NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 1173 OF 2016

1. ROHANDEEP SINGH JASWAL
(THROUGH ITS CONSTITUTED ATTORNEY AND FATHER SHRI SANJEEV JASWAL) R/O HOUSE NO. 177A, SECTOR-3, RELIANCE GREENS, MOTHIKHAVDI, JAMNAGAR, GUJARAT-361142 ....Complainant(s)

Versus

1. KOKILABEN DHIRUBHAI AMBANI HOSPITAL AND MEDICAL RESEARCH INSTITUTE & 12 ORS. ....Opp.Party(s)
(THROUGH CHIEF MEDICAL OFFICER) RAO SAHEB ACHUTRAO PATWARDHAN MARG, FOUR BUNGLOWS, MUMBAI, MAHARASHTRA-400053
2. DR. MIHIR BAPAT
KOKILABEN DHIRUBHAI AMBANI HOSPITAL AND MEDICAL RESEARCH INSTITUTE, RAO SAHEB ACHUTRAO PATWARDHAN MARG, FOUR BUNGLOWS, MUMBAI, MAHARASHTRA-400053
3. DR. VISHAL
KOKILABEN DHIRUBHAI AMBANI HOSPITAL AND MEDICAL RESEARCH INSTITUTE, RAO SAHEB ACHUTRAO PATWARDHAN MARG, FOUR BUNGLOWS, MUMBAI, MAHARASHTRA-400053
4. DR. SUSHMIT
KOKILABEN DHIRUBHAI AMBANI HOSPITAL AND MEDICAL RESEARCH INSTITUTE, RAO SAHEB ACHUTRAO PATWARDHAN MARG, FOUR BUNGLOWS, MUMBAI, MAHARASHTRA-400053
5. DR. AMANDEEP
KOKILABEN DHIRUBHAI AMBANI HOSPITAL AND MEDICAL RESEARCH INSTITUTE, RAO SAHEB ACHUTRAO PATWARDHAN MARG, FOUR BUNGLOWS, MUMBAI, MAHARASHTRA-400053
6. DR. SHARMILA RANADE
KOKILABEN DHIRUBHAI AMBANI HOSPITAL AND MEDICAL RESEARCH INSTITUTE, RAO SAHEB ACHUTRAO PATWARDHAN MARG, FOUR BUNGLOWS, MUMBAI, MAHARASHTRA-400053
7. DR. SANDEEP DOSHI
KOKILABEN DHIRUBHAI AMBANI HOSPITAL AND MEDICAL RESEARCH INSTITUTE, RAO SAHEB ACHUTRAO PATWARDHAN MARG, FOUR BUNGLOWS, MUMBAI, MAHARASHTRA-400053
8. DR. S.P.RAI
KOKILABEN DHIRUBHAI AMBANI HOSPITAL AND MEDICAL RESEARCH INSTITUTE, RAO SAHEB ACHUTRAO PATWARDHAN MARG, FOUR BUNGLOWS,

MUMBAI, MAHARASHTRA-400053

9. DR. FALGUNI PARIKH

KOKILABEN DHIRUBHAI AMBANI HOSPITAL AND MEDICAL RESEARCH INSTITUTE, RAO SAHEB ACHUTRAO PATWARDHAN MARG, FOUR BUNGLOWS,

MUMBAI, MAHARASHTRA-400053

10. DR. JAYANTI MANI

KOKILABEN DHIRUBHAI AMBANI HOSPITAL AND MEDICAL RESEARCH INSTITUTE, RAO SAHEB ACHUTRAO PATWARDHAN MARG, FOUR BUNGLOWS,

MUMBAI, MAHARASHTRA-400053

11. DR. ABHISHEK SRIVASTAVA

KOKILABEN DHIRUBHAI AMBANI HOSPITAL AND MEDICAL RESEARCH INSTITUTE, RAO SAHEB ACHUTRAO PATWARDHAN MARG, FOUR BUNGLOWS,

MUMBAI, MAHARASHTRA-400053

12. DR. TANU SINGHAL

KOKILABEN DHIRUBHAI AMBANI HOSPITAL AND MEDICAL RESEARCH INSTITUTE, RAO SAHEB ACHUTRAO PATWARDHAN MARG, FOUR BUNGLOWS,

MUMBAI, MAHARASHTRA-400053

13. DR. SANJAY PANDE

KOKILABEN DHIRUBHAI AMBANI HOSPITAL AND MEDICAL RESEARCH INSTITUTE, RAO SAHEB ACHUTRAO PATWARDHAN MARG, FOUR BUNGLOWS,

MUMBAI, MAHARASHTRA-400053

BEFORE:

