IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution: 30.05.2016
Date of hearing: 20.04.2023
Date of Decision: 09.02.2024

COMPLAINT CASE NO.- 594/2016

IN THE MATTER OF

BASANT LAL SHARMA
S/O LATE SH. SHIV KUMAR SHARMA
R/O 993/66, OPPO. DEVA RAM PARK
PRIMARY SCHOOL, TRI NAGAR
DELHI – 110035.

(Through: Anil Dutt Sharma, Advocate)
…Complainant

VERSUS

1. **SIR GANGA RAM HOSPITAL**
   THROUGH ITS MEDICAL SUPERINTENDENT
   RAJINDER NAGAR, DELHI-60.

2. **DR. PANKAJ AGGARWAL**
3. **DR. AMBUJ GARG**
4. **DR. SHYAAM AGGARWAL, DEPTT OF ONCOLOGY**
5. **DR. SUDHIR KALHAN, M.S.**
6. **DR. PRAKASH SHASTRI INCHARGE, ICU**

   ALL EMPLOYEES OR WORKING WITH SIR GANGA RAM HOSPITAL, RAJINDER NAGAR, DELHI-60.

(Through: Subash Kumar, Advocate)
…Opposite parties

CORAM:

HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)
HON'BLE MS. PINKI, MEMBER (JUDICIAL)
HON'BLE MR. J.P. AGRAWAL, MEMBER (GENERAL)

Present: Mr. Anil Dutt Sharma, Counsel for the Complainant.
Mr. Subash Kumar, Counsel for the Opposite Parties.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, PRESIDENT)

JUDGMENT

1. The present complaint has been filed by the Complainant before this Commission alleging deficiency in service and unfair trade practices by the Opposite parties and has prayed the following:

   a) *Direct the Opposite Parties to pay back sum of Rs. 17,23,319/- along with Rs 75,00,000/- as damages for causing mental pain and agony due to death of wife of Complainant due to gross negligence and deficiency in service of the Opposite Parties and in lieu of total mental and physical agony suffered by the Complainant and his family members and for financial loss suffered by them in the interest of justice.*

   b) Direct the Opposite Parties to pay Litigation charges as well as interest @ 24% per annum pendentelite and future on the amount payable by the respondents.

c) *Any other relief which this Hon'ble Court deems, fit and proper under the facts and circumstances of the case be passed in favour of the Complainant.*

2. Brief facts necessary for the adjudication of the present complaint are that the deceased/wife of Complainant *(hereinafter referred to as the patient)* was admitted in Opposite Party No.1-Sir Ganga Ram Hospital for the first time on 12.07.2014 and was diagnosed/treated for Non-Hodgkin Lymphoma by Opposite Party No.4- Dr. Shyam Aggarwal and was discharged on 03.08.2014. Subsequently, the patient was again admitted with the Opposite Party Hospital on 21.02.2015 and was advised Splenectomy by Opposite Party No.4-Dr. Shyam Aggarwal. Consequently, the patient underwent a Splenectomy on 23.02.2015 at the hands of Opposite Party No.5-Dr. Sudhir Kalhan and was discharged on 28.02.2015. The Complainant was told that the surgery was uneventful and the spleen was successfully removed from the body of the patient. Subsequently, the Complainant requested Opposite Party No.5-Dr. Sudhir Kalhan to show the specimen of the removed spleen, however, the Opposite Party No.5 refused to show the removed spleen and told the Complainant that it was none of his business. Thereafter, the patient was again admitted for the third time to the Opposite Party-Hospital on 08.06.2015 with a complaints of dehydration and associated symptoms. The Opposite Parties conducted Ultra Sound and allied tests and started the treatment of

the patient relying on the reports of the aforesaid tests. However, the patient finally succumbed to her ailments on 18.06.2015. Thereafter, the Complainant made full and final payment of Rs. 7,28,262/- on 19.6.2015 to the Opposite Party-Hospital and was handed-over the dead body, Gate Pass and Death Certificate but no other documents were provided by the Opposite Party-Hospital. Aggrieved by the refusal on part of the Opposite Parties to provide the complete medical record of the patient, the Complainant sent several letters to the Opposite Party Hospital and other Authorities viz. Medical Counsel of India, Directorate of Health Services, Delhi requesting for the requisition of the complete medical record and original documents viz. Discharge Summary, total bills, bone marrow reports, ultra sound films, spleen specimen etc and other allied reports but the same was of no avail. Furthermore, it is submitted that the Opposite Party No.3-Dr. Ambuj Garg prepared a forged and baseless discharge summary to shield the Opposite Party-Hospital. Perturbed by the conduct of the Opposite Parties, the Complainant visited the Opposite Party-Hospital on 18.08.2015 to meet the concerned higher authorities, however, the Complainant was not allowed to meet the Chairman of the Opposite Party Hospital and was subjected to gross misbehaviour by the receptionist. The Complainant called the PCR several times and it was only after two Police Officers came to the Opposite Party-Hospital that the Complainant was provided a photocopy of the bills. Thereafter, the Complainant filed multiple complaints on

several occasions with various authorities viz. Directorate General of Health Services, Delhi Medical Council, Chief Minister's Office, Deputy Commissioner of Police etc but no action was taken against the erring doctors as well as the Hospital. Finally, with the aid of the Directorate General of Health Services, three sets of medical treatment papers including the Discharge Summary and Bills were supplied to the Complainant.

