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Weekly Newsletter

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Martin H. Fischer

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N C D R C

National Consumer Disputes Redressal Commission

Patient Gives Birth After Failed Tubectomy: NCDRC Reverses State Commission's Order, Says No Medical Negligence

The National Consumer Disputes Redressal Commission (NCDRC) recently reversed a State Commission order awarding compensation for failed tubectomy while reiterating the observation of the Supreme Court that the methods of sterilization / tubectomy are not absolutely safe and secure and such failure does not deserve compensation. Therefore, the top consumer court exonerated the Rajasthan State Health Department authorities from negligence while performing tubectomy operation. Before dismissing the appeal, the NCDRC bench especially took note of the fact that the complainant gave birth to a healthy, matured baby only seven months after the tubectomy operation.

The history of the case goes back to 2005 when the complainant had undergone tubectomy operation in the Family Planning Camp organized by the State of Rajasthan, The Medical Officer at the Community Health Centre, Ramganj Mandi had performed the tubectomy on 07.11.2005. However, after two months of the tubectomy, the complainant allegedly conceived and delivered a female child. Aggrieved by this, the complainant approached the District Consumer Forum and filed a complaint.

After considering the matter, the District Forum had allowed the complaint and awarded Rs 2 lakh compensation to the complainant along with litigation cost of Rs 5000. Challenging the order, the State authorities approached the State Commission, which allowed the appeal partly and reduced the amount of compensation to Rs 1,00,000. Aggrieved by this, authorities filed Revision petition before the top consumer court.

The NCDRC bench heard both the sides and also perused the material on record. It was noted by the Commission that both the fora had overlooked the fact that according to the Complainant, she had conceived after three months of tubectomy operation i.e. around February 2006. However, surprisingly, she delivered the baby in June, 2006. Holding this proposition to be unbelievable, the Commission noted, "Thus in my view, the pregnancy was already existing prior to tubectomy and it was unnoticed during tubectomy. The Commission held that both the fora had erred on the calculation of pregnancy period and arrived to erroneous finding that there was pregnancy due to tubectomy failure.

CASE TITLE- STATE OF RAJASTHAN V ROBINA

CASE NUMBER - RP/146/2018

PATIENTS DIES OF ORGAN FAILURE: NCDRC DOCTOR TO PAY 10 LAKH COMPENSATION

Holding a Thane-based Surgeon negligent while providing treatment to a patient suffering from Stress Urine Incontinence (SUI), the National Consumer Disputes Redressal Commission (NCDRC) has directed the doctor to pay Rs 2 lakh compensation to the patient.

prescribed the medicine Dolamide to the patient despite being aware of the fact that the Sr. Creatinin was 2.57% and the patient was in renal compromise. "Thus, in our considered view opinion form the physician or Nephrologist was necessary, particularly in this case. The OP would have told/discussed with the patient about the risks of use of NSAID. It was a failure of duty of care from OP," opined the NCDRC bench.

"Therefore, considering the peculiar facts of this case and in the ends of justice the OP is directed to pay Rs. 2 lakh to the Complainant within 6 weeks from today, failing which the amount shall carry 9% interest per annum till it's realization," stated the order. The history of the case goes back to 2006 when the patient had been operated by Dr. Krishnakumar at his Kumar Maternity and Surgical Nursing Home for 'Stress Urine Incontinence'. It was alleged that the surgeon had performed the SUI operation ignoring the initial high Serum Creatinine (2.67%). After the operation, the doctor had also prescribed medicines Dolamide, Odoxil-500, Ulozet & Neurobin.

Allegedly, around six months after being discharged, the blood pressure of the patient had increased and she had consulted a Physician, who had referred the patient to a Nephrologist. The doctor had informed the patient that renal impairment led to damage both her kidneys and the patient was suffering from Chronic Kidney Disease (CKD). It was alleged that this had happened due to wrongly prescribed Dolamide, containing Nimesulide.

