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## Case Report

# When a Laparoscopic Cholecystectomy becomes a Case of Medical Negligence? Supreme Court of India

Mukesh Yadav<sup>1\*</sup> and Mukesh Kumar Bansal<sup>2</sup>

<sup>1</sup>Professor and Principal, <sup>2</sup>Assistant Professor, Department of Forensic Medicine, Rani Durgawati Medical College, Banda, Uttar Pradesh, India

\*Corresponding author email id: drmukesh65@yahoo.co.in

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### ABSTRACT

It is now well-established that laparoscopic cholecystectomy is associated with a two to three times higher risk of bile duct injury (BDI) in comparison to open cholecystectomy. Moreover, BDI during cholecystectomy is a common cause of litigation of medical negligence against the surgeon. The complainant brought a medical negligence action against the surgeon Dr. Gurmit Singh (OP-1) and the OP-3. On 13.07.2004 the complainant's wife approached R-1, a laparoscopic surgeon at Preet Surgical Centre & Maternity Hospital, R-2 for laparoscopic cholecystectomy. Due to a serious condition, the patient was shifted to DMC Ludhiana where she was treated under R-3. The complainant discussed the cause of death and the need for autopsy with R-3, however, he was told that the patient died due to intraoperative injuries to the colon and bile duct resulting in Peritonitis, Peritoneal Collection, Septicaemia and Multi-Organ failure. It is in the above-referred circumstances that the complainant filed a consumer complaint before the SCDRC, Punjab on 14.02.2005 for monetary compensation quantified at Rs. 62,85,160 from the Respondents for negligence and deficiency of services. The SCDRC after considering the evidence and hearing both the parties, allowed the complaint and held R-1 and 2 negligent and exonerated R-3 and 4. R-1 and 2 were directed to pay Rs.1544000 **jointly and severally** and Rs.10000 as costs. According to NCDRC, there was no negligence on the part of respondents. Supreme Court opined that the interest of justice would be subserved if R-1 and 2 are directed to pay to the complainants a total amount of Rs. 2500000 (Rupees Twenty-Five Lakhs only) with interest @ 6% per annum from the date of SCDRC order as compensation.

**Keywords:** Surgeon, Ethics Committee, Medical record, Deficiency of service

### BACKGROUND OF THE CASE

These appeals arise out of the decision of the National Consumer Disputes Redressal Commission, New Delhi dismissing the appeal of the complainant and allowing the appeal of the doctor and the hospital by holding that no medical negligence was proved.

### Facts of the Case

Facts as stated in the complaint filed before State Consumer Disputes Redressal Commission are as follows:

- Appellant 1**, the complainant, is a retired Semi-Government employee and his wife Late Mrs.

Manjit Kaur, aged 47 years had been working as a Government Teacher. Mrs. Manjit Kaur, the patient, developed abdominal pain for which an ultrasound examination was done and it revealed the presence of gallbladder stones.

2. On 13.07.2004, the patient approached **R-1**, a laparoscopic surgeon at Preet Surgical Centre & Maternity Hospital, **R-2**. After due examinations and medical tests, **Respondent recommended surgery for removing the gall bladder stones** and prescribed certain tests to be carried out in advance. [Para 3]
3. The complainant got the advised investigations done and showed the results to R-1. He then asked the complainant to get yet another USG examination from a specific centre as he was not satisfied with the earlier USG dated 14.07.2004. The complainant complied with this instruction of R-1 and again medical tests were done from a specific USG centre on 23.07.2004.

### Opinion of Cardiologist

R-1 was satisfied with the results and advised the complainant to get the opinion of a cardiologist as the tests revealed the patient's blood pressure to be slightly high. On 26.07.2004, Dr. Dharamvira Gandhi, the cardiologist cleared the patient for surgery. [Para 4] On the morning of 28.07.2004, R-1 performed a laparoscopic cholecystectomy and placed a drain in the patient's abdomen.

On 29.07.2004, the patient **complained of abdominal pain and distension**. The drainage tube was showing a discharge of fluid which was slightly green in color, which later on turned greenish-brown. When the complainant informed Respondent- 1 about this, he was told that such fluid was expected and that is why the tube had been inserted.