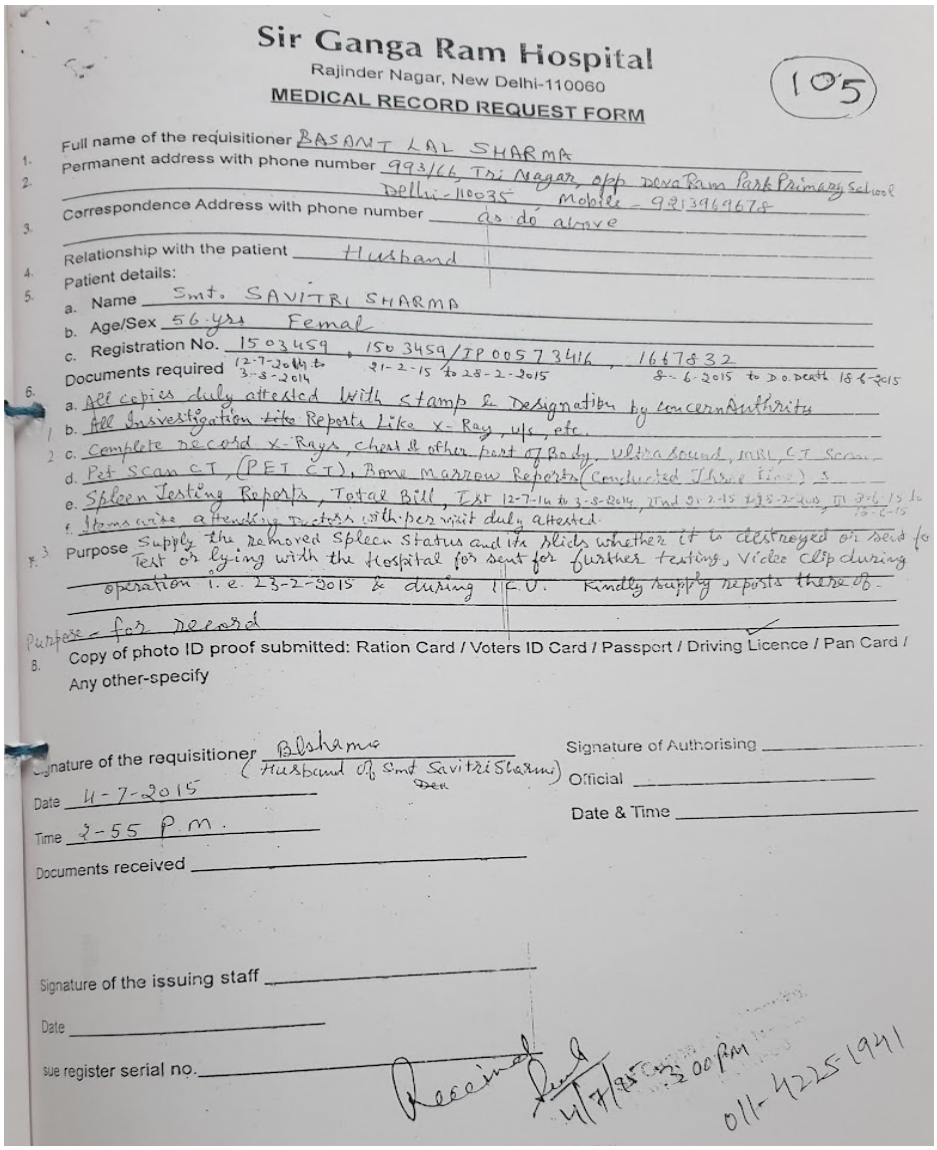
3. The Complainant has submitted that the documents pertaining to the status of the spleen, films of the ultrasound, Bone Marrow Reports etc were not provided to him even though charges against Bone Marrow Biopsy and allied tests were paid to the Opposite Party-Hospital. ***Secondly,*** it is submitted that to the shock of the Complainant, there exists a great contradiction in the ultrasound report and the discharge summary in so much so the documents were manipulated and the death summary was forged with certain additions made to the original documents. ***Thirdly,*** the Complainant has submitted that he was shocked to see the abdominal ultrasound report which showed the spleen to be normal in size and echo texture, though the spleen was already removed through a surgical procedure *"splenectomy*" performed on 23.02.2015 by Opposite Party No.5. It is further submitted that till date, despite having made several requests/complaints, the Complainant has not received the status of Spleen which was allegedly removed on 23.02.2015. ***Fourthly***, it is submitted that the Opposite Parties had charged a total amount of Rs 1,62,825 for the surgical procedure alongwith

Rs. 35,038/- as medical consumable charges against the procedure of removal of spleen *("Splenectomy Operation").* However the status of the spleen, whether removed or not, has not been made known to the Complainant till date. ***Lastly,*** it is submitted that the Opposite Parties having committed gross errors in diagnosis and post operative treatment, are liable for medical negligence and professional misconduct. Aggrieved by the aforesaid conduct of the Opposite Parties, the Complainant has approached this Commission by way of the present Complaint.

4. The Opposite Parties have filed a joint reply and have stated therein that the entire record of the case sheets, investigations, bills, death summary etc were provided to the Complainant on 07.07.2015. ***Secondly,*** it is submitted that the spleen of the patient was handled as biomedical waste as per the Biomedical Waste Rules. It is further submitted that in the present case no CCTV recording was done and a reply dated 29.07.2015 was sent to the Complainant by the Opposite Party no.1 mentioning that not all surgical procedures are routinely recorded. ***Thirdly,*** it is submitted that the Complainant made a complaint to the Delhi Medical Council alleging medical negligence on part of the Opposite Parties and a second complaint along the same lines, however, the Delhi Medical Council in its orders dated 30.12.2015 & 09.11.2016 observed that no medical negligence is made out on part of the Opposite Parties. ***Lastly,*** it is submitted that the Opposite Parties provided standard level of

treatment and care to the patient and no negligence as alleged by the Complainant is made out in the present case.

5. The Complainant has filed the Rejoinder rebutting the written statement filed by the Opposite Parties.
6. The parties have filed their Evidence by way of Affidavit in order to prove their averments on record.
7. We have perused the material available on record and heard the Ld. Counsel for the parties.
8. The ***first question*** that falls for our consideration is ***whether the Opposite Parties caused undue delay in providing the medical records of the patient to the Complainant and whether the same amounts to professional misconduct as per medical protocol.***
9. The Complainant has submitted that the Opposite Parties made undue delay in providing the medical record of the patient and the Complainant was made to run pillar-to-post asking for the intervention of various authorities to obtain the medical record from the Opposite Parties, still the record was not supplied to him. On the other hand, it is the contention of the Opposite Parties that the entire record of the case sheets, investigations, bills, death summary etc were provided to the Complainant on 07.07.2015.
10. In order to put rest to the aforesaid controversy, it is pertinent to refer to the *Medical Record Request Form (Annexure B alongwith the reply)* dated 07.07.2015:



Sir Ganga Ram Hospital
Rajinder Nagar, New Delhi-110060
MEDICAL RECORD REQUEST FORM

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1. Full name of the requisitioner BASANT LAL SHARMA
2. Permanent address with phone number 993/66, Tri Nagar, opp Deva Ram Park Primary School Delhi-110035 Mobile - 9213969678
3. Correspondence Address with phone number as do above
4. Relationship with the patient Husband
5. Patient details:
   a. Name Smt. SAVITRI SHARMA
   b. Age/Sex 56 yrs Femal
   c. Registration No. 150 3459, 150 3459/IP 0057 3416, 1667832
   Documents required 12-7-2014 to 3-8-2014, 21-2-15 to 28-2-2015, 8-6-2015 to D.O.death 18-6-2015
6. a. All copies duly attested With Stamp & Designation by concern Authority
   b. All Investigation file Reports Like X-Ray, ufs, etc.
   c. Complete record X-Rays, chest & other part of Body, Ultra Sound, MRI, CT Scan
   d. Pet Scan CT, (PET CT), Bone Marrow Reports (Conducted Three time)
   e. Spleen Testing Reports, Total Bill, Ext 12-7-14 to 3-8-2014, IP and 21-2-15 to 28-2-2015, IP 8-6-15 to 18-6-15
   f. Name wise attending Doctors with per visit duly attested.
7. Purpose Supply the removed Spleen status and its slides whether it is destroyed or sent for Test or lying with the Hospital for sent for further testing, Video Clip during operation i.e. 23-2-2015 & during ICU. Kindly supply reports there of.
   Purpose - for record
8. Copy of photo ID proof submitted: Ration Card / Voters ID Card / Passport / Driving Licence / Pan Card / Any other-specify

Signature of the requisitioner BLSharma (Husband of Smt Savitri Sharma) Dec
Date 4-7-2015
Time 3-55 P.M.
Documents received