In 2007, when the patient had been admitted to Jaslok Hospital, a doctor there had informed her that the SUI operation should not have been performed when the serum creatinin level was 2.67%. As per the discharge summary, she was a case of End Stage Renal Disease (ESRD) and was on regular hemodialysis since October, 2008. Following this, being aggrieved by the treatment provided by the first surgeon, the patient had filed a complaint before the Maharashtra State Consumer Court.

Relying on the book 'Drug Today', the doctor had also submitted that the tablet Dolamide containing drug Nimesulide is one of the safer form of NSAIDs (Non-Steroidal Anti-inflammatory Drug) with unique action, having less renal side effect. The doctor had claimed that NSAIDS can cause acute renal problem only if taken for prolonged period of time, without interruption. After considering the complaint, the State Commission dismissed the complaint and thereafter the patient approached the NCDRC bench. The top consumer court perused the medical record, the evidence and literatures on drug induced Acute Renal Failure. However, examining the law on medical negligence, the bench referred to the Supreme Court judgment in the case of Kusum Sharma and ors v. Batra Hospital and Medical Research Centre & Ors. and Spring Meadows Hospital v Harjyot Ahluwalia. Noting that the main question was whether before prescribing Dolamide, the opinion of Nephrologist was necessary, the bench observed, "In our view, the rise was not due to consumption of Dolamide for 5 days. It should be borne in mind the patient was known case of hypertensive and on medication for a decade. Rise in Sr. Creatinin was due to chronic process of renal damage, not due to short use of Dolamide which induces Acute Renal Injury." "Admittedly, the OP was a surgeon and as a common practice, painkiller like Dolamide is prescribed for short period. But in the instant case, the OP was aware that Sr. Creatinin was 2.57 mg%, the patient was in renal compromise, thus he should be very careful while further prescribing Dolamide to avoid further renal damage."

"Thus, in our considered view opinion form the physician or Nephrologist was necessary, particularly in this case. The OP would have told/discussed with the patient about the risks of use of NSAID. It was a failure of duty of care from OP. Pointing out that there was a long gap after consumption of Dolamide tablets and the evidence of ESRD, the bench noted, "The rising Sr. creatinin values indicate, that Dolamide precipitated the renal damage in the existing renal disease. It was a team work, opinion of Nephrologist would have certainly avoided the mistake. Thus, advising Dolamide tantamount to negligence of the OP to certain extent. Therefore, in our view, the OP was not liable completely for the ESRD and subsequent renal transplant." Even though the Commission directed the doctor to pay Rs 2 lakh compensation to the patient, it observed

CASE TITLE- JYOTI SHIVADAS V DR. KRISHNAKUMAR

CASE NUMBER- FA/457/2011

SC ORDERS FIR AGAINST COP AFTER 23 YEARS FOR MANHANDLING DOCTOR

Around twenty-three years after a woman ASI had manhandled a doctor along with his family members in connection with a dowry case, the Supreme Court has now ordered an FIR against the concerned officer and other police personnel.

The concerned officer, who has now been promoted to the post of DCP, allegedly dragged the doctor and his kin by the hair and manhandled them. Even though a lower court had earlier directed for registering an FIR against the police officers, the order was later quashed by the High Court bench as it noted that a sanction for prosecution was necessary. However, setting aside the HC order, the top court bench observed, "Looking at the nature of the allegations in the complaint, at this stage, it is impossible to conclude that the acts allegedly done by the first respondent were committed by her while acting or purporting to act in the discharge of her official duty. Therefore, at this stage, we cannot conclude that a sanction under Section 197 of Cr.P.C. was required. In the facts of the case, the final view on this issue can be taken only after the evidence is recorded."

"Therefore, there was no reason for the High Court to quash the proceedings at this stage on the ground that a sanction under Section 197 was mandatory," it further noted.

