

STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND  
DEHRADUN

**FIRST APPEAL NO. 191 / 2019**

Chief Medical Officer  
Roshnabad, Haridwar, P.O. Roshnabad  
Tehsil and District Haridwar

..... Appellant / Opposite Party

Versus

1. Smt. Rajkumari W/o Sh. Brijesh Kumar  
R/o Village Hathiya Thal, P.O. Tansipur  
P.S. Manglaur, District Haridwar
2. Sh. Brijesh Kumar S/o Sh. Randhir  
R/o Village Hathiya Thal, P.O. Tansipur  
P.S. Manglaur, District Haridwar

..... Respondents / Complainants

Sh. Ashok Dimri, A.D.G.C. (Civil), Dehradun, Learned Counsel for the  
Appellant  
Sh. Guru Prasad Giri, Learned Counsel for Respondents

**Coram: Hon'ble Mr. Justice D.S. Tripathi, President**  
**Mr. Udai Singh Tolia, Member-II**

**Dated: 04/01/2023**

**ORDER**

**(Per: Justice D.S. Tripathi, President):**

This appeal under Section 15 of the Consumer Protection Act, 1986 has been preferred against the impugned judgment and order dated 23.04.2019 passed by the District Consumer Disputes Redressal Commission, Haridwar (in short "The District Commission") in consumer complaint No. 201 of 2015; Smt. Rajkumari and another Vs. Chief Medical Officer, Roshnabad, Haridwar, by which the consumer complaint was allowed and the appellant – opposite party was directed to pay sum of Rs. 6,00,000/- to the respondents – complainant for upbringing; education, marriage etc. of the female child given birth by respondent No. 1 – complainant No. 1 after her

sterilization operation together with Rs. 10,000/- towards litigation expenses and counsel fee, within a period of one month from the date of impugned judgment and order, failing which the respondents – complainants were also held entitled to interest @6% p.a. on the above amount from the date of institution of the consumer complaint till final payment.

2. Facts giving rise to this appeal, in brief, are that according to the consumer complaint, the complainant No. 1 – Smt. Rajkumari was got married to complainant No. 2 – Sh. Brijesh Kumar. The complainants were having three children, which were given birth out of the wedlock between the complainants. The complainant No. 2 is less educated and being a labourer and having low income, is able to maintain his family with a great difficulty. With an intent to provide good education to their children, the complainants decided to plan their family. The complainant No. 1 visited Shri J.S.N.M. Government Hospital, Roorkee, where the doctors told her that sterilization (family planning) is the best method to limit the family and also told that after sterilization operation, she would not conceive and give birth to another child. The complainant No. 1 underwent sterilization operation on 21.05.2009, regarding which certificate was also issued. In spite of the above operation, the complainant No. 1 conceived, causing her mental agony. After about two years, gave birth to a female child. There was negligence on the part of the operating doctor in conducting sterilization operation of complainant No. 1. By birth of the child, unwanted liability has accrued to the complainants, for which the appellant – opposite party is solely responsible. In spite of demand of compensation through legal notice, no heed was paid. Therefore, the consumer complaint was filed by the complainants before the District Commission.

3. The appellant did not file any written statement before the District Commission. Vide order dated 07.12.2015, the opportunity to file written statement by the appellant was closed and the consumer complaint was proceeded ex-parte against the appellant. However, evidence was filed by the appellant by way of affidavit of Dr. Premlal, Chief Medical Officer, Haridwar, stating therein that before the sterilization operation, the complainant No. 1 was duly informed that sometimes, the operation may fail, regarding which the complainant No. 1 submitted her consent and also received incentive. As per Jeffcoate Obstetrics Guidelines, there are 0.3% chances of failure of sterilization operation. The complainant No. 1 does not fall under the category of “consumer”. No fee was charged from the complainants for the operation. The complainant No. 1 underwent family planning operation with her own sweet will and the complainants are not entitled to any compensation.

4. After giving opportunity of hearing to the parties, the consumer complaint has been decided by learned District Commission vide impugned judgment and order dated 23.04.2019, thereby allowing the consumer complaint in the above terms. Feeling aggrieved, the appellant has preferred the instant appeal.

