

(2012) 07 NCDRC CK 0162

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Narangiben Subodhchandra
Shah

APPELLANT

Vs

Gujarat Research And Medical
Institute

RESPONDENT

Date of Decision: July 4, 2012

Citation: 2012 0 NCDRC 315 : 2012 3 CPJ 509 : 2012 3 CPR 112

Hon'ble Judges: R.C.Jain , S.K.Naik J.

Advocate: M.K.Joshi , K.P.Toms , S.M.Suri , Himanshu Thakkar , Vipin Nayar , A.P.Mayee ,
Sanjeev Choudhary

Judgement

, MEMBER

1. THIS complaint, alleging adoption of totally unethical practice to convert a reference for angiography to coronary by-pass surgery which was not so indicated without any diagnostic support and that too without obtaining any written consent of either the deceased Subodhchandra Shah or any of his family member, has been filed by the legal representatives of the deceased against the Gujarat Research & Medical Institute, popularly known as "Rajasthan Hospital" (to be referred as such hereafter) and three doctors (i) Dr. Tushar J. Shah, an interventional cardiac surgeon, (ii) Dr. Sharad H. Dave, a cardiologist, both of whom are consultants to the Rajasthan Hospital, and (iii) Dr. K.C. Shah, a medicine specialist. The complainants have prayed for compensation of Rs.2,01,44,775/-. Out of the compensation sought for, Rs.1,38,519/- has been claimed on account of payments made to the hospital/opposite party no.1, Rs.1500/- paid to the doctor/opposite party no.4, Rs.4756/- spent on procuring blood, medicines etc. and Rs.2,00,00,000/- (Rupees Two Crores) on account of mental torture, agony, hardship, inconvenience suffered by the complainants and in anticipation of loss of profit which deceased

Subodhchandra Shah, a businessman, would have earned during his life time. FACTS AS ALLEGED BY THE COMPLAINANTS :

2. SHRI Subodhchandra Shah, aged 58 years, was experiencing some cardiac problem. He was taken to the "Prerna Hospital" for treatment under the care and supervision of opposite parties no. 3 and 4. On being advised by them to first have an angiography done, the patient was admitted in the Rajasthan Hospital of opposite party no.1 on the 6th of August, 1996 at 8.00 p.m. At that point of time, no ECG test was conducted since the machine was not in working condition. On the next date i.e. on 7th of August, 1996 when the doctors/opposite parties no. 3 and 4 came to the hospital and examined the patient, the complainants strongly complained to them for not having conducted ECG test, whereupon they replied that in the absence of the same no harm would be caused to the patient as his condition was being monitored on the central monitoring machine. On the said date, before the patient was to be taken for angiography at about 10.00 a.m. the doctor/opposite party no.3 introduced the doctor/opposite party no.2/Dr. Tushar J. Shah to the complainants stating that he is an eminent cardiac surgeon and has conducted many by-pass surgeries and in case any need arises for by-pass surgery, he would be available to them. The doctor/opposite party no.3 also told the complainants that they should be ready for by-pass surgery and arrange for funds for the same and finalize the package deal with the hospital/opposite party no.1. Thereafter the doctor/opposite party no.3 took the patient for angiography. At 10.30 a.m. the doctor/opposite parties no. 3 and 4 came out and stated that one right side vein of the heart of the patient was blocked to the extent of 100%, whereas two left side veins had 99% blockage and so immediate by-pass surgery was required in such a situation and in case it was not done forthwith, they would not be responsible for any eventuality that may occur. The complainants allege that at this point of time the clothes of the doctors/opposite parties no. 3 and 4 were blood stained but they did not pay any heed to his aspect since the patient's condition as stated by them was very critical. However, they asked from the doctors whether they can shift the patient to Madras for the by-pass surgery, whereupon the doctors informed them that the patient cannot be shifted anywhere else and the operation must be conducted immediately without loss of any time in discussion. The doctors/opposite parties no. 3 and 4 also informed the complainants that the patient himself has consented for the operation and, therefore, arrangements were being made for by-pass surgery forthwith. The complainants were asked to make arrangements for blood of "A" negative group. The complainants under the circumstances had no other option but to agree for the by-pass surgery reluctantly

