

IN THE DELHI STATE CONSUMER DISPUTES
REDRESSAL COMMISSION

Date of Institution: 03.03.2015

Date of Hearing: 14.07.2025

Date of Decision: 15.10.2025

FIRST APPEAL NO.-110/2015

IN THE MATTER OF

**1. MAX BALAJI HOSPITAL,
(A UNIT OF BALAJI MEDICAL AND DIAGNOSTIC
RESEARCH CENTRE),
108 A, I.P. EXTENSION,
OPPOSITE SANCHAR APARTMENT.
NEW DELHI – 110 092.**

**2. DR. L. TOMAR,
(ORTHOPAEPDIST)
108 A, I.P. EXTENSION,
OPPOSITE SANCHAR APARTMENT
NEW DELHI – 110 092.**

(Through: Mr. Ravindra Aggarwal, Advocate)

...Appellants

VERSUS

**SMT. N. R. MISHRA
W/O SHRI M.P. MISHRA,
R/O. 653, KANUNGO APARTMENTS,
DELHI – 110 092.**

(Through: Mr. Biraja Mahapatra, Advocate)

...Respondent

CORAM:**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)****HON'BLE MS. PINKI, MEMBER (JUDICIAL)**

Present: Ms. Shakti Chaturvedi, Counsel for the Appellant appeared through VC

Mr. Biraja Mahapatra and Mr. Nalin Hingorani, Counsel for the respondent (Enrl. No. D/696/2001 & D/12389/2022, Mobile: 9810935526, Email: birajamahapatra@gmail.com)

PER : HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, PRESIDENT**JUDGMENT**

1. The facts of the case as per the District Commission record are as under:

“The brief conspectus of facts of the present complaint are that the complainant, aged 56 years, was admitted to Max Balaji Hospital, the Respondent No.1 herein, on 03/06/2010 with complaints of pain and swelling on the right ankle due to fall on 02/06/2010 and was treated under the direct supervision of Respondent No. II. It is alleged that during recording of the case history the complainant referred to the X-ray film of the Gangaram Hospital which reflected three fractures one below the knee, second exactly on the ankle and the third one just below the ankle. Surgery was conducted on 03/06/2010 and internal fixation was done with two cannulated cancellous screws for posterior malleolus. The complainant remained hospitalized till 07/06/2010 and an amount Rs.76,167/- was spent on the hospitalization. At the time of discharge the complainant was assured of full recovery within four to six weeks. The plaster was removed from the leg of the complainant on 18/07/2010. Despite regular follow-up and physiotherapy sessions under the supervision of qualified physiotherapist the complainant was feeling excruciating pain in her ankle and was not able to stand properly even using a

crutch. In the last week of August and second week of September the complainant alleges to have sought opinions from two orthopaedists, one at Delhi and the other at Orissa and had shown the prescriptions and x-ray films to them. Both these doctors after examining the patient physically opined that the complainant might require another surgery as the treating doctor, the Respondent No. II herein, had not fixed the screws for another fracture below the ankle and had left a fracture unattended. The said two doctors further opined that the Respondent No. II has not followed the generally accepted medical procedure as followed in similar cases and had it been carried out the complainant would be able to walk properly till now. The complainant is forced to take the services of an attendant and take physiotherapy. The complainant has prayed for a compensation of Rs.7,25,000/- besides the cost of the present litigation.

In response to the notice issued to the respondents, a joint written version has been filed on behalf of the Respondent Nos. I and II wherein while denying all the allegations raised by the complainant in her complaint it is contended that the present complaint is liable to be dismissed as the post operative radiograph done on 06/06/2010 shows good alignment, adequate fixation and no displaced bony fragment After satisfactory treatment the complainant was discharged from the Respondent No.1 hospital on 07/06/2010 under stable condition with advice not to bear weight, continuation of casting and follow-up in OPD. The cast was removed on 18/07/2010 and radiographs taken thereafter reflected proper alignment of the ankle mortis and no fracture line or displaced fragments. The complainant was advised accordingly to walk with frame support and partial weight bearing on the right ankle and for physiotherapy. She took physiotherapy from 22/08/2010 to 03/09/2010 at the Respondent No. I hospital with clinical records dated 03/09/2010 indicating improvement and

