

**IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL
COMMISSION**

Date of Institution: 27.04.2017

Date of Hearing: 03.03.2025

Date of Decision: 28.04.2025

COMPLAINT CASE NO.- 807/2017

IN THE MATTER OF

**SANDEEP KUMAR,
S/O LATE SHRI HUKAM CHAND,
R/O H.NO. RZE 385/C, E-100
STREET NO 17-A SADH NAGAR PART- II,
PALAM CLONEY NEW DELHI 110045.**

(Through: R.K. Mahto, Advocate)

...Complainant

VERSUS

**1. ROCKLAND HOSPITAL,
THROUGH ITS DIRECTOR OF ADMINISTRATION**

(Through: Maroof Ahmed, Advocate)

2. DR. UMESH SINGH

3. DR. VIKRAM KALRA

(Through: Fanish Kumar Rai, Advocate)

4. DR. AMBER KHERA

(Through: Amardeep Soni, Advocate)

**ALL AT:- B-33, 34.
QUTUB INSITUTIONAL AREA
TARA CRESCENT ROAD
NEW DELHI- 16**

...Opposite Parties

CORAM:

HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, PRESIDENT
HON'BLE MS. PINKI, MEMBER (JUDICIAL)

Present: Mr. R. K. Mahto, Counsel for the complainant (Enrl. No. D/809/2009, Mobile: 9278904426, Email: 11raj2@gmail.com)
Mr. GaffarHussain, proxy counsel for the OP No. 1 (Enrl. No. D/5080/2016, Mobile: 8800786083, Email: ilawtax@gmail.com)
Mr.Fanish Kumar Rai, Counsel for the OP No. 2 and 3 appeared through VC
Mr. AmardeepSoni, Counsel for the OP No. 4 (Enrl. No. D/844/2012, Mobile: 9873684704, Email: adv.amardeepsoni@gmail.com)

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

JUDGMENT

1. The present Complaint has been filed before this Commission by the Complainant alleging medical negligence and unfair trade practice on the part of Opposite Party and have prayed for the following reliefs:-

- a) *Allow the present complaint;*
- b) *Direct the Opposite Party to compensate the complainant with an sum of Rs. 32,00,000 (Rupees Thirty Two Lakh) as an compensation for the loss of earning/claim caused to the complaint due to negligence and dereliction duty on the part of opposite parties;*
- c) *Pass an order thereby directing the Opposite Party to pay Compensation of sum of Rs. 8,00,000/- (Rupees Eight Lakh) - for the loss of love and affection caused to the complainant including all class-I legal heirs due to negligence and dereliction duty on the part of opposite party;*
- d) *Pass an order thereby directing the Opposite Party to pay a sum of Rs 6,00,000/- for hurt of sentiment/emotions caused to the complainant & all class-I legal hers due to negligence and dereliction duty on the part of opposite*

parties;

- e) Pass an order thereby directing the Opposite Party to Refund all expenses incurred by the complainant now & then a sum of Rs. 70,697/- (Rupees Seventy thousand Six Hundred ninety Seven) for procuring the medicine Injection carry out the certain test etc. as per direction/instruction instead of being on CGHS Panel during clinical trial due to negligence and dereliction duty on the part of opposite party/parties;*
- f) Pass an order thereby directing the Opposite Party to make the Payment a sum of Rs. 11,000/- towards the cost of Legal notice along with the expenses of present complaint may be also awarded;*
- g) Pass an order thereby directing the Opposite Party to refund all the amounts to the C.G.H.S which the opposite party charged in lieu of medical expense of consumer named Sh. Hukam Chand as they have not adhere the medical guidelines /instructions passed by C.G.H.S frequent interval on complaint of complainant after imposing the cost also on them further adopt the un fare trade practice with view to take the revenge of complaint instead of revive his(patient) health an sent him on the bed of death;*
- h) Pass such other or further order/orders as may be deemed fit and proper on the facts and in the circumstances of this case.*

2. Brief facts necessary for the adjudication of the present Complaint is that the Complainant, on 12.03.2016, had approached Opposite Party No.1- Rockland Hospital branch situated at Sector 12 Dwarka being the nearest to the residence of the complainant to admit his father (*hereinafter referred to as the 'patient'*) who was having difficulty in breathing but the said branch refused to entertain the patient and referred him to their other branch situated at B-33,34, Qutub Institutional area, Tara crescent Road, New Delhi. Thereafter, the patient was discharged on 25.03.2016. It is further submitted that the family of the patient was not given any discharge

