

**"IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
AT NEW DELHI . .**

**CONSUMER COMPLAINT NO. 479 OF 2017**

**WITH**

**IA/18437/2018, IA/1494/2019, IA/2459/2024**

**(Impleadment of Parties, Placing addl. documents, Placing addl. Documents)**

Mr. Ravi Rai  
S/o Mr. Ram Karan Rai  
R/o E-23, Floor-I, Sushila  
Devi Raod, Adarsh Nagar, Delhi-110033

... COMPLAINANT

Versus

1. FORTIS Healthcare Limited  
Registered Office:  
Escorts Heart Institute and Research Centre,  
Okhla Raod, New Delhi,  
Delhi 110025 India  
Corporate Offcie:  
Tower A, Unitech Business Park,  
Block-F, South City 1, Sector-41,  
Gurgaon, Haryana-122001
2. Fortis Hospital,  
A Block, Shalimar Bagh,  
New Delhi, Delhi 110088
3. Dr. Ashwini Maichand,  
Orthopaedic Surgeon  
MSG Hospital, Rohtak Road,  
West Punjabi Bagh,  
New Delhi-110026  
Email: a\_maichand@yahoo.co.in
4. Dr. Rahul Kakran,  
Orthopaedic Surgeon  
MSG Hospital, Rohtak Road,  
West Punjabi Bagh,  
New Delhi-110026  
Email: rahul.kakran@yahoo.com
5. Dr. Yatish Krishna Nand Sharma,  
Anaesthetist,  
Permanent Address:  
CC-9A, Shalimar Bagh, Near Police Station  
Delhi-110088

... OPPOSITE PARTIES

**BEFORE:**

**HON'BLE MR. JUSTICE A. P. SAHI, PRESIDENT**

**Consumer Complaint No. 479 OF 2017**

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For the Complainants : Mr. Abhinav Shrivastava, Advocate  
Mr. Shivang Rawat, Advocate  
Ms. Amrita Kumari, Advocate

For the Opposite Party : Mr. Pallav Sisodia, Sr. Advocate,  
Mr. Aditya Awasthi, Advocate &  
Mr. Georgey V. Mathew, Advocate for OP1&2  
Mr. K.G.Sharma, Advocate &  
Mr. S.K.Roy, Advocate for OP3  
Mr. Kapil Kher, Advocate,&  
Mr. Sandip Thukral, Advocate for OP4  
Mr. Vikalp Mishra, Advocate for OP5

**PRONOUNCED ON: 24.06.2024**

**ORDER**

1. This is a medical negligence claim wherein the Complainant who is now a working Chartered Accountant was earlier struggling to become one and during his final years of exams, he unfortunately slipped from the stairs and sustained injuries in both his legs as well as the lower back on 19.06.2016.
2. The Complainant was rushed to the Opposite Party No.2, Fortis Hospital, Shalimar Bagh for his treatment where a surgery was planned under the supervision of the Opposite Party No.3, Dr. Ashwini Maichand, who was an Orthopaedic Surgeon in the Hospital. According to the Complainant, he was also assisted in his team by the Opposite Party No.4, Dr. Rahul Kakran, also an Orthopaedician. The Complainant underwent diagnostic X-ray, CT scan and other tests regarding his injuries of a severe fracture in his right foot.
3. The fracture was diagnosed as Comminuted Fracture of the right foot and he was advised by the Opposite Parties to undergo surgery and also screw fixation followed by a cast of Plaster Of Paris.



4. The Complainant was also suggested Physiotherapy for the left leg and the spine that was undergone twice as per the advice of the Opposite Party No.3.
5. The Complainant alleges that the Complainant was never informed of any hairline fracture in his left foot or any fracture in his spine. According to the Complainant, he should not have been sent for Physiotherapy in view of the aforesaid status of his injuries, but the Doctors did not inform him about the same. However, while planning the surgery since the Complainant was Insured by the National Insurance Co. the Third Party Authority namely, Safeway TPA Services Pvt. Ltd was contacted and a pre-authorisation was taken for meeting the expenses of the surgery. An approval of Rs.1 lakh was communicated to the hospital on 20.06.2016. Learned Counsel for the Complainant has invited the attention of the Bench to the preauthorisation letter to urge that it only states the pre-authorisation of treatment for the fracture in the right leg and the surgery to be performed for the same. This document has been filed as Exhibit CW 1/8 at page 53 of the paper book. Learned Counsel for the Complainant has urged that there was no mention of any other treatment having been advised or surgery having been planned.
6. It is urged that on 21.06.2016, he was admitted to the surgery and the Anaesthetist the Opposite Party No.5 administered anaesthesia to him by puncturing his lumbar without noticing the crack/injury in the vertebral column. It is urged that the surgery was performed and when the complainant open his





eyes, he was surprised to find that it was the Opposite Party No.4 Dr. Kakran who had performed the surgery and not the Opposite Party No.3 who did not attend the operation. The Opposite Party No.4 instead of operating his right injured leg for which the surgery was planned, performed a surgery on his left leg which was neither planned nor proposed nor any consent was taken from the Complainant or his attendants.

7. Thus, the allegation is that this gross negligence on the part of the Opposite Parties No.3&4 and the reckless and careless functioning of the hospital left the Complainant with no option to get himself discharged and he approached the Max Hospital for his treatment where he was admitted the very next day.
8. The contention therefore is that this negligence on the part of the doctors and the hospital including the Anaesthetist leaves no room for doubt that the entire team totally unmindful of their job, their skills and obligation had been grossly insensitive and negligent. Consequently the Complainant has suffered immense loss for which he deserves to be compensated for which allegations have been made and documents have been brought on record.
9. Learned Counsel for the Complainant with the aid of his written submissions and compilation of list of dates and events coupled with the various judgments that applicable to the controversy has advanced his submissions in detail. With this background, he also urges that documents were manipulated and interpolated and the doctors' failure, to exercise a reasonable degree of skill and knowledge





and care that was expected of them, was established. The Complainant has also alleged that the failure to clinically examine the Complainant and refer to the X-ray and CT scan reports compounded this negligence. Learned Counsel has also urged that the conduct of the doctors violates the ethical regulations that oblige them not to neglect a patient. He has pointed out to the details of the negligence in planning and executing the surgery and after having placed the entire facts together with the chronology of events and the various orders passed by different Forums concluded his arguments by citing 8 judgments in support of his contentions.

10. The Complaint has been opposed tooth and nail by the Opposite Parties with Mr. Sisodia, learned Senior Counsel leading the arguments on behalf of the Opposite Parties No.1&2 Hospital. He submits that there was no negligence on the part of the doctors and even otherwise at the most it could be a professional error of judgment which cannot be bracketed as a negligence He has advanced his submissions contending that the Complainant had injuries in both the legs as he had a hairline fracture in the left leg which was attended to by the Doctors, and therefore the surgery on the left leg by simply putting a screw to strengthen the fracture bone was not against any medical protocol, but was for the benefit of the Complainant. Even otherwise, if there was a conservative treatment advisable for a hairline fracture, the treatment of the left leg by surgery was not against medical protocol, and therefore the surgery on the left leg instead of the



right leg was not a negligent conduct. The decision taken by the Doctor therefore was justifiable but he submits that even otherwise if the conduct of the doctors was questionable on any ground, no liability can be fixed against the Hospital by imputing negligence or deficiency in service on the part of the Hospital.

11. Mr. Sisodia has however more vehemently submitted that the present complaint should not be entertained as the Complainant cannot be permitted to invoke the pecuniary jurisdiction of this National Commission through an exaggerated claim and for that he submits that a perusal of paragraph 10 & 11 of the Complaint as answered by the Opposite Party Hospital in its written version in paragraph 1&3 and paragraph 1 of the preliminary objection as well as paragraph 10&11 of the written statement leaves no room for doubt that the Complainant has completely failed to adduce any evidence to justify the quantum of his claim on any of the heads as referred to in paragraph 11 of the Complaint. He submits that in the absence of any evidence to quantify the claim or any justification in support thereof all claims are exaggerated with a view to attract the pecuniary jurisdiction of this National Commission and hence in the absence of any cogent material, the pecuniary jurisdiction of this Commission is not attracted and the Complaint should be dismissed leaving it open to the Complainant to approach the appropriate fora that may possibly have the pecuniary jurisdiction to entertain this claim. He has cited the decision of this





Commission in the case of ***Indrani Chatterjee Vs. AMRI Hospitals decided by a Bench on 07.11.2014 and reported in 2014 4 CPR(NC) 681.***

12. He has also relied on the decisions regarding medical negligence and the manner to calculate the quantum of compensation that have also been cited by the learned Counsel for the Complainant to urge that a speculative demand with no foundation should not be made the basis of entertaining the Complaint by the National Commission as it would be lacking pecuniary jurisdiction and hence the Complaint should not be entertained. By questioning the basis of the quantum of compensation, Mr. Sisodia has doubted the basis of pecuniary jurisdiction available to the commission.
13. Mr. KG Sharma, learned Counsel for the Opposite Party No.3 has defended Dr. Ashwini Maichand to urge that the said Opposite Party was not available throughout the surgery, and therefore there cannot be any presumption of consultation made with him for having operated the left leg of the Complainant instead his right. He, however, submits that the right leg was not capable of being operated on account of the swelling on it that has been explained by the Opposite Party No.4 and even though the Opposite Party No.3 was the Orthopaedic Surgeon, he did not operate on the Complainant causing any injury nor was he negligent in any way and hence no deficiency or medical negligence against the Opposite Party No.3 is made out. He has also cited a scientific report on a comparative study of operative and conservative treatment in respect of





Calcaneal Fractures. He submits that there cannot be a medical negligence presumed if the fixation of the hairline fracture in the left leg was undertaken by fixing a screw which is permissible under medical protocols, and according to him and the literature cited by him, observations certified that surgical methods adopted have been more effective and operations have been successful to a great extent in healing hairline fractures. He therefore submits that this was a decision that was taken in respect of left leg during operation inside the OT which is within the medical protocols and cannot be said to be an act of negligence.

14. He, however, submits that the patient on his own went away to another Hospital for his treatment of the right leg where also in the discharge summary that is of the Max Hospital indicates that the surgery performed at Fortis Hospital was not against any medical protocol. He submits that the Medical Council of India has indicated only a warning against the Opposite Party No.4 which does not amount to confirming any finding of gross medical negligence on the part of the Opposite Party No.3. He has also taken the Commission through various orders and the facts on record to urge that there is neither any convincing or clinching evidence to accept any negligence on the part of the Opposite Party No.3 who was only the supervising surgeon.

15. Mr. Kher along with Mr. Sandeep Thukral for the Opposite Party No.4 surgeon urged that the decision taken to operate on the left leg is a conscious decision



by a doctor that cannot be questioned. It is not the case of the Complainant that the surgery went wrong or any complications arose so as to inflict any adverse consequences on the Complaint. The submission is that the decision which was taken as a team work was fully justified and in the given circumstances was clearly to medically rectify the injuries caused to the Complainant. The Complainant has recovered and is fully operational and hence any damages claimed and its quantum is absolutely unjustified and untenable.

16. Learned Counsel, for the Opposite Party No.5 who is the Anaesthetist, urges that there is no adverse material in so far as the Anaesthetist is concerned and according to the chart which was given to the Opposite Party to make preparations for administration of Anaesthesia to the Complainant did not mention any fracture in the Vertebral Column or Spinal Cord of the Complainant. The Opposite Parties No.3&4 never informed the Opposite Party No.5 of any such description affecting the lumbar or spinal region of the Complainant and the administration of Anaesthesia in no way has been either negligent or contrary to medical norms nor any injury was caused by his performance. Consequently, the answering Opposite Party cannot be held liable for any negligence much less a medical negligence.

17. All the learned Counsel for the Opposite Parties have also adopted the arguments advanced by Mr. Sisodia regarding the exaggerated amount of



compensation claim by the Complainant which is unsubstantiated by any proof or material on record.

18. It is in this background that the chronology of events should now be referred to in order to appreciate the arguments advanced by the learned Counsel for the Parties.

19. The documents which have been made available and have been filed along with this complaint consists of the discharge summary issued by the Opposite Party No.2 Hospital dated 21.06.2016. The same is extracted hereinunder:-

**"Discharge summary"**

Name: Ravi Rai

UHID: 682603

DOA: 19-6-2016

CONSULTANTS: Dr. Ashwani Maichand/Dr. Rahul Kakran

DEPARTMENT: Orthopaedics

Age/Sex: 24/M

IPID:000682603, Bed No-305/2

DOD:21<sup>st</sup> June, 2016

**DIAGNOSIS:**

Fracture Right Calcaneum with ? Fracture Calcaneum Left Foot.

**CHIEF COMPLAINTS:**

Pain and swelling both heels right greater than left, after a fall on 19<sup>th</sup> June, 2016.

**HISTORY OF PRESETN ILLNESS:** Patient was apparently well till 5:30 PM on 19<sup>th</sup> June 2016 when he got injured due to fall on stairs at home. Now he has come with above complaints for further complaints.

**PAST HISTORY:**

Nothing significant

**ON EXAMINATION:**

|       |   |                     |
|-------|---|---------------------|
| GC    | - | Conscious, oriented |
| Temp  | - | Afebrile            |
| BP    | - | 110/80mmHg,         |
| PR    | - | 80/Min              |
| RR    | - | 22/Min              |
| Chest | - | B/L clear           |
| CVS   | - | S1,S2 Normal        |
| CNS   | - | NAD                 |
| P/A   | - | Soft, BS(+)         |
| L/E   | - | Both Hips           |

Tenderness and swelling present over both heels (Right greater than left)

B/L ankle movements painfully restricted

No distal neurovascular deficit





COURSE IN THE HOSPITAL: After doing necessary investigation and taking fitness from anesthesia teams, patient was planned for surgery. Written and informed consent was taken and all the pro and cons of the procedure explained in details.

SURGERY/PROCEDURE DONE:  
CCS Screw fixation Calcaneum Left Side.

INVESTIGATIONS: as attached

TREATMENT GIVEN: Inj. Supacef, Inj. Pantocid, Inj. Emeset, Inj. PCM, Inj. Tramadol, Tab. Disperzyme, Cap. Vizylac.

ADVISE ON DISCHARGE.

- |                                      |                                              |
|--------------------------------------|----------------------------------------------|
| 1. TAB. Ceftum 500MG                 | 1 TAB TWICE DAILY FOR 5 DAYS                 |
| 2. TAB. Voveron -SR                  | 1 TAB TWICE DAILY AFTER MEALS FOR 5 DAYS     |
| 3. TAB. ULTRACET                     | 1 TAB TWICE DAILY FOR 5 DAYS                 |
| 4. TAB. PANTOCID 40MG                | 1 TAB ONCE DAILY BEFORE BREAKFAST FOR 5 DAYS |
| 5. TAB. DISPERZYME                   | 1 TAB TWICE DAILY BEFORE MEALS FOR 5 DAYS    |
| 6. TAB. SHELICAL-CT                  | 1 TAB ONCE DAILY FOR 7 DAYS                  |
| 7. CAP. VIZYLAC                      | 1 CAP ONCE DAILY                             |
| 8. CONTINUE PHYSIOTHERAPY AS ADVISED |                                              |

FOLLOW UP:

- To review in Ortho OPD with Dr. Ashwani Maichand/Dr. Rahul Kakran after 7 days with prior appointment by 9999074745.
- In case of any complication like unexpected severe pain, soakage, fever kindly consult.