The history of the case goes back to 2000 and the incident took place at Kotwali police station in Jabalpur. Dr. Mansoori was married to one Anjum, who had filed a complaint on January 18, 2000 against the doctor and his family members for the offences punishable under Section 498A, and Section 506 read with Section 34 of IPC as well as Section 3 read with Section 4 of the Dowry Prohibition Act, 1964. It was alleged by the doctor that Smt. Parmar, the then ASI along with other police personnel had arrived at the house of the doctor and abused them. He further alleged that he had been dragged out of his room by the hair and the cops had allegedly beat him and his family members with sticks. Further, the doctor had alleged that the ASI had snatched a gold chain, and by showing a pistol, the officer had also took out cash amount of Rs 15,000 from the almirah along with four golden ornaments. Apart from this, the police officers allegedly demanded Rs 30,000 from the family members of the doctor.

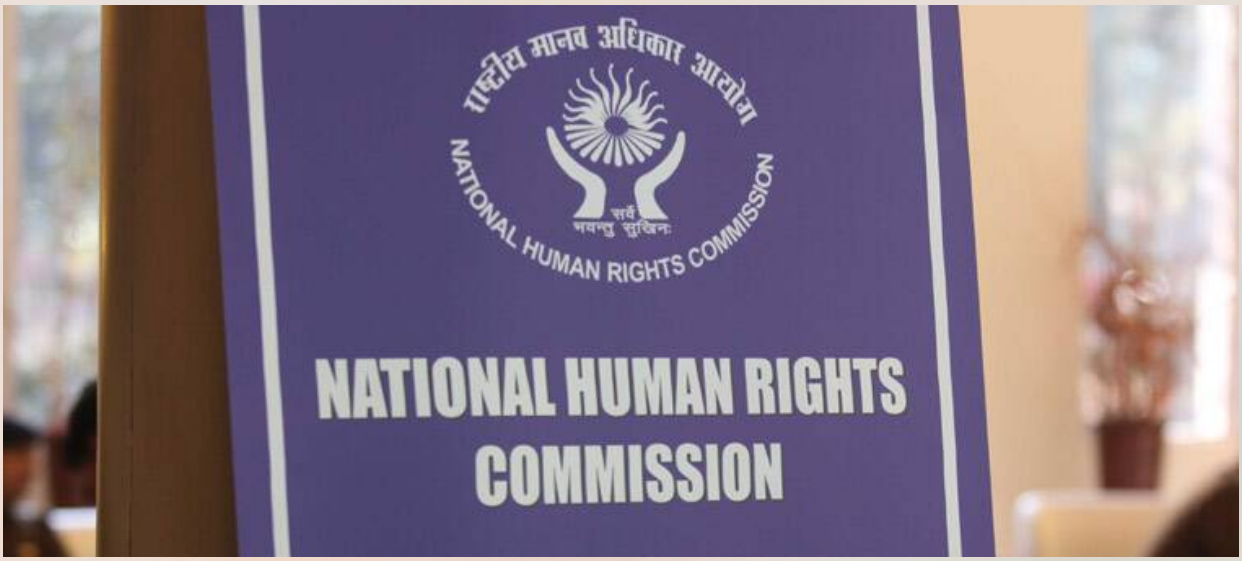
On the basis of the complaint, a lower court had framed charges against the concerned police officer. However, when she approached the HC bench, the court quashed the charges framed against the officer on the ground that a prior sanction under Section 197 of Cr.P.C. was not obtained.

The top court bench set aside the order of the HC bench and observed, "Accordingly, the impugned judgment is set aside and the order of the learned Trial Court of framing charges is restored. The appeal is, accordingly, allowed." "However, we make it clear that the observations and findings recorded in this judgment are for limited purposes of considering a challenge to the order of the High Court. Nothing observed in this judgment shall be construed as any final adjudication on the merits of the pending complaint including the issue of sanction," it clarified.

CASE TITLE- DR. SM MANSOORI V. SUREKHA PARMAR & ORS.