- summary or case summary and family was kept under the false pretext that the patient (*now deceased*) was fit to be discharged.
3. Subsequently, on 06.04.2016 the patient again faced breathing issue due to which the complainant along with patient had again approached Rockland Hospital branch situated at Sector 12 Dwarka, being the nearest to the residence of the complainant to admit patient but the said branch refused to treat and admit the patient. The patient was again referred to their other branch situated at B-33,34, Qutub Institutional area, Tara crescent Road, New Delhi where the patient succumbed to death on 23.05.2016.
 4. The Complainant has submitted that the patient was put on Anti-tuberculosis medication whereas the patient was not suffering from tuberculosis and has relied on Test reports from Sonipat Government hospital which shows absence of tuberculosis causing bacteria. It is further submitted that the patient and complainant were also subjected to unfair trade practices on the part of OP-1 during the course of the treatment. Secondly, it is submitted that AV-Fistula surgery was not done in time other instances such as non-availability of oxygen cylinders and conduct of OP-1 staff during the treatment along with their educational qualifications for administering dialysis was below the standard medical protocol. Lastly, it is submitted that though the Complainant was a CGHS Beneficiary and the Opposite Party-Hospital is an empanelled CGHS hospital, the patient was not provided with medications and the Complainant was forced by the OP-1 staff to take medical tests were from outside, out of his own pocket.
 5. The Opposite Parties have filed a joint written statement No. 1 and have denied all the allegations of the Complainant. It is submitted that the present complaint is liable to be dismissed on the ground that complainant has no locus standi to file instant complaint. The Opposite Party No. 1 has submitted that patient was admitted on 12.03.2016 at 07.21 PM with the

complaints of breathing difficulty since 1 Day & B/L swelling lower limbs, Type II DM with HTN with COPD with CKD and was admitted under nephrology team with a high BP of 170/110mmHg and was found to be in fluid overload along with lower respiratory tract infection. He was initiated on hemodialysis via femoral catheter, patient was anxious and restless and therefore, there was a need for physical restrain for which consent was given from the Complainant. Patient was also managed with IV, antibiotics & other supportive treatment. Further, on 17.03.2016 the Femoral Catheter was removed and Right Internal Jugular Vein Catheter was planned to be inserted to continue dialysis. As TLC count remained high (17.800), Antibiotic was upgraded on 18th March, 2016. The same evening, patient refused for hemodialysis & Right DLJC insertion.

6. The Opposite Parties have further submitted that the Kidney function was deranged. Blood urea 191, Creatinine - 5.91, Uric acid-9.35, serum potassium - 2:61 but patient insisted on being discharged & continued to refuse for hemodialysis which has been documented in the notes dated 25.03.2016 and also no attendants were present with the patient. Further on 25.03.2016, despite discussion with Complainant regarding patient's condition and need for hospitalization & dialysis, he was discharged on request. He was advised for hemo-dialysis thrice a week & to have AV fistula surgery at the earliest in the discharge summary; none of which were followed by either patient or attendants. Thereafter, on 06.04.2016 patient was re-admitted with complaint of generalized swelling of body and severe weakness & was found to be in fluid overload & advanced azotemia. Further on 08.04.2016 left internal jugular Vein Catheter was inserted after taking consent from patient's daughter Ms. Meenakshi on 07.04.2016. Thereafter, on 09.04.2016, CT chest showed bilateral collapsed consolidation of lungs with B/L pleural effusion with enlarged pre-tracheal, Para-tracheal & subcarinal lymph nodes and Community Acquired Pneumonia Pulmonary Koch's. Pulmonologist's opinion was

taken for same & found to have respiratory failure and therefore, pulmonologist, anti-tuberculosis treatment was started. Pleural fluid was sent for diagnostic study & on 14.04.2016 after taking opinion of pulmonologist, anti-tuberculosis treatment was started. In the meantime the patient went into sepsis with septic shock. Antibiotics were upgraded and as patient was found to have decreased Sr. Albumin level, he was advised for Inj. Human Albumin 20%. Guarded prognosis was explained to the family. Thereafter, on 16.04.2016 all investigation reports & case summary were handed over to the patient's daughter-in-law, Ms. Neha Singh. As patient became drowsy with irrelevant speech, MRI brain was advised by the doctors but the family was not ready to give consent. It is further submitted that on 20.04.2016 pro-calcitonin level was required to be done, which was not available in the Opposite Party No.1-hospital lab, but family refused to get it done from outside. Patient's consciousness level & TLC count improved & he was shifted from ICU to the ward on 21.04.2016. It is submitted that on 22.04.2016, no attendants were present with the patient. On 25.04.2016 there was no access for dialysis which was required urgently but the Complainant had given it in writing to wait for some time. It is submitted that owing to the fact that the Complainant did not give consent for dialysis when required; the attendants were asked to take second opinion & shift to higher center, if required. Patient was shifted to ICU on 25.04.2016 for monitoring and management as his condition deteriorated & was dialyzed after taking due consent.

