IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

RESERVED ON : 8.5.2025
PRONOUNCED ON : 27-11-2025

FIRST APPEAL NO.456 OF 2023

(From the order dated 02.3.2022 in CC No. 72/1996 of the State Consumer Disputes Redressal Commission, U.P.)

1. Sanjay Gandhi Post Graduate Institute of Medical Sciences through
Director, Rai Bareli Road, Lucknow
Uttar Pradesh
2. Dr.Piyali Bhattacharya
Department Pediatric
Rai Bareli Road, Lucknow
Uttar Pradesh
3. Dr.Sonia Nityanand, Immunology Deptt.
G.Block, Rai Bareli Road, Lucknow
Uttar Pradesh
4. Dr.Chandrashekhar, Immunology Deptt.
G.Block, Rai Bareli Road, Lucknow
Uttar Pradesh
5. Dr.Negi, Immunology Deptt.
G.Block, Rai Bareli Road, Lucknow
Uttar Pradesh

..... Appellant(s)

Versus

1. Rajenddra Nath Keserwani
Aged about 48 years S/o Late Shri Kedar nath Vaish
R/o 135-136, Sadar Bazar, P.S.Cantt.
District Lucknow

2. Oriental Insurance Co.Ltd., DO-1
Balmiki Marg, Lalbagh, Lucknow
through its Divisional Manager

..... Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE A.P. SAHI, PRESIDENT
HON'BLE MR. BHARATKUMAR PANDYA, MEMBER

For the Appellant(s) : Mr. Somiran Sharma, Advocate

For the Respondent No.1 : In person

For the Respondent No.2 : Mr.Subodh Jha, Advocate

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

ORDER

This Appeal has been filed by one of the prestigious Medical Institutes of the State of Uttar Pradesh namely SGPGI, Lucknow, alongwith four Doctors who had been arrayed as Opposite Parties in CC No.72/1996 filed before SCDRC, Lucknow, UP by the Respondent/Complainant.

2. The Complaint was allowed holding the appellants to be negligent in treating the deceased son of the Complainant/Respondent awarding a sum of Rs.14 lakhs to the Complainant as compensation together with interest @ 10% p.a. and in default that would stand enhanced to 15% p.a.. An additional sum of Rs.5 lakhs was awarded on account of loss suffered by the Complainant together with interest and then an amount of Rs.30 lakhs, has been awarded towards mental agony, torture and depression, with interest thereon.

3. The Appeal was preferred within time and a Caveat was lodged/filed by the Respondent/Complainant. Notices were issued and the Respondent No.1, appearing in person, sought time to file a response. The matter was taken up on 12.4.2024 and it was observed by the Bench of this Commission that no Medical Expert opinion was brought on record before the State Commission and, therefore, the Ld.Counsel for the Appellants prayed that the matter be heard on facts after assessing the Evidence i.e. on record. The case was adjourned and on 4.9.2024 the following order was passed:

> *"Heard Learned Counsel for the Appellant who has advanced submissions contending that the State Commission has proceeded to decide the matter on the basis of facts which are beyond the pleadings and was lacking in evidence. He submits that the order is perverse and the Complaint did not contain any material facts so as to allow the State Commission to opine on issues which were not even framed and did not arise from the*

pleadings which are on record. He contends that the Complaint is just a 14 paragraph narration to which a reply was given, but on a perusal of the impugned order, it is evident that the State Commission has proceeded to record findings beyond the said pleadings which are on record. He further submits that one of the main contentions raised in the complaint is about the unnecessary shifting of the patient from Immunology private ward to the Isolation ward. The contentions that even this shifting does not in any way amount to an act of medical negligence nor is there any evidence to substantiate the same. Consequently, the shifting vide itself per se does not amount to any medical negligence. He then submits that the conclusion drawn by the State Commission that the patient ought to have been shifted to the haematology ward is unfounded in as much as according to him the said ward came to be created and established in the year of 2003, and was not even in existence when the treatment is alleged to have been undertaken in the hospital. He has urged with the help of the written version already filed that the shifting of the patient was to benefit the patient as being sent to the isolation ward was nearer to the nursing and doctor's room, and since he was a critically ill patient, therefore, such a movement does not in any way indicate any inference of medical negligence. He then submits, that the findings which have been recorded by the State Commission broadly are based on certain downloaded material from the Google with which neither the parties were made aware of nor confronted with, and the said material which has been relied on is neither authentic nor is proof of any evidence to enable the State Commission to arrive at a conclusion or medical negligence on the basis of such material. He then submits, that the findings have been recorded with regard to the competence of the treating doctor as being not qualified which was not an issue raised in the complaint and consequently such findings have been arrived at which is of no consequence. He has urged that findings with regard to consent for chemotherapy are incorrect in as much as the entire medical protocol for the said purpose was followed and the findings do not find any support either from the pleadings or evidence. He has therefore, urged that in so far as the impugned order is concerned the same cannot be sustained as it proceeds on certain premises and even material which was alien to the entire pleadings and evidence on record. The arguments could not conclude today, due to paucity of time and consequently the matter will we heard on the next date fixed. He points out that since the record of the State Commission which include the original hospital treatment records might be needed in order to appreciate the infirmities is which are being pointed out in the impugned order, therefore the said record may be summoned.