Sd/-  
Signature of consultant

Signature of Resident"

20. An FIR was also lodged on 22.06.2016 at PS Shalimar Bagh lodging criminal negligence against the Opposite Party No.3.
21. The complainant was admitted in Max Hospital on 22.06.2016 and were discharged on 27.06.2016. The discharge summary from Max Healthcare Centre is extracted hereinunder:-



## DISCHARGE SUMMARY

PATIENT NAME: RAVI, RAI

AGE/SEX: 24 YEAR/MALE

LOCATION NAME SHBG-7THFLR-MST

SSN NO: 170-129-929

CONSULTANT: PALASH GUPTA

DOA: JUNE 22, 2016 15:04

Date and Time of Discharge  
22 JUNE 2016 @ 12.47 PM

### Indication for admission

R/O FALL FROM STAIRS ON DATE 19 JUNE 2016 AT HOME PT PRESENT HERE WITH  
R/O PAIN AND SWELLING OF THE BILATERAL HEEL REGION WITH LOW BACK PAIN.

### Diagnosis

UNDISPLACED FRACTURE L1 VERTEBRAE WITH NO NEUROLOGICAL INVOLVEMENT WITH  
FRACTURE CALCANEUM (COMMUNICATED) RIGHT SIDE WITH OPERATED CASE OF  
FRACTURE CALCANEUM LEFT (ELSEWHERE)

### Presenting Complaints

PATIENT HAS HISTORY OF FALL FROM STAIRS AT HOME ON DATE 19 JUNE 2016.  
PRESENTED WITH COMPLAINT OF PAIN AND SWELLING OF THE BILATERAL HEEL  
REGION ASSOCIATED WITH DIFFICULTY IN BEARING WEIGHT OVER BILATERAL  
HEEL REGION SINCE INJURY. WITH LOW BACK PAIN.  
AS PER PATIENT DISCHARGE SUMMARY OF FORTIS HOSPITAL, SHALIMAR BAGH DATED  
21 JUNE 2016 PATIENT WAS TAKEN TO FORTIS HOSPITAL, SHALIMAR BAGH AND  
DIAGNOSED AS FRACTURE RIGHT CALCANEUM WITH, ? FRACTURE CALCANEUM LEFT  
SIDE HE UNDERWENT CANNULATED CANCELLEOUS SCREW FIXATION CALCANEUM LEFT  
SIDE IN ABOVE HOSPITAL. NOW PATIENT CAME TO MAX HOSPITAL, SHALIMAR  
BAGH ON DATE 22 JUNE 2016 FOR FURTHER MANAGEMENT.

### On Examination (At Admission)

PULSE : 89/MIN

BP : 110/70 MM HG

PERIPHERAL PULSES : YES

TEMPERATURE : 98.3 F

CHEST : B/L AE+

CVS : S1S2 HEARD

ABD : SOFT, NAD

EXT :

RIGHT HEEL :

SWELLING +

RANGE OF MOTION RT ANKLE AND SUBTALAR JOINTS ARE PAINFUL

TENDERNESS +

PERIPHERAL PULSES PALPABLE +

ACTIVE FINGER MOVEMENT +

LEFT ANKLE: FIBER CAST PLASTER IN SITU

ACTIVE FINGER MOVEMENT +

DISTAL CAPILLARY CIRCULATION INTACT

Max Super Speciality Hospital, Shalimar Bagh  
C-10 Block, Shalimar Bagh, New Delhi - 110 088. Phone +91-11-4642 2222 4978 2222  
Max Healthcare Institute Limited  
CIN: 072200DL2001PLC113133  
Max House 1 Dr Jha Marg, Okhla, New Delhi - 110 020  
Phone: 11 4172 0600 Fax: +91-11-4161 2155 E-mail: secretarial@maxhealthcare.com



SPINE : TENDERNESS PRESENT AT LUMBAR SPINE  
NO DISTAL NEUROVASCULAR DEFICIT

NEURO : CONSCIOUS, ORIENTED, NO FOCAL NEURO DEFICIT

**Referrals**

DR. RAKESH NUMAR DUA - NEUROSURGERY

**Operative Notes**

DATE OF SURGERY : 24/6/2016

SURGERY DONE : CLOSED REDUCTION AND INTERNAL FIXATION WITH STAR  
SHAPE HEAD SCREWS WITH BELOW KNEE PLASTER OF PARIS SLAB APPLICATION

PATIENT IN SUPINE POSITION RIGHT SIDE FOR FRACTURE CALCANEUM RT

ANESTHESIA : GENERAL ANAESTHESIA WITH BLOCK

IMPLANTS : TITANIUM STAR SHAPED HEAD SCREWS WITH WASHER

**Hospital Course**

24 YEARS OLD MALE, WAS ADMITTED WITH ABOVE MENTIONED HISTORY AND  
COMPLAINTS ON 22.06.2016. ROUTINE INVESTIGATIONS WAS DONE. NEUROSURGERY  
CONSULTATION WAS SOUGHT AND ADVICE FOLLOWED. FOR ORTHOPEDICS PROBLEM  
SECOND OPINION WAS TAKEN BY DR RAJIV MAHESHWARI/ DR AMARJIT SINGH AND  
ADVISED FOLLOWED. MRI LUMBOSACRAL SPINE SHOWED L1 COMPRESSION FRACTURE.  
L1 LUMBAR SPINE WAS DONE SHOWED UNDISPLACED L1/NO RETROPULSION/THECAL  
COMPRESSION. PATIENT WAS TAKEN UP FOR SURGERY AFTER PAC CLEARANCE.  
PATIENT UNDERWENT CLOSED REDUCTION AND INTERNAL FIXATION WITH STAR  
SHAPE HEAD SCREWS WITH BELOW KNEE PLASTER OF PARIS SLAB APPLICATION IN  
SUPINE POSITION RIGHT SIDE FOR FRACTURE CALCANEUM RIGHT WITH REMOVAL  
OF BELOW KNEE CAST AND DRESSING DONE AT LEFT SIDE HEEL ON 24.06.2016.  
POST OPERATIVE PERIOD WAS UNEVENTFUL. REGULAR MONITORING WAS DONE. NOW  
PATIENT IS FEELING BETTER AND IS BEING DISCHARGED IN STABLE CONDITION  
WITH FOLLOW UP ADVICE. AT THE TIME OF DISCHARGE DRESSING WAS DONE AT  
BILATERAL HEEL REGION. THERE WAS NO SIGN OF INFLAMMATION, INFECTION IN  
DRESSING.

**Condition at Discharge**

NO PAIN

VITAL STABLE

APPROPRIATE

**Investigations**

ALL ROUTINE INVESTIGATION WAS DONE AND ATTACHED WITH FILE.

**Treatment Given**

INJ AMIKACIN, INJ CEFUROXIME, INJ CLOZ, INJ PARACETAMOL AND OTHER  
SUPPORTIVE

MEDICATIONS.

**Discharge Medications**

TAB CEROXIN 500 MG 7 DAYS TWICE DAILY AFTER BREAKFAST AND AFTER DINNER  
TAB LINX 600 MG BD 7 DAYS TWICE DAILY AFTER BREAKFAST AND AFTER DINNER  
TAB ANLEO BD 7 DAYS TWICE DAILY BEFORE BREAKFAST AND BEFORE DINNER  
\* TAB PRXYSM XT SOS IF C/O PAIN  
TAB ANCAL FORTE 1 OD 7 DAYS ONCE A DAY ANY TIME



CAR PURTIA PLUS 1 OD 7 DAYS ONCE A DAY ANY TIME  
 CAB ULTRACET SOS FOR ACUTE PAIN IF REQUIRED  
 ABSOLUTE BED REST FOR 4 WEEKS  
 TO BE REVIEWED AFTER 1 WEEKS FOR CHANGE OF DRESSING.  
 AS ADV BY DR. RAKESH DUA : (NEUROSURGEON)

CORSC LUMBAR BRACE  
ABSOLUTE BED REST  
NO VOLTPERITAS - 0 BID FOR 5 DAYS 0-6

ALL ABOVE MENTIONED MEDICATION FOR TILL NEXT FOLLOW UP.

**Discharge Advise**  
 NOT TO TAKE MEDICATION FOR NON ORTHOPAEDIC COMPLAINTS  
 ABSOLUTE BED REST FOR 4 WEEKS  
 TO BE REVIEWED AFTER 1 WEEKS FOR CHANGE OF DRESSING.  
 FU AFTER 1 WEEKS WITH PRIOR APP. DR. PALASH GUPTA (9810143845) DR. SEN  
 (9910029080) / DR. RITESH BANG (9810079390)

**Diet Plan**  
 AS PER DIET CHART

**Follow-Up Instructions**

PLEASE FOLLOW-UP WITH DR. PALASH GUPTA IN ORTHOPAEDICS OPD AFTER 7  
 DAYS.  
 PLEASE VISIT THE FRONT-OFFICE TO GET YOUR NEXT APPOINTMENT BOOKED OR  
 CALL AT  
 011-5642-2222.  
 AVOID CHANGING/STOPPING MEDICINES WITHOUT MEDICAL GUIDANCE.  
 PATIENT WAS VERBALIZED UNDERSTANDING OF THE DISCHARGE INSTRUCTIONS.  
 IN CASE OF  
 PAIN & SWELLING  
 CONTACT MAX HOSPITAL AT 011-4055-4055.

/s/ ASHISH KUMAR GUPTA  
 Attending Consultant  
 Signed: 27/06/2016 12:50

/s/ ASHISH KUMAR GUPTA  
 Attending Consultant  
 Signed: 27/06/2016 12:50  
 for PALASH GUPTA  
 MBBS-1994, M.S. (Orthopaedics)-1999

**Consumer Complaint No. 479 OF 2017**



22. The Delhi Medical Council through its disciplinary Committee took Suo Moto Notice of media reports alleging medical negligence against the Complainant. A written letter from the Station House Officer Police Station Shalimar Bagh was also received by the Delhi Medical Council and similarly representations were forwarded from the office of the DCP Northwest District Delhi seeking medical opinion in respect of the allegation of medical negligence. The disciplinary Committee examined the matter and the Complainant as well as his father and sister were heard in person. The copy of the medical records were also received and a joint written statement of the Opposite Party No.3 Dr Ashwini Maichand, the Opposite Party No.4 Dr Rahul Kakran and the Opposite Party No.5 Dr. Yatish Sharma was also received who were also heard in person. In addition thereto Dr. Pawan Khurana the Deputy Medical Superintendent Fortis Hospital and Ms. Deepti Jha, the Physiotherapist of the hospital were also heard. After recording all the statements, the disciplinary Committee made its observations coming to the conclusion that Dr. Ashwini Michand Opposite Party No.3 and Dr Rahul Kakran failed to exercise reasonable degree of skill, knowledge and care that was expected of an ordinary prudent doctor in the treatment of the patient, namely the Complainant Mr. Ravi Raj. It was therefore recommended that the names of the doctors namely the Opposite Parties No.3&4 be removed from the State Medical Register of the Delhi Medical Council for a period of 6 months (180 days). This report and decision was recommended by a team of 5 doctors



consisting of the Chairman, the Legal Expert and 3 Expert Members that were confirmed by the Delhi Medical Council in its meeting held on 19th January 2017 and the order in pursuance thereof promulgated on 30th January 2017.

23. This order of the Medical Council scans the facts in detail and also records the negligence step by step that was observed while recording the findings. The said report therefore needs to be reproduced in entirety.

"DMC/DC/F.14/Comp.1888/2/2017/258746

30<sup>th</sup> January, 2017

### **ORDER**

*The Delhi Medical Council through its Disciplinary Committee examined a suo moto notice of media reports, alleging medical negligence on the part of doctors of Fortis Hospital, Shalimar Bagh, New Delhi-110088, in the treatment administered to the patient Shri Ravi Rai, who underwent operation for a fracture on wrong side.*

*The Order of the Disciplinary Committee dated 16<sup>th</sup> January, 2017 is reproduced herein-below :-*

*The Disciplinary Committee of the Delhi Medical Council examined a suo moto notice of media reports, alleging medical negligence on the part of doctors of Fortis Hospital, Shalimar Bagh, New Delhi-110088, in the treatment administered to the patient Shri Ravi Rai (referred hereinafter as the patient), who underwent operation for a fracture on wrong side.*

*The Disciplinary Committee further noted that in reference to this matter, a representation from SHO, Police Station Shalimar Bagh (FIR No.424/16 dated 22-06-2016 P.S. Shalimar Bagh) informing about alleged medical negligence in the treatment administered to Shri Ravi Rai in Fortis Hospital, Shalimar Bagh, Delhi, has already been received in the Delhi Medical Council. Similarly, a representation from DCP (North West District) Delhi, forwarded by the Govt. of NCT of Delhi, seeking medical opinion in respect of alleged*





*medical negligence in the treatment administered to Shri Ravi in Fortis Hospital, is also under consideration of the Delhi Medical Council*

*The Disciplinary Committee perused the media reports, representation from Police, complaint of Shri Ram Karan Rai, joint written statement of Dr. Ashwani Maichand and Dr. Rahul Kakran, written statement of Dr. Yatish Sharma, copy of medical records of Fortis Hospital and other documents on record.*

*The following were heard in person :-*

- |                         |                                                |
|-------------------------|------------------------------------------------|
| 1) Shri Ram Karan Rai   | Complainant                                    |
| 2) Shri Ravi Rai        | Patient                                        |
| 3) Ms. Rreena Rai       | Daughter of the complainant                    |
| 4) Dr. Ashwani Maichand | Consultant Orthopaedics, Fortis Hospital       |
| 5) Dr. Yatish Sharma    | Anaesthetist, Fortis Hospital                  |
| 6) Dr. Rahul Kakran     | Associate Consultant, Fortis Hospital          |
| 7) Dr. Pawan Khurana    | Deputy Medical Superintendent, Fortis Hospital |
| 8) Ms. Dipti Jha        | Physiotherapist, Fortis Hospital               |

*The patient Shri Ravi Rai alleged that he slipped from the stairs and sustained injury on both his legs and on his lower back on the evening of 19<sup>th</sup> June, 2016. His father rushed him to the emergency at Fortis Hospital, A-Block, Shalimar Bagh, Delhi-110088 which is a hospital set-up by Fortis Healthcare Limited. He got registered as IPID No.000682603 and was given bed No.305/2. Under the supervision of Dr. Ashwani Maichand, Senior Doctor and Dr. Rahul Kakran, Orthopaedics Department at Fortis Hospital, Shalimar Bagh, Delhi, he underwent diagnostic X-ray for Right foot on 19.06.2016. He has the X-ray film, which he is submitting to the Council for consideration, however, the hospital did not provide him with the report. He was informed that there was a fracture in his right foot and, therefore, CT scan was done on the right foot on the 20.06.2016. The payment of the same was done and the bills were issued. Also, x-ray for the Left leg was done on 20.06.2016 alongwith*



the x-ray for the back-bone. CT scan was also done for the right leg and back-bone. The doctors at the hospital informed him that there was a comminuted fracture on his right foot and that the condition was serious. Therefore, he would have to undergo surgery for screw fixation on the right foot followed by plaster of paris cast. Also, the doctors suggested physiotherapy for the left leg and spine after considering the x-ray. He also underwent physiotherapy twice according to the advice of Dr. Ashwani Maichand. However, it was later found out that there was a fracture on the spine which was never informed to him by the doctors. The physiotherapy was not the right course of the treatment as he ought to have been put on complete bed rest. At the counselling desk of the hospital a total cost of Rs.1,48,088/- approximately to undergo the surgery was communicated to his father. As he was covered by cashless medical insurance by the National Insurance Co., the TPA which was Safeway TPA Services Pvt. Ltd., was contacted and pre authorization was taken for ORIF/CRIF for comminuted fracture on the right foot. The pre-authorization approval for an amount of Rs.1,00,000/- was communicated by the TPA to the hospital vide letter dated 20.06.2016. He was taken in for surgery on his right foot. The right foot was even marked with a marker before the surgery. He has photograph which he took after the surgery showing clearly the marking on the right foot. He was turned over and was put under anaesthesia. He was injected anaesthesia in the spine, which he later found out should not have been done considering there was injury in the spine. He was operated upon by the doctors at fortis hospital. This was gross medical negligence, as with the fracture on the spine; he should not have given the anaesthesia. This could have impacted him in the long term. When he woke up, he was shocked to see that his left foot was operated upon. There was no fracture on his left foot. Doctors, however, operated upon his left leg wrongly and put multiple screws inside the left foot instead of the injured right one. He was admitted to the hospital under the supervision and care of Dr. Ashwani Maichand. He was responsible for his operation. He (Dr. Ashwani Maichand) had a duty of care towards him. The operation was done on his (Dr. Ashwani Maichand) recommendation. He was never informed or his consent was never taken for the operation of his left foot. There was no requirement of the operation on his left foot, which did not have any fracture. By sheer callous medical negligence of the doctors, his healthy uninjured foot was operated upon.