Respondent 1 also informed the complainant that he had reviewed the operative CD and assured that there

was no indication of any injury, even in the operative video. On the next day, the patient became very serious and the abdominal distension and pain was compounded by difficulty in breathing. Respondent 1 reassured the complainants and started oxygen infusion to the patient and prescribed some blood tests and ultrasound examination.

### Issue of Operative /Post-op Complication

Later that evening, Respondent 1 informed the complainants the **cause of the problem was acute pancreatitis** and that there was nothing wrong with the surgery. However, the complainants remained unconvinced, especially because of the dirty brown discharge coming through the drain and the persistent pain, distension and breathlessness which were indicative of some **major intestinal or bile duct injury**, which the staff of R-1 had hinted. The complainant again requested R-1 **to seek another opinion or shift the patient to another hospital**. [Para 6]

### Issue of Referral to DMC Hospital, Ludhiana

At around 9 P.M. on 30.07.2004, R-1 decided to shift the patient to Dayanand Medical College and Hospital, Ludhiana, R-4 and referred the patient to Dr. Atul Mishra, R-3. R-1 declined the request by the complainant to give detailed patient records and operation notes by stating that the patient's condition had been adequately explained to R-3.

Dr. Punit Gupta was the doctor on duty when the patient was admitted. As per his assessment, there was suspicion of an **iatrogenic injury to the bile duct and possibly also to the intestine, during the previous surgery**. He advised an **urgent abdomen CT scan** to get a clearer picture. A CT scan was done and as per the report, the small and large intestines were normal. However, it revealed moderate intra-abdominal and sub-phrenic collection. R-3 examined the patient and the CT scan report the next morning at 9 A.M. Since **the patient was suffering from multiple**

**ailments like pneumonia, high blood pressure and coagulopathy, immediate surgical intervention was not advised.**

On 02.08.2004, the patient's condition became critical and she showed signs of **colonic perforation**. The bilious drain fluid became feculent and foul-smelling. On 03.08.2004, an **emergency laparotomy** was performed. R-3 informed the complainants that there was a large collection of intestinal contents in the abdomen due to an **injury to the colon** and in addition to **that there was also a bile duct injury**, which would be **repaired in a subsequent surgery**. The patient's condition kept deteriorating and she went into multi-organ failure including failure of the respiratory system, cardiovascular system and renal failure and patient died on 11.08.2004.

#### **Issue of Cause of Death/ Autopsy**

The complainant discussed the cause of death and the need for autopsy with R-3, however, he was told that the patient died due to intraoperative injuries to the colon and bile duct resulting in Peritonitis, Peritoneal Collection, Septicaemia and Multi-Organ failure. [Para 10]

#### **Case Before SCDRC**

It is in the above-referred circumstances that the complainant filed a consumer complaint before the SCDRC, Punjab on 14.02.2005, which was subsequently transferred to State Consumer Commission, U.T. Chandigarh. The complainant prayed for monetary compensation quantified at Rs. 62,85,160 from the Respondents for **negligence and deficiency of services**. [Para 11]

#### **Stand of Doctor/Hospital**

Respondent no. 1 and 2 filed a reply stating that R-1 is an experienced surgeon and has performed more than 2,500 laparoscopic operations successfully. It was explained that the patient's surgery was performed with

proper care, but after the surgery, she developed epigastric pain and slight distension in the abdomen. Immediately conservative treatment was started and the patient got some relief from the same. However, on the night of 30.07.2004, the patient's condition got critical, as a result of which she was referred to R-4 hospital to be treated by R-3. R-3 and 4 in their reply denied the allegations of negligence and stated that the hospital provided due and proper care to the patient.

It was further stated that most of the iatrogenic injuries to the bile duct during the cholecystectomy were not recognized in the operating room but were detected after a few days as biliary fistula or bile peritonitis. It was stated that the initial response of R-3 was to not operate immediately as it was decided to evaluate the nature of the leak and attempt to control the fistula. Also, conducting the operation earlier was not medically advised. The operation was conducted on 03.08.2004 to tackle perforation in the large bowel.

#### **Opinion of Cardiologist**

A reply was also filed by Dr. Dharamvir Gandhi, the cardiologist who stated that the patient was 47 years old and was referred to him by R-1. It was found that she was a **patient of hypothyroidism** and was taking treatment for the same for the last three years. She complained of chest pain and breathlessness for which she was treated with due care. Her cardiovascular status was stable.