and as informed to them by the assistant of doctor/opposite party no.2 amount of Rs.87000/- by a cheque was deposited immediately with the hospital authorities. The complainants allege that there was no arrangement for blood at the hospital and they could somehow procure the same after making enquiries at 3-4 blood banks and announcements on TV/mass media. Without, however, any breather to the complainants the opposite parties rushed the patient to the operation theatre for CABG operation. While the operation was going on, an assistant of doctor/opposite party no.2 came out and enquired whether the requisite amount has been deposited with the hospital authorities and upon coming to know that the said amount has been deposited by cheque, he insisted for deposit of the amount in cash. The complainants had complied with the direction and deposited the amount in cash with the hospital authorities. The complainants allege that at about 1.00 p.m. they came to know that the operating doctor/opposite party no.3 has left the hospital premises, even though he had promised to the complainants that he would be personally available all through the surgery. At about 3.30 p.m. the complainants were intimated that the surgery has been conducted successfully. At about 9.00 p.m. doctors/opposite parties no. 3 and 4 visited the hospital to examine the patient and after examination informed the complainants that condition of the patient is stable but the blood pressure is fluctuating and that efforts are being made to control the same. Ultimately, at about 10.30 p.m. the complainants to their dismay were informed by the hospital authorities that the patient has already expired and before taking away the dead body a sum of Rs.40,000/- was demanded to be paid. However, the hospital authorities on persuasion of the complainants agreed to take the dead body and deposit the amount next day, which was paid as promised. The complainants also allege that the hospital authorities did not provide the treatment record despite repeated request and gave only the discharge papers after a month on 10.09.1996.

3. FINALLY, alleging that :- (i) the hospital has no proper facilities of machines, medicines, attendant care, expertise knowledge and experience etc.; (ii) though the hospital is a charitable hospital but it is being run only on commercial basis for profit; (iii) the doctors are not well trained and sufficiently experienced; (iv) hospital staff is uncooperative and give evasive replies; (v) through the patient died on 07.08.1996 but the papers show the date as 08.08.1996; (vi) Dr. Sharad Dave/opposite party no.3 is not Anaesthetist, however, he has been shown as such; (vii) the anaesthetist has shown his ignorance regarding what is narrated in the case papers; (viii) the case papers have not been signed by the operating doctor i.e. Dr. Tushar J. Shah/opposite party no.2 and instead have been signed by Dr.

Dave/opposite party no.3; (ix) the patient died earlier but this fact was not disclosed to the complainants for hours; (x) a drama was played with the complainants wherein a doctor's gown was put on one of the relatives of the complainants, who was a non-medical man, and was taken inside the operation theatre to show the working of heart and lowering of blood pressure; (xi) Dr. Dave/opposite party no.3 departed from the hospital whereas he had promised to the complainants that he would be available during the surgery; (xii) the contradictions in the case papers speak about the fabrication and manipulation etc., the complainants issued a legal notice, to which no reply was filed by opposite party no.2/Dr. Tushar J. Shah while opposite party no.3/Dr. Sharad Dave refused to accept the legal notice. Opposite parties no. 1 and 4, however, filed evasive replies. It was in this background that the complainants have been constrained to approach this Commission by filing this complaint praying for the compensation as indicated above.

4. VERSION OF OPPOSITE PARTIES : On admission of the complaint, notice was issued to the opposite parties who have contested the complaint and have filed their written versions denying the allegations and refuting the claims in toto. Opposite parties no. 1, 2 and 3 have jointly filed a written version, in which apart from raising a preliminary objection that the complainants have deliberately inflated and exaggerated the claim for compensation of Rs.2,01,44,775/- just to invoke the jurisdiction of this Commission, and further that the case involves highly complicated question of facts and, therefore, should be relegated to the jurisdiction of the civil court and further that the complaint is bad for non-joinder of the necessary parties; they have not only denied any deficiency in service but have termed the complaint as absolutely false, frivolous and vexatious. It has been explained that the deceased Subodhchandra Shah had an old history of suffering from Mitral Valve Prolapse (MVP) for a period of ten years prior to the date of alleged surgery and was under the treatment of opposite party no.3/Dr. Sharad Dave, cardiologist. The deceased was also under the treatment of one Dr. R. Tushar Lakhia, consulting surgeon for hiatus hernia.