We may point out that this complaint was filed in the year of 1996 in respect of an incident of 1994-95. The complaint itself came to be decided on 02.03.2023 by the State Commission. In the given circumstances, more so when the Respondent/Complaint is a senior citizen, it would be appropriate that the matter be listed at the earliest. The Registry is directed to send a requisition to the State Commission summoning the original records of the State Commission by the next date fixed. The requisition shall ensure that the records reach by the next date fixed with a direction to the State Commission to comply with this order within four weeks. Let the matter be listed on 07.11.2024 at 02:00 pm."

4. Learned counsel for the Appellants had raised his submissions pointing out towards the deficit in the pleadings and also the evidence on record and he, therefore, prayed that the impugned order deserves to be set aside.

5. The case was again taken up on 7.11.2024 and the Learned counsel for the Appellants reiterated his arguments and invited the attention of the Bench to the various aspects of the case as well as the digital copy of the State Commission records received from the State Commission. It was pointed out by the Learned Counsel for the Appellants that the Execution has been set into motion and, therefore, we passed an interim order directing that the execution shall remain in abeyance. The order dated 7.11.2024 is extracted hereinunder:

"Heard learned counsel for the appellants and Mr. Keserwani, the respondent/complainant who is present in person. Learned counsel for the appellants has commenced his arguments primarily contending the issues that were advanced by him on 04.09.2023, but he has proceeded to elaborate on the same by pointing out to the findings recorded by the State Commission at page 56, page 80, page 102, page 118 and finally at page 133with the conclusion at page 139. The arguments that have been urged relate to the treatment which commenced after the child was admitted in November, 1992 and was diagnosed on 01.12.1992 with Leukemia. The contention raised is that on such diagnosis the concerned pediatrician Dr. Piyali Bhattacharya proceeded with the treatment and keeping in view the nature and intensity of the diagnosed disease, the child was put on Chemotherapy treatment which admittedly took place on

18.12.1992 and 19.12.1992. He contended that improvements were registered after the said treatment for which facts have been stated in the written statement that had been filed before the State Commission. The contention therefore is that the line of treatment after the diagnosis was in accordance with the medical protocol and the Chemotherapy had been conducted in accordance with the norms prescribed. He has then invited the attention of the Bench to the findings recorded at page 80 to urge that the doubt expressed by the State Commission about the status of recovery is not in conformity with the evidence and as a matter of fact the treatment was being continued in consultation with the experts of medical profession available in the Hospital, as a result whereof the child had registered some progress. He therefore submits that the admission of the child in the General Hospital as indicated in the impugned order was not of any significant consequence as the treatment was for the disease that had been diagnosed. Nonetheless, he again reiterated that these aspects were not even pleaded in the complaint and consequently the appellants had no occasion to contest any such allegation that had been inferred on the basis of certain material which the State Commission has taken cognizance of without pleadings on record. He has then proceeded on the issue of the consent having been taken when the child was again admitted in 1994 and he submits that the consent form indicates the name of the child and also the purpose for which the consent was being taken. A mere absence of signature does not in any way dilute the line of treatment which had been taken and adopted and was even continued even thereafter without objection. Nonetheless, this issue of consent also does not find place in the complaint and consequently any findings recorded without pleading and without any opportunity to the appellants to contest the same is an overreach by the State Commission. The other issues with regard to allegations of negligence and the findings recorded as referred to above in the impugned order also cannot stand the scrutiny of the evidence on record and in such circumstances the nature of the relief granted by the State Commission is not in consonance with the legal principles that are applicable to cases of medical negligence. He submits that in the absence of any such conclusive material regarding medical negligence any amount of compensation as against the appellants on findings of alleged medical negligence are unwarranted. We further find that we had summoned the original records under our order dated 04.09.2024 and it is reported that the records have been sent digitally in a soft copy to this Commission. Let the office dispatch an immediate request to the State Commission to send the original records as directed in the order dated 04.09.2024.

Additionally, Mr. Keserwani has filed reply to the appeal on 19.01.2024 and has served a copy of the same on the learned counsel for the appellants. According to Mr. Keserwani this compilation also contains Photostat copies of the records which may be required for an assessment of the findings recorded by the State Commission. Learned counsel for the appellant submits that the entire documents do not seem to be accompanying the copy that has been served on him. Learned counsel for the appellants is permitted to obtain a copy of this entire material from the Registry, which shall be supplied immediately as and when the learned counsel approaches the Registry for the same, so that he may be in a position to respond to the queries raised and correlate the evidence with the findings recorded whenever the matter is heard. It is informed by the learned counsel for the appellant that execution has been set into motion. Learned counsel has also produced a copy of the order dated 18.10.2024, which indicates that 22.01.2025 is the next date fixed in the execution. The proceedings initiated by the State Commission in this regard shall remain in abeyance. As prayed and agreed list on 11.02.2025 at 2 p.m."