#### **Cross Examination of Doctors**

Both R. Nos.1 and 3 were duly cross-examined by counsel of the complainant on 06.07.2006. The complaint also cross-examined Dr. Inderjit Singh and Dr. Navdeep Singh as experts before the SCDRC.

#### **Compensation Awarded by SCDRC: Joint and Several Liability**

The SCDRC after considering the evidence and hearing both the parties, allowed the complaint and held R-1

and 2 negligent and exonerated R-3 and 4. R-1 and 2 were directed to pay Rs. 15,44,000 **jointly and severally** and Rs. 10,000 as costs. [Para 16]

### **CT Scan Report: Origin of Air/Gas in Abdomen?**

The SCDRC found that the CT scan which was performed on 31.07.2004 showed pneumoperitoneum which meant a significant amount of free air in the abdomen outside the intestines was present which is not normally present.

During laparoscopic surgery, gas is introduced into the peritoneal cavity and all the gas does not get removed at the end of the surgery. It is a known fact that this residual gas gets absorbed and does not stay in the abdomen for more than 24 hours.

The only other area from where the gas can enter the peritoneal cavity is the intestines if they are ruptured at any place. The CT scan was performed three days after the laparoscopic surgery and significant air was present even after three days which is a clear sign of an intestinal injury. There was also some subphrenic abscess found below the diaphragm which has to be removed, otherwise, diaphragm movements cannot be restored.

SCDRC found that it was the direct consequence of the intra-operative injury to the bile duct and colon caused by Respondent 1 during the laparoscopic cholecystectomy that later led to the death of the patient.

With respect to Respondent 3, the **only allegation was a delay in operating on the patient**. SCDRC found that Respondent 3 could not detect any important sign of bowel perforation on 31.07.2004 or 01.08.2004 and therefore he decided against any surgical intervention at that point of time and hence there was no negligence on the part of R-3. [Para 17]

### **Case before Punjab State Medical Council**

It is necessary to mention at this stage that while the proceedings were pending before the SCDRC, the

complainants also made a complaint to the Punjab State Medical Council against the **professional misconduct** of the Respondents, which was summarily disposed of on 13.06.2006.

### **Case before the MCI in Appeal**

The complainants filed an appeal to the MCI. The MCI considered the appeal of the complainant and asked R-1 and 3 to appear before the **Ethics Committee**. Both the Respondents submitted their detailed replies.

**The Ethics Committee** considered the matter and held R-1 medically negligent and issued a strict warning to be more careful during the procedure and to be more diligent in treating and monitoring his patients during and after the operation. **R-3** was exonerated as **no medical negligence** was proved against him.

### **Case before the NCDRC**

Coming back to the appeal before NCDRC, it heard both the appeals together, i.e. the appeal filed by the complainants as well as R-1 and 2. The NCDRC observed that the patient was operated by R-1 on 28.07.2004 and **the injuries were detected after six days**.

The CT scan report of 31.07.2004 ruled out any evidence of injury or perforation peritonitis and therefore R-1 did not ignore any signs of biliary and fecal peritonitis.

Further, the complainant relied on the paramedic staff of the R-2 hospital who informed him about the operative injury; it was held that there was no evidence in this regard. There was no negligence found on the part of R-1 and 2.

In the **case of Rs 3 and 4**, it was found that the patient was not fit for diagnostic laparoscopy immediately since there were no signs of any obstructive lesion or proximal dilation. On 02.08.2004, there was a

sudden deterioration in the patient's general condition and she was then diagnosed with bowel leak with peritonitis. She was operated on 03.08.2004 to repair the colonic perforation. The patient's condition started weakening and she died on 11.08.2004 due to cardiac arrest. It was held that R-3 and 4 acted with due care and hence there was no negligence.

The NCDRC by way of the impugned decision on 05.06.2020 allowed the appeal of R 1 and 2 and set aside the order of the SCDRC holding that **negligence was not proved by the complainants.** It is from this decision that the present appeals arise [1-9].

### Submissions before Supreme Court

In these appeals, SC heard Mr. Raj Kiran Talwar Ld. Advocate for the Appellants and Dr. Sushil Kumar Gupta, Ms. Suruchi Suri and Mr. Anuj Chauhan, Ld. Advocates for the Respondents.

Ld. Advocate for the Appellants made the following submissions. At the outset, he would submit, that the patient suffered two iatrogenic injuries during her first surgery, one to the colon and the other to the bile duct. From these two injuries, fluids from the bile started to accumulate in the peritoneal cavity of the patient while the overflowing fluid started to come out of the drain.