The doctors inserted screws in the bones of his healthy left foot and also the anaesthesia which was wrongly given. It is unfathomable for him as to how the operating team has disregarded and sidestepped due processes. The doctors had a duty to act with a reasonable degree of care and skill while operating on him and they have miserably failed to perform that duty. He had to make the doctors realize that his wrong foot was operated upon. It was only after sometime that the doctors realized that they had committed a gross medical negligence. A discharge summary dated 21.06.2016 was provided to him in which false and incorrect facts have been mentioned to cover-up the negligence of the doctors. The Discharge Summary has been manipulated and interpolated to include false information that there was fracture in his left foot. There was no whisper of there being any fracture in his left foot, up till the extreme medical negligence had taken place. His father requested but was not provided with any of his diagnostic papers or reports except for the X-ray and CT- scan films which he took with him forcefully. He has suffered irreparable loss and he is suffering pain due to the evident negligence of the doctors at fortis hospital. He has also been informed that the management of the hospital has accepted and acknowledged that there was negligence on their part in operating on the wrong foot. Having lost all faith in the hospital and the doctors his father requested for discharge and he was shifted to another hospital where he underwent the surgery in the right foot. An FIR No 424 of 2016 dated 22.06.2016 has been lodged under Section 336/338/34 of IPC in PS. Shalimarg Bagh against the doctors. He got himself checked at Babu Jagivan Ram memorial Hospital, Delhi on 02.08.2016 as per the instruction of the Investigating Officer. The Regulation 1.3.2 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics), Regulations, 2002 mandates that "if any request is made for medical records either by the patients / authorised attendant or legal authorities involved, the same may be duly acknowledged and documents shall be issued within the period of 72 hours". All registered medical practitioners and hospitals / Nursing Homes have been directed to strictly adhere to the aforementioned regulation as failure to do so, constitute professional misconduct and entail disciplinary action. Clearly the hospital and the doctors failed to do the above and are, therefore, liable for professional misconduct. He faced immense difficulty in getting further treatment at the hospital he was taken to, after being





wronged at their hospital. He had to wait longer to be able to get proper treatment and the diagnosis had to be done again. The doctors of the new hospital did not have any information as to what had happened at fortis hospital due to the non-availability / incorrect information of the discharge summary or the reports. The incident speaks for itself and no proof of negligence is required as such. The doctors have shown complete disregard to his pain and suffering while committing an act of extreme medical negligence. The wrong treatment has further extended his agony and the recovery time for him. The mental harassment and the psychological impact of the wrong treatment are immense. It is not only the doctors failure but an organizational failure and a failure of all those who were involved in the operation employed by the hospital to perform their legal duty with care with respect to his treatment. The hospital is equally liable as they had approached the hospital based on its claim of having world class facility and having super-specialty and the Hospital failed to deliver on such quality standards which directly resulted in the injury caused to him. The management and handling of his treatment by the Hospital before and after the surgery also reflects malpractice on the part of the Hospital. He prays that the names of the doctors be removed from the register permanently as they are guilty of gross medical negligence unbecoming of a doctor.

Dr. Ashwani Maichand and Dr. Rahul Kakran in their joint written statement averred that the first and foremost basis of this case is the allegation of performing the surgery on the wrong foot, they strongly disagree with this statement and wish to produce the CT scan report dated 23<sup>rd</sup> June, 2016 of Max Hospital, Shalimar Bagh, New Delhi, which clearly states and they quote "multiplanar undisplaced fracture left calcaneum is noted with extension to anterior tubercle and calcaneo-cuboid articulation laterally, sustentaculum tali medially, posterior talo-articulation, and plantar surface. No obvious articular disruption is seen in situ. Tibiotalar and distal tibiofibular articulation is normal". This report pertains to the left foot post-surgery which as per the patient Shri Ravi Rai is wrong foot. The CT scan report mentioned above, proves that velocity of the trauma was high and the injury on the left calcaneum was severe. There indeed was a fracture on the left foot. The same was operated upon and fixed. They do not understand why is then there such a hue and



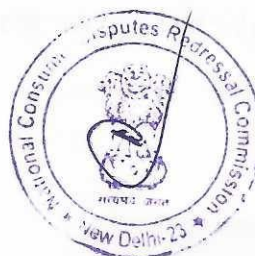
*cry raised about a surgery which was done with precision. The fact that the patient was admitted to another hospital-Max Hospital, Shalimar Bagh, New Delhi and team of doctors did not remove the screws from the left foot even after giving comments in media that screws would have to be removed from the undamaged heel first, as per page 2 of the Times of India newspaper dated 23<sup>rd</sup> June, 2016. Both the fractures were analyzed inside the OT under the C-arm guidance, after discussion it was decided to operate the left foot first as the same was minimally displaced. There was risk of fracture collapsing on left side and considering the young age of the patient, the same would have resulted in painful ankles in both left and right side had the fracture on the left foot was not fixed. Left foot was operated keeping the patient's benefit as the sole focus. The fact that there could be questions on the line of the treatment that whether a surgery was required to fix the left foot calcaneum fracture or the same could have been conservatively treated, they wish to tell the Hon'ble Council that surgery in treating such fractures helps reducing the risk of pain walking more as compared to the conservative style. The surgery further reduces the risk of swelling, reflex sympathetic dystrophy and osteoporosis. Please refer to article published in journal research of medical sciences 2011-operative compared to non-operative treatment of displaced intra-articular calcaneal fractures. The fact that the right foot was not operated first was due to swelling in the right foot where the surgeries in such cases are not recommended because of higher chances of infection, blister formation, skin necrosis and compartment syndrome. Please refer to BMJ July 2014-Research article on operative versus non-operative treatment for closed displaced, intra-articular fractures of the calcaneus; randomized controlled trial. The false and baseless allegations on them have resulted in so much stress and irreparable damage to their name and reputation at such a delicate state of their career when they are trying to establish their name like a brand-a brand of quality and trust. They are very much aware that these can be attained through a good track record, continuous learning and development and above all, through the positive and good opinion by the patients, thereby, keeping the patients at the center of everything they do. The untrue allegations has caused so much damage to them and their reputation that their services were terminated with immediate effect from Fortis-a hospital of utmost repute and is one of the dream hospital in any doctor's career, under the*





media pressure. Their families have suffered so much mental trauma and stress in all these times and are still not able to overcome it. The other hospitals are hesitant and reluctant to give them job and they have a family to feed. Their life has completely turned upside down suddenly where they are already branded as negligent doctors by the media. The day of 21<sup>st</sup> June, 2016 still haunts them and they cannot forget the question being raised about their competence as a surgeon. It raises question in their mind that whether their belief of keeping the patient's interest at the center of everything they do, is a good belief or not. Should they not do things in the interest of the patient even if it means changing the plan for the betterment inside the OT? What is the message they want to send out to thousands of doctors who work day and night tirelessly to attend the patients and really look after them diligently even at odd hours, works almost seven days a week. The very basis of this case is the allegation for the surgery on the healthy foot, which is a false and untrue statement. There is clear evidence from the CT scan report, which proves fracture on left foot. The CT scan report dated 23<sup>rd</sup> June, 2016 of Max Hospital, Shalimar Bagh, New Delhi, clearly states and they quote "Multiplanar undisplaced fracture left calcaneum is noted with extension to anterior tubercle and calcaneo-cuboid articulation laterally, sustentaculum tali medially, posterior tal-calcaneal articulation, and plantar surface. No obvious articular disruption is seen. Evidence of surgical screws in situ. Tibiotalar & distal tibiofibular articulation is normal". This report pertains to the left foot post-surgery which as per the patient is the wrong foot.

On inquiry by the Disciplinary Committee, Dr. Ashwani Maichand stated that there was suspicion of spine fracture and also suspicion of hair line fracture of left foot. He asked for x ray of the left ankle and foot after he noticed a significant swelling on left foot. There was a ? Fracture of left calcaneus and he instructed for ice packs and only toe movements and did not apply a plaster slab. The patient had complained of pain in his back but he did thought this was due to any spinal fracture though the X-ray report showed fracture. He allowed the patient to stand with walker with only toe movements. He did not instruct physiotherapist to allow partial weight bearing on left lower limb. On further enquiry, Dr. Ashwani Maichand stated that weight bearing would have been allowed on the left side



*with the ? hairline fracture after eight weeks even if surgery is not performed and eight weeks even when surgery is performed. He further stated that even though the patient Shri Ravi Rai was admitted under him, the surgery was performed by Dr. Rahul Kakran, as they work as a team.*

*Dr. Ashwani Maichand further stated that x-ray report was normal spine. He had given verbal instruction to physiotherapist for carrying out physiotherapy exercise.*

*Dr. Rahul Kakran reiterated the stand taken by Dr. Ashwani Maichand.*

*On inquiry by the Disciplinary Committee, Dr. Rahul Kakran confirmed that the surgery at Fortis Hospital on Shri Ravi was performed by him only and not Dr. Ashwani Maichand, as they work as a team. He also admitted that before the surgery, he had not physically examined Shri Ravi Rai, even once. He further stated that the comminuted fracture was on the right calcaneum. On the left foot there was obvious swelling and suspicion of hair line fracture. The plaster on right side was removed after spinal anaesthesia in the operation theater. The change of plan was made in the OT after removal of plaster on the right side finding excessive swelling on right side, as it would have been better to operate on the less injured left side (hairline fracture) to enable the patient to bear weight on the less painful side.*

*Dr. Rahul Kakran further stated that he took the patient for right side operation. Left foot operation was to be decided in O.T. In the O.T., he decided to operate on the left foot. He further stated that hair line undisplaced fracture of calcenium is generally treated conservatively. If it is multiplanar fracture then it requires fixation.*

*Dr. Yatish Sharma in his written statement averred that at 4.00 p.m., he, came to post-operative area and asked the O.T. coordinator which is next patient to be taken up. O.T. coordinator told him that ankle fracture patient of Dr. Ashwani Maichand. Circulating nurse Shri Dilip was also standing there. He asked the coordinator to call the surgeon. O.T.*





coordinator said she will call him. Then he took the surgical safety check list from Shri Dilip and asked the patient about his details. He told him his name, how the injury happened. He also asked him which site is to be operated. He told him right side. There was a slab applied on it and there was a mark on right toe. He checked it; he checked the anaesthesia and the surgery consent. He also informed him anaesthesia plan, to which he said ok (spinal). He filled the rest of the surgical safety check list and asked the technician Shri Sushant who also also standing beside him to wheel in the patient when Dr. Rahul Kakran came. Dr. Rahul Kakran came and he alongwith circulating nurse and technician wheeled in the patient. They shifted the patient to OT table. They applied monitors and checked the vitals. He told the technician that he is getting scrubbed. He came after scrubbing; he prepared everything for spinal anaesthesia. Then, he told the patient that they will make a list. He said ok. He asked the technician to make him sit. Then after painting and draping, giving local, he gave him spinal anaesthesia. Then, he made him supine. After five minutes, he asked the patient, if his legs are numb, he said yes. Then he told Dr. Rahul Kakran, he can remove the slab. He with help of the technician removed the slab. Dr. Rahul Kakran was checking in C-arm and he was talking to the patient, if he was ok. Dr. Rahul Kakran told that make the patient prone. He with the help of technician made the patient prone. Dr. Rahul Kakran painted and draped the patient. At that time, the patient developed bradycardia of around 38/min. He gave him glycopyrrolate and waited for the heart rate to come up. It took five-seven minutes for the heart rate to come around 60-70/min. He asked the technician to prepare one more dose of glycopyrrolate and keep it ready. He kept talking to the patient. The patient said he is fine. Then the time out was done. In Fortis Hospital the surgeon is asked if correct side is prepared to which surgeon always says yes (after checking), (No right or left side is said). This is the practice which he has been seeing. He was asked about the antibiotic prophylaxis, to which he replied yes. Then, the surgery was started. He remained busy with his anesthesia part that the patient should not develop bradycardia again. Then the surgery was completed and cast was placed. He asked the patient if he was fine and he said yes. The patient was shifted to post-operative area.



