NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

FIRST APPEAL NO. 165 OF 2010

(Against the Order dated 20/03/2010 in Complaint No. 05/2005 of the State Commission Kerala)

1. T. BALAKRISHNAN & ORS.
70-B, Anwer Gardens, Railway Colony, Poojappura
Trivandrum
Kerala
2. ATHIRA S. KRISHAN
70-B, Anwer Gardens, Railway Colony,Poojappura
Trivandrum
Kerala
3. SUDHA S.KRISHAN
70-B, Anwer Gardens, Railway Colony,Poojappura
Trivandrum
Kerala .....Appellant(s)

Versus

1. S. P. FORT HOSPITAL & ORS.
Represented by its Chairman
Trivandrum
Kerala
2. POTTIVELU.S.
Chairman, S.P. Fort Hospital,
Trivandrum
Kerala
3. DR. SANTHAMMA MATHEW
Chief Gynecologist, S.P. Fort Hospital,
Trivandrum
Kerala
4. DR. SAJAN VARGHESE, ANESTHETIST
S.P. Fort Hospital,
Trivandrum
Kerala
5. DR. P. ASOKAN, CHIEF EXECUTIVE
S.P. Fort Hospital,
Trivandrum
Kerala .....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE R.K. AGRAWAL,PRESIDENT
HON'BLE DR. S.M. KANTIKAR,MEMBER

For the Appellant :	Appeared at the time of arguments through video conferencing For Appellants : Dr. K. P. Kylasanatha Pillay, Sr. Advocate with Mr. A. Veneyagam Balan, Advocate
For the Respondent :	Appeared at the time of arguments through video conferencing For Respondent No. 1, 2, 4 & 5 : Ms. Akanksha, Advocate with Ms. Sweena Nair, Advocate For the Respondent No. 3 : Mr. Siddhartha Jha, Advocate

Dated : 25 May 2022

ORDER

Pronounced on: 25 th May 2022

ORDER

DR. S. M. KANTIKAR, MEMBER

1. The present First Appeal is filed under Section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act") against the impugned Order dated 20.03.2010 passed by the Kerala State Consumer Disputes Redressal Commission (hereinafter referred to as the "State Commission") in Original Petition No. 05/2005 whereby the Complaint was dismissed.

2. For the convenience, the Parties would be referred to the positions they held in the Original Petition No. 05/2005. Appellants would be referred as Complainants and the Respondents would be referred as Opposite Parties.

3. The brief facts of the case are that Sudha Kumari (since deceased, hereinafter referred to as the "patient"), wife of T. Balakrishnan – Complainant No. 1 during her pregnancy in 2004, consulted Dr. Santhamma Mathew (hereinafter referred to as the "Opposite Party No. 3") at S.P. Fort Hospital (hereinafter referred to as the "Opposite Party No. 1"). The patient developed breathing problems at 4 th month of pregnancy; it was reported to the Opposite Party No. 3. The couple expressed their desire for sterilization operation after the delivery and the Opposite Party No. 3 advised for the Post-Partum Sterilization (PPS) through laparoscopy, a minor and safe procedure. The patient was admitted to S. P. Hospital for delivery on 27.05.2004 and on next day, she delivered a female baby. After delivery, the patient developed severe chest infection; therefore, on 29.05.2004 the laparoscopic sterilization was not performed, but it was performed on 31.05.2004. It was alleged that after the laparoscopic procedure, the patient was brought to the post-operative ward at about 9.15 AM on 01.06.2004 and thereafter, the on duty nurse informed the patient's husband that the patient had died. It was alleged that the death was declared after preparing the treatment records in their own way. Death was due to the negligence on the part of the Opposite Parties Nos. 3 and 4 in conducting the laparoscopic sterilization in a causal manner. The matter was reported to the police and crime No. 298/04 of Fort Police Station was

registered. Inquest and Postmortem (PM) was conducted. The cause of death reported by the Professor and Police Surgeon of the Medical College was due to bronchopneumonia. Being aggrieved by the death due to alleged negligence of the hospital and treating doctors, the Complainant's husband and his two daughters filed a Consumer Complaint before the State Commission, Chennai praying for compensation of Rs. 75 lakhs.