**Secondly**, after the patient became critical, R-1 referred the patient to R-3 and 4 at Ludhiana which is at a distance of 100 KMs instead of a local hospital at a nearer distance. **Thirdly**, strong reliance was placed on the statement of R-1 in his cross, where he categorically stated that it did not occur to his mind that the injuries could take place. **Fourthly**, R- 3 negligently delayed the re-exploration surgery even after receiving the CT scan report. **Finally**, the NCDRC gave its decision without referring to the MCI findings.

### Case Law Referred

In support of his submission, he relied on a judgment of the Supreme Court in Maharaja Agrasen Hospital and Ors. vs. Master Rishabh Sharma and Ors.

### Reasons for Colon Injury

On the other hand, Dr. Sushil Kumar Gupta, Ld. Counsel appearing for R. Nos. 1 and 2 made the following submissions. The presence of a biliary leak does not signify injury of a bile duct as it can occur from the liver bed from the **cholecysto-hepatic duct, slippage of a clip from cystic duct stump which are not injuries.**

**Second**, for there to be a presence of a leakage from the large intestine, there are some specific symptoms which were not shown and therefore leakage of the colon was ruled out.

**Finally**, since there was no bile duct or colon injury, the presence of rent in the hepatic flexure of the colon may be either a result of delayed manifestation due to thermal injury because of the electro-cautery, or it may be a rare case of injury to the hepatic flexure of the colon because of the drainage tube.

Ld. Counsel appearing for Respondents 3 and 4 submitted that, the only allegation is of the delay in diagnosis of colonic perforation and corrective surgery. This according to her is proved incorrect as per the findings of the MCI, SCDRC and the NCDRC as well.

**Second**, the surgery was performed diligently and with due care. The bile leak coming out of the drain after the gall bladder surgery had occurred during the first surgery performed by R-1. The patient was already critical when she was admitted to R-4 hospital and therefore immediate surgical intervention was not called for. However, when the fecal matter leak was found in the drain, the patient was immediately operated on.

### SC Observations of Judgment of SCDRC

The SCDRC in its detailed decision considered **the oral and documentary evidence including medical journals** and concluded that R-1 and 2 acted negligently

in performing the operation. SCDRC also held that there is no evidence of negligence in so far as R-3 and 4 are concerned.

### SC Observations of Judgment of NCDRC

SC further observed that what we have noticed in the impugned decision of the NCDRC is that a substantive part of the decision refers only to judicial precedents on the question of medical negligence.

### Case law Referred

Reference is made to the decisions in the case of Kusum Sharma & Others v. Batra Hospital & Medical Research Centre and others; Jacob Mathew v. State of Punjab; Achutrao Haribhau Khodwa and others v. State of Maharashtra and others; and S.K. Jhunjhunwala v. Dhanwanti Kaur.

Apart from the case laws on facts, the NCDRC devoted its attention substantially to the allegations against R-3 who was anyway exonerated by the SCDRC. In so far as R-1 is concerned, **the NCDRC did not meet the specific allegations of negligence in the performance of the surgery.**

There was sufficient material indicative of large bowel perforation after the laparoscopic operation. It is true that it may not have manifested immediately in the normal course. However, there were sufficient indicators to a diligent professional, to detect and take immediate steps for restitution. Instead of examining the material that was placed on record, NCDRC seemed satisfied with raising and rejecting the plea of **res ipsa loquitur** and holding that it is impermissible to assume that any sensible professional would intentionally commit an act which would result in an injury to the patient. In these proceedings for damages due to professional negligence, the question of intention does not arise. Unfortunately, the NCDRC did not even refer to the report of the MCI. In fact, a reference to the MCI report would have been sufficient to come to the right conclusion.

