

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 136 OF 2006**

(Against the order dated 28-07-2005 in C.C No. C-93 of 2000 of the Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow )

Surendra Kumar Tyagi S/o  
Shri Trilok Chand Tyagi,  
R/o Village-Mohammed Pur,  
Azampur, P.O. Simbhavali,  
District – Ghaziabad

..... Appellant(s)

Vs.

(1) M/s Jagat Nursing Home & Hospital,  
Opposite Amarpali Cinema, Garh Road,  
Meerut City

1. (2) Dr. S.K. Sharma,  
M/s Jagat Nursing Home & Hospital,  
Opposite Amarpali Cinema, Garh Road,  
Meerut City

..... Respondent(s)

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**BEFORE:**

**HON'BLE MR. JUSTICE R.C. JAIN, PRESIDING MEMBER  
HON'BLE MR. SURESH CHANDRA, MEMBER**

For the Appellant (s) : Mr. S.K. Mittal, Mr. J.B.S. Nagar  
& Mr. Abhishek, Advocates

For the Respondent (s) : Mr. Anoop K. Kaushal, Advocate

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**Dated : 28-09-2010**

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**ORDER**

**Justice R.C. Jain, Presiding Member**

Not fully satisfied with the extent of relief granted to him by the U.P. State Consumer Disputes Redressal Commission, Lucknow (for short "the State Commission") vide its order dated 28<sup>th</sup> July, 2005 passed in the Complaint Case No. C-93/2000, the original complainant has filed the present appeal seeking upgradation of the relief by enhancement of compensation so awarded to him by the State Commission.

2. The facts and circumstances which gave rise to the complaint and the defence plea put forth by the Opposite party Nursing Home and the Doctor have been amply noted by the State Commission in the impugned order and need no repetition at our end. For deciding the present appeal we may simply notice that the complainant-appellant had filed the complaint against Jagat Nursing Home and Hospital, Meerut City and Dr. S.K. Sharma, the operating Surgeon claiming a total compensation of Rs.8,50,584/- for pecuniary and non pecuniary damages, alleging medical negligence and deficiency in service on the part of the said Doctor and the Nursing Home in the treatment of the complainant. The precise allegations of negligence and

deficiency in service were that the above named doctor performed open cholelithotomy instead of performing the same by laproscopic procedure as assured, in order to remove the calculus from the Gall Bladder, Bile Duct and Kidney of the complainant. Even the said procedure was not performed in a prudent manner as a result of which the complainant suffered certain complications and had continuous bleeding which could only be controlled/ managed with subsequent treatment and by removal of one kidney at a different hospital, namely, Bharat Hospital. It was also alleged that Doctor S.K. Sharma, though proclaimed himself to be MBBS, MS (Master of Surgery) was not in fact an MS but was simply an MBBS (Bachelor in Medicine and Bachelor in Science) and had acquired some other degree but not the qualification or degree of MS. Though the allegations of negligence were denied but it was admitted by the doctor that he was not an MS. He tried to explain that he had acquired degree of Ph.D. in a certain medical discipline but had the experience to conduct such surgical procedure as was done in the case of the complainant. The State Commission going by the respective pleas, evidence and material on record, returned the finding that Opposite party No. 1 Dr. S.K. Sharma was negligent in performing the said surgical procedure by observing as under:--

*“The very fact that there may be alleged difficulty in applying laparoscopic method or operation and, therefore, open surgery was the only course left indicates*

*that there was an assurance at some point of time that the operation shall be performed only through laparoscopic method. This apart, the fact remains that correct scientific analysis of what has to be performed should have been done before hand. The gall bladder and the common bile duct, operation was performed and stones were touched and disturbed, the blood was bound to flow out. Nothing has been shown to indicate an effort to stop that blood emission. To repeat the blood report at Hapur which the complainant is said to have obtained on 08.08.99 before consulting were alone made basis of the operation. So was the case with the ultrasound done by Dr.Ajay Kansal referred to above. The patient was already having high jaundice. Kidney and bile duct were having distension. Under the circumstances the operation at that stage was not at all recommendable. The ailment must have been managed and controlled first and then the organs should have been retested before opening the abdomen for open surgical operation.*