6. The original records were received from the State Commission as reported by the office on 4.2.2025 and the matter was again taken up on 11.2.2025 when Mr.Sharma, Learned Counsel for the Appellants concluded his arguments. The order dated 11.02.2025 is extracted hereinunder:

"Heard learned counsel for the appellants who advanced and concluded his submissions by contending that fundamentally the pleadings in the complaint are either lacking or do not reflect the facts which ought to have been disclosed correctly, as such the State Commission has manifestly erred by traveling beyond the pleadings, the reliefs claimed and the complete absence of facts in order to arrive at a conclusion in respect of negligence, that too even on the basis of the treatment that was given to the patient prior to his admission in the year 1994. He further submits that the finding on consent not having been taken was not an objection taken when the treatment was being carried out or even thereafter. The said presumption drawn on the basis of the documents by the Commission therefore amounts to expanding the entire gamut of facts without there being any opportunity to the appellants to rebut the same. He further submits that any alleged past negligence was not even subject

matter of the complaint, but the impugned order proceeds to record findings in respect thereof including observations about the competence of the treating doctor, namely Dr. Piyali Bhattacharya. It is urged that the incompetence of the concerned doctor was not even pleaded, yet the State Commission proceeded to record findings in the absence of pleadings and therefore reliance is placed on the Apex court judgment in the case of Bachhaj Nahar Vs. Nilima Mandal & Anr., (2008) 17 SCC 491, Paragraphs 12 to 18 to contend that unless in such matters where the allegations, which are of medical negligence, the pleading and proof of the allegations made has to be demonstrated and the defendant or the opposite party cannot be taken by surprise. It is urged that the Apex Court has ruled that the parties should be fully alive to the issues raised in order to prevent any deviation from the contentions raised and the decision should be taken after identifying the issues. The State Commission according to the learned counsel has breached the aforesaid legal principles and has even gone beyond it by relying on certain literature which is neither authenticated or proved and simply was downloaded from the google website and pasted in the judgment with no information to the parties or their counsel. It is urged that such material was neither part of the pleadings of either of the parties and has emerged as some sort of an expert opinion in the order without there being any opportunity to the appellants to have confronted the same. It is urged that this practice of relying on such material and then holding the hospital and the doctors to be liable on the principles of res ipsa loquitor is neither warranted nor can be supported in law as it violates the principles of natural justice. It is submitted that the medical literature relied are articles which cannot be said to be of any repute or from any authenticated Journals nor are they articles that have been peer reviewed and as such any reliance placed on those articles without being part of the evidence could not have been taken into consideration by the State Commission. In order to establish medical negligence the standard required to be observed have been referred to and relied on by the learned counsel for the appellants by citing the decision in the case of Dr. Harish Kumar Khurana and Joginder Singh & Ors., (2021) 10 SCC 291. It is therefore urged that in the background of the submissions already made on the earlier occasions and supplemented by the submissions made today, the complainant had not been able to make out any case of medical negligence and for that matter there was no material in order to establish any such medical negligence which has been made the basis of allowing the complaint. It is further submitted that the

award of Rs.30,00,000/- by the State Commission is on the basis of a one line observation made at the fag end of the impugned order without there being any foundation laid in order to justify the award of Rs.30,00,000/- compensation for mental agony. Learned counsel submits that this was not even prayed for in the relief clause and consequently the impugned order is vitiated on all counts. Mr. Kesarwani in person has appeared online and he has prayed that he may be permitted to address the Bench on another occasion as he has been unable to travel to Delhi today. He prays that the matter be fixed after 10.04.2025. Let the matter be listed at 2 p.m. on 08.05.2025. It shall be open to the opposite party to appear online."

7. The Respondent No.1 who appeared in person online made a request for adjournment and accordingly we listed the matter on 8.5.2025 when the Respondent concluded his arguments and Mr.Sharma also made his submissions in his Rejoinder.

8. Two judgments have been cited on behalf of the Appellants that have been referred to in the order dated 11.2.2025.

9. Mr.Keserwani, Respondent No.1, while advancing his submissions urged that he lost his only son because of the mismanaged and negligent treatment given to his son by the Appellants. He urges that at no stage of the treatment was either consent taken for conducting the bone marrow test, the administration of Chemotherapy or even carrying out a small surgery in the Trachea of the patient. He further submitted that the patient was admitted in the General Hospital/Ward of the Institute instead of the specific Department of Immunology or Hematology where such treatments are supposed to be carried out. The contention is that the treatment was given without any proper attendance in the General Hospital which was neither equipped with facilities or with doctors to take care of a patient of blood cancer. It is urged by him that such careless approach of treating the child resulted in his ultimate death for which the hospital and the Appellants were solely responsible. He has also relied on certain information received under the Right to

Information Act as well as some documents of the Hospital to urge that his child was shifted to an Isolation Ward where there were no facilities and was against the wishes of Respondent No.1 who had questioned the shifting of the child to the isolation ward. Mr. Keserwani passionately argued that this shifting was detrimental inasmuch as there are no chances of survival once the patient is shifted to an Isolation Ward where the patient lies uncared for and it is not known as to what treatment is carried out. He submits that it was done by the Junior doctors assisting the Appellants who did not supervise the shifting or the treatment which added to the negligence of the Appellants and their mismanagement.

10. He also submits that the manner in which the two death certificates were issued itself indicates that the hospital was unsure of the cause of death because the death certificate earlier issued indicates that the cause was a septic shock whereas the subsequent certificate indicates the cause as Leukaemia. He further submits that the absence of consent and no permission taken for administering anesthesia also added to the adverse condition of the patient resulting in his failure to revive himself.