4. Mr. Pottivelu S (hereinafter referred to as the "Opposite Party No. 2") was the Chairman of the SP Fort Hospital (Opposite Party No. 1), who filed written version that the Chairman cannot be held liable. Accordingly, the State Commission impleaded the Chief Executive of the Hospital as the Opposite Party No. 2. The medical negligence during treatment was denied.

5. The Opposite Party No. 3 filed its written version and denied all the allegations. She stated that during the entire period of pregnancy, the patient consulted her only twice, on 11.08.2003 and 13.10.2003. As the Opposite Party No. 3 was on leave, another senior Gynecologist, Dr. Anitha Thomas conducted the delivery on 27.05.2004. It was a Full Term Normal Delivery (FTND). On 29.05.2004, the Opposite Party No. 3 went to S.P. Hospital and found that the patient had been posted by Dr. Anitha Thomas for sterilization. The Opposite Party No. 3 told the couple to defer sterilization as the patient had only two children including the present new born, but the patient and her husband (Complainant No. 1) insisted for immediate sterilization. On 31.05.2004, the patient was shifted to operation theatre and the Anesthetist, Dr. Sajan Varghese (the Opposite Party No. 4) gave her fitness for general anesthesia (GA). The Opposite Party No. 3 performed laparoscopic sterilization assisted by Dr. Anitha Thomas without any complications. She denied that the surgery was conducted while the patient was suffering from Bronchopneumonia.

6. Dr. Sajan Varghese (Opposite Party No. 4), in his written version, submitted that after delivery, the patient had developed only a mild chest infection and cough on 29.05.2004, therefore the sterilization operation was postponed for two days. On 31.05.2004, the patient's chest was clear except few crepts and she was fit for anesthesia. He gave GA and intra-operatively continuously monitored the patient's heart rate, blood pressure, O_2 saturation and end tidal CO_2 which were found stable. The surgery started at 9.05 am and ended at 9.40 am. The patient when started spontaneous respiration and obeying to verbal commands reversal medicine was given and she was extubated. After extubation, all her vital parameters were stable. But, about ten minutes later, the patient developed respiratory distress and hypoxemia. Immediately she was given 100% oxygen by mask, steroids and bronchodilators and shifted to ICU. As she developed pulmonary oedema, immediately she was re-intubated after giving muscle relaxants and electively ventilated for an hour. She was also given injection Morphine and Lasix, to reduce the pulmonary oedema. Her husband was informed about her condition. The hospital senior physician, Dr. Madhusoodhanan Nair and Chest Physician, Dr. Arjun, were called for expert opinion. The other two Anesthetists, Dr. Liza and Dr. Arun were also called. The hospital management was informed about the patient's condition. Extubation was attempted after an hour, but as the patient was not maintaining saturation, therefore she was re-intubated. A chest X-ray showed signs of consolidation. It was decided to electively ventilate the patient for 24 hours. At about 3.00 AM, on 01.06.2004, the patient's B.P. started dropping and it was corrected by putting her on Dopamine drip. At around 7.00 am, patient developed sudden cardiac arrest. Doctors started the cardiac massage and resuscitation. At around 8.30 am, she again developed cardiac arrest, but despite all resuscitative efforts of Opposite Party-3 & 4, the patient could not survive and was declared dead at 9.05 am.

7. After hearing the parties and considering the evidence on record, the State Commission, vide Order dated 20.03.2010, dismissed the Complaint holding that the death of the patient had not occurred due to negligence on part of the Opposite Parties.

8. Being aggrieved by the Order of the State Commission, the Complainants preferred the present First Appeal before this Commission.