*All this apart the condition of the complainant would surely have landed in irrecoverable stage if the second operation by Dr. Nagar was not performed at another hospital. The removal of kidney alone has saved the life of the complainant and had the second operation at Jagat Hospital not been performed in time, the actions of the opposite parties might well have brought the end of complainant's life. Under the circumstances the negligence on the part of the opposite parties and deficiency of service is proved beyond all controversy.*

*The admission of the complainant in Bharat Hospital for performing the operation to remove the left kidney is an admitted position. Dr. Nagar with the cooperation of Dr. Pankaj Mittal and Dr. P. Pundhir repaired the ailment by removing the left kidney. The contents of the discharge slip dated 10-09-99 issued by Bharat Hospital may be reproduced:*

*"Patient was admitted here with profuse haematuria off & on for last about two weeks following..... and left pyelolithotomy done elsewhere. He had been given blood transfusion and had earlier had a cystoscopy for clot evacuation, which also revealed blood to be coming from left kidney. At the time of admission his general condition was poor and profuse hematuria was present. He was given the option of renal angiography and embolization of bleeding vessel to which he*

refused. As

*a life saving measure left nephrectomy was done after due consent and the kidney was handed over to attendants. Post operative period was uneventful.'*

*Reliance was placed on the decision of Hon'ble NCDRC in Mrs. O. Aisha Bi & Ors. V/s Prof. J.R. Danlal III (2003)CPJ 178 (NC), Charan Singh V/s Healing Touch Hospital & Ors. III (2003) CPJ-62(NC), K.S. Bhatia V/s Jeevan Hospital & Ors. IV(2003) CPJ-9NC and Mrs. Shantaben Muljibhai Patel & Others V/s Beach Candey Hospital and Research Centre & Ors. I(2005) CPJ-10(NC) have been cited by learned counsel for the parties. Suffice it to say that observations of the Hon'ble NCDRC are of great value but on the facts stated above the cases are distinguishable for the reasons discussed above. It is undoubtedly proved by the complainant that negligence or deficiency of service have been committed by the opposite parties. The evidence produced, the opinion of the expert available through the discharge slip of Jagat Hospital referred to above and the very conduct of the Opposite Parties are enough in this case to indicate that both the Opposite Parties are guilty of deficiency of service.*

*In view of the aforesaid discussion the conclusion is irresistible that there was negligence and medical deficiency also on the part of Dr. S.K. Sharma, therefore, he must be held liable to pay adequate compensation. On this issue Sri Bisaria wanted the entire claim as maintained in the complaint to be decreed whereas Sri Srikant vehemently pleaded for the least amount as a token compensation."*

3. Having reached the above findings, the State Commission has partly allowed the complaint by awarding a compensation of Rupees One lakh only with a direction that the amount be paid within two months. It is not

disputed that in compliance of the said order of the State Commission, the Opposite party No. 2 Dr. S.K. Sharma has already paid the awarded amount of Rupees One lakh to the complainant. Therefore, he will be deemed to have accepted the findings of the State Commission holding him guilty of the medical negligence and deficiency in service in the treatment of the complainant. However, the complainant is not contented with the said relief and therefore, he has filed the present appeal seeking enhancement of the compensation so awarded to him by the State Commission.

4. We have heard Mr. S.K. Mittal, learned counsel representing the complainant-appellant and Mr. A.K. Kaushal representing Respondent No. 2 Dr. S.K. Sharma. Mr. Mittal, learned counsel for the appellant assailed the order of the State Commission only in regard to the quantum of compensation and emphatically urged that the State Commission having held the Opposite parties guilty of medical negligence and deficient in service, the quantification of compensation to a meager sum of Rupees One lakh was not justified. In this connection, he has invited our attention to Para 17 of the complaint, in which the details of the compensation as claimed by the complainant were given. The said Para of the complaint reads as under:-

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17. *“That the complaint is entitled for Rs.9,00,584/- towards Damages, the details of which are given below along with interest @ 18% per annum:--*