11. He then submits that it is not understood that once the patient after the earlier round of treatment was discharged, there was no reason to collect any charges or issue any gate pass to Respondent no.1. This strange sort of functioning of the hospital is also a negligent approach.

12. He then submits that the reply of the hospital indicates a denial regarding the admission of the patient in the hospital for Widal test. The assertion that he was admitted for a bone marrow test is even otherwise not comprehensible inasmuch as the child was sent in an unsterilized General Hospital Ward where several patients were lying and a long needle was used for conducting the bone marrow test which is not the appropriate way for conducting the test or treating the patient of

Leukemia. The subsequent bone marrow was carried out in a similar fashion in the General Hospital without taking the child to the Hematology or Immunology department which was the appropriate department that was then looking after such patient. All this is evident from the facts on record and the Appellants have grossly erred by not filing the entire records from 1992 when the child was earlier admitted. It was on the asking of the Commission that they ultimately filed the medical records of only 22 days that too even with regard to his admission and treatment in the second round from 9.5.1994 till 31.5.1994.

13. He therefore contends that the Hospital/Appellants not only were negligent in their treatment of the child but have also not brought forth any material to contradict the findings recorded by the State Commission that have been taken notice of for recording findings and arriving at the conclusion of negligence against the Appellants.

14. Mr.Keserwani has invited the attention of the Bench to the submissions made by him in his Reply to the Appeal filed through Diary No.2790 dated 19.1.2024 and the documents filed alongwith the same as also to the Written Submissions filed on 9.5.2024.

15. Mr. Keserwani therefore submits that with all the material on record, there is no error in the order of the State Commission and the impugned order deserves to be confirmed.

16. Mr. Sharma, Learned counsel for the Appellants, in his Rejoinder has again vehemently urged that there were no pleadings regarding the submissions which has been raised today and all the arguments have been advanced without anything on record or any proof in support of such oral submissions and allegations. He reiterates that in a case of medical negligence, the allegations have to be answered on the basis of the pleadings that have been made. In the absence of any pleadings

that have been urged through arguments, there was no opportunity to the Appellants to have answered the same. Even otherwise, the evidence which is on record clearly demonstrates that the patient had been duly treated for Leukemia and the treatment then available was duly administered timely, promptly and with due diligence. He submits that it is not the case of the Respondent that the doctors attending on him were unqualified. The submission about shifting of the patient from the ward to the Isolation Ward is an argument in desperation inasmuch as there is nothing to indicate that there was absence of treatment for the diagnosed disease. The patient was shifted to the Isolation ward to ensure that he gets the best of attendance as it was besides the nursing chambers. This was to the advantage of the patient and not to his disadvantage. It is urged that in spite of the all the best medical protocols having been pressed into service, the child could not survive on account of serious nature of his ailment that was a terminal ailment. The efforts made and the treatment given was neither deficient nor negligent. The allegations made, therefore, do not make out any case of medical negligence and the conclusions drawn by the State Commission are untenable for all the reasons that have already been urged at the time of the arguments advanced earlier.

17. He, however, again points out that the impugned order has proceeded to downloaded material regarding the treatment, diagnosis of such patient which was neither an evidence led by the complainant nor were the Appellants confronted with the same and seem to have been incorporated in the order after being downloaded from some medical Website or literature. This material was never subject matter of arguments or discussion and consequently placing reliance on such material was a misdirected approach of the State Commission.

18. He then submits that the observations made about serious allegations having been levelled regarding the child not being taken to the Hematology Department is totally misplaced inasmuch as there was no Hematology department in the Institution when the child was admitted and treated in 1994. The Right to Information material relied on, cannot be subject matter of consideration inasmuch as the same was absolutely irrelevant in the background that the child had been taken care of and was being treated after being diagnosed in 1992 itself. It is not the case of the Complainant that the Pediatrician who was carrying out the treatment was unqualified to take care of the child. The findings recorded by the State Commission in this regard are without any substance. He urges that on the basis of their own conclusions, the State Commission has proceeded to rely on material which has been extensively quoted to explain the treatment of blood cancer and then to arrive at a conclusion which has no nexus at all to the treatment already carried out to the patient.

19. He then submits that the issue of consent dealt with by the State Commission was neither pleaded nor proved and for that Mr.Sharma has invited the attention of the Bench to the pleadings in the plaint.

20. Having considered the submissions raised, we may point out that this is a Complaint that was registered way-back in 1996 and the State Commission decided it in 2022. The Appeal was preferred in 2023 and has come up for final consideration before us. In the impugned order of the State Commission, the facts have been noted in the first five pages of a 107 page order. From page 6 to page 22, the Learned Members of the State Commission have referred to the understanding of the medical terminology 'Acute Lymphoblastic Leukaemia in Children'. The State Commission thereafter discussed the facts and recorded certain observations as follows:

"It has also become clear that Bone Marrow Requisition and Reporting can only be done by the expert doctors of Haematology Department and none others. Now it is clear that in 1992, Acute Lymphoblastic Leukaemia (Blood Cancer) was being treated in the Department of Immunology and not in general ward. From the perusal of the history sheet it is clear that on 28 November 1992, the patient was undergone Widal test confirming typhoid fever. Payment of Rs.1000.00 is of 01.12.92. There is direction of Dr P Bhattacharya to admit the patient in Gen Hospital. Some medicines were prescribed on 01.12.92 and also it has been written "arrange for bone marrow tomorrow". On 02.12.92 the same Dr has written "transfusion of blood one unit start slowly." But nothing has been written about bone marrow for which direction was given one day earlier. For the next two days the patient was under the treatment of paediatrician. We have seen the pathology report of 02.12.92 in which it has been written column of diagnosis/conclusion - Acute Lymphoblastic Leukaemia. So it is clear That the Acute Lymphoblastic Leukaemia has been diagnosed on 02.12.92 and as per version of SGPGI the patient should immediately be transferred to Department of Immunology. After 02.12.92 the patient was still under the treatment of paediatrician. Under what circumstances he was being treated by the petition when pathology report has confirmed Acute Lymphoblastic Leukaemia? Is it not the negligence on the part of the doctor and institute? The complainant has said that his son was being treated at Gen Hospital even after the diagnosis of Acute Lymphoblastic Leukaemia."

21. The impugned order then proceeds to discuss the symptoms of blood cancer, the tests, that are to be carried out and the abstract theory of Acute Lymphoblastic Leukaemia (ALL). This is clearly some sort of material downloaded from internet and it extracts from page 28 of the impugned order to page 46. At page 46, a brief observation was made about the articles that were referred to in the judgment as follows:-

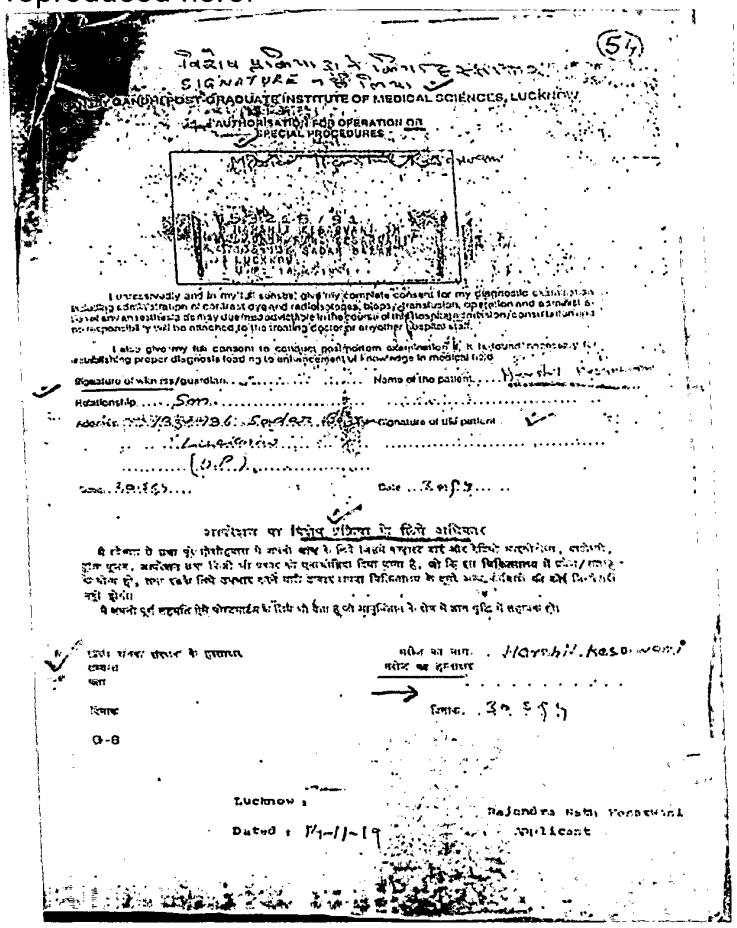
> "When we went through the article it is clear that by pathology test, cancer may be detected and recovery rate in children is very high say about 90%. Why in this case the opposite parties failed to recover a child aged about five years at the time of admission."

22. The impugned order then from page 46 proceeds to talk about the Hippocratic oath and then the skills to be exercised by a doctor. It then goes on to discuss the law as to whether an expert report is necessary or a case can be decided on the principle of *res ipsa loquitur*. The doctrine in theory has been quoted extensively and this study once again appears to be downloaded from some material which extends till page 57 of the order. The State Commission then discusses the theory of medical negligence and deficiency from page 57 to page 65. Thereafter, the Commission discusses the law relating to the quantum of compensation upto page 68 then comes the observations of the State Commission regarding consent and authorization at page 102, which is extracted hereinunder:

> "Now we see, the authorisation for operation or special procedure is document which has been submitted by SGPGI. This is on a printed pro forma having blank spaces to be filled by the concerned Dr. It is dated 30.08 (or 09).94. It is better to paste a scanned copy of this document. On this printed form there is no signature of witness or guardian, name of the patient has been written as Harshit Kesarwani, address and date has been

mentioned on this printed pro forma but there is neither the signature of patient nor the signature of the Guardian on this form.

We know that before operation or chemotherapy consent of the patient is necessary and it should be according to prescribed consent form. Now the special consent has also been obtained for anaesthesia. SGPGI is a reputed institute not only of Uttar Pradesh but of India. Their doctors are well qualified and master of their field. How can one imagine that such consent form has been kept by this institute without any signature of the patient or his Guardian. When there is no consent how can operation or chemotherapy has been performed on the child? This clearly indicates the level of negligence and the degree of carelessness on the part of the institute and concerned Dr. This consent form is reproduced here.