HON'BLE DR. S.M. KANTIKAR,PRESIDING MEMBER

For the Complainant :	APPEARED AT THE TIME OF ARGUMENTS Mr. Sanjoy Kumar Ghosh, Advocate Ms. Rupali S. Ghosh, Advocate
For the Opp.Party :	APPEARED AT THE TIME OF ARGUMENTS Dr. M. S. Kamath, AR Dr. Mihir Bapat, Doctor

Dated : 19 Dec 2022

ORDER

Neurosurgery and Orthopaedic surgery are two high-risk specialties associated with some of the highest number of medical negligence litigations. Amongst those the spinal surgery, most commonly at the lumbar level, has the highest rates of litigations. Informed consent is a significant allegation in most of the cases after spinal surgery.

1. This Complaint was filed by Sh. Sanjeev Jaswal, father of Complainant No. 1 Rohandeep Singh Constituted Attorney against Kokilaben Dhirubhai Ambani Hospital and Medical Research Centre, Mumbai & its 12 Doctors (hereinafter referred to as 'Opposite Parties') for the alleged medical negligence and deficiency in service on the part of Opposite Parties.

FACTS:

2. In the year 2004, the Complainant No. 1, Mr. Rohandeep Singh (hereinafter referred to as 'the patient') at the age of 12 years for his kypho-scoliosis' spinal deformity consulted at Sir Ganga Ram Hospital,Delhi. It was diagnosed as D3-D7 intra-medullary tumour and operated on 11.10.2004 at Sir Ganga Ram Hospital. The tumour was reported as'Ganglioglioma' a non-cancerous tumour. The doctors advised the patient's parents to keep watch for growth of tumour. Accordingly, every year MRI was conducted. In year 2012, MRI revealed shrunken size of tumour. The parents agin sought opinion from Sir Ganga Ram Hospital for correction of scoliosis, but the doctors opined possibility of correction of deformity up to maximum 50 to 60% only. In the mean time, the Complainant was transferred to Ahmadabad and they took further consultation at 'Shalvy Hospital' in Ahmedabad. The doctors therein expressed 65% correction of scoliosis was possible. They advised to undergo surgery where the Neuro-monitoring machine and facility available, it was to avoid any neurological complications during surgery.

3. Accordingly, on 17.02.2014 the patient consulted Dr. Mihir Bapat (OP No.2) at Kokilaben Dhirubhai Ambani Hospital (herein referred to as 'the Hospital' - OP-1). On 04.03.2014 CT scan and few investigations were performed. It was alleged that OP-2 told the patient and his family members that as spine was very flexible and correction up to 80% to 90% was possible. The surgery was fixed on 16.04.2014, but surgery was deferred to 23.04.2014 as the 'Neuro-Monitoring' machine was under maintenance.