*Special Damages*

a)	<i>Treatment Charges at Jagat Nursing Home</i>	<i>Rs.70,000/-</i>
b)	<i>Treatment Charges at M. Prakash Nursing Home &amp; at Bharat Hospital</i>	<i>Rs.30,000/-</i>
a. c)	<i>Conveyance Charges for purchasing Medicines from New Delhi including cost Of injections</i>	<i>Rs.1,084/-</i>
b. d)	<i>Conveyance charges to &amp; Fro Simbholi to Meerut and back</i>	<i>Rs.2,000/-</i>
e)	<i>Loss of Agricultural income for 4 months</i>	<i>Rs.40,000/-</i>
f)	<i>Legal notice Fees charges</i>	<i>Rs.4,500/-</i>
	<i>General Damages</i>	
g)	<i>For Pains &amp; sufferings</i>	<i>Rs.1,00,000/-</i>
h)	<i>For Mental Anguish</i>	<i>Rs.1,50,000/-</i>
i)	<i>For loss of left kidney</i>	<i>Rs.5,00,000/-</i>
j)	<i>For Medicines without cash memo</i>	<i>Rs. 3,000/-</i>
	<i>Total</i>	<u><i>Rs. 8,50,584/-</i></u>

5. It was contented by Mr. Mittal that the complainant had spent more than One lakh of rupees only towards treatment, besides other expenditure and damages suffered by the complainant. He prays that in the

circumstances the compensation payable to the complainant should be enhanced steeply. On the other hand, the contention of the learned counsel for the Respondent doctor and hospital is that no negligence or deficiency in service on the part of the Respondents can be said to have been established but still the Respondent decide not to challenge the finding and order of the State Commission holding them guilty of negligence and deficiency in service and paid the awarded amount of compensation of Rs. 1 lakhs as a matter of grace and by way of compassion to the complainant. In any case his submission is that the present appeal filed by the complainant – appellant is not maintainable as it has not been filed in accordance with the provisions of Consumer Protection Act, 1986 (for short the Act) and the Rules and regulations framed thereunder. In this regard our attention has in particular been invited to Rule 50 of the Consumer Protection Rules, 1987 which is to the following effect:--

*15. Procedure for hearing the appeal ---(1) Memorandum shall be presented by the appellant or his agent to the National Commission in person or be sent by registered post addressed to the Commission.*

*(2) Every memorandum filed under sub-rule (1) shall be in legible handwriting preferably typed and shall set forth concisely under distinct heads, the grounds of appeals without any argument or narrative and*

*such grounds shall be numbered consecutively.*

*(3) Each Memorandum shall be (Accompanied by a crossed demand draft as referred to in rule 14A and by a certified copy) of the order of the State Commission appealed against and such of the documents as may be required to support grounds of objection mentioned in the memorandum.*

*(4).....*

*(5).....*

*(6).....*

*(7).....*

*(8).....*

*(9).....*

6. We have considered the respective submissions put forth on behalf of the parties. Strictly speaking Memorandum of Appeal filed by the appellant in this case is not strictly in accordance with the above Rule, as it does not specifically states the grounds of the strength of which the appellant seeks to challenge the impugned order. Notwithstanding the above position, a reading of the said Memorandum of Appeal brings out the grievance of the appellant that he is not satisfied with the quantum of compensation as quantified by the State Commission and therefore, he

seeks enhancement of the same. Specific grounds were not taken in the Memorandum of Appeal perhaps due to the reason that the appellant did not wish to assail the findings and order of the State Commission so far the said order has held the Opposite parties guilty of negligence and deficiency in service. In our opinion it will be too technical and harsh to reject the Appeal only on the ground that it has not been filed strictly in accordance with the Rule 50.

7. As regards the contention of the learned counsel for the Respondent that the negligence and deficiency in service has not been established and the findings of the State Commission to the above effect is not correct, we may simply observe that it is too late in the day for the Respondent to raise such a plea in the present appeal especially when the Respondent has already accepted the said findings of the State Commission and has even paid the awarded amount to the complainant.