5. We have heard rival arguments advanced by learned counsel for the parties and perused the record.

6. It is well settled that the methods of sterilization / tubectomy are not 100% safe and secure. Hon'ble Apex Court in the case of **State of Punjab Vs. Shiv Ram and others** reported in **IV (2005) CPJ 14 (SC)** cited by learned counsel for the appellant, has held that unless it is proved by cogent evidence on record that the operating doctor was negligent in the performance of the job assigned to him /

her, no case of medical negligence can be sustained merely on the ground of failure of sterilization operation. It was further held that merely because woman having undergone sterilization operation became pregnant and delivered child, operating surgeon or his employer can not be held liable for compensation on account of unwanted pregnancy or child. It is worth to mention here that no medical expert evidence has been produced on record to show that the sterilization operation of complainant No. 1 was not carried out as per the prescribed method.

7. Learned counsel for the appellant also cited judgment of Hon'ble National Commission in the case of **Lakshmi Vs. Director of Medical Services** reported in **I (2008) CPJ 460 (NC)**, wherein it was held that failure in tubectomy operation due to natural causes would not provide any ground for claiming any compensation. It was also held that the complainant should expect only that the concerned doctor would exercise proper skill in surgery expected of a professional in his particular specialty. The complainant could not expect that the respondent should give 100% guarantee of success of the operation. The doctor can not be expected to be "a paragon combining the Qualities of polymath and prophet".

8. Learned counsel for the appellant further cited another judgment dated 31.05.2013 of Hon'ble National Commission given in **Revision Petition No. 2758 of 2008; St. Stephens Hospital and another Vs. Smt. Shalini**, wherein it was held that sterilization is not 100% safe & secure and after getting knowledge of conception inspite of having undergone the sterilization operation, if the couple opts for bearing the child, it ceases to be an unwanted child and compensation for maintenance and upbringing of such a child, can not be claimed.

9. Hon'ble National Commission in the case of **Kamla Kesharwani Vs. Superintendent, Shyamshah Medical College and Gandhi Memorial Hospital and others** reported in **III (2009) CPJ 17 (NC)**, has held that there is no guarantee that after tubectomy operation, the child birth will not take place. It was also held that the failure of tubectomy operation has been explained in medical texts. It was also held that, "the methods of sterilization so far known to medical science which are most popular and prevalent are not 100% safe and secure. In spite of the operation having been successfully performed and without any negligence on the part of the surgeon, the sterilized woman can become pregnant due to natural causes. Once the woman misses the menstrual cycle, it is expected of the couple to visit the doctor and seek medical advice. Section 3(2) Explanation II provides that if the woman has suffered an unwanted pregnancy, it can be terminated and this is legal and permissible under the Medical Termination of Pregnancy Act, 1971".

10. We may also advantageously refer to a judgment dated 03.12.2008 of Hon'ble National Commission rendered in the case of **The Chief Executive Officer and others Vs. Sagunabai Navalsing Chavan** reported in **2011 (1) CCC 286 (NS)**. The facts of the said case were that the complainant underwent tubectomy operation and even after the tubectomy operation, she became pregnant and delivered a female child. The District Forum awarded compensation of Rs. 500/- per month towards the expenses of the child upto the age of 18 years and directed the opposite party Nos. 1 to 4 to pay jointly and severally sum of Rs. 1,15,000/- as compensation along with cost of Rs. 5,000/- to the complainant. It was held by Hon'ble National Commission that the tubectomy operation was performed free of cost and the complainant got incentive from the government for undergoing operation. It was also held that once the complainant has

conceived, she could have approached same hospital for undergoing MTP, which she has not done. As per the Medical Literature, there are chances of failure of sterilization and recanalisation could take place due to natural causes. The order of the Foras below was set aside and the complaint was dismissed. In the instant case also, the sterilization / tubectomy operation of complainant No. 1 was done at the government hospital free of cost.

11. For the foregoing reasons, we are of the considered opinion that the impugned judgment and order passed by learned District Commission suffers from material illegality, warranting interference by this Commission, as the District Commission has failed to consider law on the subject. Consequently, the appeal deserves to be allowed and the impugned judgment and order passed by learned District Commission is liable to be set aside.

12. Appeal is allowed. Impugned judgment and order dated 23.04.2019 passed by the District Commission is set aside and consumer complaint No. 201 of 2015 is dismissed. No order as to costs. The amount deposited by the appellant with this Commission, be released in its favour.

13. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 / 2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties.

**(U.S. TOLIA)**  
Member-II

**(JUSTICE D.S. TRIPATHI)**  
President

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