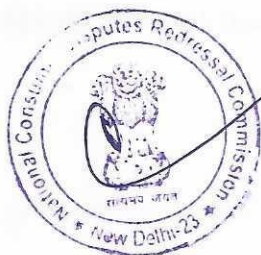
*On inquiry by the Disciplinary Committee, Dr. Yatish Sharma stated that everything for surgery was planned for right foot. There was no suspicion of spine fracture conveyed by the orthopaedic surgeons. The spinal anaesthesia was given in a sitting position and the patient was made prone after spinal anaesthesia.*

*Dr. Pawan Khurana, Deputy Medical Superintendent, Fortis Hospital stated that the C-arm images are not maintained at Fortis Hospital, hence, are not available. He further stated that the original case sheet is with the police. He filed CD and x-ray reports alongwith surgical safety check list adopted by Fortis Healthcare.*

*Dr. Dipti Jha, Physiotherapist, Fortis Hospital on inquiry by the Disciplinary Committee stated that she advised non-weight bearing left side standing physiotherapy to the patient Shri Ravi Rai, as instructed verbally by Dr. Ashwani Maichand. The patient was asked to put the weight on left side and not on right side. She was told about fracture on the right side only. She is aware that during weight bearing, 80% of the weight is transmitted on the weight bearing limb.*

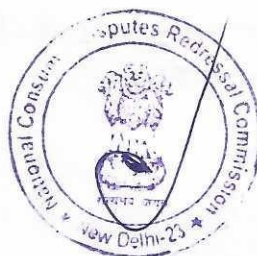
*In view of the above, the Disciplinary Committee makes the following observations:-*

- 1) *The patient had a fall from the stairs following which he was not able to get up, stand or walk and was carried to the hospital. He was attended by the Casualty Medical Officer and subsequently by a Senior Resident from the department of Orthopaedics, who got the X Ray of his right foot and ankle (also recorded in patient's case sheet). The patient was given a below knee plaster slab on the right lower limb. Plan of ORIF (Open Reduction and Internal Fixation) of the comminuted fracture of right side is recorded in case sheet dated 19.06.2016. The patient was made to undergo physiotherapy on the next day and made to stand up with the help of support and start ankle exercises. The Physiotherapist on enquiry claimed that she was given verbal instructions for ambulating the patient with walker, which is recorded in her*





notes in the case sheet. She further stated that she is aware that non weight bearing on right lower limb with walker, amounts to transmission of 80% weight on the weight bearing left lower limb. She was not informed of any fracture on the left foot and ankle or spine. On enquiry, Dr. Ashwani Maichand replied that he had asked for x ray of the left ankle and foot after he noticed a significant swelling on left foot. There was a doubtful fracture of left calcaneus and he instructed for ice packs and only toe movements and did not apply a plaster slab (not recorded in case sheet). Patient had complained of pain in his back and Dr. Ashwani Maichand did not detect any spinal fracture though the x ray report showed fracture anterior border of L-1 spine. On questioning, apparently he never palpated the spine for any tenderness and the diagnosis of spine fracture is based only on history of pain and x ray, not on any clinical examination. Hence he allowed the patient to stand with walker with only toe movements and he claims he did not instruct the physiotherapist to allow partial weight bearing on left lower limb. There are no records of Dr. Ashwani's statements in the case sheet, on the contrary the notes recorded by the physiotherapist clearly shows she made the patient put weight on the left lower limb, since she was not instructed of any other fracture). Physiotherapy notes of 20<sup>th</sup> June, 2016 shows non-weight bearing standing line with help of walkers. Further on 21<sup>st</sup> June, 2016 for left ankle pain-laser-IFT was given alongwith cold pack ankle. It is to be noted that in a fracture calcenus which needs surgery; laser with IFT should never be given and they had no intentions of any plan surgery on 21<sup>st</sup> June, 2016. CT Scan of right foot, X Ray of Left ankle and LS Spine is recorded dated 20<sup>th</sup> June, 2016. Pre-operative marking of the right lower limb was done on the second toe of right side distal to the margin of the plaster. There was no mark on the left lower limb. The anaesthetist on questioning replied that he was informed about the surgery to be done on right side, he gave spinal anaesthesia and subsequently got busy with the patient and didn't observe which limb was operated. It is to be noted, that the patient was surprised to find that the surgeon who operated was not



*Dr. Ashwani but Dr. Rahul Kakran, whom he saw for the first time. Regarding the surgery the following points are highlighted, showing a very casual attitude of pre-operative planning by the concerned surgeon. Dr. Rahul Kakran claims that change of plan was made in the OT after removal of plaster on the right side after he found excessive swelling on right side. Hence, he claimed it would have been better to operate on the less injured left side (hairline fracture) to enable the patient to bear weight on the less painful side. On being enquired, Dr. Ashwani Maichand admitted that they work as a team and it was a pre-decided combined decision to change the plan of operating on the left side in case in the operation theater excessive swelling was found on right side. However, this was not conveyed to the patient and even the change of plan to operate on the left side was not conveyed to the anaesthetist. There was no written consent of the patient regarding this type of change of plan or any consent of surgery being done on the left side. Dr. Ashwani Maichand, on questioning informed that weight bearing would be allowed on the left side with the doubtful hairline fracture after eight weeks even if surgery is not performed and eight weeks even after surgery. This statement contradicts the advantage of early surgery in an undisplaced fracture on the basis of which it has been claimed to have been performed. Left side pre-operative mark was not on the patient's limb, however, the WHO check list shows a mark on the left side. This appears to be due to tampering of the case records and marking it later, because if it has been marked pre-operatively then as per the check list consent for surgery on the left side should have been taken. The case records on page 52, shows cutting, which could be attempted tampering of records.*

*It is thus apparent that the patient pre-operatively was diagnosed to have a right sided comminuted calcaneus fracture for which the surgery planned was ORIF on right side. Patient or attendants or anaesthetists were never informed of any plan of surgery on left side and no consent of surgery on left side was taken. There is no rationale of fixation of an undisplaced fracture calcaneus on*





*the opposite left side which would unite non operatively allowing weight bearing on left side at around 8 weeks whether surgery was done or not done. Over and above a spine fracture even after reporting in x ray was not clinically co-related, even after the patient complained of back pain associated with calcaneus fracture and the patient was made to stand up and do physiotherapy.*

- 2) It is observed that the orthopaedic surgeons also failed to convey the suspicion of fracture spine to the anaesthetist before the administration of spinal anaesthesia; the same should have been avoided especially when the patient had suspicion of spine fracture.*
- 3) It is observed that AP & oblique radiographs of the right ankle/foot of the patient Shri Ravi Rai done on 19th June, 2016 at 20:13:33 hours carrying id number 000682603/ 3156569.2 demonstrate a comminuted fracture of the right calcaneum. The AP & oblique radiographs of the left ankle of the patient done on 20th June, 2016 at 10:27:31 hours carrying id number 000682603/3156590.43 demonstrate an undisplaced fracture of the left calcaneum. The AP & lateral radiographs of the lumbo-sacral spine of the patient done on 20th June, 2016 10:27:31 hours carrying id number 000682603/315690.43 demonstrate anterior wedge compression of the first lumbar vertebra. Computed tomography study of the right ankle and foot of the patient vide id 000682603 done on 20<sup>th</sup> June, 2016 at 13.59 hours demonstrates comminuted fracture of the right calcaneum.*

*In light of the observations made hereinabove, it is the decision of the Disciplinary Committee that Dr. Ashwani Maichand and Dr. Rahul Kakran failed to exercise reasonable degree of skill, knowledge and care which is expected of an ordinary prudent doctor, in the treatment of the patient Shri Ravi Rai. The Disciplinary Committee, therefore, recommends that name of Dr. Ashwani Maichand (Dr. Ashwani Kumar Maichand, Delhi Medical Council Registration*



No.14528) and Dr. Rahul Kakran (Delhi Medical Council Registration No.DMC/R/2254) be removed from State Medical Register of the Delhi Medical Council for a period of 180 days.

Matter stands disposed.

Sd/:  
(Dr. Subodh Kumar)  
Chairman,  
Disciplinary Committee

Sd/:  
(Shri Bharat Gupta)  
Legal Expert,  
Member,  
Disciplinary Committee

Sd/:  
(Dr. Yatish Agarwal)  
Expert Member,  
Disciplinary Committee

Sd/:  
(Dr. A.K. Sethi)  
Expert Member,  
Disciplinary Committee

Sd/:  
(Dr. Sumit Sural)  
Expert Member,  
Disciplinary Committee

The Order of the Disciplinary Committee dated 16<sup>th</sup> January, 2017 was confirmed by the Delhi Medical Council in its meeting held on 19<sup>th</sup> January, 2017.

The Council also confirmed the punishment of removal of name awarded to Dr. Ashwani Maichand (Dr. Ashwani Kumar Maichand, Delhi Medical Council Registration No.14528) and Dr. Rahul Kakran (Delhi Medical Council Registration No.DMC/R/2254) by the Disciplinary Committee.

The Council further observed that the Order directing the removal of name from the State Medical Register of Delhi Medical Council shall come into effect after 30 days from the date of the Order. The Order of the Disciplinary Committee stands modified to this extent and the modified Order is confirmed.

By the Order & in the name of  
Delhi Medical Council

(Dr. Girish Tyagi)  
Secretary"





24. Two appeals were filed against the said order of the Delhi Medical Council one by Dr. Ashwini Maichand, the Opposite Party No.3 and the other by the Complainant. The Medical Council of India passed an order on 23rd August 17 exonerating Dr. Ashwini Maichand and the punishment awarded to him was quashed.
25. A warning was issued to the Opposite Party No.5 Dr. Yatish Sharma to be more careful while dealing with such cases. A warning was issued to Dr. Pawan Khurana the Deputy Medical Superintendent for not providing the medical records within time and was also directed to be more careful in future.
26. The Medical Council of India also commented upon the functioning of corporate hospitals that were not following and observing the responsibilities by being supportive and compassionate. It was observed that the hospital management has become very business-like and totally insensitive which is very regrettable. The order is extracted hereinunder:-

*"No.MCI-211(2) (92-2016 & 03-2017/Appeal)-Ethics/132428*

*Date:23/08/17*

**ORDER**

*Subject: Appeal dated 20.02.2017 filed by Dr. Ashwani Maichand Against order dated 30.01.2017 passed by Delhi Medical Council-reg*

*&*

*Appeal dated 28.03.2017 filed by Sh. Ravi Rai, against the Order dated 30.01.2017 passed by Delhi Medical Council-Reg*

*Whereas, the Ethics Committee at its various meetings considered the appeals filed by Dr. Ashwani Maichand and Sh. Ravi Rai against order dated 30.01.2017 passed by Delhi Medical Council.*

*The brief of the case reads as under:-*



*The Ethics Committee at its various meetings considered the appeals filed by Dr. Ashwani Maichand and Sh. Ravi Rai against order dated 30.01.2017 passed by Delhi Medical Council.*

*The Ethics Committee further noted that initially Delhi Medical Council examined a suo moto notice of media reports, alleging medical negligence on the part of doctors of Fortis Hospital, Shalimar Bagh, New Delhi in the treatment administered to the patient Sh. Rayi Rai who underwent operation for a fracture on wrong side.*

*The ethics Committee further observed the decision dated 30.01.2017 passed by Delhi Medical Council. The operative part of the order of Delhi Medical Council is as under:-*

*".....In light of the observations made hereinabove, it is the decision of the Disciplinary Committee that Dr. Ashwani Maichand and Dr. Rahul Kakran failed to exercise reasonable degree of skill, knowledge and care which is expected of an ordinary prudent doctor, in the treatment of the patient Shri Ravi Rai. The Disciplinary Committee, therefore, recommends that name of Dr. Ashwani Maichand (Dr. Ashwani Kumar Maichand, Delhi Medical Council Registration No.14528) and Dr. Rahul Kakran (Delhi Medical Council Registration No.DMC/R/2254) be removed from State Medical Register of the Delhi Medical Council for a period of 180 days.*

*Matter stands disposed.*

*The Order of the Disciplinary Committee dated 16<sup>th</sup> January, 2017 was confirmed by the Delhi Medical Council in its meeting held on 19<sup>th</sup> January, 2017.*

*The Council also confirmed the punishment of removal of name awarded to Dr. Ashwani Maichand (Dr. Ashwani Kumar Maichand, Delhi Medical Council Registration No.14528) and Dr. Rahul Kakran (Delhi Medical Council Registration No.DMC/R/2254) by the Disciplinary Committee.*

*The Council further observed that the Order directing the removal of name from the State Medical Register of Delhi Medical Council shall come into effect after 30 days from the date of the Order. The Order of the Disciplinary Committee stands modified to this extent and the modified Order is confirmed.*





*The Ethics Committee further noted that Delhi Medical Council has found medical negligence on the part of Dr. Ashwani Maichand and Dr. Rahul Kakran and awarded a punishment of removal of name from the State Medical Register for a period of 180 days (6 Months)"*

*The above matter was considered by the Ethics committee at its various meetings and lastly held on 18<sup>th</sup> & 19<sup>th</sup> May, 2017. Whereas, the Ethics Committee of the Council investigated the matter and recorded the statements of Dr. Ashwani Maichand, Dr. Rahul Kakran, Dr. Yatish Sharma, Dr. Pawan Khurana & Sh. Ravi Rai.*

*The operative part of proceedings of the said meeting reproduced as under:*

*".....The Ethics Committee after hearing Dr. Yatish Sharma noted that PAC was done by other Anesthetist. Dr. Sharma has administered spinal anesthesia to the patient Sh. Ravi Rai, without clinically co-relating the X-ray of the Spine for any injury..*

*After perusing the documents available in record and the statements given by both the parties, the Ethics Committee discussed the matter in detail and after detailed deliberation noted that prima-facie there is a medical negligence on the part of operating doctor, therefore, the Committee decided the as under:-*

***1. Dr. Ashwani Maichand was absent on the day of the operation due to personal reasons and was not present in the OT and during the whole procedure. The Ethics Committee noted from all available records and deposition given before it that the original plan was to operate in the right leg and not the left leg. Dr. Maichand was involved in the operational planning only. Whatever happened in the OT that led to an operation on the left side. Dr. Maichand was not involved in this whole procedure. Being absent personally he was in no position to know that either the decision to operate on the right side was changed and the left side operation was done. There is no evidence that he had been contacted nor his advice was sought over telephone also.***



Considering the above and mainly the fact that **Dr. Ashwani Maichand** was absent and not aware to what transpired in the OT, the Ethics Committee came to the unanimous conclusion that no case of medical negligence could be actually made against **Dr. Ashwani Maichand**. It has also noted that now a days in many corporate hospitals the overall management of patients has become very mechanical and proper procedures like obtaining informed consent of patients which should be the responsibility of both the hospital management along with the treating doctors, anaesthetist are not being followed. Moreover instead of being supportive and compassionate the hospital management have become very business like and totally insensitive. This is very regrettable.

As no case of Medical negligence, either by Commission or by omission can be made out against the unit head Dr. Ashwani Maichand. **The Ethics Committee unanimously decided to exonerate him and quash the punishment given to him** by the Delhi Medical Council of removal of his name from IMR for 180 days.

2. Issue a Warning to Dr. Yatish Sharma to be more careful while dealing with such cases.

3. Issue a Warning to Dr. Pawan Khurana, Deputy Medical Superintendent of Fortis Hospital for not providing the medical records within 72 hours as per Ethics Regulations under clause 1.3.2 which reads as under:-

"If any request is made for medical records either by the patients/authorized attendant or legal authorities involved, the same may be duly acknowledged and documents shall be issued within the period of 72 hours."

Dr. Pawan khurana is also directed to be more careful in future in such type of cases."

The above recommendations of the Ethics Committee have been approved by the Executive Committee at its meeting held on 11.07.2017.





*You are therefore requested to take necessary action to implement the above decision of the Council.*

*Yours faithfully,  
Sd/-  
(Dr. Parul Goel)  
Deputy secretary"*

27. A set of another Appeals were filed by the Opposite Party No.4 Dr. Rahul Kakran and the Complainant where it was observed that Dr. Rahul Kakran was negligent in his treatment towards his patient and accordingly the decision against him for removing his name from the Register for 180 days was upheld. The order passed in relation to Dr. Rahul Kakran Opposite Party No.4 by the Medical Council of India on 23.08.2017 is extracted hereinunder:-

*"No.MCI-211(2) (93-2016 & 03-2017/Appeal)-Ethics/132439*

*Date:23/08/17*

*ORDER*

*Subject: Appeal dated 21.02.2017 filed by Dr. Rahul Kakran Against order dated 30.01.2017 passed by Delhi Medical Council-reg*

*&*

*Appeal dated 28.03.2017 filed by Sh. Ravi Rai, against the Order dated 30.01.2017 passed by Delhi Medical Council-Reg*

*Whereas, the Ethics Committee at its various meetings considered the appeals filed by Dr. Rahul Kakran and Sh. Ravi Rai against order dated 30.01.2017 passed by Delhi Medical Council.*

*The brief of the case reads as under:-*

*The Ethics Committee at its various meetings considered the appeals filed by Dr. Rahul Kakran and Sh. Ravi Rai against order dated 30.01.2017 passed by Delhi Medical Council.*

*The Ethics Committee further noted that initially Delhi Medical Council examined a suo moto notice of media reports, alleging medical negligence on the part of doctors of Fortis Hospital, Shalimar Bagh, New Delhi in the treatment*



administered to the patient Sh. Ravi Rai who underwent operation for a fracture on wrong side.