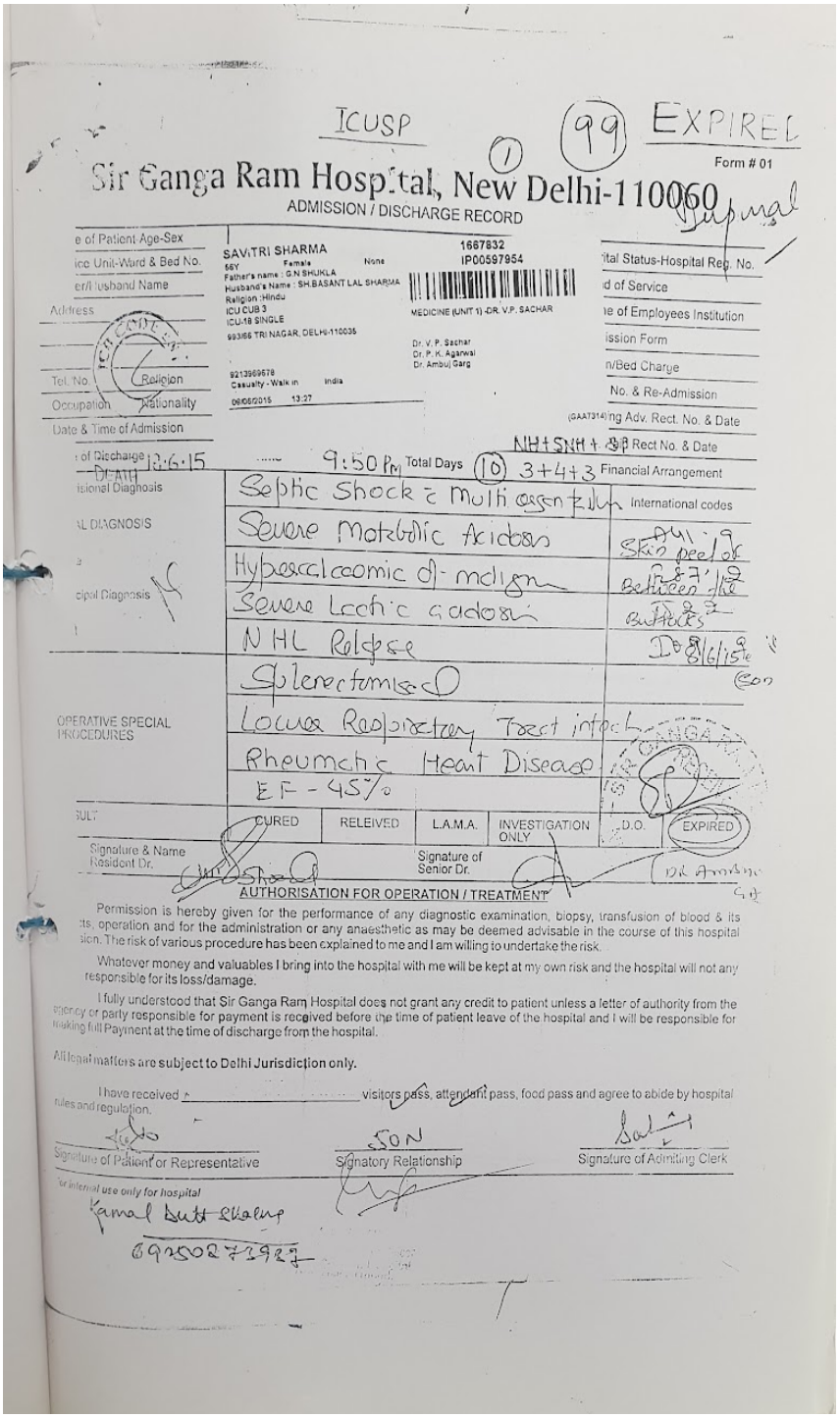
Signature of Authorising Official
Date & Time

Signature of the issuing staff
Date
sue register serial no.

Received 4/7/15 3:00 PM 011-42251941

11. Here, it is to be noted that the patient was declared dead on 18.06.2015. A perusal of the aforesaid request form divulges that the Complainant had categorically requested for the details of the patient on 07.07.2015 pertaining to the PET Scan, spleen reports, bone marrow reports etc, however, the Opposite Parties have stated admittedly, in their reply that the record was supplied to the Complainant on 07.07.2015 itself.

12. In this regard we further deem it appropriate to refer to the Discharge Summary dated 19.06.2015 reproduced hereunder as:



ICUSP (1) (99) EXPIRED

Form # 01

Sir Ganga Ram Hospital, New Delhi-110060

ADMISSION / DISCHARGE RECORD

Gupmal

SAVITRI SHARMA 1667832
56Y Female None IP00597954
Father's name : G.N.SHUKLA
Husband's Name : SH.BASANT LAL SHARMA
Religion :Hindu
ICU CUB 3
ICU-18 SINGLE
99366 TRI NAGAR, DELHI-110035
9213969678
Casualty - Walk in India
06/05/2015 13:27

MEDICINE (UNIT 1) -DR. V.P. SACHAR
Dr. V.P. Sachar
Dr. P. K. Agarwal
Dr. Ambuj Garg

Address
Tel. No. Religion
Occupation Nationality
Date & Time of Admission
Date of Discharge 12.6.15 9:50 PM Total Days (10) 3+4+3
DEATH
Provisional Diagnosis
FINAL DIAGNOSIS
Principal Diagnosis

NH + SNH + [illegible] Rect No. & Date
Financial Arrangement
International codes

Septic Shock & Multi organ failure
Severe Metabolic Acidosis
Hypercalcaemic of malignancy
Severe Lactic acidosis
NHL Relapse
Splenectomised
Lower Respiratory Tract infection
Rheumatic Heart Disease
EF - 45%

Skin peeling between the buttocks
D8 8/6/15

OPERATIVE SPECIAL PROCEDURES

RESULT: CURED | RELEIVED | L.A.M.A. | INVESTIGATION ONLY | D.O. | EXPIRED

Signature & Name Resident Dr.
Signature of Senior Dr.

AUTHORISATION FOR OPERATION / TREATMENT

Permission is hereby given for the performance of any diagnostic examination, biopsy, transfusion of blood & its ...ts, operation and for the administration or any anaesthetic as may be deemed advisable in the course of this hospital ...sion. The risk of various procedure has been explained to me and I am willing to undertake the risk.

Whatever money and valuables I bring into the hospital with me will be kept at my own risk and the hospital will not any responsible for its loss/damage.