7. It is further submitted that on 25.04.2016, guarded prognosis was explained to all family members by critical care team. As patient's condition deteriorated in the night, the family was informed on phone but they refused to come. It is submitted that as the patient went into fluid overload and Encephalopathy, he required dialysis but on 26.04.2016 his son refused for dialysis against the advice of Nephrologists Dr. Ambar Khaira-Opposite Party No. 4. Thereafter, a Police complaint was lodged on phone

by AMS Dr. Ranoo Arora. Despite counseling the family daily, they refused for dialysis which has been duly documented. It is further submitted that the Patient continued in encephalopathy & respiratory acidosis and required intermittent Bi-PAP support for breathing but patient vitals remain stable and he was maintaining saturation 97% on room air. The Patient was planned for discharge on 12.05.2016, however on 13.05.2016 patient had reoccurrence of right pleural effusion. Thereafter, Pulmonology opinion was taken again. On 17.05.2016 USG guided diagnostic therapeutic pleural tapping was done. Subsequently, on 18.05.2016, patient suddenly developed nasal & oral bleed and became drowsy. The Opposite Parties have submitted that Verbal consent was taken on phone with Complainant for intubation & mechanical ventilator for airway protection, Patient's Blood Pressure became low and he needed drugs to keep the blood pressure within normal parameters. Guarded prognosis was explained to attendants. ENT opinion was also taken for NASAL bleed. Patient continued to be in altered sensorium, ventilator support & WBC count went upto 21800. Attempt to wean him off the ventilator was to no avail. On 22.05.2016 patient's B.P. remained on very low side despite, being on high dose of inotropes which was again further escalated. Further on 23.05.2016 at 07:10 am, he developed Bradycardia (slowing of heart rate). Cardio pulmonary resuscitation was started as per protocol but patient could not be revived and was declared as dead at 07:45 am.

8. The Opposite Parties have further submitted that Procalcitonin test was not available in the lab. Lastly, it is submitted that the aforesaid test was done in patient's interest and not to enrich the Opposite Party hospital or the doctors. Therefore, the attendants were told that they may consider getting the test done from outside and as such, no medical negligence can be carved out on the part of the Opposite Parties.
9. The Complainant has filed the Rejoinder to the reply filed by the Opposite

Party rebutting all the averments and allegations made therein and reiterated the contentions made in the Complaint.

10. Both parties have filed their Evidence by way of Affidavit to prove their averments on record.
11. We have pursued the material available on record and heard the counsels for both the parties.
12. Written Arguments have been filed by the both the parties and the same have been given due consideration.
13. The first question that falls for our consideration is *whether the conduct of the Opposite Parties amounts to unfair trade practice.*
14. The Complainant has submitted that the Opposite Parties had forced him to buy medications and get the procalcitonin test conducted from outside out of his own pocket. It is an admitted position, as is evident from the written statement of the Opposite Party 2 and 3 that the procalcitonin test was not available at the Opposite Party No. 1 Hospital and hence the Complainant was suggested to get the same done from outside. Furthermore, a bare perusal of the *Nurse's Notes dated 20.04.2016 (Annexed as Annexure 22-A alongwith Written Statement)* filed by Opposite Party No. 4 clearly show that the family of patient had denied the procalcitonin test. Further, as regards to getting the prescribed medication from the outside, the Opposite Parties have denied any such instance and the Complainant has only produced a table showing expenditure on medication and has failed to substantiate the aforesaid contention by way of adducing proper invoices/bills for medications purchased from outside.
15. Further, Complainant has alleged that the Opposite Parties forced him to pay an amount of Rs. 10,000/- before conducting the AV-Fistula Surgery and also forced him to pay an additional Rs. 11,000/- before re-admission on 13.04.2016. As regards the question of AV-Fistula surgery, the Opposite Party has submitted that it is the hospital's policy to get the amount deposited and the said amount was reimbursable under CGHS.

Moving on to the question of Re-admission charges, the Opposite parties have denied the same and the Complainant has failed to produce any cogent material or documentary proof to substantiate such charges. Therefore, in light of the aforesaid discussion, no liability for unfair trade practice can be affixed on part of Opposite Parties.

16. The next question that falls for our consideration is *whether the conduct of the Opposite Parties amounts to medical negligence.*
17. Adverting to the facts of the instant case, the Complainant has contended that the Patient was not suffering from Tuberculosis yet he was administered anti tuberculosis medications; On the other hand, the Opposite Parties have relied on medical literature and submitted that diagnosis of pleural effusion was the second most common form of Tuberculosis in the series and the diagnosis of pleural effusion was based on several criterion out of which increased LDH and lymphocytic dominance is considered synonymous with tuberculosis. Further in same context Opposite Party No. 4 has submitted that CT chest was done by the pulmonologist and a diagnostic pleural tap was done which the pulmonologist felt to be Tuberculosis and anti-tuberculosis medication was started.
18. Here, it is to be noted that the Complainant has failed to rebut the submissions of the Opposite Parties by way of relevant medical literature or to prove any nexus between anti tuberculosis medication and the cause of death of the Patient. At this juncture, it is pertinent to note that it is an established position of law that error of judgment cannot be construed to amount to medical negligence as observed by the Hon'ble National Commission in the case of *Dr. Subramanyam and Anr. vs. Dr. B. Krishna Rao and Anr, II (1996) CPJ 233 (NC).*
19. Further, the Complainant has raised certain other pleas as regards to the delay in AV-fistula surgery, conduct of hospital staff and unqualified hospital staff.
20. From a bare perusal of the evident on-record it is amply clear that the family