The ethics Committee further observed the decision dated 30.01.2017 passed by Delhi Medical Council. The operative part of the order of Delhi Medical Council is as under:-

".....In light of the observations made hereinabove, it is the decision of the Disciplinary Committee that Dr. Ashwani Maichand and Dr. Rahul Kakran failed to exercise reasonable degree of skill, knowledge and care which is expected of an ordinary prudent doctor, in the treatment of the patient Shri Ravi Rai. The Disciplinary Committee, therefore, recommends that name of Dr. Ashwani Maichand (Dr. Ashwani Kumar Maichand, Delhi Medical Council Registration No.14528) and Dr. Rahul Kakran (Delhi Medical Council Registration No.DMC/R/2254) be removed from State Medical Register of the Delhi Medical Council for a period of 180 days.

Matter stands disposed.

The Order of the Disciplinary Committee dated 16<sup>th</sup> January, 2017 was confirmed by the Delhi Medical Council in its meeting held on 19<sup>th</sup> January, 2017.

The Council also confirmed the punishment of removal of name awarded to Dr. Ashwani Maichand (Dr. Ashwani Kumar Maichand, Delhi Medical Council Registration No.14528) and Dr. Rahul Kakran (Delhi Medical Council Registration No.DMC/R/2254) by the Disciplinary Committee.

The Council further observed that the Order directing the removal of name from the State Medical Register of Delhi Medical Council shall come into effect after 30 days from the date of the Order. The Order of the Disciplinary Committee stands modified to this extent and the modified Order is confirmed."

The Ethics Committee further noted that Delhi Medical Council has found medical negligence on the part of Dr. Ashwani Maichand and Dr. Rahul Kakran and awarded a punishment of removal of name from the State Medical Register for a period of 180 days (6 Months)"

The above matter was considered by the Ethics committee at its various meetings and lastly held on 18<sup>th</sup> & 19<sup>th</sup> May, 2017. Whereas, the Ethics Committee of





the Council investigated the matter and recorded the statements of Dr. Ashwani Maichand, Dr. Rahul Kakran, Dr. Yatish Sharma, Dr. Pawan Khurana & Sh. Ravi Rai.

The operative part of proceedings of the said meeting reproduced as under:

" .....

1. **Dr. Rahul Kakran by his own admission came into the picture in this case only on the day before the operation when he discussed the case with Dr. Ashwani Maichand. It was clear from disposition of both doctors that the operation was planned in the right side only. This was borne also by the disposition of the complainant and also by the fact that written consent for operation was taken for operation in right foot only.**

**It appears that Dr. Rahul Kakran himself took the decision to operate on the left foot without taking written consent for operation from the patient and attendant.**

**It appears that Dr. Rahul Kakran did not exercise reasonable care in dealing with the patient while changing the operation from right to left foot.**

**In view of the above the Ethics Committee is of the unanimous opinion that Dr. Rahul Kakran is negligent in his treatment to the patient and decided to uphold the decision in Delhi Medical Council in respect of Dr. Rahul Kakran.....**

The above recommendations of the Ethics Committee have been approved by the Executive Committee at its meeting held on 11.07.2017.

You are therefore requested to take necessary action to implement the above decision of the Council.

Yours faithfully,  
Sd/-  
(Dr. Parul Goel)  
Deputy secretary"

28. The Opposite Party No.4 aggrieved by the orders passed by the Delhi Medical Council and the Medical Council of India filed WP(C)8099/2017 before the High



Court of Delhi. A learned Single Judge vide a judgment dated 12<sup>th</sup> September 2017 noted the facts and after referring to the judgment in the case of **Jacob Mathew Vs. State of Punjab & Anr., (2005) 6 SCC 1** and then went on to observe in paragraph 24 to 28 as follows:-

*"24. The two professional bodies have examined the controversy and have found that the conduct of the petitioner was negligent. This Court has also briefly examined the facts and, as is apparent there is ample material available to indicate that the petitioner was guilty of medical negligence.*

*25. Indisputably, the patient was willing for operation of the right limb, his consent form for surgery also does not mention any proposed surgery of the left limb. Although, the petitioner has contended that the surgery on the left leg was also necessary, the DMC has not accepted the same. In the given facts as noticed above, this Court does not find any ground to interfere with the impugned orders passed by the DMC and/or the MCI.*

*26. The reference to the decision of **Jacob Mathew v. State of Punjab and Anr (supra)** is misplaced. The contention that the patient suffered no injury and, therefore, there was no negligence is, plainly, unmerited. The facts clearly indicate that the patient's left leg had been operated without his consent and there is good ground to believe that such surgery was not necessary. In the aforesaid context, the contention that no injury was caused to the patient, is unsustainable.*

*27. The contention that the punishment imposed on other persons accused of negligence would not be relevant; the role of other persons involved was materially different and, **concededly, the surgery was performed by the petitioner.***

*28. In so far as the contention that the petitioner has suffered enough and the quantum of punishment ought to be reduced is concerned, **this Court does not find any valid ground to do so. The punishment imposed is not disproportionate to the allegations - which have been sustained - against the petitioner.***"

29. The Writ Petition was accordingly dismissed with the said findings.





30. Against the order of the Medical Council of India dated 23.08.2017 two writ petitions were filed being WP/10506/2017 and WP/10625/2017 by the Complainant Ravi Rai contending that the exoneration of Dr. Maichand the Opposite Party No.3 by the Medical Council of India was incorrect and it was contrary to the findings recorded by the Delhi Medical Council so far as the second Writ Petition was concerned, it alleged that the punishment awarded to Dr. Kakran was inadequate and hence the order of the Medical Council of India was vitiated. The Court, however, noted that Dr. Kakran had filed Writ Petition No.8099/2017 which was disposed of on 12<sup>th</sup> September 2017 by the learned Single Judge but the order quoted above, and no letters patents Appeal was filed against the same. The High Court then went on to analyse and reason out the entire episode and the evidence on record, formulated the questions in paragraph 23 and then went on to answer the same by holding that the order of the Medical Council of India in favour of the Opposite Party No.3 Dr. Maichand exonerating him was wrong and accordingly the order of the Medical Council of India dated 23.08.2017 was set aside.

31. So far as the Opposite Party No.4 Dr. Kakran is concerned, the Medical Council of India had already upheld the order of the Delhi Medical Council against him whereby his name was removed from the Register for 6 months, and as such the High Court found that the punishment awarded to Dr. Kakran did not require any further enhancement. However, it was left to the



Complainant to avail of any other remedies in respect of compensation and injury caused to him. The Writ Petition filed against the Opposite Party No.3 was allowed and the matter was demanded to the Medical Council of India only on the issue of quantum of punishment inasmuch as the order passed by the Medical Council of India 23.08.2017 in so far as it related to the Opposite Party No.3 was set aside.

32. Not only this Dr. Maichand was also called upon to pay a cost of Rs.1 Lakh which was imposed by the High Court noting the fact that the Complainant had to undergo surgery for his right foot at the Max Hospital, Shalimar Bagh.

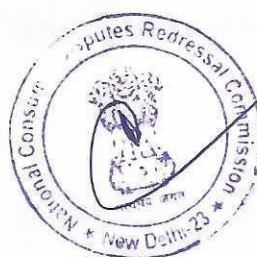
33. The relevant findings of the said dated judgment from paragraph 23-31 are extracted hereinunder:-

23) *'Given these findings of fact, what is required to be considered is the following issues: First, whether MCI was right in exonerating Dr. Maichand completely? Secondly, whether punishment accorded to Dr. Kakran commensurated with the extent of its culpability?*

24) *Insofar as the first issue is concerned, in my view, the MCI was wrong in exonerating Dr. Maichand, completely. What has come to fore clearly, is that, Dr. Maichand was a senior doctor, under whose care and supervision, Mr. Rai had been admitted for treatment. The initial diagnostic test carried out on Mr. Rai had been seen by Dr. Maichand.*

24.1) *Therefore, knowledge would have to be attributed to Dr. Maichand, with regard to the fact that Mr. Rai had suffered a comminuted fracture on the right foot and a hairline fracture on the left foot and spine.*

24.2) *It has also emerged from the findings recorded by the DMC that Dr.*





*Maichand and Dr. Kakran had agreed, even prior to the surgery, that if swelling was found in the right foot, surgery would be performed on the left foot. It has further been brought to fore that this aspect of the matter was neither disclosed to Mr. Rai or the Anaesthetist, Dr. Yatish Sharma. Therefore, the fact that Dr. Maichand was not present during the course of surgery, for whatever reason, cannot completely efface his culpability in the matter. Dr. Maichand, as a senior doctor, owed duty of care to Mr. Rai. The fact that he failed to discharge that obligation is evident from the following:*

- (i) He failed to clinically examine Mr. Rai even when he complained of back pain and the X-ray showed that he had fractured his spinal cord.*
- (ii) He did not convey to the Physiotherapist i.e., Ms. Dipti Jha the fact that Mr. Rai had fractured his backbone and his left leg.*
- (iii) He did not ensure, the fact that Mr. Rai had fractured his backbone, was communicated to the Anaesthetist, Dr. Yatish Sharma.*
- (iv) Assuming that a decision was taken, even prior to the surgery by Dr.*

*Maichand in consultation with Mr. Kakran, that in case swelling was found on the right foot on the day of surgery, the surgery would, instead be performed on the left foot (which, to my mind was a false stand taken to justify the surgery on the left foot), was a decision which was not communicated to Mr. Rai.*

- (v) At no stage, did Mr. Maichand communicate to Mr. Rai that instead of him, Dr. Kakran would be performing the surgery.*

*25) As a result of these acts of omission and commission, Dr. Maichand, in my view, not only contributed to the avoidable trauma but also to the surgery being performed on Mr. Rai's left foot, which as per findings recorded by the DMC, would have healed after eight weeks, even if no surgery was performed. An aspect which was not disputed by Dr. Maichand in his deposition before the DMC. Furthermore, as alluded to above, Dr. Maichand's negligence, exposed Mr. Rai to trauma of not only having to undergo the surgery, which was not required to be done, including screws being inserted in the left foot which would have healed, even otherwise, naturally within eight (8) weeks, but was also, exposed him to the danger and after effects of receiving anaesthesia in a fractured spinal cord and*



**undergoing physiotherapy sessions.**

26) Therefore, for the foregoing reasons, I am unable to persuade myself that the decision of the MCI, insofar as Dr. Maichand was concerned, was correct. The MCI has, in fact, glossed over the findings of fact, recorded by the DMC, in its order. Thus, I am inclined to set aside MCI's order dated 23.08.2017, insofar as Dr. Maichand is concerned.

27) As regards Dr. Kakran, the only grievance of Mr. Rai is with regard to the punishment accorded to him. In this context, I had asked Mr. Singhdev, who made submissions on behalf of the MCI, as to whether any policy had been formulated by the MCI, with regard to punishments to be accorded to delinquent doctors for infractions committed by them.

28) Mr. Singhdev informed me that no such policy had been formulated.

*In my opinion, this aspect needs to be looked at, urgently, by MCI. MCI must have a sentencing policy in place for guidance of its Committees which are tasked with job of returning recommendations both, on the guilt and punishment to be accorded to a delinquent doctor. The sentencing guidelines should take into account the aggravating and mitigating circumstances, including but not limited to whether or not the delinquent doctor is a first time offender or a repeat offender. MCI, is directed to report on this aspect of the matter within the next three months.*

29) Having said so, in my view, the best judges of the conduct of a professional are his peers. The only area available to a Court for interfering with the punishment accorded to a delinquent doctor by his peers is where the punishment given is grossly inadequate or grossly disproportionate. (See:- Ranjit Thakur Vs Union of India and Ors., (1987) 4 SCC 611. )

29.1) I am not able to persuade myself that Dr. Kakran's case falls within the aforementioned parameters. Besides this, a Single Judge of this Court has already dismissed the writ petition preferred by Dr. Kakran, albeit, without giving notice to Mr. Rai, qua which no appeal has been filed. **Therefore, insofar as Dr. Kakran is concerned, in my view, nothing further needs to be done, as regards the**





**punishment which has been accorded to him by MCI.**

29.2) This, of course, will not prevent Mr. Rai from seeking recourse to other remedies that may be available to him in law qua Dr. Maichand and Dr. Kakran, including compensation for the injury caused to him.

30) In these circumstances, W.P. (C) No. 10506/2017, in which relief is sought against Dr. Kakran, is dismissed.

30.1) However, W.P. (C) No.10625/2017 is allowed, and the matter is remanded to the MCI on the issue of quantum of punishment. The MCI, will hear the matter afresh and while doing so, will give adequate opportunity to the parties concerned, including Mr. Rai and Dr. Maichand. The MCI, will complete this exercise at the earliest, though, not later than eight (8) weeks from the date of receipt of a copy of the order.

31) Furthermore, given the fact that Mr. Rai had to go surgery for his right foot at the Max Hospital, Shalimar Bagh, **I am inclined to award cost of Rs.1 lakh.** The Cost will be borne by Dr. Maichand and will be paid within a period of two weeks from the date of receipt of a copy of the order."

34. The Opposite Party No.3 Dr. Ashwini Maichand filed Letters Patent Appeal No.580/2018 before the Division Bench of the High Court assailing the order of the learned Single Judge quoted hereinabove. The division Bench after having noted all the submissions and the findings recorded by the learned Single Judge upheld the same and dismissed the appeal on 28.11.2018. The order of the division Bench as reflected in paragraphs 9 and 10 is extracted hereinunder:-

"9. Mr. Rai learned Senior Counsel appearing for the appellant would reiterate the only submission as was made on behalf of the appellant before the learned Single Judge that the appellant was not present in the operation theatre when the operation had taken place. **We are unable to agree with the said submission of Mr. Rai. There is no dispute that the appellant was a Senior Doctor, under whose care and supervision Mr. Ravi Rai was admitted for treatment.** Mr. Rai was examined first by the appellant only. The **conclusion of the learned Single Judge** was that the appellant



owed a duty of care to Mr. Ravi Rai and he has **failed to discharge the said obligation. In other words, the acts of omission and commission on the part of the appellant are not confined to the operation only but also as a treating Doctor.**

**10. Further the factual conclusions of the learned Single Judge, as noted above have not been contested before us.** In the absence of any challenge to those conclusions, which clearly prove the culpability of the appellant, and the learned Single Judge has remanded the matter to the MCI for deciding the issue of quantum of punishment, the impugned Judgment cannot be faulted. **The conclusion arrived at by the MCI exonerating the appellant cannot be sustained.** The plea of Mr. Rai, learned Senior Counsel for the appellant that the case of the appellant cannot be equated with Dr. Kakran is concerned, the same is premature. It is for the authorities concerned, while considering the issue of quantum of punishment to take into account, the culpability of the appellant on the basis of findings arrived at by the Disciplinary Committee of the DMC and as noted by the learned Single Judge. The appeal, being without any merit, the same is dismissed. No costs."