SIGNATURE

SANJAY GANDHI POST-GRADUATE INSTITUTE OF MEDICAL SCIENCES, LUCKNOW

AUTHORISATION FOR OPERATION OR SPECIAL PROCEDURES

Name of the patient

Relationship ..... Son .....

Signature of the patient

Date

Lucknow :

Dated : 7/1-11-19

Rajendra Nath Yaduvanshi

Applicant

It is the story of negligence and carelessness on its own. As far as consent is concerned we have to see the articles and guidelines regarding consent."

23. The impugned order at page 68 refers to certain documents and consent to indicate that the signature of the patient or the guardian is not available.

24. From page 70 of the impugned order the entire literature on consent has been reproduced which continues along with certain articles and references till page 84.

25. The State Commission after quoting all the theory of 'consent', records its observations as follows:-

> "Now we discuss a little about consent form filed by the opposite parties as annexure -2 with his written statement. First there is no signature of the concerned Dr on this consent form. There is no separate consent form for anaesthesia. This pro forma is not in accordance with the pro forma prescribed for taking the consent. There is no separate consent to use the body for post-mortem examination for the purpose of study. There is nothing in this consent form which show that the doctor has specifically mentioned all the risks to the patient or his family members regarding operation or any other tests which may be performed. So this consent form is not a proper consent form as per the guidelines. It also shows deficiency and negligence on the part of the opposite parties."

26. The Learned Members then express a brief concern about the duty to take care and manage a patient and then from page 85 onwards have only reproduced certain articles or printouts upto page 99 of the order.

27. The impugned order at page 99 proceeds to record its findings and then again from page 101 to page 105, the procedure of bone marrow aspiration has been extracted, in all probability, from some medical

literature and has been transplanted into the impugned order. In the last two pages i.e. pages 105 and 106, the conclusions have been recorded.

28. The findings recorded and the conclusions drawn from page 99 to 101 are extracted hereinunder:

> "Now we come to the present case which has been handled poorly by the doctors and Institute. The patient was sent to special ward on 09.05.94 by Dr Sonia Nityanand. After admission, Dr S Nityanand and Dr Chandrashekhar and Dr Negi visited regularly to the patient along with senior Dr RN Mishra and they used to console the complainant that the patient's condition is improving. As per complainant, during this period of treatment in private room-3, the patient was compelled many times to be shifted in isolation room being cheap treatment there in comparison to private rooms. We have seen the death certificate in which Dr S Nityanand has written that on 31 May 1994 at 1.4 5 PM patient developed hypotension and he was then shifted to Iso-2 (after informing mother of patient) as Iso-2 is next to the nursing station were all emergency equipments are available and from where intensive monitoring of patient is better. The patient expired at 2:20 PM. Here the question arises when the patient was in immunology ward, there was no need to shift him to isolation ward /room. This report is given later on when the court directed the institute to file the documents. It is the duty of every hospital, nursing home to provide all the case history sheet, BHT to the patient or his ward at the time of discharge on in case of sad demise of the patient. But they did not do it and ultimately the court, to the rescue.
>
> The Department of Clinical Immunology and Rheumatology was established in 1987 and was the first department of its kind in the country. At the time of admission of the patient there was immunology department in SGPGI and inspite of it, the patient was admitted in general hospital/general ward. The qualified doctor even after detecting the need of bone marrow, could not transfer the patient to the Department of immunology. When once they came to know that it is not a case of paediatrician, why did she not direct that patient be immediately shifted to Department of immunology and the expert doctors dealing with cancer should go for further management. The Department of Radiotherapy was there. So they were responsible for the treatment of the patient. In spite of it various doctors including paediatrician treated the patient for a long time knowing that it is a known case of ALL. It is

negligence on the part of Dr and also on the part of the institute. When we know that the cancer patient may be treated at an early stage and could be saved, in spite of it they did not pay proper attention and care as demanded by cancer patient. The consent paper is blank meaning thereby that it has been prepared later on when the court asked the institute to file all the papers related to treatment of the patient. In reply of RTI so many facts revealed that established the fact that such type of patient cannot be admitted to general hospital and it should have been admitted to Department of immunology. In this case the ultimate negligence was shown by Dr Pyali Bhattacharya who being a paediatrician treated the patient for a long time though she knew that it is a case of Department of immunology. The institute was also negligent in not seeing that a paediatrician is treating the cancer patient. Other doctors were also negligent towards the treatment of the patient. The patient was shifted from one ward to another ward for no reason. Opposite parties no.3 to 5 also did not pay attention towards the proper treatment of the patient. When the document dated 18 December 1992, the patient was referred to Department of radiology by Dr P Bhattacharya, the paediatrician, for the first time for chest x-ray and in the column of clinical finding/provisional diagnosis it is written "Acute Leukaemia on Chemotherapy." There is no document showing the permission taken for chemotherapy. We are unable to understand that why paediatrician was involved in the treatment of a ALL patient. While did she not refer the patient to Department of immunology in the beginning.