9. Heard the learned Counsel for the Parties and perused the entire material on record *inter alia* the Order of the State Commission.

10. Learned Counsel for the Complainant vehemently argued that the death of patient Sudhakumari was due to the negligence of Gynecologist (Opposite Party No. 3) and Anaesthesiologist (Opposite Party No. 4). They failed to do proper pre-anesthetic checkup and the Opposite Party No. 3 performed laparoscopic PPS under GA when the patient was not fit. It was violation of the guidelines issued by the Ministry of Health and Family Welfare, Government of India that laparoscopic sterilization especially under general anesthesia shall be avoided during the post-partum period. The patient was under treatment for upper respiratory tract infection and cough; thus GA should be avoided. The patient was suffering from bronchopneumonia when she underwent laparoscopic PPS. The consent was taken for earlier date of PPS fixed on 29.05.2004, but no fresh consent was taken on 31.05.2004, the date of PPS operation. The learned Counsel for the Complainant relied upon following judgments:

Ashish Kumar Mazumdar v. Aishi Ram Batra Charitable Hospital Trust & Ors [1]

Srimannarayana A. v. Dasari Santakumari & Anr. [2]

Minor Margheh K. Parikh v. Dr. Mayur H. Mehta [3] , ***Kishan Rao V. v. Nikhil Super Speciality*** ***[4]***

Samira Kohli v. Dr. Prabha Manchanda & Anr. [5] ,

Nizam Institute of Medical Sciences v. Prasanth S. Dhananka & Ors. ***[6]***

11. The learned counsel for OPs argued that for laparoscopy procedure, GA is the safest and most accepted mode of anesthesia as stated in the text book of "A Practice of Anesthesia" by Wylie and Churchill Davidson (6 th edn) The laparoscopic sterilization was done with utmost care with due diligence and the professional skills as per the standard protocol. The patient was connected to a Data scope monitor, which continuously recorded the Oxygen saturation, end tidal CO_2 , ECG and non-invasive blood pressure. The same monitor was connected to the patient in the post-operative ward also and the values were recorded at regular intervals. The post-operative management was done in a proper consultation with two other Anesthetists, Senior General Physician and a Chest Physician and all medicines for resuscitation were given. The death of patient occurred due to aspiration pneumonia and pulmonary oedema leading to ARDS (Adult Respiratory Distress Syndrome) and not due to any negligence or deficiency in the service of the Opposite Parties Nos. 3 and 4.

12. The learned Counsel for the Opposite Party No. 3 argued that she did not post the patient for laparoscopic surgery on 29.05.2004. It is evident from the record that she neither examined the

patient not prescribed any medicine from 27.05.2004 to 29.05.2004. The breathing difficulty was informed to Dr. Anita Thomas, the Gynecologist of the Opposite Party No. 1 Hospital and she only prescribed medicines to the patient. He further submitted that the Opposite Party No. 3 tried to persuade the Appellant to postpone the PPS. The PPS was performed on the insistence of the patient's husband. Therefore, consent was given by himself and his wife on 28.05.2004. She advised the patient to wait and see whether the cough comes down and to carry out PPS on Monday. It was the duty of Dr. Anita who had naturally evaluated and made sure of the fitness of the patient before posting the surgery.

13. Learned Counsel for the Opposite Parties Nos. 1, 2, 4 and 5 vehemently argued that there is no evidence to establish that the patient was suffering from Bronchopneumonia at the time of surgery. The learned counsel further argued that on 31.05.2004 the patient had no signs or symptoms of bronchopneumonia like fever, dyspnea etc. during the pre-anesthetic check-up done by the Opposite Party No. 4. The patient herself told the Opposite Party No. 4 that her cough had subsided completely. On auscultation, only a few occasional crepitations were heard, which could be reasonably attributed to the patient being in supine position for the past few days [7] . Physical examination also showed the patient as fit for surgery. Already consent was taken on 29.05.2004 days and surgery was postponed for two days and no change in procedure was adopted. Therefore a fresh consent was not necessary.