35. A perusal of the same would indicated that the findings of the learned Single Judge were confirmed with the observation that the omission and Commission on the part of the Opposite Party No.3 were not only confined to the operation but also as a treating doctor. It has also been recorded that the factual conclusions drawn by the learned Single Judge having not been contested, it was reiterated that conclusion drawn by the MCI exonerating the Opposite Party No.3 cannot be sustained. It was left open for the concerned Forum/Authority to consider the issue of quantum of punishment while taking into account the culpability of the Opposite Party No.3 on the basis of the findings arrived at by the disciplinary Committee of the Delhi Medical Council and as noted by the learned Single Judge.





36. Thus the division Bench also confined the enquiry with regard to the quantum of punishment to be decided by the Medical Council of India in view of the culpability of the Opposite Party No.3 on the basis of the findings of the order of the Delhi Medical Council and noted by the learned Single Judge that were confirmed by the division Bench in paragraph 9 and 10 of the judgement as quoted hereinabove.
37. The Opposite Party No.3 filed Special Leave to Appeal No.10932 of 2019 before the Apex Court assailing the order of the division Bench dated 28.11.2018 referred to above.
38. In between the Medical Council of India passed the fresh order dated 05.12.2019 and virtually put aside the findings recorded by the High Court regarding the conduct of the Opposite Party No.3 that had confirmed the findings of the Delhi Medical Council, and had set aside the order of the Medical Council of India exonerating the Opposite Party No.3 with a direction only to gauge the proportionality and quantum of punishment. The Medical Council of India issued a simple warning to the Opposite Party No.3 for not communicating properly to the patient with the patient and his relatives as well as for not keeping the records properly. This was done even after noting the orders passed by the Delhi High Court to the effect that the erstwhile order of the Medical Council of India has not been accepted by the High Court. The relevant



extract of the said order of the MCI dated 05.12.2019 and the decision thereon is extracted hereinunder:-

*"...the Ethics Sub Committee further discussed the matter in detail and noted that the decision of the erstwhile Ethics Committee of MCI with respect to Dr. Ashwani Maichand has not been accepted by the Hon'ble High Court of Delhi. The Ethics Sub Committee of the Medical Council of India has further been directed by the Hon'ble High Court of Delhi to decide the issue of quantum of punishment in case of Dr. Ashwani Maichand after giving appropriate opportunity of hearing to parties concerned."*

*Whereas, the Ethics Committee of the Council investigated the matter and recorded the statements of Sh. Ravi Rai and Dr. Ashwani Maichand.*

*The above matter was considered by the Ethics Committee at its various meetings and lastly at its meeting held on 24th April, 2019. The operative part of proceedings of the said meeting is reproduced as under:-*

*"...the Ethics Committee heard the matter and after going through the records and the judgement of the Hon'ble High Court, **the Ethics Committee viewed to give warning to Dr. Maichand for not communicating properly to the patients and their relatives as well as for not keeping record properly.** As per the available records and on hearing, spinal stable fracture may be missed commonly and in spinal, stable fractures epidural anaesthesia can be given, depending upon the condition of the patient...."*

*The above recommendations of the Ethics Committee have been accorded approval by the Board of Governors at its meeting held on 09.10.2019."*

39. The Opposite Party No.3 through his Counsel thereafter made a statement before the Apex Court in the special leave to appeal no.10932 of 2019 that in view of the order of the Medical Council of India, the Special Leave Petition has





become infructuous and it was disposed of accordingly. An offer was also made to deposit the sum of Rs.1 lakh imposed against him which was also recorded and the SLP was disposed of as infructuous by the following order:-

**"ORDER**

*When this matter came up today, though the matter was listed for directions, having regard to the submissions made across the bar, we are of the view that the Special Leave Petition itself can be disposed of.*

*The learned counsel for the petitioner draws our attention to the fact that pursuant to the impugned order, Medical Council of India issued an order dated 05.12.2019. In the light of this order, **learned counsel for the petitioner submits that the present petition has become infructuous.** He further submits that the petitioner will also deposit a sum of Rs. 1,00,000/-(Rupees One lakh) ordered to be paid as costs within a period of one week. We record his submission.*

*The Special Leave Petition stands disposed of as has become infructuous.*

*Pending application(s), if any, stands disposed of accordingly."*

40. The order dated 05.12.2019 passed by the Medical Council of India issuing a warning to the Opposite Party No.3 was challenged by the Complainant again before the Delhi High Court in Writ Petition No.1849 of 2020 where a prayer was made to enhance the punishment against the Opposite Party No.3. The High Court declined to interfere with the quantum and after noting that the order of the Medical Council of India attempts to dilute the judgements of the High Court passed earlier, observed that the Medical Council of India cannot dilute the finding given by the High Court. Paragraph 3 to 8 of the said judgement dated 5th October 2023 are extracted hereinunder:-



"3. It is well settled that Courts, while exercising their jurisdiction under Article 226 of the Constitution of India, should not interfere with the decision arrived at by the experts unless it is arbitrary and illegal. Therefore, this Court cannot substitute its conclusion to the one arrived at by an expert Committee on the question of quantum of punishment awarded to the Doctors unless it is so perverse that it shocks the conscience of this Court.

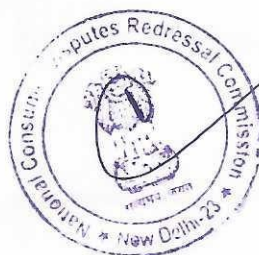
4. It is contended by the learned Counsel for the Petitioner that the Order dated 05.12.2019, passed by the MCI dilutes the Order dated 20.08.2020, passed by this Court in W.P.(C) No.10506/2017 & 10625/2017.

**5. Needless to state that MCI cannot dilute a finding given by this Court in its writ jurisdiction. The MCI was only considering the facts limited to the award of punishment to both the Doctors under the erstwhile MCI Act and this cannot be an indicator to decide the deficiency of service, if any, which has to be evaluated by the competent forums in deciding the issue on deficiency in service. It has been stated by the learned Counsel for the Petitioner that proceedings under the Consumer Protection Act, 2019 have been initiated against the Doctors. He has also stated that in the criminal proceedings initiated in FIR No.424/2016, final report has been filed by the Police and the Court of competent jurisdiction is proceeding ahead with the matter.**

6. In light of the above, the Writ Petition is disposed off with an observation that the award of punishment by the MCI cannot be an indicator to decide on any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service which is required to be maintained under law.

7. The competent Courts are directed to proceed ahead with the case on facts without being influenced by the quantum of punishment awarded to the Doctors herein by the MCI.

8. With these observations, the Writ Petition is disposed of. Pending applications, if any, also stand disposed of."





41. A perusal of the said order therefore indicates that even though the High Court did not interfere with the quantum of punishment which was a warning given to the Opposite Party No.3, it observed that the findings given by the High Court in the Writ jurisdiction cannot be diluted by the Medical Council of India that was only considering the facts limited to the award of punishment to the doctors. It was also observed that the same could not be an indicator to decide the deficiency of service if any which has to be evaluated by the competent Forums while deciding the issue of deficiency in service. The court also noted the pendency of these proceedings as well as the criminal proceedings arising out of the FIR lodged against the Opposite Party No.3.
42. The order of the Medical Council of India is therefore limited to the quantum of punishment. A warning has been issued to the Opposite Party No.3 but the direction of removal of the name from the Register for 6 months regarding Opposite Party No.4 has been upheld. This also confirms the negligence of the Opposite Parties.
43. However, it should not be forgotten that the Delhi High Court itself while dealing with those orders recorded its own findings after having analysed the entire facts which is evident from the orders of the learned single Judges in both the Writ Petitions, one filed concerning the Opposite Party No.3, who contested the matter up to the Supreme Court and made a statement that his Special Leave Petition had become infructuous. The findings recorded by the Delhi High



Court therefore were neither set aside nor further adjudication was pleaded by the Opposite Party No.3 before the Apex Court. The simple statement on the strength of the fresh order of the Medical Council of India imposing warning was made that the cause had become infructuous which was a unilateral statement made on behalf of the Opposite Party No.3 that was accepted by the Apex Court and the matter was closed.

44. The findings recorded by the Delhi High Court as quoted hereinabove do not seem to have been diluted or set aside and it is for this reason that the High Court of Delhi in the last judgement dated 5<sup>th</sup> October 2023 observed that the Medical Council of India cannot be construed to have diluted the findings given by the High Court in its Writ jurisdiction. It may be mentioned that the last judgement of the High Court is almost 2 years after the disposal of the Special Leave Petition as infructuous.

45. With the aforesaid journey of the legal contest between the parties the allegation of the Complainant that he was operated on his left foot without any consent or preparation or knowledge to the complainant cannot be doubted. There is nothing on record to indicate that the Complainant was ever informed about any plan by the doctors or the hospital to operate the left leg of the complainant. It is also evident from the medical reports that the left foot bone was having only a hairline fracture and according to the Complainant the same did not even require surgery as hairline fractures in the conservative way are





treated by a simple plaster to keep the leg stable and the fracture is cured by a self-healing process within 8 weeks. This can be gathered from the statement of the Opposite Party No.3 before the Delhi Medical Council which has been extracted hereinabove. The Opposite Party No.4 also in his statement has indicated that hairline fractures are generally treated conservatively. It is further evident from the said statements which also form part of the evidence in the present proceedings that the planning was of the surgery of the right leg which was badly affected. The change in plan of surgery is stated to have been made inside the operation theatre during the period the Complainant was inside the OT, as on the removal of the Plaster of the right leg it was found to be possessed of excessive swelling. The statements made before the Delhi Medical Council as confirmed by the findings of the learned Single Judge in Para 24.2 of the judgment dated 20.08.2018 indicate that it was a pre-planned combined decision to change the plan for operating the left side if excessive swelling was found on the right leg. These statements reflect contradictions.

46. There is no evidence to substantiate that this change of plan was ever conveyed to the Complainant. There was no written consent regarding this change of plan nor was the Anaesthetist the Opposite Party No.5 intimated about this change in the plan of surgery. The affidavit of the Opposite Party No.5 dated 04.07.2017 filed on 07.07.2017 makes an interesting read as he does not seem to be aware about the change.



47. It has also been found as a matter of fact, which could not be disputed by the Opposite Parties through any evidence, that the plan of surgery while being executed was followed by marking the right leg and there was no pre-operative mark on the left leg. Later on, the WHO checklist indicated a mark on the left side which the Delhi Medical Council found to be a tampering of the case records as is evident from paragraph 1 of the observations of the Delhi Medical Council extracted hereinabove. The very same allegations have been made in the complaint and the denial by the Opposite Parties does not lead to any other conclusion apart from what has been arrived at by the Delhi Medical Council and confirmed by the High Court in its findings. The attempt of the Opposite Parties No.3&4 to justify the surgery of the left leg of the complainant is absolutely untenable and against the weight of evidence on record. The patient was absolutely unaware about any such procedure and the bald statement made in the written statement vaguely that the patient was aware of the surgery on his left leg is unfounded. The Complainant appears to have virtually escaped from the Hospital and ran for his life on account of this mess having been created by the Opposite Parties in proceeding to perform a surgery of the left leg when the surgery was planned to rectify and treat the fracture of the right leg. This fact is supported by several pieces of evidence on record namely the Insurance Clearance documents that clearly indicate that the request sent to the Insurance Company was for the coverage of a surgery planned for the right foot which has





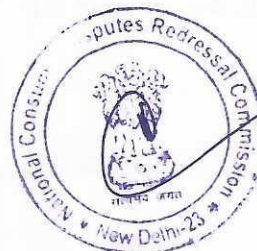
been noted hereinabove. The consent which was taken for surgery was also for the right leg and not for the left one. The documents were all sent and the X-ray was also taken of the right leg. It is also stated that the X-ray of the left leg and the CT scan was available and the X-ray of the Vertebral Column was also available. These facts are also borne out from the discharge summary of the second Hospital namely Max Hospital where the complainant went for getting his surgery done on the right leg and is evident from the discharge summary dated 22nd June 2016 of the Max Hospital. The said discharge summary records all the three fractures.

48. The Anaesthetist has categorically stated in his response that he was not informed of any such fracture in the vertebral region nor was he intimated about the surgery planned for the left leg. This also consolidates the negligence of the surgeons in proceeding to operate the left leg of the Complainant instead of the right one.

49. With the entire evidence on record and the findings recorded by the High Court of Delhi in the judgments, the extracts whereof have been highlighted hereinabove leave no room for doubt that the findings recorded by a team of experts of the Delhi Medical council and the subsequent orders passed by the Medical Council of India confirm the negligence. The negligence on the part of the Opposite Parties No.2,3&4 is therefore clearly made out. The contribution towards the deficiency and negligence in performance of the surgery on a wrong



foot is clearly made out against the Opposite Parties No.3&4 with vicarious liability on the Opposite Party No.2 which is a Hospital run by the Opposite Party No.1. The defence taken that the treatment given to the left foot is according to medical protocol cannot be justified as surgery of the left foot was neither planned nor consented to nor was it medically necessary, as the same could have been healed with a conservative treatment within 8 weeks due to it being a hairline fracture. The conscious decision of surgery of the left foot was therefore absolutely a negligent conduct. The Delhi High Court has categorically recorded a finding in paragraph 24.2 of the judgment dated 20.08.2018 and affirmed by the Division Bench on 28.11.2018 that the Opposite Parties No.3&4, as per the findings recorded by the Delhi Medical Council, had jointly agreed to perform surgery on the left foot if any swelling was found in the right foot which appears to have never been informed to the patient. This statement, of it being preplanned, is in conflict with the stand that the shift in plan was made during the surgery inside the OT where the Opposite Party No.3 was not present. These shifting stands being taken are excuses and defences that seem to have been ingenuously crafted for obvious purposes that is plainly red-herring. The Opposite Party No.3 has attempted to exonerate himself by contending that he was not present when the decision was converted by the Opposite Party No.4 to operate the left foot. This explanation of the Opposite Party No.3 cannot be accepted when once the Delhi High Court has confirmed this finding after





assessing the records of the Delhi Medical Council and the statements made therein. The contributory negligence of the Opposite Party No.3 therefore remains the same as that of the Opposite Party No.4 in equal measure.

50. Non-adherence to the norms of an informed consent before planning surgery of the left foot is also negligence. The Complainant was never informed about the same. These acts and omissions have been confirmed by the Delhi High Court in its findings and there is no other evidence contrary to the said findings for this Commission to arrive at a different conclusion. The facts of the case and the findings also attract the principles of *res ipsa loquitur* which the Opposite Parties have failed to demolish and hence the only conclusion that can be drawn is that the Opposite Parties No.3&4 were grossly negligent in the performance of their obligations in spite of being possessed of the skills and professional standards expected of them. Their failure has caused sufficient damage to the Complainant enabling him to maintain the complaint for the compensation sought. The Opposite Party No. 2 Hospital by engaging the services of the Opposite Party No.3&4 and then continuously defending them at every stage holds them vicariously liable.