5. THE deceased complained of persistent severe chest pain with perspiration from the afternoon of 2nd of August, 1996. Suspecting that the chest pain was due to the hiatus hernia, he consulted Dr. Lakhia, who, however, ruled out the cause of the

pain as a result of the hiatus hernia surgery and stating that the chest pain related to his heart, he advised him to get admitted into the ICCU at Prerna Hospital. According to them, the deceased remained in the Prerna Hospital under the care of opposite party no.4/Dr. K.C. Shah from the 2nd of August, 1996 until the 6th of 1996 evening when on the recurrence of severe chest pain, which radiated to his right upper arm, and there being no cath lab facility at Prerna Hospital, on the advice of Dr. Dave, the cardiologist, who had been specially requested by the complainants to come to Prerna Hospital, the deceased was shifted to the Rajasthan Hospital at about 8.00 p.m. It has been averred in the written version that the complainants have deliberately suppressed the previous medical history and treatment at the Prerna Hospital in the complaint to mislead the Commission.

6. OPPOSITE Party No. 4/Dr. K.C. Shah, who has separately filed his written version, has stated that on the advice of Dr. Tushar Lakhia, who was treating the deceased for hiatus hernia, he admitted the deceased into the Prerna Hospital for treatment of persistent severe chest pain. The deceased was admitted to the ICCU at about 9.00 p.m. on the 2nd of August, 1996 and was discharged for better management on the 6th of August, 1996 at 7.30 p.m. as the acute coronary insufficiency did not show any improvement even though it provided temporary relief after he administered Norphin, Phenargon, Nitroglycerine drip, Heparin drip, Tablet Ecosprin, Tablet Ativan, Tablet Atenolol, Injection Rantac 30 mg. On the recurrence of severe chest pain, Dr. Sharad Dave, Cardiologist, who had been treating the deceased earlier was also consulted, who on the request of the complainants came to the Prerna Hospital and examined the patient and finding that the ECG showed severe changes of Eschemia, he advised the complainants to admit the deceased to the Rajasthan Hospital for undergoing a coronary angiography and further intervention, if required, and for better management in view of the repeated unstable angina. This was necessary since the Prerna Hospital did not have the facility of cath lab. It has further been averred that after the discharge of deceased at about 7.30 p.m. on 6th of August, 1996, he had no active involvement in the treatment of the deceased except to the limited extent that he had visited the patient in the Rajasthan Hospital on the request of the complainants themselves but his role was that of an observer. In this background, it has been submitted that the complaint being without any substance and made with ulterior motive be dismissed.

7. IN the rejoinder to the written version of the opposite parties, the complainants have dismissed all the defence advanced by the opposite parties as totally baseless and have reiterated the allegations and deficiencies alleged in the complaint. It has further been stated that despite repeated request to furnish copies of the treatment record, the opposite parties did not provide the records except for the death certificate which too was delayed by about a month during which they manipulated the records to protect themselves from the misdeeds/negligent acts. They have reiterated their allegation that the conduct of CABG was a pre-meditated act on the part of the opposite parties to extort money by exaggerating the condition of the deceased to be critical while he was admitted only for the purpose of angiography. The by-pass surgery was conducted without anybody's consent. The 15 units of blood which were arranged with great difficulty as the deceased belonged to a rare "A" negative group were not put to use to save the life of the deceased and no account thereof was maintained by the hospital. In substance, the complainants have reiterated all their allegations.

8. PARTIES in support of their respective stands have filed their affidavits. Medical records have been filed belatedly by the opposite parties. On behalf of the complainants, Manish Subodhchandra Shah, complainant no.4, has filed his affidavit while on behalf of opposite party no.1/Rajasthan Hospital affidavit of their Medical Director has been filed and the other opposite party/doctors i.e. opposite parties no. 2, 3 and 4 too have filed their respective affidavits as evidence in support of their contention made in the written version.

