# Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

*" An aware consumer is an asset to the nation"* *Website : www.advantageconsumer.com*

**VOLUME – XXXVI** **JUNE 2024** **ADVANTAGE - VI**

## Queries & Answers through the Web

(*www.advantageconsumer.com* is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

## Medical Negligence established based on the Omission and Commission of the doctor and hence directed to pay a compensation to the patient.

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**
**NEW DELHI**

**FIRST APPEAL NO. 925 OF 2019**

(Against the Order dated 23/04/2019 in Complaint No. 4/2012 of the State Commission Rajasthan)

DHANVANTRI HOSPITAL & RESEARCH CENTRE (A UNIT OF DHANVANTRI LIVE CARE PVT. LTD.) & ANR.
THROUGH ITS DIRECTOR, DR. R.P. SANINI, 67/56-A, NEW SANGANER ROAD, MANSAROVER
JAIPUR
RAJASTHAN 302020 .....Appellant(s)

Versus

SANTOSH KUMAR SHARMA & 3 ORS.
SHREE RAMPURA, POST DEVLI TEHSIL LALSOT
DAUSA
RAJASTHAN .....Respondent(s)

**BEFORE:**
**HON'BLE DR. S.M. KANTIKAR, PRESIDING MEMBER**

**Dated : 03 Mar 2023**

**ORDER**

1. This Order shall decide both the first appeals arising from the impugned Judgment /Order dated 23.04.2019 passed by the State Consumer Disputes Redressal Commission, Jaipur (hereinafter referred to as the "State Commission") in Consumer Complaint no. 4/2012, wherein the State Commission allowed the complaint holdings the OPs liable for medical negligence and awarded compensation.

2. For the Convenience the parties are referred to be as in the Complaint before the State Commission

3. Brief facts are that on 03.07.2011 Santosh Kumar, aged about 17 years- the Complainant No. 1 (hereinafter referred to be as the "patient") sustained electric burn injuries in his arms, legs and abdomen due to electrocution in his village. Immediately, he was taken to the Community Health Centre at Lalsot, District Dausa and after first aid,

on the same day he was referred to S.M.S. Hospital at Jaipur. He got admitted in Plastic Surgery (Burn) unit. Thereafter on 05.07.2011 he was taken to Dhanvantri Hospital (OP-1) and admitted in the Ortho Unit under Dr. R.P. Saini (OP-2). On 09.07.2011 patient's left hand was operated by OP-2, but, after the operation bleeding was present at operated site, therefore after 2 days, OP-2 performed another operation on 11.07.2011. It was alleged that initially OP-2 delayed the 1st operation by 4 days and then a gap of 2 days 2nd operation was performed. The delay led to 'gangrene' of the left arm, therefore, amputation of left arm below elbow was done at Fortis Hospital on 15.07.2011.

4. The Complainants further alleged that, the OP-2 failed to treat other burn injuries on both legs and right forearm which resulted in infection and gangrene. Therefore, patient was taken to the Fortis hospital for further management. There amputation of left had below elbow, and right trans-metatarsal amputation and left Syme's amputation. Thus, due to gross negligence of the OP-1 & OP-2 the patient became completely handicapped and suffered 80% disability (Disability Certificate Ex. C/106). Being aggrieved the Complainants filed Consumer Complaint No. 4/2006 before State Commission, Jaipur.

5. The OP- 1 & 2, in their reply denied all allegations. It was further submitted that the patient absconded from SMS Hospital and came to Dhanvantari Hospital (OP-1) in a very serious condition. He was treated as per the accepted standards. The High-Risk Informed Consent was obtained prior to surgery from the patient's uncle. The OPs further submitted that, CT Angiography was performed on 08.07.2011 and to prevent further damage and infection the Latissimus Dorsi (LD) Flap surgery of left hand was done on 09.07.2011, after due informed consent. The oozing of blood from the wound was noted after surgery. The patient was taken to Fortis hospital for further treatment. It was stated that the complainants deposited only Rs.5000/- at the time of admission, but afterwards they did not make any payment towards hospitalization. The OPs further submitted that the hospital (OP-1) had Indemnity insurance cover for Rs.20.00 lakhs from the New India Assurance Company Limited (OP-3). The insurance co.in its reply admitted the policy cover of Rs.20.00 lakhs given to the OP No. 1 hospital, but denied the allegations of the complaints about medical negligence.

6. The State Commission hearing the parties and on appraisal of the evidence held the OPs liable for medical negligence with following observation:

> If we compare the first CT-Angiography and the second CT-Angiography, then it appears that all the complications have started only after getting admitted in Dhanvantri Hospital, after operation and the bleeding. The complainant was subsequently taken to Escort Hospital, where the left hand of the complainant had to be amputated near the elbow and the right hand became lean, a finger got damaged, all the fingers got curved, the fingers of the left leg got degenerated and the toe of the left leg vanished. In this way, the complainant in total has become disabled by his both legs and both hands. Based on the above investigation, the complainant has succeeded in proving that the negligence of the OPs they did not employ due care and skill.