4. On 23.04.2004, the patient was operated by OP-2. It was alleged that no informed consent was taken. The surgery took long time from 7 a.m. to 4 p.m. After the surgery the patient was shifted to room. The OP-2 came to room and informed the patent's parents that the patient regained consciousness, but not moving his legs, therefore re-surgery was necessary for releasing the implants and to reduce the correction as carried out in the spine. The parents were shocked to learn about no leg movements and patient lost senses below his chest (rib and cage) after the surgery. It was further alleged that, the patient heard the doctors' conversation that they should not have accepted and operated the case. The OP-2 did not inform the condition as it was 'Paraplagia'. Thereafter, condition of the patient continued to deteriorate. On 02.05.2014, he got 103°F fever and again shifted to ICU on 03.05.2014. It was diagnosed as 'Pyogenic Meningitis' and the CSF culture detected bacterial infection "Acinetobacter Baumennii Meningitis". On 27.07.2014 the patient was discharged from OP-1 Hospital in Paraplegic condition(loss of senses below rib cage), no bowel and urine control, Therefore, for daily routine activities of the patient an attendant was needed. Thereafter, the patient was admitted to Dhirubhai Ambani Occupational Health from 27.07.2014 to 07.02.2015. The family consulted number of doctors, but patient's condition did not improve. As advised by Dr. Bhoj Raj on 04.10.2014 contrast CT Myelography test was performed. It revealed D-8 vertebra slightly wedged before surgery, it got totally crushed during the surgery indicating severe stretching or blockage at the point of vertebra.

5. Being aggrieved by the negligent treatment, gross carelessness and deficiency in service of the OPs causing Paraplegia; the Complainants (1 & 2) filed the Consumer Compliant under section 21 of the Consumer Protection Act, 1986 before this Commission and prayed Rs. 58,92,02,000/- as compensation from the Opposite Parties along with interest and other relief.

DEFENCE:

6. The Opposite Parties filed their respective Written Versions and denied the allegations of medical negligence. The OP-1 Hospital offers to the public a wide range of services in the medical field both on Outpatient and Indoor admission basis. It was stated that the OP-2 is an Orthopaedic-spine surgeon and Opposite Party No. 3 to 13 are full time Specialists working in various departments in the Hospital. As per the history provided by the patient and his parents, over the year the deformity had been increased and became more painful, finding it difficult to sit in his classes. The OP-2 - Dr. Bapat discussed with them and told it was not ideal to deformity correction for cosmetic reason at that age of patient. On 17.02.2014 OPD examination told that the curve correction was 42% (approximately 70^0 to 30^0). The OP-2 also explained that the surgery was risky. Because of residual spinal tumour patient had risk of neurological worsening and paralysis. The patient and his parents were convinced and agreed for need of surgery to extent of deformity and pain. The OP-2 informed about use of 'Neuro-Monitoring' to prevent risk of paraplegia. The spinal correction surgery went off smoothly and the 'Neuro-Monitoring' team reported normal signals till the commencement of wound closure which took 1 hour. As per protocol, neuro-monitoring was stopped (around 1pm). The reversal of anaesthesia was done and patient gained consciousness around 3 pm. At that time the patient was unable to move his legs. As per standard operating procedure, MRI was immediately performed and the implant position was found to be optimal. Therefore a decision to loosen the implant was taken to

reduce a possible stretch on the spinal cord. Further IV steroids were administered to reduce edema of spinal cord which could have increased the risk of infection. But it was mandatory to reduce spinal cord swelling. However, despite all correct intra-operative procedures there was no improvement seen from paraplegia after surgery. After 7 days of surgery, there was wound infection and the patient showed signs of 'Meningitis'. The wound swabs and lumbar puncture CSF cultures shown Acinetobacter baumanii infection. The culture findings were discussed with an Infectious disease expert Dr. Tanu Singhal and the infection was controlled aggressively with intravenous and intra-thecal higher antibiotics. Thereafter, neuro-rehabilitation was started as per planned rehabilitation program and use of robotic treadmill walking device (Locomat). Despite all efforts, unfortunately, patient did not recover from the paraplegia. It was submitted that, at regular intervals, doctors in the team of OP No. 2 have discussed the prognosis with the patient and his relatives. It was a known complication and no doctor would ever wish it to happen to his patient.

ARGUMENTS:

On behalf of the Complainants:

7. The learned Counsel for the Complainants reiterated the facts and their affidavit of evidence. He submitted that it was a clear case of negligence on the part of the OPs - 1 & 2. The OP-2 had knowledge that the patient was previously operated for Spinal Cord tumour. The OP-2 was an Orthopedic surgeon, not competent to perform spinal surgeries. The OP-2 did not seek an opinion of Neuro-Surgeon before and after the surgery when the patient suffered paraplegia. Neurosurgeon's opinion was not sought for the Corrective surgery. It was further argued that during several consultations, the OP-2 never informed the patient or his parents about the possibility of paraplegia after the surgery. The Consent forms for anaesthesia and surgery were devoid of details about the surgical risk of Paralysis / Paraplegia. The OP-2 gave such rosy picture and impression about his surgical skills and the usage of neuro-monitoring machine. He also emphasized that, he already conducted 500 surgeries and only one developed some problem and that patient also started walking.