14. We gave our thoughtful consideration and perused the record *inter-alia* the Medical Record and the Order of the State Commission .

15. The first point for consideration is that whether GA was administered when the patient was suffering alleged bronchopneumonia on 31.05.2004. It is pertinent to note from the Medical Record that the patient did not show the clinical signs of bronchopneumonia like high fever, severe cough with purulent sputum, tachycardia, tachypnea and breathlessness. There was no central cyanosis. On 31.05.2004, the patient reported complete subsidence of cough. Therefore, the allegation of GA was administered to the patient when suffering from bronchopneumonia is unsustainable.

16. We have perused the evidence of PW-2, **Dr. Sreekumari,** Professor of Forensic Medicine of Medical College, Thiruvananthapuram who performed the PM of deceased on 01.06.2004. She stated that bronchopneumonia is one of the accepted complications of general anesthesia. Generally in fatal cases the Acute Respiratory Distress Syndrome (ARDS), it is often super imposed by bronchopneumonia. It is a common finding in Post Mortem(PM). She submitted that if general anesthesia is given to a patient having respiratory infection and breathing difficulties, chances of bronchopneumonia are more. In ARDS there would be presence of hemorrhagic materials in bronchi and bronchioles following aspiration of gastric fluids which might be primary cause of respiratory failure and could result in multi organ failure. During PM, she noticed whole lung was consolidated and there was no patchy consolidation. In the present case, she denied that there was aspiration of stomach juice into the air passages.

17. The **PW3 - Dr. Gopalakrishnan,** a Cardio-thoracic anesthetist from the Medical College Hospital stated that 99% of the patients prefer GA for laparoscopic procedure. It was the gynecologist's duty to inform the anesthetist about the general condition of the patient. He further stated that in all cases X-ray chest is not necessary but its compulsory if the patient is aged over 60 years and if the patient is under treatment of respiratory infection and having breathing difficulty. According to him, unless emergency, the GA was contra indicated for 5 weeks, if the

patient was having respiratory infection and breathing difficulty moreover. The GA in such patient will precipitate bronchopneumonia. He submitted that he would not give GA to a patient having respiratory infection unless an emergency. In his cross examination stated about the presence of occasional crepitation which indicates a mild disease and the presence of cough alone is not an absolute contraindication for GA. No history of cough with sputum and breathing difficulty was recorded in the case sheet. He has also stated that pre-medication like bronchodilators, steroids and to reduce secretions and to reduce gastric pH and as antiemetic drug Perinorm were given. Despite precautions, due to silent aspiration patient can develop Mendelson's syndrome. In the instant case during post-operative complications the Anesthesiologist made all efforts and as per standard protocol cardiac arrest was managed. He has also admitted that in case sheet Ext. A4, the breathing difficulty was recorded after delivery only on 28.05.2004. On 31/05/04 the physician examined the patient after 4 hours of surgery at 1.30 p.m. and found bilateral consolidation. According to him if the anesthetist declare the patient fit for anesthesia, the surgeon can go ahead with the surgical procedure .

18. The PW4 was **Dr. Sheela Shenoy** , the Professor and Head of the Department of Obstetrics and Gynecology in the Medical College Hospital. She denied that she was not in good terms with the Opposite Party No. 3, Dr. Santhamma Mathew on account of certain disputes regarding transfer and posting. In her evidence she stated that:

i) In her department laparoscopy sterilization is usually done under local anaesthesia and that it is done after 6 weeks of delivery because the uterus will contract and it will avoid injuries during laparoscopic sterilization.

ii) She will not advise a postpartum sterilization when patient has got cough . It is not routine to do postpartum sterilization when the patient has respiratory infection. PPS is an elective procedure and that it is proper only to do it when there is no infection .

iii) The patient was given Dexona injection because of severe breathing difficulty. But improvement of the patient was not noted.