7. The State Commission allowed the Complaint with following Order:

> "Rs 25,00,000/- to the complainant No. 1 along with 9% interest from 25.01.2012 (Rs. 20,00,000 to be borne by New India Assurance Company). That further a sum of Rs 5,00,000/- each was granted to the parents of the complainant no. 1 (Complainant no.2 and 3) along with 9% interest from 25.01.2012. That further a sum of Rs 16,99,857/- was awarded as the expenses for the prosthesis and Rs 7,26,356/- as medical expenses and litigation expenses to the tune of Rs 50,000/- was also awarded along with 9% interest from 25.01.2012".

8. Being aggrieved, the OPs-1 & 2 filed FA No. 925 of 2019 and the Insurance Company filed FA No. 945 of 2019.

9. Heard the arguments from the learned Counsel for both the sides. Perused the material on record *inter alia* the medical literature and order of State Commission, also the original record from the State Commission was also requisition. 10. The learned counsel for Complainant argued that on 09.07.2011, after the operation of left forearm there was heavy bleeding from patient's left forearm and Dr. R.P. Saini (OP-2) assured that with dressing put on it bleeding will stop, but the bleeding continued for 48 hours. Therefore, total 14 units of blood were transfused. No treatment was given to the Rt. Hand and both the legs. There was no separate bum unit in the hospital, therefore the burn patients are more prone for infection, Septicaemia, and death. The Counsel submitted that it was the gross negligence as the OP-2 was being an Orthopaedic surgeon performed plastic surgery / LD flap.

11. The learned counsel for the OPs-1 & 2 and the Insurance Company argued that Complainant has concealed several facts, not filed entire medical record, but filed manipulated record. The OPs filed an application before the State Commission for production of the entire medical record, but it was rejected by the State Commission. The learned counsel reiterated the evidence filed by the OP and chronology of treatment given at OP-2 Hospital. He further argued that burn injury patient needs supportive treatment like dressing, maintaining electrolyte balance, administering antibiotics and pain killers. The Counsel further submitted that the LD flap was necessary, because due to severe burn the muscle, soft tissue and blood vessels were totally damaged and bone was exposed. LD flap of left forearm was done in order to save the maximum part of limb. The Counsel further argued that the allegations of complainants are vague without supported by expert evidence. Also not specifically proved that OP-2 deviated from accepted medical practice. The learned counsel for OPs relied upon following decisions:

a. C.P. Sreekumar (Dr.), MS (Ortho) Vs. S. Ramanujam, (2009) 7 SCC 130.
b. Dr. Suresh Gupta v. Govt. of N.C.T of Delhi 2004 Crl.L.J. 3870, State of Punjab v. Shiv Ram (2005) 7 SCC 1 and Jacob Matthew's case.
c. Achutrao Haribhau Khodwa vs. State of Maharashtra &Ors., 1996 (2) sec 634.
d. Jacob Matthew v. Union of India (2005) SCC (Crl.) 1369,
e. Arun Kumar Manglik v. Chirayu Health and Medicare Private Limited and Anr, (2019) 7 sec 401.
f. Dr. Harish Kumar Khurana v. Joginder Singh & Others 14 (2021) SCC Online SC 673.
g. Kusum Sharma and Others v. Batra Hospital and Medical Research Centre and Others (2010) 3 SCC 480,
h. K. S. Bhatia vs. Jeevan Hospital &Anr. 2004 CTJ 175 (NC)

12. I took reference from the **Handbook of Burns Volume 1: Acute Burn Care, Textbook of Plastic, Reconstructive, and Aesthetic Surgery and few articles on the subject.**

- The majority of acute burn wounds undergoing surgical treatment require the excision of burn eschar and split skin grafting[1]. However, the introduction of free micro vascular tissue transfer has allowed the preservation of otherwise unsalvageable deep burn injuries, when vital tissues such as nerves, arteries, veins, bones, tendons or joints are exposed Moreover, free flaps can be essential in secondary correction of contracted burn scars.
- In reconstructive burn surgery, full thickness grafts or local skin flaps can be used. Reconstruction of burned scars is often difficult, due the lack of skin elasticity at the site of the contraction, avoiding rotation or transposition of local tissue. Thus, burn sequelae can be safely treated with 'enbloc' resection and resurfacing using a free flap Tissue expansion offers an alternative procedure for re-surfacing, but it is not always available.
- The latissimus dorsi flap (LD flap) reconstruction is considered a major surgical procedure. Generally, the procedure takes longer than breast implant surgery. Healing will also take longer with a tissue flap procedure since two surgical sites available - the donor site on the back and the newly constructed area. Though not a health risk, you should know that the procedure will leave a back scar. While health risks from this surgery are rare, it is still important to be aware of them. The surgical complications like bleeding, infection, and delayed healing.