8. Now coming to the important question as to whether in the given facts and circumstances and having regard to the extent of negligence and deficiency in service, the compensation so awarded by the State Commission can be said to be just and reasonable. Our answer is plainly in the negative because the compensation has to be commensurate with the loss and injury suffered by the complainant and can not arbitrary but has to

be quantified on the basis of well-settled principles. What is meant by compensation within the meaning of section 14 of the Consumer Protection Act 1986 has been considered by the Supreme Court in the case of **Ghaziabad Development Authority Vs. Balbir Singh [(2004) 5 Supreme Court Cases 65]**, as under:

*“The word ‘compensation’ is again of very wide connotation. It has not been defined in the Act. According to dictionary it means, ‘compensating or being compensated; thing given as recompense;. In legal sense it may constitute actual loss or expected loss and may extend to physical, mental or even emotional suffering, insult or injury or loss. Therefore, when the Commission has been vested with the jurisdiction to award value of goods or service and compensation it has to be construed widely enabling the Commission to determine compensation for any loss or damage suffered by a consumer which in law is otherwise included in wide meaning of compensation. The provision in our opinion enables a consumer to claim and empowers the Commission to redress any injustice done to him. The Commission or the Forum in the Act is thus entitled to award not only value of the goods or services but also to compensate a consumer for injustice suffered by him.”*

Besides it, the settled position is that :

*“A patient who has been injured by an act of medical negligence has suffered in a way which is recognized by the law-and by the public at large-as deserving compensation. This loss may be continuing and*

*what may seem like an unduly large award may be little more than that sum which is required to compensate him for such matters as loss of future earnings and future cost of medical or nursing care. To deny a legitimate claim or to restrict arbitrarily the size of an award would amount to substantial injustice. After all, there is no difference in legal theory between the plaintiff injured through medical negligence and the plaintiff injured in an industrial or motor accident.*

*Under civil and consumer law compensation paid for medical negligence is neither punishment nor reward. The principle on which damages for medical negligence are assessed is that they are to be regarded as compensation for the injury sustained or death and not as punishment for the wrong inflicted. There is no difference in the principles applied to the assessment of damages in a medical negligence case and other actions for personal injuries, e.g., in motor accidents claims.”*

9. In the case of medical negligence and deficiency in service in treatment of a patient damages are to be quantified under two heads – pecuniary and non-pecuniary damages. Under the first head, will be those damages, which can be quantified in terms of money i.e. actual expenditure incurred by the patient – complainant in getting the treatment or in the rectification of the deficient treatment, which he received as also for the resultant loss of business, etc. The non-pecuniary damages would be for the

physical and mental pain and sufferings of the patient – complainant on account of such faulty treatment. In the case in hand, the appellant incurred more than a sum of Rupees One lakh towards the treatment, which he received at the Opposite party hospital and at some other hospital. Not only the complainant had to incur heavy expenditure in rectification of the faulty treatment given by Opposite party Doctor, even his one kidney was ultimately removed, leaving him dependant on one kidney only throughout his remaining life and with a lurking apprehension about the proper functioning of the substituted kidney, God forbidding in case his second kidney develops some problem, his life would be at risk apart from the fact that the complainant himself has suffered immense physical and mental pain and agony due to faculty treatment given by the Opposite party doctor.

10. There is yet another important dimension of the case and it is that that the Opposite party doctor though proclaimed himself to be M.S. (Master in Surgery) but was in fact not so qualified that would clearly amount that he had misrepresented to the complainant for that reason other similarly situated persons and prospective patients about his real qualification and experience. This is another deficiency in service or what we can term as adoption of unfair trade practice – unethical practice on the part of a medical professional.

For the kind of negligence, deficiency in service and the misrepresentation made by the Opposite party doctor, award of compensation of Rupee One lakh only cannot be considered as reasonable or commensurate with the loss, injury and mental and physical pain and agony suffered by the complainant. In our view it would adequately meet the ends of justice if the compensation payable to the complainant enhanced to a minimum of Rupees Two lakhs, fifty thousand only.

11. In the result, the appeal is partly allowed and the impugned order of the State Commission so far as has awarded compensation of Rupee One lakh shall stand modified to the extent that the Opposite party No. 2 Doctor S.K. Sharma shall be liable to pay a sum of Rs. 2.5 lakhs (Rupees two lakhs and fifty thousand only) to the complainant besides a sum of Rs.20,000/- as cost of proceedings throughout. Since an amount of Rupee One Lakh stands already paid to the complainant, Respondent No. 2 – Dr. S.K. Sharma is directed to remit the balance sum of Rs.1,70,000/- to the complainant within a period of four weeks from the date of this order failing which the amount shall carry interest at the rate of 12% per annum.

.....Sd/.....  
(R.C. JAIN, J)

***PRESIDING MEMBER***

.....Sd/.....  
**(SURESH CHANDRA)**  
**MEMBER**

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