8. The learned Counsel for Complainant relied upon the principles of informed consent laid down by the Hon'ble Supreme Court in the case "***Samira Kohli vs. Dr. Prabha Manchanda & Anr.[1]***"**.** He further submitted that during post-operative period the patient acquired a serious life threatening 'Meningitis' due to 'Acinetobacter Baumannii Meningitis. He further argued that during surgery the Neuro-Monitoring Machine was not functioning but the hospital was trying to conceal facts to mislead this Commission. As per the evidence of Dr. Ram Narain, the witness of OP-1, the Machine No. 2 was used, as Machine No. 1 was non-functional which was deemed to be irreparable.

Arguments from the Opposite Parties

9. The Authorised representative (AR) for the Opposite Parties reiterated the Affidavit of evidence. He argued that in year 2004 the patient at the age of 12 years was operated for Spinal tumour called Ganglioglioma. At that time the part of the tumour was left unattended. In the due course, the patient consulted several doctors, including specialists in Ahmedabad for severe intractable pain. They advised to undergo surgery at the hi-tech hospital having Neuro-Monitoring Machine. Therefore, since the neuro-monitoring machine was available with OP-1 hospital, the patient approached Dr. Mahir Bapt – OP-2 on 24.04.2014, who was specialized in the spinal surgeries and regularly using the neuro-monitoring machine. The AR further submitted that the machine was used to check status of nerves whether functional and not traumatized during the surgery. In the instant case the machine was used under the supervision of a competent Neuro-physician and the Technical Assistant who have confirmed that no signal of untoward incident reported from the machine. The Consent was taken by OP-2 for the surgery on two separate Consent Forms - one by the Hospital and the other by the Orthopaedic team. The OP-2 investigated the Post-operative paraplegia and re-operated to check any fault during surgery. The AR filed copies of following medical literature:

i. *Spinal Deformities: the Essentials by Robert F. Heary and Todd J. Albert*[2]

ii. *Recent Advances in Scoliosis edited by Theodoros B. Grivas*

iii. Principles and Practice of Spine Surgery by Vaccaro, Betz and Zeidman

iv. Campbell's Operative Orthopaedics, Twelfth Edition, Volume One by S. Terry Canale and James H. Beaty

v. Aospine manual principles and techniques (Vol 1)

vi. Aospine manual clinical applications (Vol 2)

vii. An Analysis of the Incidence and Outcomes of Major vs. Minor Neurological Decline after Complex Adult Spinal Deformity Surgery: A Sub-analysis of Scoli-RISK-1 Study[3]

viii. Spine Surgery – Tricks of the Trade by Alexander R. Vaccaro and Todd J. Albert – Third Edition

ix. False-Negative Transcranial Motor-Evoked Potentials During Scoliosis Surgery Causing Paralysis[4]

x. Progressive Myelopathy Patients Who Lack Spinal Cord Monitoring Data Have the Highest Rate of Spinal Cord Deficits Following Posterior Vertebral Column Resection Surgery[5]

xi. Best Practices in Intraoperative Neuromonitoring in Spine Deformity Surgery: Development of an Intraoperative Checklist to Optimise Response[6]

xii. Is it Real False Negative Finding in Motor Evoked Potential Monitoring during Corrective Surgery of Ankylosing Spondylitis? A Case Report[7]

xiii. Arvydas Tamkus, Kent S. Rice, Michael McCaffrey, Perils of intraoperative neurophysiologic monitoring: analysis of 'false negative' results in spine surgeries[8]

xiv. Long-term incidence and risk factors for development of spinal deformity following resection of pediatric intramedullary spinal cord tumors[9]

