STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND
DEHRADUN

Date of Admission: 28.05.2019
Date of Final Hearing: 09.10.2026
Date of Pronouncement: 15.10.2026

SC/5/A/209/2019

Dr. Shree Mohan (aged about 67 years') S/o late Ram Gopal Kansal
Paras Nursing Home, Opposite B.S.M. Degree College
Railway Road, Roorkee
District Haridwar

(Through: Sh. Vijay Pal Tiwari &
Sh. Shree Gopal Narsan, Advocates)
…… Appellant

Versus

1. Sh. Rajesh Kumar S/o Sh. Om Prakash
R/o Village Rawali Mahdood
Post Bahadrabad, Tehsil and District Haridwar
(Through: Sh. Lalit Kumar, Advocate
via Video Conferencing)

2. National Insurance Company Limited
(wrongly mentioned as National Assurance Company Limited)
Branch Office First, 710-711, First Floor
Vijaya Bank, Sotiganj, Meerut – 250001
(Through: Sh. Rajesh Kumar Devliyal, Advocate)
…… Respondents

Coram:
Ms. Kumkum Rani, President
Mr. C.M. Singh, Member

ORDER

(Per: Ms. Kumkum Rani, President):

This appeal under Section 15 of the Consumer Protection Act, 1986 has been directed against the impugned judgment and order dated 26.04.2019 passed by learned District Consumer Disputes Redressal Forum, Haridwar (hereinafter to be referred as "The District

Commission") in consumer complaint No. 240 of 2015, styled as Sh. Rajesh Kumar Vs. Dr. Shree Mohan and another, wherein and whereby the consumer complaint was allowed and the appellant / opposite party No. 1 was directed to pay compensation of Rs. 9,00,000/- to respondent No. 1 / complainant on account of wrong and negligent treatment of the complainant's daughter alongwith litigation expenses of Rs. 7,500/-, in all, Rs. 9,07,500/-, within a period of one month from the date of impugned judgment and order, failing which the respondent No. 1 / complainant was further held entitled to interest @6% p.a. on the aforesaid amount of Rs. 9,07,500/-, payable from the date of filing of the consumer complaint till payment.

2. The facts giving rise to the present appeal, in brief, are, as such that on 23.05.2014, the respondent No. 1 / complainant took his daughter Ms. Varnika aged 03 years' to the appellant / opposite party No. 1 in regard to check-up of her left hand. On examination, the appellant told the complainant to get the elbow of her daughter's left hand operated, whereafter his daughter would be alright. Believing on the version of the appellant, the complainant became / got ready to get his daughter operated upon on 23.05.2014. The appellant told his fees as Rs. 7,800/-, which the complainant duly deposited. It was alleged that the operation of elbow of complainant's daughter's left hand was negligently done / carried out by the appellant. The complainant took his daughter to the nursing home of the appellant on different dates and on each occasion, the complainant was told that the operation has rightfully been done and the appellant refused to get the x-ray of the patient's hand done. The appellant removed the plaster from the patient's hand, but the patient's hand did not work and on account of wrongful and negligent treatment as well as operation by the appellant,

the patient's left hand got damaged / did not work properly. On 15.07.2014, the complainant showed his daughter to Dr. Suresh Chand and on 06.11.2014 to Dr. Mukesh Jain at Muzaffarnagar. The complainant also took his daughter to Dr. Nitin Agarwal on 19.07.2014 and on 05.12.2014 to Himalayan Hospital, Dehradun. All the doctors told that on account of negligent operation, the patient's hand had got damaged, with the result that the life of the patient / complainant's daughter had been ruined, for which the appellant is responsible. The complainant through his Advocate sent a legal notice to the appellant, which went unreplied. Thus, alleging medical negligence on the part of the appellant, consumer complaint was instituted by the complainant before the District Commission.