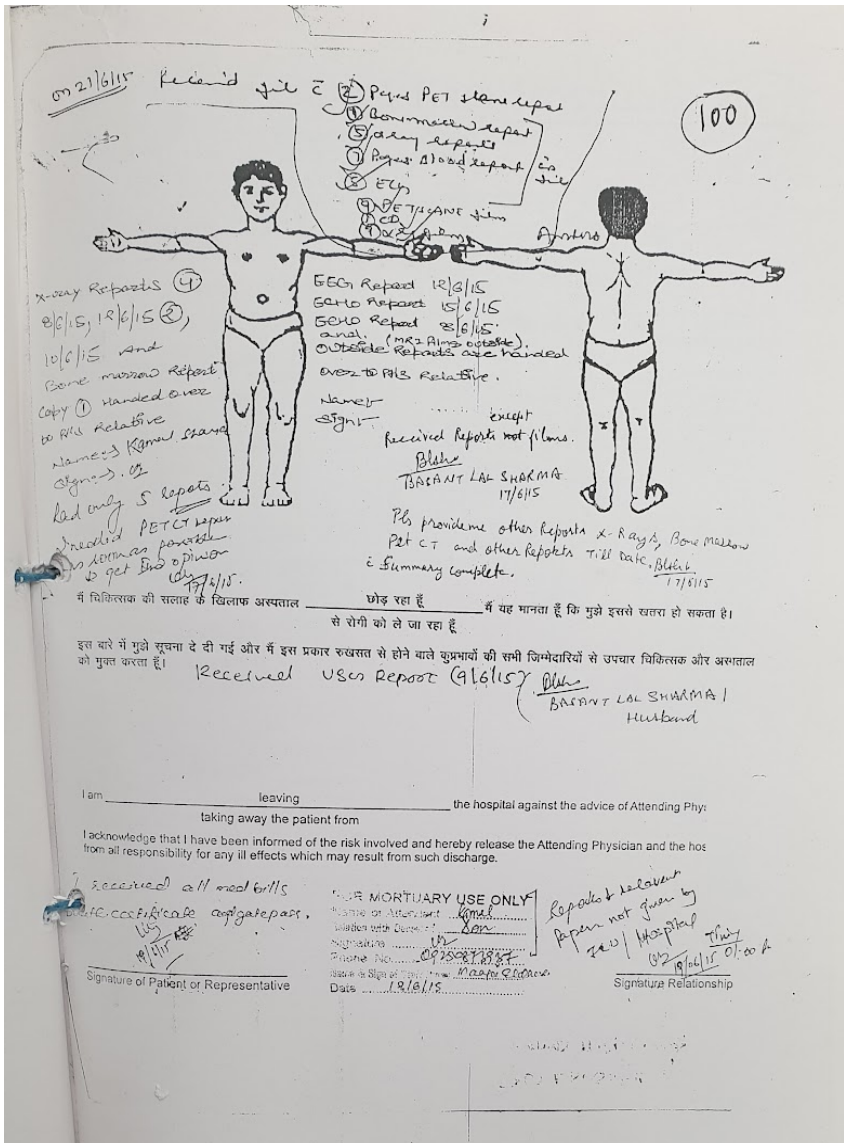
I fully understood that Sir Ganga Ram Hospital does not grant any credit to patient unless a letter of authority from the ...gency or partly responsible for payment is received before the time of patient leave of the hospital and I will be responsible for making full Payment at the time of discharge from the hospital.

All legal matters are subject to Delhi Jurisdiction only.

I have received ..... visitors pass, attendant pass, food pass and agree to abide by hospital rules and regulation.

Signature of Patient or Representative | SON Signatory Relationship | Signature of Admitting Clerk

For internal use only for hospital
Kamal Dutt Sharma
8975027927



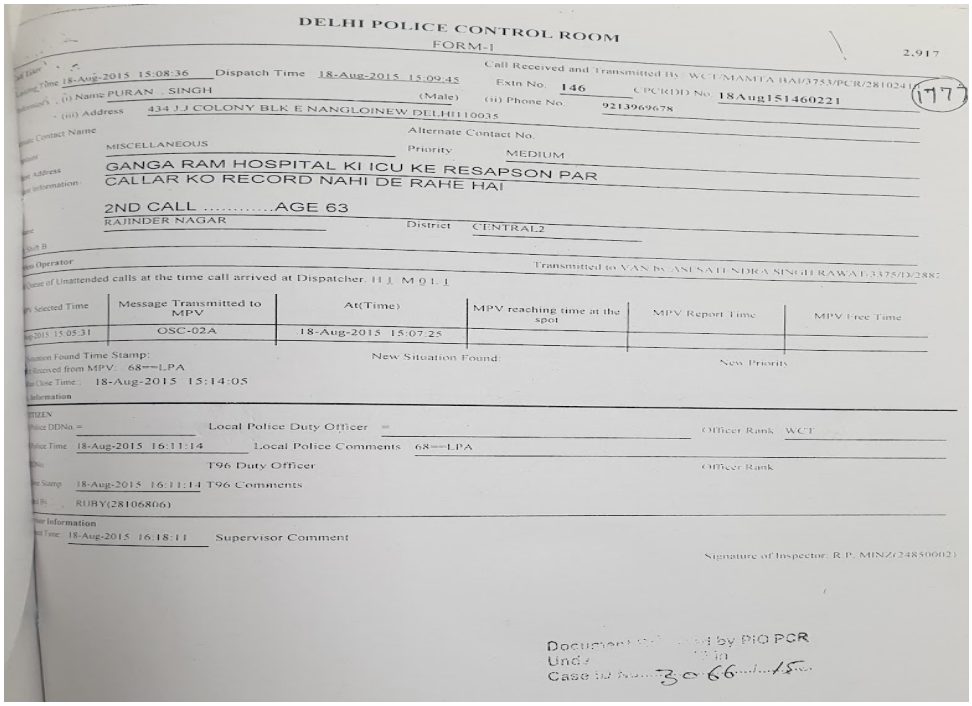
13. A perusal of the aforesaid summary makes it clear that the document bears the remark along with the signature of the Complainant "*reports and relevant papers not given by hospital"*. The document further bears the remark of the Complainant in his handwriting along with his signatures "*please provide other reports, X-rays, Bone Marrow, PET CT, other reports and summary complete till date."* The document further records the remark of the Complainant

"needed PET scan report as soon as possible to get second opinion".

14. It is to be noted that the Opposite Parties in their joint reply have categorically denied that no police intervention was called for and the Complainant was provided the record on the same day as requested. Relevant extract reproduced hereunder as:

> *" 6……. It is submitted that all the medical record has already been provided to him on 07.07.2015. Thereafter, he is asking for the same record is difficult to understand. The complainant calling police through PCR cannot be commented upon for want of knowledge."*

15. In this regard we deem it appropriate to refer to the *Delhi Police Control Room Report (annexed alongwith the Complaint)* reproduced hereunder as:



DELHI POLICE CONTROL ROOM

FORM-1

2,917

Call Received and Transmitted By: WCT/MAMTA BAI/3753/PCR/2810241

Dispatch Time 18-Aug-2015 15:09:45 Extn No. 146 CPCR(D) No. 18Aug151460221

(i) Name PURAN SINGH (Male) (ii) Phone No. 9213969678

(iii) Address 434 J J COLONY BLK E NANGLOINEW DELHI110035

Contact Name Alternate Contact No.