Now we have see the bone transplantation. For bone marrow, it is necessary to give anaesthesia but we did not find any paper regarding taking of consent for the bone marrow transplantation or sending bone marrow for biopsy or for giving anaesthesia. When they did not take consent and submitted a blank consent form without the signature of either the doctor or the patient or the Guardian of the patient what to say about bone marrow."

29. The concluding part of the order at page 105 and 106 is extracted hereinunder:-

"It shows that there is negligence on the part of the doctors and institute at each and every step regarding the treatment of a ALL patient, specifically a child of a tender age who can be saved by

immediate and proper treatment but he could not be saved. There was lack of post-operative care which should have been of the highest level but in this case we do not find any effective post-operative care by the Institute or by the concerned Dr treating the patient. All these show the ultimate degree of carelessness and negligence on the part of the Institute and also on the part of concerned doctors. After considering all the facts and circumstances of this case we are of the constant view that there is negligence, deficiency of service and carelessness on the part of the opposite parties.

Opposite party-6 is Oriental Insurance Company who will indemnify the doctor against any compensation to the maximum limit for which they are insured. For this the negligent person can file a suit against the Oriental insurance Co to indemnify themselves."

30. Having heard the learned counsel for the appellant and the complainant in person, we find that the State Commission has padded up the entire impugned order with theoretical material in all probability downloaded from internet. This material was neither cited by the complainant nor did the hospital or the doctors have had any opportunity to test its correctness as they were not confronted by it. The material has been utilized seemingly as expert opinion upon being downloaded from the internet. We find this procedure to be in violation of principles of natural justice inasmuch as in the field of medical science, particularly in the field of medicine, there might be a lot of other material which could have been brought on record by the hospital and the doctor. Had they been given any opportunity to meet the said material which was not part

of the pleadings or even the evidence. The procedure, therefore, adopted does not seem to be in conformity with law.

31. We also find that during the pendency of the Complaint, certain information was sought by the Complainant under the Right to Information Act and an application was moved before the State Commission along with her compilation of the documents. The said application dated 23.12.2020 was filed with some documents and the information received through the Right to Information Act. The Complainant had alleged that he had moved an application for summoning the records from the Hospital which the Appellant had failed to provide but later on, filed the documents only pertaining to the treatment of the patient in the year 1994. The documents pertaining to the treatment in the year 1992 had not been provided and were withheld by the Appellant. We, therefore, find that the State Commission had entertained certain documents filed on behalf of the Complainant that have been referred to in the impugned order.

32. The Commission has then proceeded to make observations regarding childhood Acute Lymphoblastic Leukaemia (ALL), which is nothing else but a reproduction of the internet material, the source whereof has not been disclosed.

33. The State Commission then proceeds to record that the Vidal test was conducted in 1992 when the patient was shifted in the Hospital and diagnosed suspected typhoid fever but at the same time, other tests were also advised for arrangement of bone marrow process. The State Commission has referred to the case sheet dated 01.02.1992 and 02.12.1992 and it was, therefore, assumed that the treating Doctor had the knowledge about the blood cancer. The State Commission expressed a doubt as to why the bone marrow arrangement or anything

about the same was not written on the next day and not taken into consideration.

34. The State Commission then comes to the conclusion that the patient was admitted at the General Hospital for necessary investigations where there were no special facilities. The State Commission then turned towards the reply given by the Institute under the Right to Information Act that patients suffering from blood cancer are treated in the Haematology Department. The Right to Information Act documents have been discussed after pasting them in the judgment itself including the reply about getting the consent of the patient before starting chemotherapy. The State Commission on the basis of this opinion came to the conclusion that the treatment of the patient was being done in the Immunology Department of the Institute and according to such information it could have only been done by the expert doctors of the Haematology Department and none others. The State Commission, therefore, came to the conclusion that the patient suffering from blood cancer was being treated in the Immunology department and not in the general ward in 1992.

35. The State Commission then mixes up all these doubts about the patient being sent and admitted to the general hospital, the treatment being given by the Immunology department, the attending doctor being Paediatrics and has expressed its doubt in a peculiar way.

36. The State Commission, thereafter, formed an opinion that since the child was being treated by a Paediatric and analysed the situation in its understanding. The State Commission recorded that during arguments when we queried from the Advocate of opposite parties regarding chemotherapy, he could not answer at all. Except this, he was not in a position to clarify all the things and questions related to the treatment of the child.

37. After these findings, the State Commission proceeds to once again refer to an article regarding cancer patients without any reference as to the source of the said article. It continues from page 28 to 46 in 18 pages and then commented upon the doctors as follows.

> "When we went through the article it is clear that by pathology test, cancer may be detected and recovery rate in children is very high say about 90%, Why in this case the opposite parties failed to recover a child aged about five years at the time of admission. The medical profession is a noble profession and Dr takes a oath when enters into this noble profession. As per guidelines of MCI, Every member should get it framed in his or her office It should never be violated in its letter and spirit."

38. The State Commission then quoted the Hippocratic Oath and then refers to the professional skills of a doctor qua negligence by referring to some decisions of the Apex Court.

39. The State Commission then refers to the doctrine of res Ipsa Liquator and its essentials along with the provisions of the Indian Evidence Act. The excerpts from black law dictionary as well as other English decisions and authorities to define as to what is medical negligence. This discussion appears at internal page 47 of the impugned order till page 68.

