

REPORTABLEIN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTIONCIVIL APPEAL NO(s). 3625 OF 2005

SHEELA HIRBA NAIK GAUNEKAR

Appellant (s)

VERSUS

APOLLO HOSPITALS LTD. & ANR.

Respondent (s)

CIVIL APPEAL NO(s). 4408 OF 2005

APOLLO HOSPITALS LTD.

Appellant (s)

VERSUS

SHEELA HIRBA NAIK GAUNEKAR

Respondent (s)

O R D E R

The present appeals arise out of an order dated 13.05.2005, passed by the National Consumer Disputes Redressal Commission (hereinafter referred to as the "Commission") in Original Petition No.103 of 1997. Appeals before this Court have been filed by the complainant as well as the Apollo Hospital, urging various legal contentions.

Since the facts in both the appeals are identical, for

the sake of convenience we refer to the facts in the appeal filed by the complainant, being Civil Appeal No.3625 of 2005.

The complainant is the wife of the deceased-Mr. Gaunekar, who underwent angioplasty treatment in the Apollo Hospitals Ltd., Chennai. Angioplasty procedure was conducted on 14.05.1996. The deceased died shortly thereafter of a heart attack on 18.05.1996. The complainant-wife preferred a claim petition before the Commission alleging that the death of her husband was on account of the medical negligence on the part of the hospital and its doctors and due to deficiency of service. Thus, she is entitled to compensation for a sum of Rs.70 lakhs. The Commission heard the complainant-wife and the respondent Hospital, recorded evidence adduced by both the parties and examined the correctness of the claim made by the complainant-wife. The Commission also examined RW.1-Dr. Mathews Samuel Kalarickal, the doctor who performed the surgery.

The Commission being a fact finding authority, examined the evidence and relevant records and came to the conclusion that there was negligence on the part of the respondent-hospital. The correctness of

these findings has been questioned by the respondent-Apollo Hospitals in the connected appeal filed by it, urging that the said findings are not based on proper evaluation of evidence on record. It is further contended that the death of the deceased had been caused due to heart failure and therefore, the finding recorded by the Commission that death had occurred as a result of medical negligence is an erroneous finding. It further contended that the finding recorded by the Commission in awarding amount of Rs.2 lakhs along with interest at the rate of 6% per annum as compensation, is also not legally correct based on any substantial evidence.

The complainant has also challenged the quantum of compensation awarded by the Commission and has sought enhancement of compensation. It is contended that the Commission recorded a finding of fact on the question of medical negligence on the basis of the evidence of RW.1-Dr. Mathews in his cross-examination by the learned counsel appearing on behalf of the complainant. It is contended that the fact of negligence in taking post-operative care of the deceased after the angioplasty has been proved by the evidence on record and after assigning valid reasons. The learned counsel appearing on behalf of the appellant-complainant contends that after

recording such a finding, the Commission erred in awarding just Rs.2 lakhs as the amount of compensation on account of death of the deceased.

We have heard learned counsel appearing on behalf of the parties at length. Our attention was drawn to the impugned judgment and order as well as the evidence on record, including the cross-examination of Dr. Mathews. After a perusal of the evidence on record, in our considered view, the finding recorded by the Commission that there was medical negligence on the part of the hospital in not taking proper post-operative care of the deceased, is based on legal and substantive evidence on record. The same has been properly appreciated by the Commission in exercise of its original jurisdiction. Therefore, we do not find any error, much less any perversity, in the findings recorded by the Commission so as to interfere with the impugned order in exercise of appellate jurisdiction of this Court under Article 136 of the Constitution of India. Therefore, Civil Appeal NO.4408 of 2005, filed by the Apollo Hospitals Enterprise Ltd. Is liable to be dismissed and is accordingly, dismissed.

Having affirmed the findings recorded by the Commission on the question of medical negligence and

deficiency in services rendered by the respondent-Hospital, we are required to examine as to whether the amount of compensation awarded by the Commission was just and reasonable. The Commission awarded compensation of Rs.2 lakhs along with interest at the rate of 6% per annum. The income tax declaration filed by the deceased to the Income Tax department during the financial year in the which death had occurred is on record as evidence on behalf of the complainant in justification of her claim. According to the Income Tax return, the annual income of the deceased was Rs.5 lakhs per annum. Deducting one-third amount of that towards the personal expenditure of the deceased comes to Rs.3,33,000/- (approximately). As on the date of the death, the deceased was aged 60 years. In terms of the Motor Vehicles Act, 1988 and the decision of this Court in the case of *Sarla Verma (Smt.) and Others v. Delhi Transport Corporation and Another*¹, the appropriate multiplier in the instant case is 9. Thus, the annual loss of dependency comes to Rs.29,70,000/- Having regard to the fact that the incident in the instant case occurred in the year 1996 and the litigation has been going on for nearly twenty years, it would serve the ends of justice to award Rs.40 lakhs as compensation. Having further regard

1 (2009) 6 SCC 121

to suffering of the complainant on account of mental agony, loss of head of the family, loss of consortium and loss of love and affection, we deem it fit to award a further consolidated sum of Rs.10 lakhs under the abovementioned heads, in accordance with the principles laid down by this Court in the case of *Balram Prasad v. Kunal Saha and Others*². Thus, in the interest of justice, we deem it fit to award a total amount of Rs.50 lakhs as compensation in toto.

