Doctors of Safdarjung Hospital, a list of equipments required by the minor is also mentioned. The complainant had submitted an estimate alongwith the written arguments wherein the cost of the equipment at the prevailing rates is estimated to be Rs. 8,94,300/ - and recurring per year Rs. 2,89,900/ -. This estimate has been refuted on behalf of the Hospital on the ground that the cost of the equipments required has been exaggerated and those were

available at a very low cost. No evidence has been produced on behalf of the complainant in support of the estimate placed on record with the written arguments. Affidavit by way of evidence of Kamaljit Singh Ahluwalia father of the minor, was filed. Alongwith the affidavit, he filed an Annexure regarding specific requirements of the minor/ wherein it was stated that the fixed amount required for purchasing the equipments would be Rs. 2,16,350/- and the recurring expenses per year would be Rs. 83,825/-. However, it was stated in the Annexure that the estimate did not include the expenses for physiotherapy and occupational therapy through a private practitioner. There is no rebuttal on behalf of the respondents to this Annexure filed alongwith the affidavit of the father of the minor.

From the report of the Doctors of Safdarjung Hospital, it appears that the minor is having gross physical and mental deficits. The level of mental retardation is severe to profound. At the present, the child is fully dependent for his daily needs like feeding, self care etc. It is anticipated that the child shall be dependent for his daily needs for his life. Regarding the educational and vocational potentials it is anticipated that the child will not be able to pursue formal education and undertake any gainful employment.

25. THE entire career of the child has gone and vanished. Both the parents of the child are Post -Graduates in Business Management. Considering the qualifications and the status of the parents, in normal course, the child would have got good education and would have settled very well in life. He is the only child of his parents. The minor has suffered/ is suffering and will suffer bodily and mentally - due to the negligence on the part of the Hospital and the Nurse. In our opinion, no amount of compensation can retrieve the mental condition of the minor. However, a provision has to be made for rehabilitation and maintenance of the child. The only evidence placed on record by the complainant is the affidavit of the father of the complainant wherein it is stated that the equipment will cost Rs. 2,16,350/ and the recurring expenses would be Rs. 83,825/- per year. This does not include the expenses on account of physiotherapy and occupational -therapy. In our opinion justice will be well met if we award a sum of Rs. 10 lakhs towards compensation to the minor. This estimate was filed in the year 1994. Taking into consideration, the inflation for these three years we are of the opinion that the price of the equipment would be near about Rs. 2.5 lakhs. So we also award Rs. 2.5 lakhs for the purchase of the equipment. So, in all the complainant will be entitled to Rs. 12.5 lakhs. As we have already held that there was negligence on the part of Dr. Dhananjay and the Nurse/ Miss Bina Mathew/ the Hospital and the Nurse are jointly and severally liable to pay this amount of the complainant.

26. IN addition to the compensation that we have fixed as payable to the minor we are of the considered view that due notice has to be taken of the acute mental agony that has been caused to the parents of the minor by reason of their only son having been reduced to a vegetative state requiring life -long care and attention. We are of the view that a sum of Rs. five lakhs should be paid to the parents of the minor/the liability for such payment being jointly and severally borne by the Hospital and Miss Bina Mathew.

The next question that arises for consideration and determination is whether the Insurance Company is liable for indemnification for the liability of the Hospital.

27. IT was submitted on behalf of the Hospital that the Hospital had got itself duly insured with the Insurance Company/ opposite party No. 3. The Insurance Company has assured the insured i.e. the Hospital with all the employees including the Resident Doctors/Nurses/Technicians, Trainees/Helpers, Administrative Staff etc. as per the stipulation under serial No. 6 of the proposal form. The Insurance Company was very much informed that the Registration of the opposite party Hospital was pending with the Government and that me factual aspect had been deliberately suppressed by the Insurance Company by not placing the original proposal form before this Commission. As per the proposal form the opposite party No. 1, the Hospital is not a Registered Hospital. The Insurance Company was insuring an unregistered nursing home and it was a direct contract between the two parties and whatever liabilities were incurred by the opposite party No. 1, Hospital are automatically shifted upon and transferred to the Insurance Company. The Insurance Company is estopped by raising the issue of Nurse being qualified or not qualified especially in view of the background of the fact that even after the opposite party No. 1, Hospital, being alleged by them for not having a qualified Nurse, the Insurance Company insured the opposite party Hospital, even in the subsequent years.

28. ON the other hand the contention on behalf of the Insurance Company is that it is not liable to indemnify the loss for the reason that the minor suffered brain damage due to the negligence of the Nurse and not due to the negligence of the Doctor. The cause of the brain damage of the minor is on account of administration of Lariago (Chloroquine) by Bina Mathew instead of the injection "Chloramphenicol" as prescribed by the Doctor.