MISCELLANEOUS Priority MEDIUM

GANGA RAM HOSPITAL KI ICU KE RESAPSON PAR

CALLAR KO RECORD NAHI DE RAHE HAI

2ND CALL .....AGE 63

RAJINDER NAGAR District CENTRAL2

Operator Transmitted to VAN by: ASI SATENDRA SINGH RAWAT-3375/D/288

Cause of Unattended calls at the time call arrived at Dispatcher: H J M 0 1 1

Selected Time	Message Transmitted to MPV	At(Time)	MPV reaching time at the spot	MPV Report Time	MPV Free Time
18-Aug-2015 15:05:31	OSC-02A	18-Aug-2015 15:07:25			

Situation Found Time Stamp: New Situation Found: New Priority

Received from MPV: 68==LPA

Close Time: 18-Aug-2015 15:14:05

Information

CITIZEN

Police DDNo. = Local Police Duty Officer = Officer Rank WCT

Police Time 18-Aug-2015 16:11:14 Local Police Comments 68==LPA

DNo. T96 Duty Officer Officer Rank

Time Stamp 18-Aug-2015 16:11:14 T96 Comments

By: RUBY(28106806)

Other Information

Post Time 18-Aug-2015 16:18:11 Supervisor Comment

Signature of Inspector: R.P. MINZ(248500021

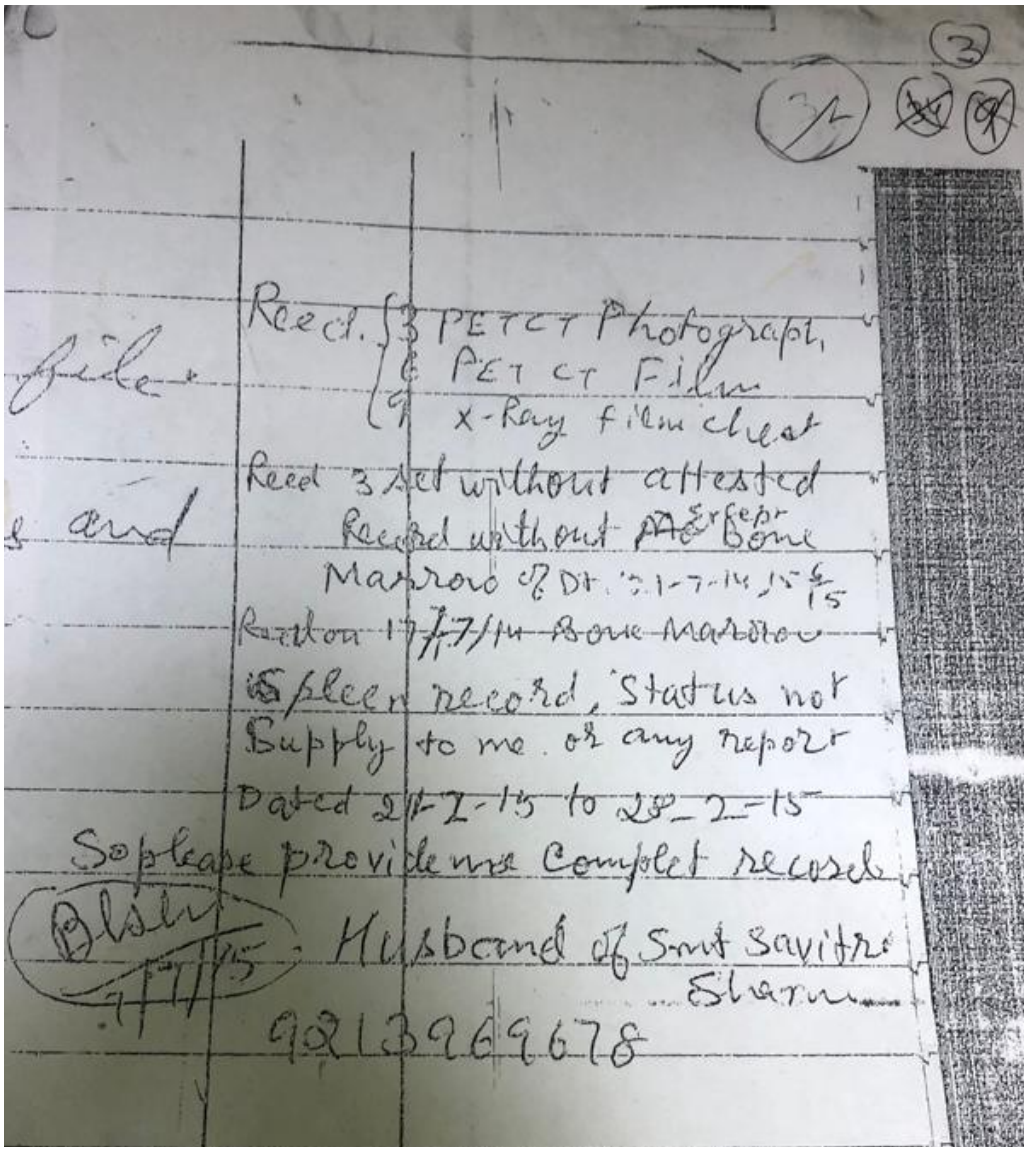
Document ... by PIO PCR

Unit: ... 10

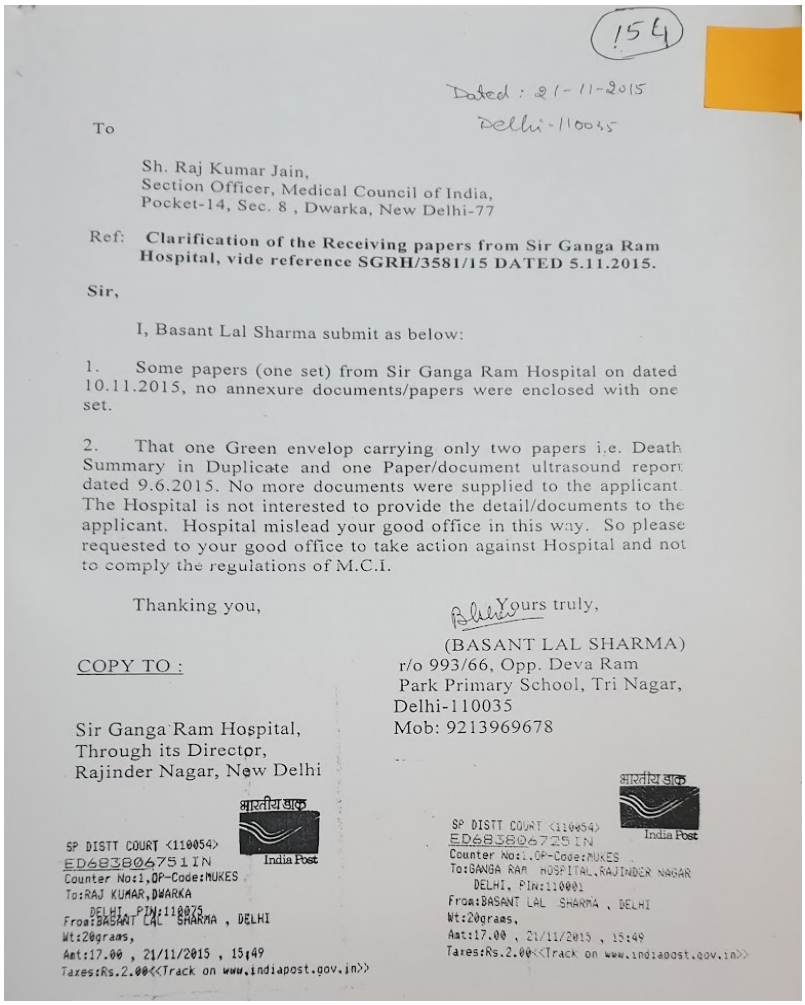
Case ID No. 3c 66 ... 15

16. A perusal of the aforesaid report suggests that 6 calls were made to the police by the Complainant and the report clearly records the reasons cited as *"Gangaram Hospital ke ICU ke Resapson par Callar ko record nahi de rahe"*.