Accordingly, the compensation awarded by the Commission is modified as aforementioned. Further, interest has to be awarded at 9% per annum, instead of 6% per annum, from the date of the institution of the complaint till the date of payment, applying the principle laid down by this Court in the case of *Municipal Corporation of Delhi, Delhi v. Uphaar Tragedy Victims Association and Others*³.

We also modify the order of the Commission to the extent that RW.1-Mr. Mathews, who performed the surgery which ultimately resulted in death of Mr. Gaunekar, is also held liable to pay compensation along with the Apollo Hospital. Applying the principle laid down in the case of

2 (2014) 1 SCC 384

3 (2011) 14 SCC 481

Balram Prasad (supra), it would be just and proper if we direct RW.1-Dr. Mathews to pay Rs.10 lakhs with proportionate interest to the complainant, out of total of Rs.50 lakhs which has been awarded by way of this Order.

Accordingly, Civil Appeal No.3625 of 2005 filed by the complainant-wife is allowed and Civil Appeal No.4408 of 2005 filed by the Apollo Hospitals Enterprise Ltd. is dismissed. We modify the order passed by the Commission, awarding the compensation at Rs.2 lakhs along with interest at the rate of 6% per annum, to payment of compensation at Rs.50 lakhs along with interest at the rate of 9% per annum as full and final settlement of all claims, to be paid within four weeks from the date of receipt of the copy of this Order. It is once again clarified that the liability of the Apollo Hospital and Dr. Mathews towards compensation will be Rs.40 lakhs and Rs.10 lakhs respectively with proportionate interest at the rate of 9% per annum. We further make it clear that in case the Doctor, Dr.Mathews does not deposit the amount as ordered against him, the same shall be paid to the appellant-complainant by the respondent-Hospital and recovered from him. We further direct the respondent-Hospital to comply with this order and submit compliance report to the Registry of this Court within

eight weeks from the date of receipt of the copy of this
Order.

.....J.
(V. GOPALA GOWDA)

.....J.
(DR. D.Y. CHANDRACHUD)

NEW DELHI
DATED 5th October, 2016.

ITEM NO.102

COURT NO.13

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 3625/2005

SHEELA HIRBA NAIK GAUNEKAR

Appellant(s)

VERSUS

APOLLO HOSPITALS LTD. & ANR.

Respondent(s)

WITH C.A. No. 4408/2005
(With Office Report)

Date : 05/10/2016 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V. GOPALA GOWDA
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

| | |
|---------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| For Appellant(s) (CA No.3625/2005) | Ms. Shobha,Adv. Mr. Shrey Dambhare,Adv. |
| (CA No.4408/2005) | Ms. Surekha Raman,Adv. Ms. Niharika,Adv. Mr. Aman Shukla,Adv. Mr. Pratap Venugopla,Adv. For M/s. K. J. John & Co.,Adv. |
| For Respondent(s) | Ms. Surekha Raman,Adv. Ms. Niharika,Adv. Mr. Aman Shukla,Adv. Mr. Pratap Venugopla,Adv. For M/s. K. J. John & Co.,Adv. |
| | Mr. Gautam Narayan,Adv. Mr. R.A. Iyer,Adv. Mr. Shatrajit Banerji,Adv. |
| | Mr. Siddhartha Chowdhury,Adv. |
| | Ms. Shobha,Adv. Mr. Shrey Dambhare,Adv. |

UPON hearing the counsel the Court made the following
O R D E R

In terms of the signed order, Civil Appeal No.3625 of

2005 filed by the complainant-wife is allowed and Civil Appeal No.4408 of 2005 filed by the Apollo Hospitals Enterprise Ltd. is dismissed:

"Accordingly, Civil Appeal No.3625 of 2005 filed by the complainant-wife is allowed and Civil Appeal No.4408 of 2005 filed by the Apollo Hospitals Enterprise Ltd. is dismissed. We modify the order passed by the Commission, awarding the compensation at Rs.2 lakhs along with interest at the rate of 6% per annum, to payment of compensation to Rs.50 lakhs along with interest at the rate of 9% per annum as full and final settlement of all claims, to be paid within four weeks from the date of receipt of the copy of this Order. It is once again clarified that the liability of the Apollo Hospital and Dr. Mathews towards compensation will be Rs.40 lakhs and Rs.10 lakhs respectively with proportionate interest at the rate of 9% per annum. We further make it clear that in case the Doctor, Dr.Mathews does not deposit the amount as ordered against him, the same shall be paid to the appellant-complainant by the respondent-Hospital and recovered from him. We further direct the respondent-Hospital to comply with this order and submit compliance report to the Registry of this Court within eight weeks from the date of receipt of the copy of this Order."

(MAHABIR SINGH)
COURT MASTER

(VEENA KHERA)
COURT MASTER

(Signed order is placed on the file)

ITEM NO.102

COURT NO.13

REVISED
SECTION XVIIS U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SCivil Appeal No(s). 3625/2005

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| | For M/s. K. J. John & Co.,Adv. |
| For Respondent(s) | Ms. Surekha Raman,Adv. |
| | Ms. Niharika,Adv. |
| | Mr. Aman Shukla,Adv. |
| | Mr. Pratap Venugopla,Adv. |
| | For M/s. K. J. John & Co.,Adv. |
| | Mr. Gautam Narayan,Adv. |
| | Mr. R.A. Iyer,Adv. |
| | Mr. Shatrajit Banerji,Adv. |
| | Mr. Siddhartha Chowdhury,Adv. |
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(MAHABIR SINGH)
COURT MASTER

(VEENA KHERA)
COURT MASTER

(Signed Reportable order is placed on the file)