SLP NUMBER- CRL/4517/2019

RETIRED DOCTOR MAULED TO DEATH: NHRC ISSUES NOTICE TO UTTAR PRADESH GOVT



Days after a 70-year-old retired doctor was mauled to death by a pack of stray dogs inside the Aligarh Muslim University (AMU) campus, the National Human Rights Commission (NHRC) on Thursday issued notices to the chief secretary of Uttar Pradesh , the vice-chancellor of AMU, and the Aligarh municipal commissioner, calling for a detailed report in the matter within six weeks.

The commission also sought information on whether any relief has been given to the victim's family or not. Besides, it called for comments from the secretary of the Animal Welfare Board of India, and the department of animal husbandry and dairying on the present status of the implementation of provisions of law and the strategy, if any, to deal with the issue of the 'right to life of humans and protection from stray animals.' According to police, on April 17, Safdar Ali was attacked by stray dogs in a garden at the Sir Syed Museum in AMU, and succumbed to his injuries on the spot. The incident was captured on CCTV cameras and its video clip had gone viral on social media, sparking outrage.

The commission observed that "such incidents indicate that there is a need to review prevailing safeguards as this is not a problem of any one state or union territory, and the situation is grim and alarming." "It has been observed that animal rights are advocated and supported in the same way as human rights because it is quite imperative to safeguard and protect animals from oppression, confinement, and abusive treatment, which they may be prone to suffer at the hands of human beings. But on the other side, there are constant conflicts arising between humans and unruly animals, and these are certainly rising in number with each passing day, and that is why it is necessary for the authority to understand the gravity and seriousness of the issue, and to take effective action in the matter, without any delay", the NHRC stated.

MUMBAI DOCTOR KILLED, 4 INJURED AS CAR RAMS TRUCK ON HIGHWAY: COPS

A 50-year-old doctor from Mumbai was killed and four others injured when their car rammed into a truck on Samruddhi Expressway in Jalna, police said on Saturday. The accident took place on Friday morning, when Dr Abdul Khalique was travelling to his hometown Amravati with his wife and two children to celebrate Eid with his family, an official said.

The car reached Samruddhi Expressway in Jalna, when the driver rammed into a truck, killing the doctor who was sitting in the front, he said.

"Preliminary information suggests that the accident had occurred due to the negligence of the truck driver. The four other occupants of the car are recuperating at a hospital in Jalna," inspector Keshav Wagh of Sindhkhed police station said.

The doctor's body was handed over to his relatives who performed the last rites, he said.

COURT PULLS UP AAP GOVERNMENT OVER COVID COMPENSATION FOR DELHI DOCTOR

The Delhi High Court asked the Delhi government to answer why compensation has not been released to the kin of a doctor working at an AAP mohalla clinic who died of Covid. A single-judge bench of Justice Prathiba Singh was hearing a plea moved by the children of Dr Ujjal Kumar Ghosh who was treating patients at an Aam Aadmi Mohalla Clinic at Dichaon Kalan and had passed away after having contracted Covid on June 15, 2020. The petitioner's counsel Gaurav Jain argued that despite repeated representation having been made and the factum of the Ghosh's service not being in dispute, the compensation was not released.

The court referred to a May 13, 2020 cabinet decision of the Delhi government which stated that "council of ministers had considered a note of Minister (Health and Family Welfare) and had approved that any person, including doctor, nurse, para-medical staff, security/sanitation staff or any other government officer/official such as police officer/official, whether temporary or permanent employee or contractual in the government or private sector deployed for Covid duties by the government of NCT of Delhi expires by contracting the disease during discharge of his/her duty, his/her family shall be paid an ex-gratia amount of Rs 1 crore, posthumously."

Justice Singh said, "There is no reason why there should be delay." The Delhi government's counsel sought time to seek instructions after which the court asked the counsel to file a "specific affidavit" as to "why compensation is not released".

Justice Singh said that "this is not a case where there is a doubt".