17. We further deem it pertinent to refer to the copy of the record room register as placed by the Complainant on record *(annexed at pg 32 alongwith the Complaint)*



18. A perusal of the aforesaid entry in the record room register makes it absolutely clear that the Complainant, though had received 3 sets of medical record without attestation, yet the same did not contain Bone Marrow reports and spleen status reports. In this regard, the Complainant again intimated the Medical Council of India through letter dated 21.11.2015 stating that he had received only a green envelope containing the Death Summary and Ultra sound report and that no more documents were supplied. The said letter is reproduced hereunder as :



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Dated : 21-11-2015

To Delhi-110035

Sh. Raj Kumar Jain,
Section Officer, Medical Council of India,
Pocket-14, Sec. 8 , Dwarka, New Delhi-77

Ref: **Clarification of the Receiving papers from Sir Ganga Ram Hospital, vide reference SGRH/3581/15 DATED 5.11.2015.**

Sir,

I, Basant Lal Sharma submit as below:

1. Some papers (one set) from Sir Ganga Ram Hospital on dated 10.11.2015, no annexure documents/papers were enclosed with one set.

2. That one Green envelop carrying only two papers i.e. Death Summary in Duplicate and one Paper/document ultrasound report dated 9.6.2015. No more documents were supplied to the applicant. The Hospital is not interested to provide the detail/documents to the applicant. Hospital mislead your good office in this way. So please requested to your good office to take action against Hospital and not to comply the regulations of M.C.I.

Thanking you,

Yours truly,

(BASANT LAL SHARMA)
r/o 993/66, Opp. Deva Ram
Park Primary School, Tri Nagar,
Delhi-110035
Mob: 9213969678

COPY TO :

Sir Ganga Ram Hospital,
Through its Director,
Rajinder Nagar, New Delhi

भारतीय डाक India Post
SP DISTT COURT <110054>
ED683806751IN
Counter No:1,OP-Code:MUKES
To:RAJ KUMAR,DWARKA
DELHI, PIN:110075
From:BASANT LAL SHARMA , DELHI
Wt:20grams,
Amt:17.00 , 21/11/2015 , 15:49
Taxes:Rs.2.00<<Track on www.indiapost.gov.in>>

भारतीय डाक India Post
SP DISTT COURT <110054>
ED683806725IN
Counter No:1,OP-Code:MUKES
To:BANGA RAM HOSPITAL,RAJINDER NAGAR
DELHI, PIN:110001
From:BASANT LAL SHARMA , DELHI
Wt:20grams,
Amt:17.00 , 21/11/2015 , 15:49
Taxes:Rs.2.00<<Track on www.indiapost.gov.in>>

19. A thorough perusal of the record further divulges that a complaint was received by the Directorate General of Health Services, Government of NCT, New Delhi (*hereinafter referred to as "DGHS")* and consequently, a letter was sent to the Opposite Party No.1-Hospital to provide the Complainant a complete set of the medical record within 3 days. Thereafter, the Complainant was provided 3 sets of medical record through Speed Post No.ED718229950TN dated 29.9.2015 from the office of DGHS. received on 01.10.2015. However, the Ultrasound film and photograph of the Ultrasound film as well as status of removal of spleen as mentioned above were yet not been supplied.
20. It is to be noted that the abovementioned death summary records multiple remarks by the Complainant that various documents have not been supplied to the Complainant as on the said date. It is to be noted further that the record room register of the Opposite Party No.1-Hospital also records that the Bone Marrow reports and spleen status have not been provided and the Complainant again approached the DGHS for obtaining the medical record.
21. On the other hand, the Opposite Parties have not placed on record any cogent material to disprove the averments as made by the Complainant. The Opposite Party-Hospital has merely relied upon the signatures on the death summary and the acknowledgments signed by the Complainant, thus submitting that the entire record was supplied to the Complainant.

22. Therefore, from the aforesaid discussion, it flows that though the Complainant was provided the medical record pertaining to the patient, the same did not contain documents pertaining to the Bone Marrow Reports, spleen status etc. It is not denied by the Complainant that he did not receive any documents. It is further clear that, though 3 sets of documents as per the direction of the DGHS were supplied to the Complainant vide speed post no.ED718229950TN, yet the same did not contain the documents pertaining to the spleen status as demanded by the Complainant. The Opposite Party No.1-Hospital has failed to provide any explanation in this regard as to why the Complainant was made to wait for a period of more than 2 months for providing the complete record of the patient as demanded by the Complainant. It is pertinent to note here that on a perusal of the record, it is clear that the Complainant had only asked for the reports of the test conducted prior to the death of the patient, which were already prepared beforehand, yet the Opposite Party-hospital made inordinate delays in supplying the same until the intervention of DGHS. Therefore, it is clear that prima facie that Opposite Parties kept the Complainant dangling in the air for no reason whatsoever.
23. The Complainant has taken *another plea that the Opposite Parties manipulated the records and forged the signatures of the Complainant.*
24. The Complainant has submitted that the Complainant's son took a snap of the medical record at 1:06 AM on 19.06.2015 through his

mobile no.9250873937 and the medical record of the patient did not contain any writing after 19.06.2015. However, the Opposite Parties filled the blank spaces as can be seen in the photograph taken by the Complainant on Direction of one Dr. Deepak and the conversation recorded in the C.D. enclosed alongwith the record. The Complainant has also raised allegations against the Bone Marrow Biopsy/Bone Marrow Aspiration and Flow Cytometry done by the Opposite Parties dated 15.06.2015. *(Ex.RW4/A alongwith the evidence of Opposite Party No.4).*

25. Here, we deem it appropriate to refer to the recent decision of the Hon'ble Supreme Court in ***Civil Appeal No. 7289 OF 2009 decided on 27.03.2023*** titled as "***The Chairman & Managing Director, City Union Bank Ltd. & Anr. Versus R. Chandramohan" :***

> *"The proceedings before the Commission being summary in nature, the complaints involving highly disputed questions of facts or the cases involving tortious acts or criminality like fraud or cheating, could not be decided by the Forum/Commission under the said Act. The "deficiency in service", as well settled, has to be distinguished from the criminal acts or tortious acts. There could not be any presumption with regard to the wilful fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance in service, as contemplated in Section 2(1)(g) of the Act. The burden of*

proving the deficiency in service would always be upon the person alleging it."