13. I have carefully perused the medical record of SMS Hospital and OP-2 hospital. The chronology of events revealed that on 8/7/2011, the CT angiography of the both upper limbs was done at OP-2. It showed satisfactory blood flow; therefore, the LD Flap to left hand was performed by OP-2 to save the exposed nerves, blood vessels and other muscular tissue. It was necessary to reduce the level of amputation. However, the oozing of blood from LD flap operative wound persisted. Therefore, the anticoagulant drugs were immediately stopped. The patient was transfused 14 units of blood and also maintained electrolyte balance with IV fluids. It was an accepted standard line of treatment in the cases of burn injuries. In my view, in the instant case, the severity of burns led to damage of muscles, nerves and blood vessels, which was the cause of development of gangrene. Therefore, the fact was the patient sustained heavy electric burn injuries with 11000 volts, which badly charred the upper limbs and lower limbs, therefore amputation was inevitable. Therefore, OP as an Orthopaedician, performed his duty with reasonable care.

14. It is pertinent to note that Dr. R. P. Saini (OP-2), though he was an Orthopaedic Surgeon, MS (Ortho) performed LD Flap Surgery. According to him the syllabus during his post-graduation consists of study of Electric burns, Micro Vascular free LD Flap[2]. He possesses professional experience of 3 decades. However, it should be born in mind that the treatment of patients suffering from burn injuries poses unique challenges, both in acute and late settings. Complex injuries of the upper limb are usually associated with massive soft tissue necrosis, infection, and exposure of the vital structures. Management is fairly problematic, requiring multiple operations and prolonged hospitalization. Further, acutely, avoiding stages of shock with the emphasis being on ensuring patent airways, ensuring adequate breathing, and optimizing circulation. Early removal of burned tissue and skin grafting remains the most effective procedure for most

burn patients. However, microsurgical free tissue transfer could be the ideal solution for wound coverage of complex defects in the burn patient, allowing for the preservation of deep burn injuries.

15. In my view, the L.D. flap is a specialized procedure involves complex procedure with micro-vascular surgery. It was the domain of plastic surgeons, who deal with such procedures more efficiently. It is pertinent to note that, OP-1 Hospital was in Jaipur and certainly, the availability of qualified Plastic Surgeons was not an issue. The OP-2 would have taken plastic surgeon's assistance or opinion during L.D. flap procedure. Therefore, the OP-2 shall not absolve himself from the liability for the act of omission, though he acted in the best interest of the patient.

16. There are certain duties of the doctor. Those case laid down by the Hon'ble Supreme Court. In the case of **Dr. Laxman Balakrishna Joshi vs. Dr. Trimbak Bapu Godbole &Anr**.[3]**,** it was held that the doctor owes to his patient certain duties which are:

a. a duty of care in deciding whether to undertake the case;
b. a duty of care in deciding what treatment to give; and
c. a duty of care in the administration of that treatment.

A breach of any of the above duties may give a cause of action for negligence and the patient may, on that basis, recover damages from his doctor. In the instant case, the OP-2 failed on all counts stated above.

17. The high voltage electric burns, also initiate gangrene in the extremities and subsequently amputation. I have gathered information from the standard textbook[4] and few literatures. Accordingly,

> Injury due to high-voltage (>1000 V) electricity is one of the most challenging problems in emergency medicine and plastic surgery. Extremity amputation because of electrical injury yields a stump that leaves vital structures, such as bone, muscle, blood vessels, and nerves, exposed; these structures should be covered with appropriate tissue. The use of an *ipsilateral LD Myo cutaneous flap* is an adequate surgical operation in upper extremity amputations resulting from high-voltage electrical burn injuries and that this procedure permits stump length maintenance, contributes to arm functioning, avoids extended operation times, and prepares patients for prosthesis usage.
>
> High-voltage electrical injuries can cause serious damage to extremities and can result in amputations. Tissue destruction of an extremity in patients exposed to an electrical burn is reduced in a distal-to-proximal direction. During emergency resuscitation, compartment syndrome of a limb should be noted. After a physical examination, escharotomy or fasciotomy could be an extremity-salvaging or life-saving procedure. Amputations may be required in third-degree.
>
> Rhabdomyolysis is common sequel of electrical burns and may result in severe and permanent metabolic and renal impairment. Debridement and decompression are the cornerstones of initial surgical intervention and are crucial to minimizing infectious complications and preserving vital structures. Free tissue transfer has become increasingly popular, but the ideal timing of microsurgery is still uncertain. Nonetheless, pedicled flaps remain widely used and still have an important role in reconstruction of electrical burns.