Jain said that even the amount liable to be received from Pradhan Mantri Garib Kalyan Package(PMGKP) to be “routed through the Delhi government” had not been given pursuant to which the court said that the affidavit will deal on this issue as well. The matter has been listed on May 8 along with other connected matters pertaining to the grant of compensation on this issue.

The plea states that Ghosh was an empaneled doctor at the clinic and after his death, his daughter filed a personal accident insurance claim form on July 13, 2020, which made her eligible to receive a claim amount of Rs 50 lakh under the PMGKP. As per this, the Department of Health and Family Welfare, Delhi government, was entrusted with the task of forwarding and submitting the claim to the policy’s insurance company for approval, but the department failed to do so, the plea states.

It states that on December 10, 2020, death audit committee issued a certificate giving a finding that Ghosh died of Covid on June 15, 2020. The daughter had received a letter in July 2020 from the chief district medical officer (CDMO) of the South West district, asking her to submit her father’s Covid positive report death certificate and other documents at the CDMOs office for further processing of the compensation case. The daughter this January sent a representation to the Delhi government and Chief Minister Arvind Kejriwal, requesting them to provide the compensation as per the cabinet decision. As per the petitioners, the government on March 15 sent a letter to the daughter to inform her that her father’s case file was received by the relief branch of the revenue department on April 1, 2022, and a letter was sent to the CDMO’s office seeking some documents in the matter, the reply to which is still awaited.

ORDER NOT UPLOADED YET ON THE WEBSITE OF HON'BLE DELHI HIGH COURT

U-TURN: DOCTORS FROM RURAL DISPENSARIES IN PUNJAB TO BE SENT BACK

After facing strong resistance from villages, the Punjab Government decided today to run Aam Aadmi Clinics (AACs) on empanelment mode.

Earlier, the government had deployed a large number of doctors and pharmacists from rural dispensaries to run the 404 mohalla clinics in urban areas. This had led to widespread protests across the state. With this decision, all the doctors who were deployed from rural dispensaries, primary health centres and community health centres will be sent back to their original place of posting.

A communication, sent to all the Civil Surgeons by State Programme Officer, Aam Aadmi Clinics, states, “The government has, after due consideration, decided to shift to empanelment mode for all the 404 primary health centres (PHCs) upgraded as Aam Aadmi Clinics (AACs) during Phase II as also the 64 AACs which are under upgrade.”

The communication further said that the empanelment process shall first be undertaken for Medical Officers. For that, a special online module has been developed to seek a one-time option from the Medical Officers empanelled for 100 Aam Aadmi Clinics during Phase I in case they seek to relocate themselves to the AACs opened in Phase II. An SMS has already been sent to the 100 empanelled MOs of Phase I to exercise this option, in case they so desire, within 48 hours. To run AACs under the empanelment mode, the government empanels doctors, pharmacists and attendants who are given a consolidated monthly amount besides incentive depending on the daily patient footfall. They won’t be employees of the Health Department and are free to do private practice in free time.

Just before the inauguration of around 400 Aam Aadmi Clinics on January 27, the government had deployed 202 doctors from Punjab Civil Medical Services and 135 rural Medical Officers, pharmacists and Class-IV employees to these clinics. The staff had been providing healthcare services at the dispensaries in rural areas which were being managed by the Department of Rural Development and Panchayats.

The pulling out of staff from the rural dispensaries and CHCs had crippled OPD and emergency services in Bathinda, Barnala, Faridkot, Ludhiana and Muktsar districts, raising a question mark on the future of the dispensaries which were the lifeline of rural areas. That led to widespread protests in villages across the state. Following that, the government started sending back the doctors.

Punjab Govt to run clinics under empanelment mode

- The government will empanel doctors, pharmacists and attendants for AACs
- They will be given consolidated monthly amount besides incentive depending on the daily patient footfall
- They won’t be Health Department employees and are free to do private practice in free time

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