OBSERVATIONS:

10. The patient was diagnosed as Congenital Kyphoscoliosis (Spinal deformity). Initially in year 2004 on 11.10.2004, he was operated at Sir Ganga Ram Hospital(SGRH), Delhi, for a non-malignant spinal tumour diagnosed as 'Ganglioglioma' tumour. That time complete resection was not done, the part of tumour still remained. He was under regular follow-up and to review the tumour size MRI being conducted yearly. In the year 2012, MRI revealed the size of residual tumour became shrunken. The doctors at SGRH and Shalyvy Hospital opined that in the instant case correction of Scoliosis was possible to the extent of 50-60% only. Thereafter 2 years the parents of patient approached OP-2 at OP-1 hospital for the treatment of Scoliosis.

11. Adverting to the "Informed Consent" , I have perused the Consent forms and the operating surgeon's prescriptions. It is pertinent to note that the Consent for anaesthesia and for operation is on record. The Consent for operation lacks the ingredients of Informed Consent. The risks of paraplegia/paralysis during the Kyphoscoliosis surgery was not mentioned or explained to the Complainants or the patient. A specific query was put to the AR about the informed consent in the instant case. He submitted that the patient had the knowledge of spinal surgery and moreover during every visit and discussion with the OP-2, it was explained to the patient and his parents about the operation and its complications etc. According to AR it was deemed to be consent. The documents on record are unsigned prescriptions which in my view it does not construed as "informed consent". Thus it is evident that the OP-2 failed to obtain informed consent for surgery in the instant case,

12. The law of medical consent has been undergoing changes in recent years evolving towards a more patient centric standard of disclosure. Patients' expectations are higher and they are aware of exercising their rights. The responsibility of the doctor (neuro/ ortho surgeon) is to provide the patient with all information pertinent to the medical decision in an optimally comprehensible manner. The lack of informed consent is the

basis for a large portion of negligence litigations in neurosurgery. The informed consent is a process by which the doctor communicates with the patient about details, risks, benefits expectations, and alternatives of a given treatment which includes declining treatment.. Documentation serves as an adjunct. The legal standard is to provide all information so that an average, reasonable individual has the information required to make a decision. Moreover, in my view the underlying principle of consent isn't particularly complicated. Patients have a right to make an informed, voluntary decision about their care. There are 4 components of informed consent including decision capacity, documentation of consent, disclosure, and competency. The two well-recognized exceptions for informed consent to medical treatment that one is a medical emergency and another is rare, when by certain court-ordered treatments or tests mandated by law. In the instant case it was a planned surgery, which needs proper informed consent.

13. It is pertinent to note that, in year 2004 during patient spinal tumour was operated in his childhood. After span of one decade, in 2014 the Spinal Scoliosis correction surgery performed by the OP-2. Therefore, in my view, prior to surgery it was the duty of OP-2 to conduct nerve conduction studies and neurological assessment. It was also necessary to seek opinion or assistance of competent Neurosurgeon before surgery and also during surgery. It was the failure of duty of care from OP-2.

14. When spinal surgery is considered, the common dilemma or conflict is whether the patient should be treated by an Orthopaedic Surgeon or a Neurosurgeon. Traditionally Neurosurgeons deal with brain surgery and Occipito-cervical junction. Orthopaedic surgeons also treat spinal problems and limbs. The spinal deformity corrective surgery involves skill and experience of the operating surgeon. In India and worldwide spinal surgeries are performed by the Neurosurgeon or Orthopaedic surgeon having experience in spinal surgery. The role of Orthopaedic surgeon in Spinal surgery is restricted to the bony structure or correction of deformity but if there is neural tissue involvement, then the operating team shall consists a Neurosurgeon. From the medical literature it is known that during large spinal curve correction, more chances of excessive cord stretching, leading to neuro-deficit. Moreover, usually the patients with congenital scoliosis have spinal cord malformations also. The best age for corrective surgery is 18 years, but it was not very conducive for the patient who was 22 years old unless it was life threatening. In the instant case the OP-2 did not seek opinion of Neurosurgeon before putting a knife. The MRI report revealed D8 vertebra was slightly wedged out, which could likely to get collapsed while use of force during straightening the spine.