3. The appellant / opposite party No. 1 (treating doctor) filed written statement before the District Commission and pleaded that the complainant took his daughter to the appellant in relation to an injury in her left hand. On examination, the appellant told that there would be a minor operation, which can be carried out in an O.P.D. itself, but the complainant did not agree for a minor operation and insisted for affixing plaster on the injury instead of operating the hand. On advice of his relatives, the complainant agreed for the operation. After the operation, the complainant was advised for regular check-up of the patient in 3-4 days'. The complainant was also advised that there is necessity of physiotherapy of the patient's hand. During check-up, whenever the appellant used to touch the patient's hand, she used to cry, whereupon the complainant and his relatives used to stop the appellant from examining the patient's hand. The appellant contended that for any defect in the patient's hand, the complainant himself is responsible. The appellant further contended that none of the doctor,

to whom the complainant had afterwards taken his daughter, has pointed out any negligence on the part of the appellant. The appellant pleaded that no medical negligence was committed by him in the treatment / operation of the patient, hence the consumer complaint is liable to be dismissed.

4. The respondent No. 2 / opposite party No. 2 (insurance company) submitted written statement before the District Commission, stating therein that the insurance company has not issued any insurance policy in the complainant's favour, hence he is not their consumer. Thus, the complainant is not entitled to any amount from the insurance company and the consumer complaint deserves dismissal against the insurance company.

5. The District Commission, after hearing learned counsel for respondent No. 1 / complainant as well as learned counsel for respondent No. 2 / opposite party No. 2 and after taking into consideration the material available on record, allowed the consumer complaint vide impugned judgment and order dated 26.04.2019 in the above terms. On the date of arguments before the District Commission, none turned up on behalf of the appellant / opposite party No. 1. Feeling aggrieved by the impugned judgment and order, the instant appeal has been set in motion by the appellant.

6. We have heard learned counsel for the parties and perused the record. We have also gone through the written arguments dated 18.08.2026 (Paper Nos. 67 to 79) submitted on behalf of respondent No. 1 / complainant.

7. The complainant has alleged that the appellant – treating doctor has committed carelessness and negligence in the treatment and operation of left hand of his daughter, with the result that the left hand of complainant's daughter got damaged / did not work properly, hence the appellant is liable to compensate the complainant for the wrong committed by him.

8. It is an admitted position that the left hand of the complainant's daughter was operated upon by the appellant – treating doctor on 23.05.2014. The appellant is a qualified M.B.B.S., D. Ortho and M.S. (Ortho) medical professional and a Consultant Orthopaedic Surgeon and is running a nursing home under the name & style of "Paras Nursing Home" at Roorkee, District Haridwar. There is no averment from the side of the complainant that the appellant – treating doctor was not qualified enough to treat the patient / complainant's daughter or that he did not possess the requisite skill in the medical field. The onus to prove medical negligence on the part of the appellant – treating doctor in the treatment of complainant's daughter lies upon the complainant and he was obliged to discharge the said burden by producing cogent and reliable evidence in that regard. In para 8 of the consumer complaint, the complainant has stated that the doctors to whom he had taken his daughter afterwards, had stated that the left hand of his daughter has damaged due to negligence of the appellant during the course of operation.

9. In para 13 of his written statement filed before the District Commission, the appellant has specifically pleaded that after the operation, the complainant was duly advised that the physiotherapy of

the patient is necessary. The copy of the medical prescription dated 01.06.2014 issued by the appellant is Paper Nos. 31 to 32, which shows that on 11.06.2014 (although the date is not clearly visible), the patient was referred to physiotherapist. There is no averment in the consumer complaint that all the advices given by the appellant, were duly followed or that the patient was subjected to physiotherapy, as was advised. It would not be out of place to mention here that none of the doctor / hospital, to whom the patient was taken afterwards by the complainant, had pointed out any negligence on the part of the appellant in the treatment of the patient.

10. In the case of **Martin F. D'Souza Vs. Mohd. Ishfaq** reported in **(2009) 3 Supreme Court Cases 1**, Hon'ble Apex Court has held in paragraph No. 106 as under:

> "106. We, therefore, direct that whenever a complaint is received against a doctor or hospital by the Consumer Fora (whether District, State or National) or by the criminal court, then before issuing notice to the doctor or hospital against whom the complaint was made, the Consumer Forum or the criminal court should first refer the matter to a competent doctor or committee of doctors, specialised in the field relating to which the medical negligence is attributed, and only after that doctor or committee reports that there is a prima facie case of medical negligence, should notice be then issued to the doctor/hospital concerned. This is necessary to avoid harassment to doctors who may not be ultimately found to be negligent. We further warn the police officials not to

> arrest or harass doctors unless the facts clearly come within the parameters laid down in *Jacob Mathew case*[1], otherwise the policemen will themselves have to face legal action."