26. A perusal of the aforesaid decision makes it clear that the proceedings before the Commission being summary in nature, the complaints involving highly disputed questions of facts or the cases involving tortious acts or criminality like fraud or cheating, cannot be decided by the Commission under the Consumer Protection Act. Reverting to the material on record, the present case involves allegations as to forgery, fraudulent practices etc. The issue pertaining to determining the veracity of the call detail records, recordings of conversations, handwriting and forged signatures etc involve highly disputed question of facts and the same cannot be looked into by this Commission under the Consumer Protection Act. Therefore, we confine our adjudication to the frontiers as defined under the law.
27. The ***main question*** that now falls for our consideration is ***whether the conduct of the Opposite Parties amounts to medical negligence.***
28. At the outset, it is pertinent to remark that the term "negligence" has no defined boundaries and if any medical negligence is alleged, whether it pertains to pre or post-operative medical care or to the follow-up care at any point in time at the hands of the treating doctors, it is always apposite to take note of the constituents of negligence and the exposition of law as laid down by the Hon'ble

Apex Court in ***Jacob Mathew v. State of Punjab and Anr* (*2005) 6 *SCC 1*** *as:*

"*The test for determining medical negligence as laid down in Bolam case [(1957) 2 All ER 118 (QBD), WLR at p. 586] holds good in its applicability in India.*

xxx xxx xxx

24. The term "negligence" has been defined in Halsbury Laws of England (Fourth Edition) para 34 and as settled in Kusum Sharma and Others v. Batra Hospital and Medical Research Centre and Others as under:

"45. According to Halsbury's Laws of England, 4th Edn., Vol. 26 pp. 17-18, the definition of negligence is as under:

"22. Negligence.—Duties owed to patient. A person who holds himself out as ready to give medical advice or treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person, whether he is a registered medical practitioner or not, who is consulted by a patient, owes him certain duties, namely, a duty of care in deciding whether to undertake the case; a duty of care in deciding what treatment to give; and a duty of care in his administration of that treatment. A breach of any of these duties will support an action for negligence by the patient."

29. What is to be gleaned from the aforesaid decision is that to establish a claim for medical negligence, it is imperative to meet the following criterion i.e. **firstly**, the patient was owed a duty of care. **Secondly,** that duty was breached by a deviation from accepted standards of care. **Thirdly**, the patient suffered damages and **fourthly,** the damages suffered were a direct result of the medical provider's breach of duty.

30. Adverting to the facts of the instant case, a perusal of the record divulges that the patient was seen by the Opposite Party No.2-Dr. Pankaj Aggarwal on 12.07.2014 for the first time. The patient was advised PET Scan for clinical evaluation which showed active uptake of FDG in spleen. Thereafter, the Opposite Party No.4-Dr. Shyam Aggarwal treated the patient and referred her to the Opposite Party No.5-Dr. Sudhir Kalhan for laparoscopic splenectomy. Subsequently, patient was admitted under Opposite Party No.5 as a case of *Non-Hodgkin's Lymphoma Post Chemotherapy with Splenic Abscess for Laparoscopic Splenectomy* on 21.02.2015 (Regn. No. 1503459/ IP 00593416), which was performed under General Anaesthesia on 23.02.2015.

31. It is pertinent to refer here to the details of the abdominal ultra sound report dated 09.06.2015 reproduced hereunder as follows:

> *"The liver shows a normal, homogeneous echo texture without any hypo or hyperechoic masses, abscesses cysts. Liver span is 13.5cm. Hepatic veins are normal and diameter of portal vein is 8 cm.*

There is no dilatation of the intrahepatic billiary tree and the common hepatic duct. Common duct is 5.7 cm
Spleen is normal in size and echo texture.
Both kidney are normal in size(right 76x3.2cm, left = 7.6x4.0cm.)…."

32. A perusal of the aforesaid report clearly establishes that spleen was normal in size and echotexture. Furthermore, a perusal of the bills placed on record clearly show that the Opposite Party No.1-Hospital has charged Rs.20,380/- as operation charges, Rs.01,62,825/- as splenectomy charges i.e. charges for removal of the spleen of the patient alongwith and medical consumable charges Rs.35,038/-. However, it is abysmally surprising to note that the ultra sound report dated 09.06.2015 shows that the spleen is intact and normal in size. It is implausible as to how could the spleen be spotted normal in size and texture when the same was removed on 21.02.2015 through Laparoscopic Splenectomy procedure. It is further inexplicable as to how could the Opposite Party-hospital charge for a surgery, which as per test reports, was never performed, or to the contrary, even if performed, constitutes a total failure as is negated by the ultra sound report which shows the spleen intact.
33. It is to be noted further that it is a standard medical practice to show the patient or his/her relatives the specimen of the removed organ after an organ removal surgery. However, in the present case, it is not in dispute that neither the Complainant nor the patient or any other relative thereof was shown the removed spleen after surgery

and the same was treated as biomedical waste. The relevant extract of the reply filed by the Opposite Parties is reproduced hereunder as:

> *"5…..it is further submitted that regarding spleen, it was handled as per Biomedical Waste Handling Rules."*
>
> *….In the present case, no CCTV/video recording of the operation was done and there is no CCTV/video recording done in the ICU"*

34. Another anomaly that solicits the attention of this Commission is that no CCTV footage of the operation was recorded/ preserved in the first place. The Opposite Parties have clearly stated in the joint reply that no CCTV recording was done in the ICU.

35. Here, it is pertinent to remark that the aforesaid findings /discrepancies in the line of treatment, highly reek of an unprofessional and heedless attitude of the Opposite Parties towards the patient, thus rendering the present case absolutely fit to fall in the domain of the doctrine of *res ipsa loquitor*. Here, the principle of *res ipsa loquitor* very well comes into play, as prima facie, the conduct of the Opposite Parties tantamounts to negligent conduct. A negative inference can be drawn against the Opposite Parties solely on the basis of the doctrine of *res ipsa loquito*r which shall be applicable herein keeping in view the treatment record produced by the Complainant. For the application of the maxim res ipsa loquitur no less important a requirement is that the res must not only bespeak negligence, but pin it on the Opposite Party. The aforesaid

findings independently make way for raising an adverse presumption against the Opposite Parties that either the Spleen was not removed at all and the Complainant was wrongly charged for the said operation, or to the contrary, even if it is assumed that the spleen was removed, the post-operative treatment was erroneous as it was based on a faulty test report/diagnosis which showed the spleen to be present intact within the patient's body. It is crucial to remark here that none of the Opposite Parties ever reflected on the aforesaid discrepancy and continued to provide treatment based on a faulty line of diagnosis/ test reports. Therefore, either way, the Opposite Parties cannot shrug off their liability in so far so the Opposite Parties failed to exercise reasonable care and diligence in extending post operative care to the patient.

36. The Opposite Parties have taken *another plea that the scan was sub-optimal and the report of the Delhi Medical Council absolves the Opposite Parties of the allegations pertaining to medical negligence and as such, no negligence can be made out on part of the Opposite Parties.*

37. It is to be noted here that the Opposite Parties owed a duty of care towards the patient. The whole post operative treatment of the patient was based on the test reports which turned out to be faulty. This Commission is of the view that even if it is assumed that the scan was sub-optimal, the Opposite Parties ought to have referred the patient for a second scan and ought not to have proceeded with further course of treatment till an optimal scan was obtained. The

Opposite Parties have prima facie failed in exercising reasonable care towards the patient in so much so that all the treating doctors proceeded with further treatment based on an erroneous report which shows the spleen to be intact when the same was already removed.