reduction in pain and swelling. Thereafter the complainant has not been in contact with the Respondent No.1. It is submitted by the respondents that the complainant is a known case of hypothyroid on regular medication. She had suffered an injury due to a fall two days before the date of admission into the Respondent No.1 hospital and had not taken her initial treatment from it. On clinical and radiological evaluation she was diagnosed to be suffering from fracture dislocation of right ankle with posterior malleolus displacement (Fracture of the ankle) and fracture of the proximal fibula (Fracture below the knee). The medial malleolus fracture (Fracture just below the ankle) was not evident. Such injuries are classified as Type C-3 Fracture which is proximal fracture of the fibula associated with displaced fracture of the posterior malleolus and may involve medial fracture or deltoid ligament injury. After proper work up the complainant was posted for surgery on 04/06/2010 complainant underwent manipulation and reduction of fracture posterior malleolus and fixation with two cannulated cancellous screw. The joint was assessed for stability under Image Intensifier TV (IITV) guidance and confirmation of ankle mortise congruity was done. The complainant was given a below knee cast for the associated ligament injury. The presence of undisplaced medial malleolus fracture or deltoid ligament injury was simultaneously treated in below knee cast as standard treatment. The respondents have denied having left any fracture unattended while the complainant was under their treatment. It is further submitted that the discharge summary of the complainant clearly shows that the complainant was informed and advised to report back in emergency if she felt any discomfort. However, the complainant visited the Respondent N. I hospital as per the follow-up schedule mentioned on the discharge summary on 10/06/2010. The medical records of the OPD reflect that the complainant did not report of any pain until 22/08/2010 i.e., approximately two months after surgery. Rest of the allegations have been denied.

Evidence by way of Affidavit filed by the complainant and Respondent No. II and on behalf of Respondent No. I in support of their respective cases.

The matter was referred to the GTB Hospital, Delhi for Expert Medical Opinion regarding the deficiency in service, if any, on the part of the respondents in the treatment given to the patient/complainant. The Expert Medical Opinion of the Medical Board constituted by the Medical Superintendent of the GTB Hospital dated 22/11/2011 was submitted vide Letter No. F.17/GTBH/MS/SP/COURT/11/15882 dated 25/11/2011. Copy of the same was supplied to the complainant. Objections filed by the complainant to the said Expert Opinion of GTB Hospital challenging the said report”.

2. The District Commission after taking into consideration the material available on record passed the order dated **17.09.2014**, whereby it held as under:

“We have gone through the entire record and heard the parties at length. It is not dispute that the complainant suffered an injury in the right ankle due to a fall on 02/06/2011 and was admitted into the Respondent No.1 hospital on 03/06/2011 where she was diagnosed to be a case of Fracture Dislocation Right Ankle with posterior malleoli fracture and fracture fibula proximal third as per the Typed Discharge Summary filed on record. On perusal of the documents placed on record by the parties to the present lis viz., the treatment record of the Respondent No.1 particularly the Discharge Summary which has not been refuted by the complainant there is not a scintilla of doubt that the complainant was operated on 04/06/2010 instead of on 03/06/2010 as alleged by the complainant in her pleadings. The fact as to the date of surgery is apparent on the face of the record. As such the statement made by the

complainant in her pleadings is not true and is, thus, not acceptable to us.

Further, the only question that needs to be adjudicated upon in the case in hand is - Whether the respondents were in any way negligent in treating the complainant? In the present case before us, the Typed and Hand-written versions of the Discharge Summary of the Respondent Hospital are very crucial evidence in deciding the factum of negligence on the part of the respondents. On perusal of the Typed Discharge of negligence on the part of Summary annexed as Paper 16 and also filed on record as Exhibit OP1/2 (colly) and the Hand-written version of the Discharge Summary annexed as Paper Nos 17 and 18 10 the Written Statement it is shocking to observe the glaring inconsistency in the two versions of the Discharge Summary of the Respondent Hospital, In the Typed-version under the head "Diagnosis the complainant was diagnosed to have fracture dislocation right ankle with posterior malleoli fracture and fracture fibula proximal third whereas in the hand-written version under the head "Course in Hospital" a noting has been made that the Patient was admitted after an injury to right ankle. On clinicoradiological evaluation was diagnosed to be fracture dislocation right ankle with fracture posterior malleolus and fracture medial malleolus. (The discrepancy is evident, glaring and writ large on the bare perusal of the said two versions of Discharge Summary in as much as the respondents have not mentioned the fracture of medial malleolus in the Typed version but the same has been included in the noting of the Hand-written Discharge Summary wherein they have erred to note the fracture of fibula proximal third which has been clearly mentioned in the Typed version of the Discharge Summary. It is pertinent to mention here that as a general practice prevalent in the medical field, the Typed version of the Discharge Summary is prepared from its Hand-written version