18. It is apparent from the medical record that, the burn injuries were inflicted due to 11000V (High Voltage) wherein patient's both the upper and lower limbs were charred. The patient was first taken on 03/07/2011 to SMS Hospital and remained there up to 05/07/2011. The doctors opined that the limbs of the complainant to be amputated because of the onset of gangrene. Therefore, knowing about amputation, the patient absconded from SMS Hospital and approached OP-1 Hospital.

19. I have perused an opinion of the General Surgeon Dr. Devraj Taneja, from Jaipur. He opined that electric burn cases suffer amputation, sooner or later, since the blood vessel gets blocked due to damage caused by electric burn. He also opined that L.D. Flap can be performed by an experienced Orthopaedic Surgeon.

20. From the discharge summary of Fortis Escorts Hospital, it is clear that the patient was treated there from 14.07.2011 to 21.08.2011. The doctors noted gangrenous changes in bilateral foot and necrotic changes over distal right forearm. Also, the burn injury and necrotic changes on abdomen. On 15.07.2011, doctors performed below elbow

amputation of left arm and wound debridement of right arm. Thereafter, on 18.07.2011, he underwent right metatarsal amputation with left Syme's amputation. He was again operated for groin flap to right limb. During hospital course, he was treated with various antibiotics and other medicines and discharged on 21.08.2011.

21. Such high voltage burns affect multiple organ systems which makes the treatment of such patients exceptionally challenging, multi-disciplinary and resource-intensive. In the instant case the deformities and amputation of right metatarsal was the sequel of severe high voltage electric burns. Therefore, OP-2 shall not be held liable for all the injuries sustained by the patient, but liable to limited extent of performing the L.D. Flap surgery. It was his "act of commission" i.e. doing something, which he was not supposed to do. He would have referred the patient to the higher centre, but it was delayed and resulted to amputation of left hand (below elbow).

22. Adverting to the quantum of compensation, the Complainants have claimed Rs. 99,96,356/- under various heads. It is pertinent to note that the total treatment expenses were Rs.7,26,356/-. They have also claimed Rs.17 lakhs for provision for prosthesis. In my view, the compensation awarded by the State Commission is not justified. As discussed above the OP-1 and OP-2 are not liable for the entire sufferings /deformities suffered by the patient. Therefore, in the ends of justice, in my view the lump-sum compensation of Rs.20 lakhs is just and reasonable in the instant case. Therefore, the OPs are directed to pay Rs.20 lacs to the Complainants within 6 weeks from today failing which the amount shall carry interest @ 9 % per annum till its realisation. The insurance co. shall pay the amount as per the Professional Indemnity insurance (Medical Establishment) Policy issued to the OPs.

Both the Appeals are partly allowed.

Anaesthesia and Intensive Care. 2020;48(2):93-100.
[2] Campbell Operative Orthopaedics
[3] AIR 1969 SC 128
[4] Handbook of Burns Volume 1

**********

## Support Your Cause

Consumer Protection Council, Rourkela is a registered voluntary organization, espousing the cause of the consumer. To a great extent, for its sustenance it depends on the good will of its donors like you. We solicit your support for sustaining the multifarious activities of the council. Donation to the council is eligible for tax exemption under Section : 80-G(5) (iv) of the IT Act. Donation may please be contributed through cash or crossed cheque / DD, drawn in favour of **" Consumer Protection Council, Rourkela".**

Editor **: Sri B Pradhan**
Editorial Committee : Sri P.Ravi Krishnan
Sri Rajib Ku. Nayak
Sri A. Samantray
Sri Sanjay Kumar Pradhan

Circulation Manager : Sri Amitava Thakur

Remittance for subscription may be sent to the Secretary, Consumer Protection Council, B/90, Sector-7, Rourkela-769003, through crossed D.D/M.O or Cheque (local only), payable in favour of

'CONSUMER **PROTECTION COUNCIL, ROURKELA'.**
For tariff and other details regarding advertisement, contact Editor.

**ADVANTAGE CONSUMER**
***ENGLISH MONTHLY***

**JUNE 2024**

**To**
_____
_____
_____

Printed & Published by Sri B Pradhan, Consumer Protection Council, Rourkela at B/90, Sector-7, Rourkela – 769003
E.mail **:** **bpradhan.cpcrkl@gmail.com**
**(or) vaidya@advantageconsumer.com**

If undelivered, please return to :
Consumer Protection Council, Rourkela
B/90, Sector-7, Rourkela -769003. Odisha