iv) T he practice to take fresh consent is necessary with respect to a postponed surgery.

v) The Guidelines promulgated by the Ministry of Health and Family Welfare, instructions are issued as it was found that laparoscopic sterilizations are done in rural areas where there are no expert doctors or equipments. In hospitals having facilities laparoscopic sterilizations can be done. In certain private hospitals laparoscopic sterilization used to be done after delivery in case there are competent doctors.

vi) While doing laparoscopic sterilization the patient would be in an inclined head down position and hence more possibilities for breathing difficulty. If GA is applied, there will be possibility of increasing the breathing problems.

vii) Laparoscopic surgery in comparison with laparotomy is having less complications, minimal tissue trauma, faster recovery and short hospital stay.

19. The PW5 was presently **the Additional Director** of the Kerala State TB Centre. At the time of incident, she was working as DMO and prepared Ext.A6 for the Crime Case against the Gynaecologist (Opposite Party No. 3) and Anesthesiologist (Opposite Party No. 4) with respect to the death of the patient.

As per the government order the panel was constituted with specialist doctors and the District Government Pleader. The panel opined that it was a case of gross negligence of the doctors and that the crime case can be proceeded against them as per law as surgical procedure should have been avoided as occasional crepitations indicated lower respiratory tract infection.

The Opposite Parties Nos. 3 and 4 have challenged the opinion through Appeal before the Apex body consists of 5 doctors and the Director General of Prosecution. The Apex body held negligence on the part of all treating doctors.

Conclusion:

20. Considering the evidence of both the sides, relevant documents and the opinion from Apex body, it is evident that since the date of admission 27.05.2004 to the Opposite Party hospital the patient had symptoms of respiratory infection. After admission she was given injection Deriphyllin and Dexona for bronchial asthma. On 28.05.2004, she delivered normally. The antibiotic Azithromycin was started on 29.05.2004. Thus, Anesthetist (Opposite Party No. 4) was aware of the patient having respiratory infection on antibiotics and bronchodilators. In our view before surgery, the Opposite Party No. 4 did not perform pre-anesthetic evaluation, but as per his submission it was done in the morning of 31.05.2004 i.e. on the day of surgery though he recorded basal crepitations and GA was given. Moreover, in the instant case PPS was not an emergency surgery; which could have been postponed till the complete cure/control of respiratory infection.

21. It is pertinent to note that Apex body report observed that consultants visit the hospital as and when required, but they won't take the responsibility of the patient's further management. The patient's duty of care starts from the time of admission. The responsibility of care is on treating doctor and hospital till the patient's discharge from the hospital. It appears the doctors in the S.P. Fort hospital were shunting their duties between surgeon, junior doctor and anesthesiologist. Therefore, in our considered view, Dr. Santhamma Mathew (Opposite Party No. 3) and Dr. Sajin Varghese (Opposite Party No. 4) involved in the PPS are responsible for the negligence. Post-operatively the patient developed respiratory distress and hypoxemia leading to pulmonary oedema, the possibility of aspiration pneumonia cannot be ruled out. We find the post-operative complications and resuscitation were managed with consultation of specialist like two anesthetists, senior general physician and a chest physician. But, to save the life of patient, the Opposite Party No. 3 and 4 failed to refer the patient to medical college. Thus, the doctors have acted negligently and caused irreparable loss to the Complainants. In their support complainants have also produced the Final Report in the crime case which implicated the Opposite Parties Nos. 3 and 4 for offences u/s 304 part II r/w section 34 IPC.