The minor suffered from cardiac arrest which resulted damage to the brain. There was negligence on the part of the Nurse who administered the intravenous injection as the Nurse was not qualified Nurse, so the liability of the Insurance Company is excluded under the indemnity clause. In order to appreciate the contention of the parties it will be advantageous to reproduce the indemnity clause which has been relied upon by the parties:

"Indemnity: The indemnity applies only to claims arising out of bodily injury and/or death of any patient caused by or alleged to have been caused by error, omission or negligence in professional service rendered or which have been rendered by the insured or qualified assistant named in the schedule or any Nurse or technician employed by the insured".

Exclusion Clause is reproduced as below :

"Exclusions : 1. No liability shall attach to the company in respect of - (a). Any criminal act or any act committed in violation of any law or ordinance. 2. This Policy does not cover liability - (ii). Arising out of deliberate, wilful or intentional non-compliance of any statutory provision. (x). The deliberate, conscious or intentional disregard of the insured's technical or administrative management of the need to take all reasonable steps to prevent claims".

29. IT was contended on behalf of the Hospital that the indemnity clause covers any Nurse, i.e. she may be qualified or she may not be a qualified Nurse. On the other hand, the contention of the Insurance Company is that the reference to "any Nurse" in the indemnity clause means a "qualified Nurse" and not an "unqualified Nurse".

30. WE have carefully considered the relevant contentions of the parties. In our opinion/ the contention raised on behalf of the Insurance Company is well -founded.

Any Nurse means "qualified Nurse" and it does not include any unqualified Nurse. Even otherwise, as per definition of "Nurse" given in the Punjab Nurses Registration Act, 1932, the Nurse means "a person who holds a certificate in nursing from any institution recognised in this behalf by the Council or one who has been registered in Sub -section (2) of Section 14". As already we have returned the finding that Bina Mathew was not a qualified Nurse, the Indemnity clause is not applicable on that score.

But, as we have already held that the minor had suffered on account of the negligence, error or omission on the part of Dr. Dhananjay in professional services rendered, the case is fully covered under the indemnity clause. So the Insurance Company is liable to indemnify the amount of Rs.12,37,500/- in terms of the policy on account of the liability of the Hospital.

31. THE next question that arises for constitution is how to expend this amount. There is no difficulty about the compensation awarded to the parents of the minor as the amount should be paid to them directly by the Hospital and the Nurse. But it would not be safe to disburse the entire compensation awarded to the minor to the parents of the minor. The welfare of the minor is a paramount consideration of the Court. The minor has a long way to go. What we propose to do is to disburse an amount of Rs. 2,50,000/- to the mother of the minor for the purchase of necessary equipments for the minor. The balance amount of Rs. 10 lakhs will be deposited in a nationalised Bank by way of an F.D.R. in the name of the Registrar of this Commission for a term of 37 months. This amount is likely to yield yearly interest at Rs. 1,20,000/- i.e. Rs.10,000/- per month. The Registrar of this Commission would instruct the Bankers to remit to the mother of the minor quarterly interest payable on the fixed deposit. The interest amount so received would be utilised for the recurring expenses of the rehabilitation and maintenance of the minor. The mother of the minor shall file a statement of account regarding the purchase of the equipments out of Rs.2,50,000/-. It is made clear that no further amount besides the sum of Rs. 2,50,000/- will be allowed for the purchase of the equipments. The parents of the minor shall every year in the month of April, submit an examination report of the minor in the Registry of this Commission from the Safdarjung Hospital. We direct the Insurance Company to file within 30 days from the date of receipt of a copy of this order two drafts i.e. one for an amount of Rs. 2,37,500/- drawn in the name of the mother of the minor and the other for Rs. 10 lakhs drawn in the name of the Registrar of this Commission. On receiving the two drafts the draft for Rs. 2,37,500/- will be given to the mother of the minor and the Registrar will deposit the amount of Rs. 10 lakhs in a scheduled Bank by way of a fixed deposit for a period of

37 months. The Hospital shall within one month from the date of receipt of a copy of this Order pay Rs. 5 lakhs to the parents of the minor and also file a draft for Rs. 12,500/- in the name of the mother of the minor. The draft shall also be handed over to the mother of the minor for the purchase of the equipments. The Registrar will give a direction to the Bankers to give quarterly interest to the mother of the minor for maintenance of the minor. The parties will be at liberty to move this Commission in case any difficulty is experienced in implementation of this Order. The Original Petition is disposed of. The matter will be listed before this Commission after a period of 37 months for further directions in respect of the groups of Rs. 10 lakhs deposited in the Bank. Petition disposed of.