9. IT may be stated here that on the request of the learned counsel for the complainants (order dated 13.11.2003) expert opinion from the All India Institute of Medical Sciences (AIIMS) was requested on the subject of surgery/treatment after taking into consideration the allegations made in the complaint. Opinion of Dr. K.K. Talwar, Professor and Head, Department of Cardiology, AIIMS received in response thereto is on record. Subsequently, the complainants were permitted to serve interrogatories on the doctors/opposite parties no. 2, 3 and 4, which have been duly answered by them. DISCUSSION ON THE MERITS OF THE CASE :

10. THIS complaint, as has already been narrated in the preceding paragraphs, has passed through a very chequered path, in which the complainants have made vigorous attempts to prove their allegations and the case has now acquired a bulk of 9 volumes, which contain plethora of medical records and medical literature, citations/rulings of the Hon"ble Supreme Court and this Commission on the subject of medical negligence, besides affidavits from both the sides. On the face of it, it appears to be a highly complicated and difficult case of medical negligence for adjudication but in reality the complaint is in a very narrow compass. The say of the complainants is that their 58 years old father Subodhchandra Shah, a businessman, who was otherwise quite hale and hearty, was under the care and supervision of opposite parties no. 3 and 4 in Prerna Hospital when on the 6th of August, 1996 the doctors advised to have an angiography done. There being no cath lab in Prerna Hospital, they advised the transfer of the patient to Rajasthan Hospital, where he was admitted the same evening at about 9.00 p.m. Learned counsel for the complainants has emphatically argued that the transfer of the patient was for the purpose of undergoing angiography but rather than confining themselves to the conduct of angiography and apprising the complainants with the outcome of the angiogram, in a pre-meditated manner they conducted a CABG i.e. by-pass surgery on the patient, for which no consent either of the patient or his relatives was obtained. Contending that the whole operation was conducted in a hush hush manner, it has been argued that neither they nor anyone of their relatives were ever given any information with regard to the progress of the operation. The 15 units of blood, which they obtained with great difficulty, were not utilized, inasmuch as only 5 units were transfused and no account of the balance units was maintained nor referred to in any of the hospital treatment records. The opposite parties even tried to keep under wrap their negligent act, inasmuch as even when the patient had died, they made a relative of the deceased wear a sanitized gown to enter into the operation theatre to show him that the patient was alive. In short the charge of the complainants against the opposite parties is that the deceased was shifted from Prerna Hospital to the Rajasthan Hospital only for the conduct of angiography but the opposite parties to extort money from the complainants had a pre-meditated plan to conduct by-pass surgery without their consent and failed to save the life of the deceased in the process. It has been argued that when angiography procedure was undertaken, it was expected of the doctors, in particular opposite party no.3/Dr. Sharad Dave, to have informed the result of the angiogram to the complainants but without any intimation/information in that regard and without obtaining their consent the patient was ushered into the operation theatre straight from the cath lab. As per the complainants, had there been no prior plan/arrangement to undertake a by-pass surgery, it would have taken some time for the opposite parties

to apprise the complainants if there was any sudden emergency. Learned counsel contends that no emergency for CABG as such was indicated. In fact when being questioned and suggested that in the case of such a requirement whether the patient can be taken to the Apollo Hospital at Chennai, their suggestion was firmly disproved with fearful consequences. Had the by-pass surgery not been pre-planned, the learned counsel contends that there was no need for opposite party no.3, the cardiologist, to have introduced the opposite party no.2, the cardiac surgeon, to them before the angiography. According to him, it was only a link in the chain of pre-determined plan to undertake by-pass surgery.

11. THE opposite parties, however, have completely denied any such ill-intention on their part and have stoutly come out in defence of their stand and have contended that the complainants have suppressed the past medical history of the patient and his condition at the time of transfer from Prerna Hospital to the Rajasthan Hospital. In the written statement filed by opposite parties no. 2 and 3, it has been stated that the deceased was suffering from heart problems for the last ten years before his death. In fact opposite party no.3/Dr. Sharad Dave had treated the deceased for his cardiac problems from 1987 to 1990. It has further been submitted that the deceased himself had disclosed that he had suffered from a myocardial infarction in 1990 as recorded by Dr. Ramesh Rao in his report. A firm stand has been taken that the transfer of the patient from Prerna Hospital to the Rajasthan Hospital was not limited to the conduct of an angiography but as a sequel to the past history of cardiac problem and the treatment from the 2nd to 6th of August, 1996 leading to a conclusive diagnosis that the patient had to undergo coronary artery by-pass surgery and in that direction angiography was necessary. This was discussed with the deceased and the complainants in the Prerna Hospital and, therefore, to suggest that by-pass surgery was not indicated is only an attempt to make out a false case. Factually, the gravity of the situation demanding such a course was discussed with the deceased and the complainants before the transfer of the patient to Rajasthan Hospital. In the affidavit of opposite party no.3/Dr. Sharad Dave, it has been emphatically asserted that the transfer was to take place only if such a course is acceptable to the complainants on the basis of the angiography report.