15. Admittedly the patient's parents had chosen the OP-1 hospital for the proposed spinal surgery where Neuro-monitoring machine was available and same was emphasized by the OP- 2 that its use prevent any damage to the spinal cord during surgery. It is pertinent to note that the proposed surgery was postponed from 16/4/2014 to 23/4/2014, as the neuro monitoring machine was under repair. The hospital (OP-1) failed to provide the purchase invoice, installation report, training record of the operating person of Neuro-Monitoring Machine used during the instant surgery. The OP-1 deliberately concealed Annual Maintenance Contract(AMC), service report of the machine which used , but filed AMC service report of the machine which was not used during the surgery. Also, the statements of the Neurotechnologist Ms. Parichar Jassawala and the Neurophysiologist Dr. Sunita Iyer were contradictory to each other on the Neuro-monitoring and interpretation of its reports in the instant case. Moreover, the qualification of neuro-technician raises many doubts.

16. The duty of care has been discussed by the Hon'ble Supreme Court in the case of **Dr. Laxmn B. Joshi vs Dr. Trimbak B Godbole & Anr.,** AIR 1969 SC 128. It laid down certain duties of doctor that:

> *(a) Duty of care in deciding whether to undertake the case (b) Duty of care in deciding what treatment to give, and (c) 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. The doctor owes certain duty towards the patient and the doctor can decide the method of treatment, which is more suitable for the patient.*

Though the mode of treatment/ skill differ from doctor to doctor and if he performs his duty with reasonableness and with due care, he cannot be held negligent. However in the instant case it was deficiency in service and failure of duty of care from the OP-2 who performed the spinal surgery without an informed consent and without the assistance of Neurosurgeon. The operative notes are devoid of many details viz the time of commencement of the surgery, closure of wounds, the time of wake up test was done and the patient's loss of legs movements and when the corrective surgery commenced and ended. The Neuro-

monitoring details are not available. The corrective surgery was performed after delay of 4 hours which was sufficient to cause permanent damage to the cord.

17. Based on afore discussion, the OP-2 is held liable for the act of 'Commission' and 'Omission' during the treatment of the patient. Also, the hospital is vicariously liable for the deficiency in services. It was the duty of hospital to ensure standard of patient care. The doctors or the concerned staff were accountable, who failed to adhere to the Standard operating procedures (SOP).

18. Adverting to the Compensation, I would like to rely upon the law laid down by the Hon'ble Supreme Court. The patient post-operatively suffered irreversible damage- i.e. paraplegia for his remaining life. The Complainant deserves just and reasonable compensation because such patient needs electric bed, air mattress to avoid bed sores, DVT Pump to avoid deep vein thrombosis, automated wheel chairs and walker etc.

19. Reliance be placed on another **Sarla Verma's Case**[10], wherein the Hon'ble Apex Court discussed "just compensation" with a lot of clarity and precision. It was 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"

20. Based on the discussion above, in the ends of justice , in my view, ₹ 40 lakh shall be the just and adequate compensation be paid to the Complainants by the OP-1 hospital and the treating doctor OP-2 in equal proportion within 6 weeks from today. Beyond 6 weeks the entire amount shall carry the interest at rate of 9% per annum till its realization.

The Complaint is partly allowed. Parties to bear their own costs.

---

[1] (2008) 2 SCC

[2] SPINE Volume 41, Number 3, pp 204-212

[3] Spine(Phila Pa 1976) 2017 Nov 10

[4] SPINE Volume 34, Number 24,pp E896-E900

[5] Spine Deformity 3 (2015) 352-359

[6] Spine Deformity 2 (2014) 333-339

[7] Asian Spine Journal Vol. 6, NO. 1, pp 50-54, 2012

[8] The Spine Journal (2017)

[9] 3 Neurosurg Pediatrics 13:613-621, 2014

[10] 2009 (6) SCC 121

....

DR. S.M. KANTIKAR
PRESIDING MEMBER