22. We have perused the evidence of **Dr. Mahadevan [DW6]** in support of Anesthetist (Opposite Party No. 4). Dr. Madhavan is a retired Director/Professor of Anaesthesia of the Medical College Hospital and presently working at Ananthapuri Hospital. He asserted that for occasional crepitation X-ray chest is not required and it is not a contraindication for GA. He has stated that

he had given GA to thousands of cases in which the patients have chronic bronchitis. According to him contraindication for GA was if there is infection the sputum would be yellow in colour and increased rate of respiration. But the Respiratory rate was 14/min as normal. The patient did not show high grade fever. To prevent chest complications, the patient was given Deriphyllin and Efcorlin. To prevent aspiration Injection Glycolpirolate, Rantac and Perinorm were given. He has stated that Mendelson's syndrome i.e. gastric acid aspiration can be the possible reason for the complications in the instant case. According to him the Opposite Parties managed the post-operative complication as per the standard protocol and no negligence on the part of Anesthetist, who administered GA. He has also stated that ideally the pre assessment to be done on the previous day and laparoscopic sterilization was not a major surgery.

23.In support of the Gynecologist- Opposite Party No. 3, one **Dr. Sulekha Devi** (DW2) the Professor and Head of the department of Obstetrics and Gynecology of Gokulam Medical College, Thiruvananthapuram filed an evidence. According to her, the Opposite Party No. 3 is an experienced Obstetrician and Gynecologist. Usually for laparoscopic surgery, GA is commonly used and laparoscopic PPS to be performed in a hospital having expert Gynecologist with all facilities. The anesthetist who decides as to the type of anesthesia and the surgeon has to take decision on type of Surgery to be performed. She stated that there is no practice to obtain Consent again, if the sterilization operation is postponed.

24. Another Gynecologist, **Dr. Leelamony (DW2)** in her evidence stated that laparoscopic PPS could be done under GA as the preferred method of anaesthesia. As per the Federation of Obstetrics and Gynecologist (FOCSI) guidelines for laparoscopic sterilization, the GA is mentioned as preferable although local anaesthesia is appropriate. The Anesthetist is the more competent person to assess the chest condition of the patient. The respiratory dysfunction is one of the contraindications for laparoscopic PPS. The fitness of the patient will be checked on the previous day and also before surgery.

25. **Dr. Kantaswamy** , the Director and Professor of Forensic Medicine of Medical College Hospital, who was also a Police Surgeon and Medico-Legal Adviser to the Government of Kerala stated that the diagnosis of bronchopneumonia was not established conclusively as a primary cause of death. In the instant case, it was aspiration which led to ARDS which is a known postoperative complication of GA. Despite all precautions, the patient can develop Mendelson's syndrome by silent aspiration. He relied upon the testimony of DW6 the former Director and Professor of Anesthesia, Medical College Hospital that occasional crepitation is a mild disease and not a contraindication for general anesthesia, if the severity is assessed by the anesthetist. He has also stated that adequate pre-medication was given to the patient for upper respiratory infection.

26. We gave our thoughtful consideration to the evidence of the parties and witnesses. It is an admitted fact that the patient was already showing signs of mild crepitations and lower respiratory tract infection at the time of admission in the hospital. Even then no X-ray chest was taken prior to declaring her fit for GA. As per the surgery text book [8] [9] the chest x-ray is one of the common investigations for surgical patients. The fitness for surgery exclusively pertains to Anesthetist. The treating Surgeon has no role in it and therefore the surgeon (Opposite Party No. 3 in this case) is not responsible for the complications due to negligence of Anesthetist. The Govt. appointed Apex Body in its report (Ext.A7) held the treating doctors responsible. The witnesses

also stated that ideally to have the pre-anesthetic check up on the previous day if possible. We are surprised that in the instant case pre-anesthetic checkup was performed by the Opposite Party No. 4 in the operation theatre on the day of operation just few hours before the operation.

27. The allegation regarding consent, it is evident that initially PPS was fixed on 28.05.2004, but due to cough, it was postponed for 2 days to 31.05.2004. The patient signed the consent an application for sterilization surgery, therefore, it was a valid consent and no need to take fresh consent again on 31.05.2004. However, we strongly observe certain lapses on the part of the hospital that the Consent Form was not filled properly and it was devoid of particulars like name of surgery, type of anesthesia etc.