51. The nature of professional duty coupled with the legal obligation of the doctors to receive an informed consent, if omitted, results in breach of contractual obligations as well as a legal duty on their part. It is also a moral duty as well. The performance of a positive act to operate the left leg instead of



the right as planned, the exceptional violation of the duty to take consent, amounts to a negligence. The consequences of such breach forms the basis of a liability. The decision to undertake surgery on the left leg was required to be taken with the utmost care but in the present case a shift in the decision was taken without informing the patient about it. The Opposite Party No.3 as indicated above is said to have participated in the decision making prior to the surgery as found by the Delhi Medical Council and affirmed by the High Court, but even if the decision was taken by the Opposite Party No.4 to shift the surgery from the right leg to the left inside the operation theater, then too it was required to be brought to the attention of the patient or his attendants as the case may be which was not done in the present case. The Opposite Parties No.3&4 may be possessed of the requisite skill which they profess to possess but this glaring omission as indicated above is sufficient to hold them responsible. It may be apt to mention that a consent is given by a person to the proposed procedure of treatment, the expected outcome, the likelihood of its success, the risk and alternatives to the procedure and supporting information in respect of such alternatives. The consent should be voluntary and the patient should be in a capacity and competence to give consent after knowing the minimum of an adequate level of information about the nature of the procedure to which he has to consent to. The aforesaid ingredients are incorporated in the definition of informed consent in Taber's Cyclopedic Medical Dictionary.





52. The American exposition of law was considered by the Apex Court in the case of ***Samira Kohli V. Prabha Manchanda, I (2008) CPJ 56*** where the decision in the case of ***Canterbury V. Spence 1972(464) Federal Reporter 2d 772*** was extracted with approval and is gainfully reproduced hereinunder:

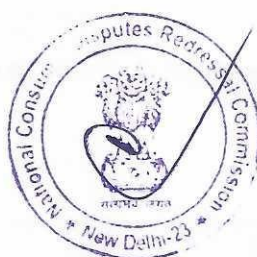
*"In Canterbury v. Spence, the United States Courts of Appeals, District of Columbia Circuit, emphasized the element of Doctor's duty in informed consent's thus:*

*"It is well established that the physician must seek and secure his patient's consent before commencing an operation or other course of treatment. It is also clear that the consent, to be efficacious, must be free from imposition upon the patient. It is the settled rule that therapy not authorized by the patient may amount to a tort-a common law battery-by the physician. And it is evident that it is normally impossible to obtain a consent worthy of the name unless the physician first elucidates the options and the perils for the patient's edification. Thus the physician has long borne a duty, on pain of liability for unauthorized treatment, to make adequate disclosure to the patient."*

53. It would be further illustrative to refer to the basic principles under American and English law that have been also referred to with approval in a large number of Indian Cases including the decision in the case of ***Samira Kohli (Supra)***.

*"The basic principle in regard to patient's consent may be traced to the following classic statement by Justice Cardozo in Schoendorff v. Society of New York Hospital.:*

*"Every human being of adult years and sound mind has a right to determine what should be done with his body; and a surgeon who performs the operation without his patient's consent, commits an assault for which he is liable in damages."*



*This principle has been accepted by English Court also. In Re: F., the House of Lords while dealing with a case of sterilization of a mental patient reiterated the fundamental principle that every person's body is inviolate and performance of a medical operation on a person without his or her consent is unlawful. The English Law on this aspect is summarised thus in Principles of Medical Law (published by Oxford University Press-Second Edition, edited by Andrew Grubb, Para 3.04, Page 133):*

*"Any intentional touching of a person is unlawful and amounts to the tort of battery unless it is justified by consent or other lawful authority. In medical law, this means that a doctor may only carry out a medical treatment or procedure which involves contact with a patient if there exists a valid consent by the patient (or another person authorised by law to consent on his behalf) or if the touching is permitted notwithstanding the absence of consent"*

54. Another authority on the subject is Chapter VI titled CONSENT TO TREATMENT in the famous treatise of MEDICAL NEGLIGENCE by Michael A. Jones, Professor of Common Law of the University of Liverpool and Solicitor of the Supreme Court of United Kingdom, published by Sweet and Maxwell. In the said chapter, the principles as indicated above have been referred to *vis-à-vis* different nature of cases. On the issue of burden of proof, the author refers to the different views on the subject and then opines that the traditional view has been that consent operates as a defence and accordingly it is for the defendant to prove that the claimant consented. In the instant case no proof much less an evidence of any worth has been produced by the Opposite Parties regarding consent by the Complainant for surgery of the left foot.





55. It is not the case pleaded that surgery on the left foot was a compulsive necessity or an emergency. The decision to perform the surgery on the left leg was taken inside the operation theatre and there is no evidence to indicate that it was an emergency. This aspect has also been dealt with by the learned author referred to hereinabove where it has been indicated that the same involves a professional value judgment about the effectiveness of a treatment. Applying the principles as explained therein, any decision should be convincing enough to eliminate the conventional rights of a patient of an informed consent. Some of the parameters in order to delve into this question has been gauged by the learned Author in terms of the Mental Health Act 2007 as prevalent in England where the definition of urgent treatment has been categorised as follows:

*"(a) which is immediately necessary to save the patient's life; or  
(b) which (not being irreversible) is immediately necessary to prevent a serious deterioration of his condition; or  
(c) which (not being irreversible or hazardous) is immediately necessary to alleviate serious suffering by the patient; or  
(d) which (not being irreversible or hazardous) is immediately necessary and represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or to others"*

56. Applying the said principles, which illustrates the cases of mental illness, an analogy can be drawn that the hairline fracture in the left leg of the Complainant was capable of being treated conservatively, as is evident from the findings referred to hereinabove by simply plastering the leg and allowing the patient to let it heal by itself within 8 weeks. Nothing has been shown that it was emergent



or compulsive to operate the left leg instead of the right for which the surgery was planned and was urgent. This act of the Opposite Parties in proceeding not to perform the surgery on the right leg due to a swelling, does not justify the switch over to the surgery of the left leg where the bone had only a hairline fracture. It is for this reason that the only conclusion which can be drawn is that the Opposite Parties acted unreasonably to justify the admission of the Complainant in the Hospital and perform a surgery which was neither planned for which no consent was given. It will not be unreasonable to presume that a person with a simple hairline fracture would not avail of the facilities of a luxurious multi-super-specialty Hospital which can be comfortably treated by any Orthopaedic Surgeon. A hairline fracture did not require an expertise of a peculiar hospital like the Opposite Party No.2, where they proceeded to nail a hairline fracture with screws without information or consent and have set up an unjustifiable defence to support their unethical and illegal act.

57. The Opposite Party No.2 Hospital as managed by the Opposite Party No.1 is vicariously liable for these acts and omissions as they are running a hospital claiming themselves to be one of the best quality hospitals of repute available in India. Their reputation and their status as claimed by them therefore expects these hospitals as well to be equipped with doctors having exceptional skill and expertise. It has been informed by Mr. Sharma learned Counsel for the Opposite Party No.3 that the doctors after this incident, which was blown out of





proportions in the media, according to them were given marching orders. This gesture on the part of the administration and the Hospital cannot in any way compensate the loss suffered by the Complainant and therefore the Hospital is also liable to share the consequences of the lapses, gross negligence and absence to take due care by its doctors.

58. Accordingly the Opposite Parties No.2&3 along with Opposite Parties No.1&2 are liable to compensate the Complainant for the loss suffered by him.

59. Coming to the issue of compensation there is no dispute that the Complainant was in the final year of his Chartered Accountancy Course which he has successfully completed. The Counsel for the Opposite Parties vehemently contended that the Complainant has now completely healed and the fact that he has successfully completed his Chartered Accountancy and is now based in the United Kingdom does not in any way entitle him to the quantum of compensation claimed. They therefore submit that given the expenses borne by him as also by the Insurance Co., the quantum as desired and claimed are not substantiated. In this regard, the argument advanced by Mr. Sisodia is that paragraphs 10 & 11 of the written statement are simply statements of facts with nothing to support the said recitals. This he says has been objected to in the written version and since the Complainant has failed to adduce any evidence to justify the quantum claimed by him under different heads, no relief can be granted and the complaint should be not entertained for want of pecuniary



jurisdiction. To appreciate the aforesaid argument. Paragraph 11 of the complaint is extracted hereinunder:

*"11. That the complainant value its claim as under:*

|     |                                                                                                                                     |                                  |
|-----|-------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
| 1.  | <i>Present burden of medical expenses</i>                                                                                           | <i>Rs.5,00,000.00</i>            |
| 2.  | <i>Perspective burden of expenses for provide physiotherapy etc.</i>                                                                | <i>Rs.5,00,000.00</i>            |
| 3.  | <i>Loss of future earnings</i>                                                                                                      | <i>Rs.75,00,000.00</i>           |
| 4.  | <i>Loss of enjoyment of future married life</i>                                                                                     | <i>Rs.25,00,000.00</i>           |
| 5.  | <i>Compensation towards mental annoyance, Pains/sufferings, loss of amenities, enjoyment life and shortening of life expectancy</i> | <i>Rs.1,50,00,000.00</i>         |
| 6.  | <i>Humiliation and condemnation on account of being disabled person</i>                                                             | <i>Rs.50,00,000.00</i>           |
| 7.  | <i>Permanent attendant/driver</i>                                                                                                   | <i>Rs.35,00,000.00</i>           |
| 8.  | <i>Damage/compensation to parents on account of trauma suffered by them</i>                                                         | <i>Rs.10,00,000.00</i>           |
| 9.  | <i>Loss of earning of father who had to stop his business to take care of the complainant who was bed ridden</i>                    | <i>Rs.35,00,000.00</i>           |
| 10. | <i>Damages on account of present mental agony of parents of the complainant</i>                                                     | <i>Rs.25,00,000.00</i>           |
| 11. | <i>Compensation towards punitive damages</i>                                                                                        | <i>Rs.75,00,000.00</i>           |
| 12. | <i>Compensation towards litigation and other expenses</i>                                                                           | <i>Rs.7,00,000.00</i>            |
|     | <b><i>TOTAL</i></b>                                                                                                                 | <b><i>Rs.4,97,00,000.00"</i></b> |

60. The first issue which needs to be answered in respect of the quantum of compensation is the objection taken by Mr. Sisodia regarding pecuniary jurisdiction on the strength of the decision in the case of ***Indrani Chatterjee Vs. AMRI Hospitals (Supra)***. The present complaint was filed in the year





2017, and was then governed by the provisions of the Consumer Protection Act 1986. The pecuniary jurisdiction, as was then existing under Section 11 for the District Commission, Section 17 for the State Commission and Section 21 for the National Commission was on the value of the goods or services and compensation. By an Amendment under Act No.62 of 2002, the pecuniary jurisdiction of the National Commission was fixed on the value of the goods or services, and compensation if any claimed that exceeded Rs.1 crore. This was the position when the present complaint was instituted.

61. The relief prayed for in the complaint is as follows:

- "1. A sum of Rs. 4,97,00,000/- (Rupees Four Crores Ninety Seven Lacs Only) towards compensation; and*
- 2. Pendente Interest @ 18% per annum on the said amount of from the date of filing the present complaint till its actual realization; and*
- 3. The Doctors should not be allowed to practice/perform surgery ever again;*
- 4. Any other or further relief as this Hon'ble Commission finds fit and proper in the circumstances of the case may also be awarded for which act of kindness the Complainant shall ever pray."*

62. The aforesaid relief has to be read with the details of different heads of compensation as referred to in paragraph 11 of the complaint quoted hereinabove. Whatever be the nature of the claim made, in a case of medical negligence as presently involved, the defence has denied any medical negligence and has not even admitted a conservative forecast of compensation which



according to the learned Counsel for the Opposite Parties would be sufficient to deny pecuniary jurisdiction to this Commission. Their contention is that there is no evidence to support the quantum as claimed and therefore it should be presumed to be possessed of hardly any content to invoke the pecuniary jurisdiction of this Commission. Mr. Sisodia has vehemently urged that an exaggerated claim for which there is no foundation denudes this Commission from entering into the merits of the claim for want of pecuniary jurisdiction and therefore as per the decision of ***Indrani Chatterjee Vs. AMRI Hospitals (Supra)***, the self-assessment made by the Complainant is neither realistic nor reasonable and is highly excessive only with a view to attract the jurisdiction of this Commission, and therefore the complaint should be dismissed without answering the issues on merits with liberty to the Complainant to approach the forum which may have or can be reasonably construed to have pecuniary jurisdiction in the matter.

63. The decision relied on by the learned Counsel indicates that none of the circumstances as claimed by the Complainant existed on the facts of that case. The claims were under the heads of loss of care, guidance, companionship and life amenities, emotional distress, pain and suffering and punitive damages or special damages. It was held that the claims were ad-hoc. The said complaint was in respect of a fire incident where some people had perished in the fire in a hospital. After referring to some of the claims as calculated under different





heads it was observed that they were excessive. After considering a couple of decisions it was held that the claim of compensation in that case ranging between Rs.7 crores to Rs.9 crores were under identical heads without any differentiation in relation to the age of the victims which was between 15 years to 88 years. It is on those facts that it was inferred that the claims were exaggerated and therefore it was held that the claimants were not able to satisfy as to on what basis the inflated claim had been made. All the complaints were therefore refused admission with liberty to the complainants to suitably amend their complaints and file it before the appropriate Forum. The benefit of limitation was given to allow the complainants to avail the remedy before the appropriate Forum.

64. This is not a case of a patent lack of pecuniary jurisdiction in view of the provisions of the 1986 Act referred to hereinabove which allows the entertaining of complaints on the value of goods and services and compensation claimed as the basis for the institution of a complaint. To begin with, the present complaint was entertained and notices were issued where after affidavits and evidence have been exchanged. It is to be noted that this litigation has witnessed several rounds of contest before different forums ranging from the Delhi Medical Council, the High Court of Delhi as well as the Apex Court. The fact that this complaint was pending since 2017 before the National Commission has not gone unnoticed by the High Court where it appears the issue of claim of compensation



was left open specifically to be contested before the appropriate forum as is evident from the order of the Delhi High Court dated 20.08.2018 in paragraph 29.2 which is extracted hereinunder.

*"29.2) This, of course, will not prevent Mr. Rai from seeking recourse to other remedies that may be available to him in law qua Dr. Maichand and Dr. Kakran, including compensation for the injury caused to him."*

65. This order was confirmed by the Division Bench of the Delhi High Court on 28.11.2018.

66. Subsequently after the Special Leave Petition filed by the Opposite Party No.3 was disposed of as infructuous on 17.11.2021, a challenge was raised to the subsequent order of the Medical Council of India imposing a warning on the Opposite Party No.3. The Complainant filed WP/1849/2020 where again the High Court took notice of the proceedings already availed and then observed in paragraphs 6&7 as follows:

*"6. In light of the above, the Writ Petition is disposed off with an observation that the award of punishment by the MCI cannot be an indicator to decide on any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service which is required to be maintained under law.*

*7. The competent Courts are directed to proceed ahead with the case on facts without being influenced by the quantum of punishment awarded to the Doctors herein by the MCI."*

67. The aforesaid observation therefore leaves no room for doubt that the High Court was aware of such claims and it was left open to be proceeded with and





decided accordingly. It is correct that no such issue regarding the pecuniary jurisdiction of this Commission was raised but the fact remains that all the above orders of the High Court were passed during the pendency of this Complaint.