and, thus, the contents of the two versions of the Discharge Summary should be identical with no variations at all. On reading the two versions of the same document together there is no room for doubt that the patient was having three fractures (fracture dislocation right ankle with posterior malleoli fracture, fracture medial malleolus and fracture fibula proximal third) and not two as assailed by the respondents and all the three fractures were well within the knowledge of the respondents. Despite having full knowledge of the three fractures the respondents had attended only two fractures viz.. fracture of posterior malleolus and fracture of fibula proximal third. Further, in Para 11(a) of the Written Statement it is stated by the respondents that the medial malleolus fracture was not evident and in Parall(c) it is stated that the joint was assessed for stability under Image Intensifier TV (IITV) for confirmation of ankle mortise congruity. Further, the statements in Para 10 of the affidavits of Dr. Monawar Khurshid, the Deputy Medicals Superintendent at Respondent No.1 and Dr.L.Tomar, the Respondent Well herein, that the presence of the undisplaced medial malleolus fracture or deltoid ament injury was simultaneously treated in belove knee cast the standard treatment. Taking the sequel of these circumstances, it is hard to believe that the medial malleolus fracture was not known or evident to the attending doctor. The fact that despite knowledge of the fracture the treating doctor had given a standard treatment to the medial malleolus fracture and not treated it specifically reflects sheer negligence on the part of the respondents who had in fact left the medial malleolus fracture literally unattended causing pain and suffering to the complainant.

Further, the record of the Respondent Hospital Physiotherapy Department relating to the complainant dated 22/08/2010 wherein under the head "Examination" the treating

Physiotherapist had made a noting under the sub-head "Pain" that the pain was worse while standing and walking and moderate swelling and tenderness around ankle joint and foot. This was the condition of the complainant after more than one month of removal of plaster on 18/07/2010. It was also observed by the treating physiotherapist that the complainant could bear partial weight only with walker support. On going through the history of the physiotherapy treatment dated 29/08/2010 filed on record it is evident that there was mild tenderness and oedema on medial and lateral malleoli. The assessment made on 30/08/2010 also reflects swelling only on malleoli besides improvement in movements. The said record of its Physiotherapy Department further give strength to the allegations made by the complainant that due to the negligence of the respondents in treating the complainant her fracture of the medial malleoli remained ununited causing pain, agony and inconvenience to her after taking required treatment. The fact that she was having complications even after more than one month of the removal of plaster cast on 18/07/2010 also substantiates her claim Further, on perusal on the Expert Opinion it is CONSUMP relevant to mention here that fore rendering the medical opinion neither the complainant was examined by the doctors on the panel nor any fresh x-ray/s were taken to ascertain the charges of alleged medical negligence. The Expert Opinion rendered by the Medical Board of GTB Hospital is based on x-rays taken after she sustained injury till the removal of the cast on 18/07/2010. The panel of doctors have also failed to take into consideration the opinions sought by the complainant from two orthopaedic surgeons namely, Dr. Shankar Acharya of Sir Ganga Ram Hospital (dated 31/08/2010) filed on record as Annexure & Paper 18 and that of Prof. U.N. Misra (dated 10/09/2010) filed on record as Annexure 6 Paper 18A. In the opinion given by Dr. Acharya he has specifically made a note about fracture in the right ankle - medial malleolus. The report of Prof. U.N.

Misra also mentions undisplaced fracture of medial malleolus which according to his observation was ununited as on 10/09/2010 when the complainant had sought his opinion. The panel of doctors should have taken into consideration these opinions sought by the complainant before rendering their opinion and investigated the case of the complainant from that aspect also as to whether there was any fracture of medial malleoli which had not united and thereafter rendered their opinion.

Also, despite specific mention of the fact that while giving the Expert Opinion Discharge Summary had been seen, the panel of experts have failed to indict the Respondent No.II for medical negligence and reasons for this is not very knotty to comprehend as members of medical fraternity would not like to indict their colleagues in majority of cases even when sheer negligence in the treatment comes to their notice or is apparent on the face of the record as in the case in hand. They tend to cover up the negligence of their fellow members by giving an opinion exonerating him from any charges of medical negligence on his part. Instead of assisting the courts with their expertise they are rendering the entire exercise of seeking expert opinion for adjudicating the cases of medical negligence in a justifiable manner infructuous.