12. ON the question of whether there was any attempt on part of the complainants to withhold the material information with regard to the prior history of cardiac problem of the deceased and whether the opposite parties had any motive behind the by-pass surgery as alleged by the complainants, we have carefully perused the allegations, the replies of the opposite parties in their written versions, the affidavits and the reply to the interrogatories. We find that the complainants in their complaint have refrained from giving details of the treatment obtained by the deceased at Prerna Hospital from 2nd to 6th of August, 1996. In their interrogatories the complainants made an attempt to disprove that the deceased had consulted the opposite party no.3/Dr. Sharad Dave with regard to his ailment during 1987 to 1990 but with no success, inasmuch as in reply to their query, the opposite party no.3 has clearly stated as under :- "I came to know Late Subodhbhai, when he attended my OPD at institute of Cardiology Civil Hospital, Ahmedabad in 1987. I was then full time Assistant Professor of Cardiology. Mr. Subodhbhai repeatedly consulted me at institute of Cardiology for his complaints or recurrent cardiac irregularities chest discomforts. The records are with Civil Hospital where he had undergone treadmill tests, echocardiography for assessment of his cardiyoascular status and ischemic heart disease status. Last it had seen him at his residence in 1990 in the evening hours for his chest pain complaints. The ECG and prescription papers must be with relations, which have not been produced before Hon"ble Commission. At this time it was in private practice and no more attached with Institute of Cardiology."

13. WE also find from the written version of opposite party no.4/Dr. K.C. Shah that the deceased had been referred to Prerna Hospital by Dr. Tushar Lakhia, who had treated the deceased for hiatus hernia ruling out the complaint of chest pain of the deceased as a result of the hernia operation. It has also been stated therein that the deceased was under the treatment of opposite party no.3/Dr. Sharad Dave for Mitral Valve Prolapse (MVP). Thus, the inescapable inference that can be drawn is that the complainants have not come clean and have attempted to suppress material information with regard to the prior medical history and treatment of the deceased.

14. INSOFAR as the issue whether the opposite parties had a pre-meditated plan to influence and pressurize the deceased or the complainants to force them for a

by-pass surgery is concerned, we find it very difficult to subscribe to the allegations of the complainants. We say so because firstly the deceased had a long history of cardiac problem ever since 1987. It has also come out from the records that the deceased suffered a myocardial infarction during 1990 as per his own statement given before Dr. Ramesh Rao. Even though the complainants claim that the statement should not be taken on its face value, we do not find any justification to discard the same as a doctor would not normally record a false statement attributable to a dead person. Further, the Prerna Hospital records clearly depicts that the deceased was referred by Dr. Tushar Lakhia, whom the deceased had approached for pain in his chest on the aftermath of the hiatus hernia operation conducted by him. Dr. Lakhia, however, ruled out that the chest pain was related to his hernia operation and had, therefore, referred the deceased to Prerna Hospital where opposite party no.4 treated him from 2nd to 6th of August, 1996. It was the complainants who had requested the opposite party no.3/Dr. Sharad Dave to come and be associated with the treatment of the deceased in the Prerna Hospital. When the treatment given by opposite party no.4 in the Prerna Hospital in consultation with opposite party no.3 did not help improve the situation, both opposite parties no. 3 and 4 explained the deteriorating situation and the seriousness warranting a by-pass surgery, which could be undertaken only after angiography was conducted. Angiography is only a diagnostic tool and not treatment per se and, therefore, the undue emphasis by the complainants that the patient was transferred only for the purpose of angiography and not for the by-pass surgery is an incorrect inference that the complainants have drawn. Even otherwise, such complicated by-pass surgeries were being conducted by expert surgeons only in few centres of the country at that time and opposite party no.2/Dr. Tushar J. Shah being one of such eminent qualified and experienced surgeon, it would be unfair to him and his profession to allege that he would have any motive to preplan an unwarranted by-pass surgery just to make some money.