68. The aforesaid facts therefore place this case on a different footing than the order passed by the Commission in the case of ***Indrani Chatterjee Vs. AMRI Hospitals (Supra)***. The Complaint in that case were filed in 2013 and at the admission stage itself this issue was dealt with at the outset and the complaint was disposed of on 07.11.2014 with liberty to the Complainants to amend their complaints and file the same before an appropriate Consumer Fora. The findings recorded were that the claims made were ad-hoc. It was also found that a flat rate was claimed in respect of the victims who were aged between 15 years to 88 years. The conclusion was that the complaints had not been able to satisfy the Commission as to on what basis the claims were ranging from Rs.7 crores to Rs.20 crores and it was therefore held that on those facts the claims were inflated for invoking the jurisdiction of this Commission.

69. Needless to mention that the same decision has referred to the judgment of the Apex Court in the case of ***Charan Singh Vs. Healing Touch Hospital & Ors. (2000) 7 SCC 668***. The Order passed by this Commission was reversed on the ground that the claim could have been labelled as unrealistic or excessive or exaggerated only after the claimants had been given an opportunity to prove



their case. It was also held that the Complaint had been dismissed after six years of its filing even when the pleadings were complete.

70. As indicated above in the present case, the complaint was filed in the year 2017 and is being heard after 7 years with full pleadings having been completed and exchanged between the parties. For this reason, the present complaint does not deserve to be dismissed and for the reasons supplemented hereinafter and the findings recorded on the quantum, the complaint cannot be dismissed even applying the ratio of ***Indrani Chatterjee Vs. AMRI Hospitals (Supra)***. It is not only that the pleadings have been completed but the parties have litigated at various forums since 2016.

71. This is not one of those claims where compensation has been claimed only on the drop of the hat. The nature of the negligence and the liability of the hospital as discussed above unquestionably calls for award of compensation. It is not to be tested on the principle of "*where there is blame, there is claim*". An exaggerated claim is based on an overstatement and at times is to be taken with a grain of salt. However, it cannot be said that there is no truth in the quantum as indicated by the Complainant even if according to the Opposite Parties, the claims are beyond a given measure. To understand if the claim is a superabundant or overindulgent or even extravagant, one has to observe that the nature of the negligence cannot be minimised by treating the act of negligence of the Opposite Parties arising out of a minor soft tissue injury. The





negligence is not only the performance of a surgery on the wrong foot but also the decision to perform the surgery without consent. The registration of the complaint therefore in such circumstances was well-founded and the negligence has been proved to the hilt. There is no suggestion by the Hospital or the doctors that for such sort of negligence, what would be the possible specific formula to gauge a compensation for such negligence. In my opinion, it not only the actual loss but all the consequences that ensue affecting the quality of life or in other words life altering consequences over and above loss of earnings and unpredictable tantrums that may arise in future.

72. One has to put oneself in such moments to understand as to what actually would follow when a patient is faced with such agony and trauma. To assess a limping man's pain or the feelings and challenges of a soldier who has lost his leg in a mine blast or the trauma of a gangster resulting in an amputation, one has to enter into the "Orthopaedic Shoes" of the sufferer, not physically, but emphatically. In the words of Justice Sonia Sotomayor of US supreme court, Empathy shouldn't be confused with sympathy and it shouldn't be confused with bias. It means the ability to walk a mile in somebody else's shoes. That may be the single most important quality going into a court where once you are seated you never walk anywhere in anyone else's shoes. You are exposed to an extremely narrow range of people, you just think and write. The life changing effects and the practical impact forever changing one's life history are the other

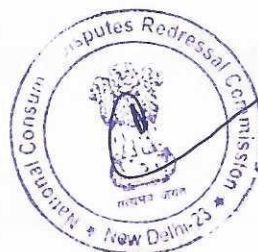


consequences which cannot be ignored. These consequences that one has to face are not exaggerated or rhetorical. The negligence of the Opposite Parties is operating the wrong foot without consent is for beyond unreasonableness and the defence setup is inexcusable. The proportionality of compensation in the present case has also to be gauged from the point of view that visiting a hospital which acts so negligently is a matter of high risk and there could have been a situation where the surgery might have created complications given the nature of the methodology adopted by the doctors and their decision making process. It is not unknown that there have been cases of wrong extraction of tooth, treatment of the left eye instead of the affected right eye or the ears but at the same time it would be a serious matter if in a surgery the right kidney is treated instead of the left. It is this disproportionality of negligence that is involved in the present case and hence the quantum of general or special damages have to be construed accordingly.

73. There are some judgments that have been relied on by the learned Counsel for the Complainant to throw light regarding compensation in the present case.

The following decisions have been relied on by the learned Counsel:

- P.B Desai V. State of Maharashtra, (2013) 15 SCC 481
- Maharaja Agrasen Hospital V. Rishabh Sharma, (2020) 6 SCC 501
- Dr. Balram Prasad V. Kunal Saha, (2014) 1 SCC 384
- Bhanwar Kanwar V. R.K. Gupta & Anr. (2013) 4 SCC 252





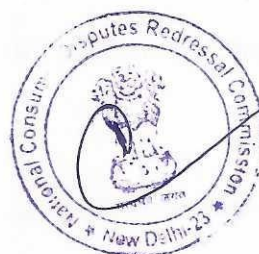
- Sheela Hirba Naik Gaunekar V. Apollo Hospitals Ltd. (2018) 12 SCC 699
- Shoba Devi V. DDU Hospital, (2019) 14 SCC 357
- Barnali Chowdhury & Anr. V. Woodlands Medical Centre Ltd. & Ors. 2023 SCC OnLine NCDRC 821
- Nand Kishore Prasad V. Mohib Hamidi, (2019) 6 SCC 512

74. The principles laid down in the aforesaid judgments therefore allow the Commission to undertake an exercise for the assessment of compensation in the background of the case.

75. Applying the parameters as discussed and the judgments that have been relied on by the learned Counsel for the complainant, the present is a case where the complainant had a prospective carrier in front of him as a Chartered Accountant that was impeded on account of the reprehensible conduct of the Opposite Parties as observed above. The legitimacy of the quantum as regards the heads claimed may vary in assessment but in the present case on a moderation, even assuming for the sake of arguments that compensation for non-pecuniary damages towards mental allowance, pain, suffering and trauma has been claimed on the higher side, the same has to be awarded in the background of the present case which is peculiar in itself, given the long drawn legal battle which has been fought by the Complainant. There cannot be any denial that the principles laid down in the cases that have been cited at the bar, just compensation is payable under various heads.



76. The date from which the loss has to be assessed is the date of incident which is 19.06.2016 coupled with the fact that the complaint was filed in the year 2017. The medical expenses claim and the burden of physiotherapy expenses (5 lakhs + 5 lakhs on each head) do not appear to be excessive and exaggerated. The Opposite Parties have been unable to dispute this quantification by any rational method.
77. Coming to the loss of future earnings it is evident that the Complainant was on the threshold of the carrier of an upcoming Chartered Accountant. This was clearly impeded and marred by a couple of years while undergoing this trauma of his treatment followed by the burdening of contesting litigation at the cost of his carrier. Even if a minimum of Rs.1 lakh per month is assessed for a couple of years, the same would on a modest basis comes to about Rs.25 lakhs of future earnings.
78. The heading of loss of enjoyment of any future married life of course may appear to be a bit speculative but through the course of arguments it was informed by the learned Counsel for the Complainant very fairly that the Complainant is now married and the said head therefore now may not call for any such speculation.
79. There is a claim regarding physical suffering, a permanent mark of injury and weakening of the legs. Even though a sum of Rs.50 lakhs has been claimed for humiliation under this head, the same can be awarded to the tune of Rs.5 lakhs.





The Complainant will have to live with the scars and the weakening of the legs throughout his life.

80. Coming to the issue of mental pain suffering and loss of amenities and enjoyment of life, apart from physical pain and suffering, the mental trauma that might have been undergone by the Complainant is not unimaginable. This will continue to hover his mind throughout his life. Nonetheless, a reasonable compensation towards the same to the tune of Rs.5 lakhs deserves to be awarded in this case.

81. The Complainant has claimed for a permanent attendant/driver throughout his life. This is neither exaggeration nor is it an overstatement. It is evident that but for the negligence of the Opposite Parties the Complainant would have been comforted by performance of the surgery of his right leg which had to be ultimately performed in a different hospital. Resultantly, in order to sustain a support to him which may have likely continue for a long time and may be required in future, the Complainant is entitled to a sum of Rs.10 lakhs against the said head as well.

82. The Complainant has also come up with a claim of damage and compensation for his parents as it was his allegation that loss of earning was caused to his father who had stopped his business to take care of the Complainant who was bed ridden. This contention is not supported by any such indication as to how and in what manner there was a depreciation in the earnings of his father and



therefore any such claim with regard to trauma or loss of earnings may not be a reasonable claim. Similarly, the mental agony of parents of the Complainant may not be a possible claim where no loss has actually been caused to them as their child is safe and is now treated and settled in life.

83. What comes to the forefront is not the actual consequential loss in monetary terms of receipt or loss of income. The issue is of the nature of the activity which has been found to be grossly negligent. The observations made by the three Judges of the Apex Court in the case of ***Charan Singh Vs. Healing Touch Hospital & Ors. (2000) 7 SCC 668*** are apt. Paragraph 13 is extracted hereinunder:

*"13. It is not merely the alleged harm or mental pain, agony or physical discomfort, loss of salary and emoluments etc. suffered by the appellant which is in issue — it is also the quality of conduct committed by the respondents upon which attention is required to be founded in a case of proven negligence."*

84. The two doctors namely the Opposite Party No.3&4 planned the surgery, and came up with an explanation about the planning of the surgery beforehand and at the same time the surgery planned being altered inside the operation theatre. As concluded hereinabove, both these stands were excuses and appear to contradict each other that seem to have been framed and pleaded to save each other or to absolve themselves of their responsibilities. This conduct of the Opposite Parties No. 3&4 is absolutely unethical which aims at covering up their negligence. There is no explanation by either of them as to why consent was not





taken for surgery on the left leg. This reckless approach is a conduct gross negligence. The Opposite Party No.3 was completely absent at the time of surgery and the Opposite Party No.4 performed the surgery on a foot which was neither planned for being operated upon nor was there any consent taken. The Hospital which has strived for its reputation has completely failed in living up to the maintenance of medical standards expected of a multispecialty hospital. This gross negligence therefore calls for heavy special and punitive damages to be imposed on them not only for their faults and lapses but also for having violated the Hippocratic Oath severely.

85. In my considered opinion, the Opposite Party No.3&4 on a moderate assessment deserve to pay a lump sum compensation of Rs.10 lakhs each to the Complainant, and the Hospital deserves to be saddled with a heavier lump sum amount of Rs.30 lakhs as compensation on account of its vicarious liability in having the services of such doctors whose negligence is writ large in the circumstances indicated above. The circumstances are another example of *res ipsa loquitur*.

86. Apart from this, the Complainant has also suffered costs of continuous litigation. Keeping in view that the Delhi High Court had awarded Rs.1 lakh as costs, the present litigation has also been heavily contested and consequently it would be appropriate to award Rs.5 lakhs as litigation costs.

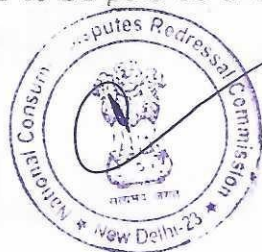


87. This takes care also of the argument of pecuniary jurisdiction raised by Mr. Sisodia which in the light of the findings above deserves rejection. It is not only the quantum of compensation but also the fact that the litigation has been pending for the past seven years and has seen several grounds of litigation at different forums indicated hereinabove up to the Apex Court.
88. To reiterate the issue of Pecuniary Jurisdiction it would be apt to quote paragraph 14 of the three Judges Judgment of the Apex Court in the case of ***Charan Singh Vs. Healing Touch Hospital & Ors. (Supra)***. The same is reproduced hereinunder:

*"14. It must be remembered that the National Consumer Forum has jurisdiction, without pecuniary limitations, to award proper compensation, even less than the one claimed in a given case, depending upon the established facts and circumstances of that particular case and the evidence led by the parties. The District Forum and the State Commission, on the other hand, have pecuniary jurisdictional limitations for granting compensation beyond their jurisdictional limits. Under Section 11(1) of the Consumer Protection Act, 1986, the District Forum has jurisdiction to entertain complaints where the value of the goods or services and compensation, if any, claimed does not exceed Rs 5 lakhs. Section 17(a) of the Act provides that the State Commission shall have jurisdiction to entertain complaints where the value of goods or services and compensation, if any, claimed exceeds Rs 5 lakhs, but does not exceed Rs 20 lakhs. In view of these jurisdictional limitations of the District Forum and the State Commission, these bodies would not be able to award compensation, even if satisfied in a given case that the complainant was entitled to more compensation than what he had claimed, beyond their pecuniary jurisdiction."*

89. In the light of what has been discussed hereinabove, the extent of pecuniary and non-pecuniary damages are liable to be paid as under:

**Consumer Complaint No. 479 OF 2017**





| S.No.                                                                                                    | Particulars                                                                              | Amount           |
|----------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|------------------|
| 1.                                                                                                       | Medical Expenses                                                                         | Rs.5,00,000/-    |
| 2.                                                                                                       | Expenses regarding Physiotherapy Etc.                                                    | Rs.5,00,000/-    |
| 3.                                                                                                       | Loss of Earnings (for two years)                                                         | Rs.25,00,000/-   |
| 4.                                                                                                       | Compensation for Physical Injury                                                         | Rs.5,00,000/-    |
| 5.                                                                                                       | Compensation for Mental Trauma and Pain                                                  | Rs.5,00,000/-    |
| 6.                                                                                                       | Compensation for engaging a Driver/Assistant<br>for permanent assistance in daily chores | Rs.10,00,000/-   |
| <b><u>Special Damages for Gross Negligence on the<br/>Opposite Party No.3&amp;4 and the Hospital</u></b> |                                                                                          |                  |
| 1.                                                                                                       | Rs.10,00,000/- each on the Opposite Party<br>No.3&4                                      | Rs.20,00,000/-   |
| 2.                                                                                                       | On Hospital                                                                              | Rs.30,00,000/-   |
| 3.                                                                                                       | Litigation Cost                                                                          | Rs.5,00,000/-    |
| Total                                                                                                    |                                                                                          | Rs.1,10,00,000/- |

90. The Complaint is accordingly allowed. The entire amount has been calculated on a moderation and lump sum basis and that is why no interest is being awarded. The amount of Rs.60 lakhs shall be payable by the Hospital, the Opposite Party No.1&2 jointly and severally, along with the special damages of



Rs.30 lakhs. The Opposite Party No.3&4 shall be liable to pay only Rs.10 lakhs each as indicated above.

91. In the event the aforesaid amount is not paid within three months. The same shall be carry interest at the rate of 9% per annum from the date of this order till the date of actual payment.

Sd/-

( A.P. SAHI, J. )  
PRESIDENT

Karan/Court-1/Reserved



3401

*1/18/2024*  
*28/06/2024*