The Hon'ble Supreme Court in its judgment delivered in Martin F. D'Souza vs Mohd. Ishfaq (Civil Appeal No 3541 of 2002) on 17th February, 2009 has expressed the view that since Judges are not experts in medical science, rather they are lay men. This itself often makes it somewhat difficult for them to decide cases relating to medical negligence. Though Judges usually rely on testimonies of other doctors which may not necessarily in all cases be objective, since like in all

professions and services, doctors too sometimes have a tendency to support their own colleagues who are charged with medical negligence. So a Court is not bound by the evidence of the experts and the Court must cautiously derive its own conclusion. From this a clear cut inference can be drawn that Experts' opinions are not binding on the court in medical negligence cases and to a large extent they are advisory in nature. The Hon'ble National Commission has also referred to this judgment in its judgment in Dr. Niraj Awasthi vs Jagdish Bharti (deceased) through Legal Representatives 2010 CT) 656 (CP) (NCDRC).

It is further pertinent to mention here that the patient/complainant approached the Respondent No.II for treatment of fractures so that she is able to resume her normal daily routine chores, etc. as she did prior to the fall a general expectation which one expects on approaching an Orthopaedic Surgeon working in a Hospital of repute. Is it not a tacit evidence suggesting lack of due care in discharging his professional responsibility which a doctor of ordinary skill was expected to exercise. Though it is stated that Dr.L. Tomar, the treating doctor in the present case, held high professional degrees and experience but the circumstances do speak that he did not exercise due care in attending to the fractures of the complainant and there was a breach of duty on his part and liability has to be fastened against him for consequential damages, pain and agony suffered by the complainant. Though the complainant has not placed on record evidence that she has engaged a maid servant for attending to her but in a case where the it is an evident fact that the complainant cannot stand and walk properly and is suffering from pain and swelling on the ankle which bears the weight of the entire body, it is hard to believe that she can do her daily chores without some assistance. Infact, the complainant has been

constrained to depend on the assistance of some person for meeting her daily needs.

Taking into consideration the sequel of observations and discussion made supra, we arrive at an inference that the conduct of Respondent Nos I and II fell below the standards of a reasonably competent hospital and practitioner in his field and nail them down of negligence on their part. The complainant has been made to suffer the traumatic pain for which she needs to be compensated. We award a compensation of Rs 5,00,000/- to the complainant and this amount shall include the cost of litigation. The said amount shall be payable, either jointly or severally, by the respondents within 45 days from the date of this order.”

3. Aggrieved by the aforesaid judgment of District Commission, the Appellant has preferred the present appeal, contending that the District Commission failed to appreciate that a typed and hand written versions of the discharge summary can have multiple corrections and discrepancies keeping in view the medical facts and circumstances. It is further submitted that the District Commission failed to appreciate that the hand written discharge summary does not mention fracture of proximal third fibula (fracture below the knee), because it was not prepared by the treating doctor but by an intern; whereas the said fact is included in the signed/ typed Discharge summary. Secondly, it is submitted that as per the Expert Opinion received from the GTB Hospital, no negligence can be carved out on the part of the Appellant. Lastly, it is submitted that the Appellant-Hospital and its doctors took all the possible measures and acted according to the standard medical practice and as such, no negligence can be attributed to the conduct of the Appellant. Pressing the aforesaid submissions, the Appellant has prayed that the Impugned Order be set aside.

4. The Respondent has filed the reply to the present appeal and has stated therein that the present appeal is a gross abuse of the process of law in so much so that the handwritten discharge summary, which is stated to be prepared by an intern, clearly makes a mention of the fracture of med malleolus. Secondly, it is submitted that the District Commission rightly rejected the Expert Opinion as the same did not appeal to its conscience. Lastly, it is submitted that the Appellants doctor has not followed the standard procedure as is expected of a prudent doctor in the given situation and the present case squarely falls in the domain of medical negligence. Pressing the aforesaid submission, the Respondent has submitted that the present appeal be dismissed with heavy costs.
5. Parties have filed their brief written arguments and the same have been given due consideration .
6. We have perused the material available on record and heard the counsels for the Parties.
7. The *first question* that falls for our consideration is *whether the District Commission erred in appreciating the hand-written and typed Discharge Summaries*.
8. It is the contention of the Appellant that discrepancies are bound to occur in the hand-written and typed discharge summary and the hand written discharge summary does not mention fracture of proximal third fibula (fracture below the knee), because it was not prepared by the treating doctor but by intern. However, it is pertinent to remark that controversy in the present case is not whether the Hand-written or typed Discharge Summary is final, rather the pivotal point is that the fracture of medial malleolus was left out by the treating doctor, thus implying an overt act of negligence.
9. Furthermore, we are not impressed by the submission of the Appellant that the Hand-written Discharge Summary was prepared by an intern. The Appellant

cannot simply shrug off its responsibility by stating that a documents as crucial as the Discharge Summary was prepared by the intern. Here, it is to be noted that even if it is assumed that the said summary was prepared by the intern and corrections were made in the typed Discharge Summary which the Appellant is vehemently projecting as final and error-free, it is abysmally surprising to note that the hand-written summary makes a clear mention of fracture of the medial malleolus while in the final summary, this necessary piece of information guiding the whole course of treatment was simply omitted. In our considered opinion, the fact remains that the treating doctor, ignored a particular fracture i.e. Medial Malleolus fracture is clearly evident from the record.