of Patient was did not accede to the advice of the doctors throughout the course of treatment. Further, from a perusal of the discharge summary dated 23.03.2016, it is clear that the Complainant acted in contravention of doctor's advice of dialysis thrice a week. In such circumstances, contributory negligence on the part of Complainant is clear beyond doubt.

21. Our view is further fortified by the Expert Medical Opinion passed by the Delhi Medical Council dated 08.06.2018, reproduced hereunder for ready reference:

DMC/DC/F.14/Comp.1897/2/2018/

08th June, 2018

ORDER

The Delhi Medical Council through its Executive Committee examined a complaint of Shri. Sandeep Kumar, r/o-RZE 385/C, E-100, Street 17-A Sadh Nagar, Palam Colony, New Delhi-110045 alleging medical negligence and professional misconduct on the part of doctors of Rockland Hospital, B-33-34, Qutab Institutional Area, Katwaria Sarai, New Delhi-110016, in the treatment administered to complainant's father Shri. Hukum Chand at Rockland Hospital, resulting in his death.

The Order of the Executive Committee dated 11th May, 2018 is reproduced herein-below:

"The Executive Committee of the Delhi Medical Council examined a complaint of Shri. Sandeep Kumar, r/o-RZE 385/C, E-100, Street 17-A Sadh Nagar, Palam Colony, New Delhi-110045(referred hereinafter as the complainant) alleging medical negligence and professional misconduct on the part of doctors of Rockland Hospital, B-33-34, Qutab Institutional Area, Katwaria Sarai, New Delhi-110016(referred hereinafter as the said Hospital), in the treatment administered to complainant's father Shri. Hukum Chand at Rockland Hospital, resulting in his death.

The Executive Committee perused the complaint, written statement of Dr. Renu Siwas, Additional Medical Superintendent, Rockland Hospital, enclosing therewith joint written statement of Dr. Umesh Gupta, Dr. Vikram Kalra, Dr. Ambar Khaira, copy of medical records of Rockland Hospital and other documents on record.

The Executive Committee notes that the patient late Shri. Hukum Chand has had End stage kidney failure with fluid overload requiring dialysis and also

had pleural effusion which was considered as tubercular and he was also treated in consultation with pulmonary and CCU team. It seems that there has been a communication gap between the treating doctors and the family members. It is observed that the patient received adequate treatment in accordance with accepted professional practices in such cases but he developed sepsis and succumbed to this illness, unfortunately.

In view of the observation made hereinabove, it is, therefore, the decision of the Executive Committee that prima facie no case of medical negligence and professional misconduct is made out on the part of doctors of Rockland Hospital, B-33-34, Qutab Institutional Area, Katwaria Sarai, New Delhi-110016, in the treatment administered to complainant's father late Shri. Hukum Chand at Rockland Hospital.

Complaint stands disposed."

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| Sd/: (Dr. Arun Kumar Gupta) Chairman, Executive Committee | Sd/: (Dr. Ajay Gambhir) Member, Executive Committee | Sd/: (Dr. Satendra Singh) Member, Executive Committee |
| Sd/: (Dr. Vinay Aggarwal) Member Executive Committee | Sd/: (Dr. Vijay Kher) Expert Member Executive Committee | |

The Order of the Executive Committee dated 11th May, 2018 was confirmed by the Delhi Medical Council in its meeting held on 25th May, 2018.

By the Order & in the name of
Delhi Medical Council

(Dr. Girish Tyagi)
Secretary

22. A perusal of the aforementioned expert opinion leaves no room for doubt that the Complainant was treated as per standard medical protocol. It is clear from the expert opinion that the patient was at the end stage of kidney failure and had pleural effusion which was considered to be tubercular. The patient had fluid overload and required dialysis and the patient ultimately succumbed to the ailment owing to sepsis.
23. Therefore, in light of the above discussion and the Expert Medical Opinion passed by the Indian Medical Council, we opine that no negligence can be carved out on the part of the Opposite Parties. ***Consequently, the present Complaint stands dismissed with no order as to costs.***
24. Applications pending, if any, stand disposed of in terms of the aforesaid

judgement.

25.The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.

26.File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

Pronounced On:
28.04.2025

L.R-G.P.K