15. THIS view of ours is also based on the expert opinion of Professor K.K. Talwar, an eminent Cardiologist of AIIMS, who, after scrutiny of the entire medical records of the case, has opined that on the basis of the angiographic finding the CABG was indicated in the case. His opinion being relevant is extracted as under :- "The angiography reel of pt Subodhbhari P. Shah and his records were examined. 1. The angiography reel provided mentions the patients name as S.P. Shah dated 7.8.96 and performed by Dr. S.H. Dave at GRMI, Abad. The patient has triple vessel disease with significant obstructive coronary artery disease (involving the left anterior descending artery, left circumflex and right coronary artery and their branches)

along with mild left ventricular dysfunction. 2. As per records the patient had unstable angina and subsequently was advised coronary angiography. The angiogram revealed triple vessel disease with left ventricular dysfunction. As per records patient has angina during the angiogram and was subsequently taken up for emergency coronary artery bypass surgery. As for the angiographic finding the CABG is indicated in such a case." 15.1 The complainants though have not challenged the said opinion, have, however, submitted that his opinion was based on the distorted/fabricated medical records and, therefore, it would not be proper to take that opinion into consideration. Besides, Dr. Talwar has not specifically stated that the by-pass surgery was warranted due to any emergency specially without weaning away the patient from the effect of blood thinning drugs. The allegation of the fabrication of the medical records/documents is based on the inordinate delay in filing of the documents. We find that the hospital records and documents pertain to two different hospitals and have passed through the hands of a number of doctors and diagnostic reports. Just because these documents were filed belatedly, it cannot be held that they are either fabricated or distorted specially in the background of the explanations offered by the opposite parties in their replies to the interrogatories which have not been effectively countered by the complainants. Opinion of Dr. Talwar had to be based on these records and, therefore, cannot be disbelieved. 15.2 We further find that the opposite parties have filed a plethora of medical literature to prove that to undertake the by-pass surgery was the most appropriate and proper course given to the findings of angiography but would only refer to the opinion of Franklin Rosenfeldt, Associate Professor of Baker Medical Research Institute, Australia, which reads as under :- "30th October, 1997 Dr Tushar J Shah 405 Shefali Centre Paldi Ahmedabad-380006 INDIA FAX : +91 79 6575312 Dear Dr Shah Thank you for your letter and the description of the clinical progress of your patient with the fatal outcome. I have read the case summary with interest. I believe the most likely diagnosis is, as you have suggested, that the patient did sustain significant pre-operative myocardial damage associated with his repeated episodes of chest pain, especially during angiography. A marker of the severity of the myocardial injury during angiography was the onset of atrial fibrillation with a fast ventricular rate. Research in our laboratory has shown that the recently infarcted heart responds poorly to cardioplegia and, although there were no obvious indications of infarction pre-operatively, it is highly likely that there was evolving patchy infarction in the heart at that time. Of course, other less frequent causes could still be postulated, such as coronary spasm or protamine reaction. In any case, I think the conduct of the operation and the management of the complication on your part was handled very well, and all appropriate steps were taken to correct the situation. I do not believe there was anything else you could have done that would have improved matters to a significant extent. Yours sincerely Sd/- Franklin Rosenfeldt World Health Organisation Collaborating Centre for Research and Training in Cardiovascular Diseases" 15.3 Even though the complainants would like us to discard this opinion, in our view, since the opposite

party no.2/Dr. Tushar J. Shah had referred the specific case of the deceased to the research institute located abroad, the same cannot be ignored since the organization is undertaking the research and training in cardiovascular diseases in collaboration with the World Health Organization.

16. THE complainants have referred to a number of discrepancies/inaccuracies in the treatment records and certain events to prove their allegations. It has been contended that while 15 units of "A" negative blood group were requisitioned, only 5 units were utilized with no details with regard to the remaining units. We do not consider that the omission to maintain the record with regard to balance 10 units of blood in any way lends support to the case of the complainants. As rightly explained by the opposite parties depending on the anticipated requirement of blood either the blood bank or the patient's relatives are advised to keep sufficient blood units ready to meet any emergency. In the process, if any blood remains unutilized, obviously they would be deposited with the laboratory/blood bank for being utilized by other patients. We also do not find any weight on the allegation that the doctors or the staff did not have sufficient experience. Minor discrepancies in the record with regard to the (i) documents showing Dr. Sharad Dave as an anesthetist; (ii) some papers having not been signed by opposite party no.2; (iii) the hospital being ill-equipped; (iv) the failure of ECG machine etc., have been satisfactorily explained by the opposite parties.