38. In order to appreciate the opinion of the Delhi Medical Council, we deem it appropriate to refer to the contents of the order dated 09.11.2016, relevant extract reproduced hereunder as:

> "..... *Infact the post operative PET NCCT scan duplicate report dated 16th June, 2015 gives a finding that the spleen is not visualized consistent with post operative status. Dr. Deepak Chawla gave explanation that when the spleen has been excised or is small due to other reasons, the left lobe of liver grows to fill the left subdiaphragmatic space and because of similar echotexture can frequently mimic like spleen, is not a medically tenable explanation. It for sure appears that ultrasonologist who reported the Abdominal ultrasound done on 09th June, 2015 has made a mistake by wrongly reporting that spleen is normal in size, when the spleen has already been removed on 23rd February, 2015. The ultrasonologist is advised to be careful, for future."*

39. A perusal of the aforesaid order makes ***it abundantly clear that Dr. Deepak Chawla misunderstood the liver to be spleen***. His explanation that when the spleen has been excised or is small due to

other reasons, the left lobe of live grows to fill the left subdiaphragmatic space and because of similar echotexture can frequently mimic like spleen, is not a medically tenable explanation. The aforesaid finding prima facie gives rise to an adverse presumption against the competency of the treating doctors in being well conversant with the anatomy of the human body, failing to clinically correlate the findings in the reports for diagnosing the disease and to later provide treatment accordingly.

40. It is worthwhile to mention here that the post operative PET NCCT scan duplicate report dated 16.06.2015 also gives a clear-cut finding that "*the spleen is not visualized consistent with post operative status."* thus confirming there being no spleen in the body of the patient and the ultra sound report was an erroneous one which wrongly reported the spleen to be normal in size. Therefore, the aforesaid events prima facie tantamount to seemingly evident negligence and are sufficient proof to carve out a case of medical negligence.

41. It is further noteworthy that there is a glaring discrepancy in the abdominal ultra sound report and death summary for the period of 08.06.2015 and 18.06.2015. The relevant extract from the death summary is reproduced hereunder for ready reference:

".....USG abdomen was suggestive of hepatomegaly with fatty infiltrations"

42. The relevant extract from the abdominal ultra sound report dated 09.06.2015 is also reproduced hereunder as follows:

> "…..*The liver shows a normal, homogeneous echo texture without any hypo or hyperechoic masses, abscesses cysts."*

43. From the extensive reading of medical literature, it has come to our knowledge that Hepatomegaly refers to the enlargement of the liver beyond its normal size ("*Hepatomegaly", Review Date 5/2/2023, Updated by: Michael M. Phillips, MD, Emeritus Professor of Medicine, The George Washington University School of Medicine, Washington, DC, accessible at https://medlineplus.gov/ency/imagepages/9396.htm#:~:text=Hepatomegaly%20is%20enlargement%20of%20the,all%20cause%20an%20enlarged%20liver, MedlinePlus. Bethesda (MD): National Library of Medicine (US))*.

44. A juxtaposition of the ultra sound report and the clinical summary as recorded in the death summary project a contradictory picture. The clinical summary states that the liver is observed to be enlarged than its normal size. However, the ultra sound report makes it clear that the liver is normal in size. The aforesaid observations again indicate towards a confused state of conduct, raising an adverse inference against the level of skill and competence of the Opposite Parties.

45. In order to further appreciate the opinion of the Delhi Medical Council, it will be apposite to take note of the legal principles which would apply in any case of medical negligence. The Hon'ble Supreme Court in ***Jacob Mathew v. State of Punjab (supra)*** dealt with the law of medical negligence in respect of professionals

professing some special skills. Thus, any individual approaching a skilled person would have a reasonable expectation under the duty of care that while undertaking the performance of his task, he/she would exercise his skills to the best of his ability and with reasonable competence. Thus, the liability would only come if (a) either the doctor did not possess the requisite skills which he professed to have possessed; or (b) he did not exercise with reasonable competence in given case the skill which he did possess. The Hon'ble Supreme Court held as under:

> *"48. We sum up our conclusions as under: (1) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: "duty", "breach" and "resulting damage".*

46. The Court further observed:

> *"When it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.*

47. Moreover, the Hon'ble Apex Court has left no room for confusion as to the binding value of medical expert opinion on courts. The Hon'ble Apex Court in ***Madan Gopal v. Naval Dubey reported as (1992) 3 SCC 204*** held that the medical opinion is just an opinion and is not binding onto the court. Opinion on technical aspects and

material data given by the medical experts is only considered by court as advice and the court has to form its own opinion, relevant extract reproduced hereunder as :

> "*A medical witness called in as an expert to assist the Court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination. The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the Court on the technical aspect of the case by explaining the terms of science so that the Court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is accepted, it is not the opinion of the medical officer but of the Court."*

48. Therefore, in view of the aforesaid discussion, it can be concluded beyond doubt that the conduct of the Opposite Parties fell below that of the standards of a reasonably competent practitioner in exercising

skill and competence and the Opposite Parties conjointly failed to take reasonable care of the patient.

49. It is worthwhile to remark here that the Opposite Parties being a team of doctors, are dealing with human lives and not guinea pigs. The treating doctors, working in synergy, cannot use the patient as an "experimental site" without adhering to the standard line of medical treatment. A single word written erroneously in the report, a mere head turn while performing a procedure, merely looking left and right midst diagnosis/treatment can change the whole life of the patient and can give life-long trauma to patients, shattering their lives in the most unimaginable ways. A miniscule act of negligence on the part of the doctor can change the whole course of treatment yet money is shelved and the patient goes through immense mental, physical and financial stress only for reposing his trust in the doctor or healthcare provider.

50. This Commission is of the view that a doctor owes the highest moral obligation, the duty to take care of the patient, since he is dealing with human lives. A medical practitioner who is consulted by a patient, owes him certain duties, namely, a duty of care in deciding whether to undertake the case; a duty of care in deciding what treatment to give; and a duty of care in his administration of that treatment. A breach of any of these duties will support an action for negligence by the patient. It is crucial to remark here that the aforesaid discussion be treated as an advisory to all medical

practitioners and members of the healthcare industry to be careful while dealing with human lives.

51. In view of the aforesaid discussion, we hold that the Opposite Parties being a team of doctors working conjointly, were negligent and deficient in providing their services pertaining to accurate diagnosis and operative care of the patient and therefore, the ***Consumer Complaint No.594/2016 stands partly allowed.*** Consequently, we direct;

    a) *the Opposite Parties No.1-6 to pay the Complainant a sum of Rs. 85,000/- each to the Complainant totalling to Rs.5,10,000/- as damages towards the physical agony suffered by the patient including Rs.1,97,900/- being the charges of surgical procedure.*

    b) *the Opposite Parties No.1-6 to pay a sum of Rs.20,000/- each to the Complainant as mental agony.*

    c) *the Opposite Parties No.1-6 to pay a sum of Rs. 15,000/- each to the Complainant as litigation charges.*

52. The Opposite Parties are directed to comply with the directions as contained in para 51, within two months from the date of the present judgment i.e. on or before 09.04.2024, failing which the Opposite Parties shall be liable to pay the entire sum along with simple interest at the rate 9% p.a. till the actual realization of the amount.

53. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.
54. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
55. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

(J.P. AGRAWAL)
MEMBER (GENERAL)

Pronounced On:
09.02.2024

L.R. - GPK