10. Interestingly, the Appellants have claimed that the fracture medial malleolus was not evident. However, at the same time the Appellants/Opposite Parties in their Written statement before the District Commission at *Page No.95 (Para C)* have submitted that "*the presence of undisplaced medial malleolus fracture or deltoid ligament injury was simultaneously treated in below knee cast as the standard treatment*"

11. It is to be noted further that the Appellant No.2/Opposite Party No.2-doctor, in his written statement before the District Commission has contended that the medial malleolus fracture was not evident. However, it is again surprising to note that the document titled "*Course in the Hospital*" (*annexed at pg-122 alongwith the Appeal*) clearly mentions the presence of medial malleolus fracture, relevant extract reproduced hereunder as:

"...patient was admitted after an injury on right ankle, on clinicardiological evaluation was diagnosed to be fracture dislocation right ankle with fracture 1. Posterior malleolus, 2 fracture medial malleolus. Patient was taken up for surgery

after clearance by physician for hypothyroidism, open reduction and internal fixation was done and post operative period was uneventful."

12. It is to be noted further that the medical literature placed on record by the Appellants (pg-183 alongwith the appeal) suggests that *"displaced fractures on med malleolus should be treated surgically because persistent displacement allows the talus to tilt into varus". It is particularly important in individuals with high functional demand.*" However, it is pertinent to mention that the patient was treated with a below knee POP cast, which is evidently not the standard/recommended treatment for medial malleolus fracture.

13. ***The final question that falls for our consideration is whether the District Commission erred in rejecting the Expert Opinion of doctors at GTB Hospital.***

14. A bare perusal of the Expert Opinion rendered by the Medical Board constituted at GTB Hospital makes it abundantly clear that the panel of doctors have deliberately overlooked the opinions sought by the Respondent from two orthopedic surgeons namely, Dr. Shankar Acharya of Sir Ganga Ram Hospital (dated 31.08.2010) and that of Prof. U.N. Misra (dated 10.09.2010). A bare perusal of the opinion given by Dr. Acharya reflects that he has specifically made a note about fracture in the right ankle – medial malleolus. Furthermore, a perusal of the report of Prof. U.N. Misra also makes a categorical mention to the effect that the undisplaced fracture of medial malleolus stood ununited as on 10.09.2010, i.e. the date on which the Respondent had sought the aforesaid opinion. In our thoughtful opinion, no credence can be attributed to the Expert Opinion given by the panel of doctors at GTB hospital in so much so that the said Medical Board deliberately overlooked to take into consideration the opinions given by Dr. Acharya & Prof. U.N. Misra, before forming their own

opinion and failed to investigate the case from a comprehensive perspective as to whether there was any fracture of medial malleoli which had been lying ununited.

15. Even otherwise, it is to be noted that the observations by doctors of the Expert Medical Board to the effect that "*Non-union of medial malleolus, post traumatic stiffness and RSD are known complication of this injury*" is not germane to the case of the Respondent. The controversy in the present case relates to the conduct of the Appellant No.2-treating doctor who has nowhere mentioned that he has addressed the injury of medial malleolus. It is settled position of law that the opinion of experts is only advisory in nature and the Court is not bound by the same as has been held by the Hon'ble National Commission in the case of ***Dr. Neeraj Awasthi Vs. Jagdish Bharti reported as 2010 CTJ (CP) NCDRC***, and the Court can reject the expert's opinion when such an opinion does not appeal to the conscience of the Court. Therefore, we opine that the District Commission rightly rejected the expert's opinion in view of the material placed on record.

16. At this juncture, it is worthwhile to mention that it is a settled position of law that if medical practitioner falls short of following the standard medical protocol, which is expected of an ordinary prudent doctor, a clear case of medical negligence is made out. The medical practitioner though, is not required to possess the highest level of expertise, but is expected to adhere to the standard of extending reasonable care and following the standard medical procedure, which in the instant case, the Appellants have evidently failed to do.

17. Therefore, we do not find any ground to warrant interference with the order passed by the District Commission. ***Consequently, the present Appeal stands dismissed with no order as to costs.***

18. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgement.
19. The Judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.
20. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

Pronounced On:
15.10.2025

L.R.-G.P.K