17. ANOTHER point on which lot of emphasis has been placed by the learned counsel for the complainants is that the by-pass surgery was undertaken without the consent either by the deceased or the complainants. It has been explained by the opposite parties that the consent in fact was obtained both for angiography and by-pass surgery as the problem of the deceased was so acute that a by-pass surgery was inevitable for which an angiogram was necessary prior to undertaking the by-pass surgery and, therefore, the consent was obtained both for angiography and by-pass surgery. Further, the claim of the opposite parties that when the deceased was informed about severe blockage of three of his arteries leaving no other course of treatment except the by-pass surgery, the deceased himself had given his consent before he was taken to the operation theater from the cath lab. We have perused the letter of consent. It clearly states that the consent was for angiography

and if necessary for CABG operation as well. Complainant no.2, who is the son of the deceased has signed this consent form in English and, therefore, he is supposed to have understood the implications clearly. In the background of the medical history of the deceased, we find the explanation of the opposite parties quite satisfactory especially in view of the post angiography emergency necessitating the by-pass surgery. Reliance by the operating surgeon on the consent already obtained for undertaking the CABG operation and not insisting upon a repeat consent, in our view, was strictly not warranted. Reliance by the learned counsel for the complainants to the judgment of the Hon"ble Supreme Court in the case of Samira Kohli V. Dr. Prabha Manchanda [(2008) 2 SCC 1], therefore, is totally misplaced.

18. THE other allegations that a drama was played with the complainants wherein a doctor's gown was put on one of the relatives of the complainants to take him inside the operation theater to show that the patient was passing through a difficult period of low blood pressure, in our view, cannot be said to be an act to withhold any information with regard to the treatment given to the deceased. This allegation appears to have been made out of emotional reasons just because the patient could not be saved despite the best efforts by the doctors.

19. BEFORE, however, concluding, we would like to refer to what the Hon"ble Supreme Court has said on the subject of medical negligence in the often cited judgment in the case of Jacob Mathew V. State of Punjab And Anr. [(2005) 6 SCC 1]. In para-26, it has been stated as under :- "No sensible professional would intentionally commit an act or omission which would result in loss or injury to the patient as the professional reputation of the person is at stake. A single failure may cost him dear in his career. Even in civil jurisdiction, the rule of res ipsa loquitur is not of universal application and has to be applied with extreme care and caution to the cases of professional negligence and in particular that of the doctors. Else it would be counter-productive. Simply because a patient has not favourably responded to a treatment given by a physician or a surgery has failed, the doctor cannot be held liable per se by applying the doctrine of res ipsa loquitur." 19.1. Further, the Hon"ble Apex Court commenting on the allegation of medical negligence in a case of a failed tubectomy in the case of State of Punjab v. Shiv Ram and Ors. [(2005) 7 SCC 1] has held that "A Doctor, in essence, needs to be inventive

and has to take snap decisions especially in the course of performing surgery when some unexpected problems crop up or complication sets in. If the medical profession, as a whole, is hemmed in by threat of action, criminal and civil, the consequence will be loss to the patients. No doctor would take a risk, a justifiable risk in the circumstances of a given case, and try to save his patient from a complicated disease or in the face of an unexpected problem that confronts him during the treatment or the surgery".

20. IN this case, even though the complainants have contended that it was a case of *res ipsa loquitur*, as has been discussed in the preceding paragraphs, it is far from being so. Besides, the complainants themselves having requested this Commission to obtain an expert opinion which goes in favour of the opposite parties, the only inference that can be drawn from this case is that the opposite parties have followed the most desirable and expected course of treatment/operation and if in the process the patient has died, they cannot be held liable merely on the allegation of the complainants. After all doctors can only treat but cannot guarantee the success of a surgical operation which inevitably is fraught with risks.

21. OVERALL, therefore, we are of the view that no case of medical negligence is proved from the facts of the case. The complaint is, accordingly, dismissed with no order as to cost.