### Case before Ethics Committee of MCI

The Committee recorded the statement of the complainant, and the doctors R-1 and 3. The Ethics Committee also sought the opinion of Experts on the conduct of these Respondents. The two Experts were Professors and HODs of AIIMS, New Delhi and KGMC, Lucknow. The Ethics Committee after perusal of all the above documents have come to the conclusion that

1. In the case of Dr. Atul Mishra, no case of medical negligence can be established against him. Therefore, the Ethics Committee decided to drop the matter against Dr. Atul Mishra and exonerate him from the charges.
2. Ethics Committee found that Dr. Gurmit Singh has failed to exercise adequate medical competence in treating the patient as is apparent from the following points:
  - a) There was a large bowel perforation after the laparoscopic operation. This complication which though not known in the normal course of time, had occurred in this particular case. This complication could have been prevented if care had been exercised during the procedure by Dr. Gurmit Singh.
  - b) More importantly Dr. Gurmit has failed to suspect the occurrence of complications despite following warning, signs/symptoms) the patient not recovering after the operation.
  - c) Patient increasingly deteriorating.
  - d) There was a strong indication of a complication occurring after the procedure. Thereafter, his failure to detect all these conditions led to delay in diagnosis of all perforation of the bowel and resulted in a situation of avoidable delay which causes increased deterioration of the patient.



In view of the clear findings, the MCI decided to issue a **strict warning to R-1** to be more careful during the procedure and to be more diligent in treating and monitoring his patients during and after the operation.

### **Observations of the SC on NCDRC Findings**

SC observed that the above-referred findings of the MCI on the conduct of R-1 leave no doubt in our mind that this is certainly a case of medical negligence leading to deficiency in his services. NCDRC, except referring to the general principles of law as laid down in the judgments of this Court has not attempted to draw its conclusion from the oral and documentary evidence available on record. Apart from the facts that clearly emerge from the report of the MCI, there is sufficient evidence to reiterate the same findings of deficiency <sup>[1-4]</sup>.

### **Cross-Examination of R-1**

In the **oral evidence**, the **following answers** were elicited from R-1 in **the cross-examination** which fortifies the report given by the MCI.

1. Q) Did you consider during your investigation that there was possible intraoperative injury to bile duct or intestines?  
  
A) No, it did not occur to my mind. In-fact, there was no such injury while the patient was in my hospital.
2. Q) Did you think it necessary to take the opinion/consultation of another Surgeon?  
  
A) I did not think it necessary in the circumstances of this case to consult another surgeon.
3. Q) Why did you consider it proper to refer the patient to another Surgeon instead of a Chest Specialist as according to your opinion, the patient was not having any surgical problem but was having chest problem?

A) Patient was referred to a Surgeon because we wanted to know that why the abdomen pain has developed as also why there was excessive discharge from the drain.

Having considered the matter in detail, SC was of the opinion that the NCDRC has committed an error in reversing the findings of the SCDRC and not adverting to the evidence on record including the report of the MCI <sup>[5-9]</sup>.

The decision of the NCDRC was set aside and complainants have made out a case of medical negligence against Respondent 1 and 2 and are entitled to seek compensation on the ground of deficiency of service.

The State Commission as well as the National Commission and even the MCI have not found Rs. 3 and 4 negligent in performing their services, and SC is in agreement with such findings and therefore, confines his conclusion and directions to Rs-1 and 2. To this extent, SC rejected the appeal of the complainant against all except Rs- 1 and 2.

### **SUMMARY AND CONCLUSIONS**

In view of the findings as indicated above we are of the opinion that the appeal filed by the complainants deserves to be allowed. The complainants had claimed an amount of Rs. 62,85,160/- on various counts such as amounts paid to the doctors and the hospitals for treatment, loss of income of the patient who was a Government servant with the salary of Rs. 37,150 per month with 10 years remaining service, damages for trauma and shock and on certain other grounds.

### **Compensation Awarded**

Having considered the matter in detail, Bench of the SC [we] are of the opinion that the interest of justice would be subserved if Respondents 1 and 2 are directed to pay to the complainants a total amount of Rs. 25,00,000 (Rupees Twenty-Five Lakhs only) with

interest @ 6% per annum from the date of SCDRC order as compensation.

Respondents 1 and 2 will be entitled to adjust any amount already paid or deposited in favour of the complainants' pending proceedings. The amount shall be deposited within a period of 6 months from today, failing which it shall carry an interest of 9% per annum.

Supreme Court concluded that for the reasons stated above, these appeals are allowed and the judgment of the National Consumer Disputes Redressal Commission, New Delhi in Appeal No.108/2008 and Appeal No.120/2008 is hereby set aside. Parties shall bear their own costs.

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- [9] S.K. Jhunjhunwala vs. Dhanwanti Kaur & Anr. (2019) 2 SCC 282.

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