11. In the case of **Dr. Harish Kumar Khurana Vs. Joginder Singh and others** reported in **(2021) 10 Supreme Court Cases 291**, Hon'ble Apex Court has held as under:

> "While it is necessary that the hospital and doctors are required to exercise sufficient care in treating the patient in all circumstances, in every case where the treatment is not successful or the patient dies during surgery, it can not be automatically assumed that the medical professional was negligent. To indicate negligence, there should be material available on record or else appropriate medical evidence should be tendered. The negligence alleged should be so glaring, in which event the principle of res ipsa loquitur could be made applicable and not based on perception."

12. In the case of **Chandigarh Nursing Home and another Vs. Sukhdeep Kaur** reported in **2022 SCC OnLine SC 1193**, Hon'ble Apex Court has held in paragraph No. 15 as under:

> "15. Even otherwise, in absence of any cogent reasons and/or material, the National Commission was not justified in enhancing the amount of compensation to Rs. 10 lakhs. While enhancing the amount of compensation to Rs. 10 lakhs, the National Commission has just referred to few decisions of this Court in

> paragraph 14 and thereafter has straightaway enhanced the amount of compensation. It is to be noted that the amount of compensation varies from person to person, looking to the damages and/or disability suffered/sustained. Merely because in some cases, the amount of compensation has been enhanced, in other cases, the amount of compensation cannot be enhanced. While enhancing the amount of compensation to Rs. 10 lakhs as such, the learned National Commission has not at all discussed the disability suffered by the complainant. Therefore, also, the impugned judgment and order passed by the National Commission enhancing the amount of compensation to Rs. 10 lakhs is unsustainable."

13. The aforesaid case laws are fully applicable to the case in hand. In the instant case, there is no appropriate medical evidence tendered on behalf of the complainant to prove that the treating doctor was negligent in the treatment and operation of his daughter. It is well established that on the basis of perception, no medical practitioner can be held liable.

14. In the impugned judgment and order, the District Commission has opined that if the complainant's daughter would have properly been treated, there would not have been any occasion for the complainant to take his daughter to other medical professional(s). It is well settled that merely because the patient did not get any relief or his / her problem did not subside, is not ground to hold the medical professional liable. So far as expert opinion is concerned, the District Commission has

observed that there are medical prescriptions / papers issued by Dr. Mukesh Jain and Himalayan Hospital. As is stated above, none of the doctor / hospital has observed / pointed out any negligence on the part of the appellant. Moreover, no expert report of Chief Medical Officer has been submitted on record on behalf of respondent No. 1 / complainant to substantiate the version of medical negligence on the part of the treating doctor. This apart, the District Commission has not given any basis for awarding such a huge compensation, i.e., Rs. 9,00,000/-.

15. For the reasons aforesaid, we are of the view that the impugned judgment and order has been passed by the District Commission without application of mind. We are also of the considered opinion that the complainant has failed to prove any medical negligence or deficiency in service on the part of the treating doctor. Hence, the impugned judgment and order passed by the District Commission is totally unjustified and the District Commission has exercised the jurisdiction not vested in it by law and has acted with material illegality and infirmity, while passing the impugned judgment and order. Thus, we are inclined to interfere with the finding recorded by the District Commission. Therefore, the appeal is liable to be allowed.

16. Appeal is allowed. Impugned judgment and order dated 26.04.2019 passed by the District Commission is set aside and consumer complaint No. 240 of 2015 is hereby dismissed. No order as to costs of the appeal. The amount deposited by the appellant with this Commission, be released in his favour.

17. 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. A copy of this Order be sent to the concerned District Commission for record and necessary information.

18. File be consigned to record room along with a copy of this Order.

(**Ms. Kumkum Rani**)
President

(**Mr. C.M. Singh**)
Member

Pronounced on: 15.10.2026