28. As discussed above, the PPS operation was not an emergency to be performed immediately after delivery. It could have been deferred when the patient had respiratory problems with signs of crepitations which further aggravated to fatal complications. The evidence on record, the statements of witnesses and the medical literatures clearly support the case of complainant. We have no hesitation to hold the hospital and the Opposite Parties Nos. 3 & 4 liable for the breach in duty of care and act of omission, thus a medical negligence.

29. We would like to rely upon the case of **Achutrao Haribhau Khodwa v. State of Maharashtra** [10] **,** their Lordships observed that in cases where the doctors act carelessly and in a manner which is not expected of a medical practitioner, then in such a case an action in tort would be maintainable. Their Lordships further observed that if the doctor has taken proper precautions and despite that if the patient does not survive then the court should be very slow in attributing negligence on the part of the doctor. It was held as 'A medical practitioner has various duties towards his patient and he must act with a reasonable degree of skill and knowledge and must exercise a reasonable degree of care'.

In the instant case, the Opposite Party No. 3 & 4 are liable for the acts of omission.

30. In the medical negligence cases the quantum of Compensation is highly subjective in nature as the human life is most precious. The Hon'ble Supreme Court laid down different methods to determine 'just and adequate compensation'. However, further cautioned the tribunals, saying the amount of compensation awarded was not expected to be a windfall or bonanza, nor should it be niggardly or a pittance. It was always a mixed question of fact and law, but a mere speculative possibility of benefit was not sufficient.

31. In this context, we would like to rely upon the judgment of Hon'ble Supreme Court in ***Sarla Verma & Ors. vs Delhi Transport Corp. & Anr.*** [11], which observed:

> *"Compensation awarded does not become 'just compensation' merely because the Tribunal considers it to be just…Just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit…Assessment of compensation though involving certain hypothetical*

considerations, should nevertheless be objective. Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision making process and the decisions"

32. In the instant case, the Complainants claimed Rs. 75 lakhs on the basis that the deceased was 33 years old and was working as a Senior Telecom Office Assistant in BSNL. She was having further 27 years of service. She belonged to a Scheduled Tribe community and hence the promotional prospects were very high. The deceased left two minor daughters (one 6 years and the other 7 months old), who were deprived of maternal care, love and affection. The husband (Complainant No.1) lost consortium. Thus, we are of the considered view that the Complainants in the ends of justice to Rs. 30 lakh is just and proper compensation.

33. On the basis of forgoing discussion the Hospital - Opposite Party No. 1 and the two treating doctors (Opposite Parties Nos. 3 and 4) are directed to pay a total sum of Rs. 30 lakh (Rs. 20 lakh by the Hospital and Rs. 5 lakh each by the Opposite Parties Nos. 3 & 4). The Complainant No. 1 shall keep the amount in Fixed Deposit in any Nationalised Bank in the names of two daughters (Complainant No. 2 and 3) in equal proportions (Rs. 15 lakh each) till both attain the age of 25 years. He may draw periodic interest for the welfare and expenses of his daughters.

The Opposite Parties shall pay the awarded amount within 6 weeks from the date of receipt of this Order. The delay beyond 6 weeks shall attract interest @ 7% per annum till its realisation.

The Appeal is partly allowed. However, there shall be no Order as to costs.

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[1] 2014 (9) SCC 256

[2] 2013 (9) SCC 496

[3] 2011 (1) SCC 31

[4] 2010 (5) SCC 513

[5] 2008 (2) SCC 1

[6] 2009 (6) SCC 1

[7] Davidson's Principles and Practice of Medicine, 16th Edition

[8] Bailey and Love's Short Practice of Surgery (24th edn)

[9] Farquharson's Textbook of Operative General Surgery (9 th edn)

[10] (1996) 2 SCC 634

[11] 2009 (6) SCC 121

.....J
R.K. AGRAWAL
PRESIDENT

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DR. S.M. KANTIKAR
MEMBER