40. Thereafter, the State Commission refers back to the case on the issue of authorization for the operation meaning thereby the consent for carrying out the process of chemotherapy or performing any surgery. This issue of consent has been dealt with by observing that in the absence of any signature of the patient or his guardian chemotherapy could not have been undertaken. We may then refer to the fact that consent was not pleaded in the complaint and this issue had nowhere

been raised in the pleadings of the complainant. It seems that when the documents were later brought on record this point was argued.

41. The State Commission then dwells into the theory of consent which begins from internal page 70 and continues with reference till page 84 whereafter a little comment is passed on by referring to the consent form once again and then once again a theory and generals on patient safety and quality improvement as commencing from page 85 that has continued upto page 99.

42. The State Commission commenced by concluding that the case was handled poorly and once again observed that the cancer patient was not treated properly nor proper attention was extended and the consent had not been obtained. The main grievance recorded by the State Commission is that the patient was treated by Dr P Bhattacharya, who was only a Paediatrician and this treatment continued for a long time in spite of she having known that it was a case of Department of Immunology. Consequently, it was concluded that the hospital was deficient and had not paid any attention to the patient when he was treated in the year 1992.

43. The State Commission then again seems to have downloaded the material from the Internet or copied it from same place, commenting upon the procedure of bone marrow which runs from page 101-105 of the impugned order.

44. Resultantly a conclusion has been drawn by the State Commission holding the institute and the doctors to be negligent at each and every step commenting upon the lack of post operative care and the carelessness with which the patient was treated. The reliefs were granted on the basis of the conclusion drawn extracted above.

45. On an analysis of the facts on record and the contentions raised, the first grievance of the Respondent/Complainant appears to be about

the patient not having been treated by the appropriate department or doctors. The Institute has come up with an explanation that since the patient was a child, he was rightly taken to Paediatrician department where his initial checkup was done and the suspicion as well as the doubts were cleared with appropriate tests locating blood cancer in the patient. It is urged that the admission in the general Hospital, in no way, is an indication of improper treatment in as much as patients of all variety are admitted and the patient was being treated in consultation with the department of immunology. It has also been pointed out that there was no Department of Haematology in 1992 and, therefore, any reference to the answers given under the Right to Information Act, no way, establish that such a department existed in 1992. To the contrary, it has come on record that the said department was created long thereafter in the year 2001 and, therefore, there was no question of the patient being sent to Haematology department. The State Commission has, therefore, mixed up all these factual issues and has reproduced the material that was neither provided by the complainant nor was made known to the Appellant and seemed to have been on the basis of the same opinion gathered by the doctors themselves. In all probability the majority of the opinion founded in the order appears to have been downloaded from the internet and pasted therein without any opportunity to either of the parties.

46. Coming back to the issue relating to the treatment extended to the child, it is evident from the documents which have been brought on record that the child was diagnosed and then was ultimately treated for cancer. He was diagnosed by the experts of the field and not only by the Paediatrician as alleged. The attendance to the patient was by doctors dealing with subject matter which is evident from the prescriptions and the pleadings filed on behalf of the Institute. The

conclusion, therefore, drawn by the State Commission that the patient had only been treated by a paediatrician carelessly without attending to the issue of blood cancer does not seem to be supported by the material on record. The assumptions made by the State Commission as extracted hereinabove, seem to have been made based on subjective suggestions by presuming that the child had not been treated for the disease and for which reference has been made to the admission of the child in a general hospital. We cannot accept this argument that merely because the child was admitted to the general Hospital in 1992, no care was taken about his ailment and even thereafter in 1994. The State Commission itself has recorded that the Department of Immunology existed then, and from the treatment records and the documents, it is evident that the patient had been examined and then diagnosed with blood cancer for which chemotherapy was undertaken.

47. On the issue of consent, there may be an absence of a signature of the guardian or the patient but the chemotherapy was conducted in the full knowledge of the Complainant after carrying out the tests including bone marrow process. The Complainant has alleged that even the process for bone marrow, which requires insertion of a fairly thick needle, was done without consent. We are unable to accept this submission inasmuch as no objection seems to have been raised by the guardian in the said procedure of the treatment. From perusal of the submissions and the arguments which have been advanced, the main thrust of the Complainant is that the child had been sent to the general Hospital at the initial stage, but even thereafter, he was shifted to the isolation ward without his consent. According to the Complainant and his doubt, this shift was in the absence of any expert treatment, and, therefore, this surgery led to a careless approach, leading to the death of the patient.

48. Hospital has come up with an explanation that an isolation ward is meant to be more secure, and it is located beside the nursing ward. A critical patient, particularly a child, was, therefore, supposed to be looked after in a better way, and it is for this reason that he was kept in the isolation ward. The child was being attended to by the doctors around the clock, including the junior doctors who were working on the instructions of their seniors and were taking care of the child. Thus, the contention that there was absence of paediatric care cannot be accepted as the doctors had been attending to the patient, but unfortunately the severe nature of the disease of the child, which was almost terminal in nature, almost the child could not be saved.

49. The State Commission has drawn assumptions that the degree of skill that was required to be undertaken for treating a patient with blood cancer was not exercised, and the concerned doctors of the hospital did not treat the patient as per the medical protocol for the disease from which he was suffering.

50. We have examined and produced the records as well as the evidence referred to in addition. We find that a mere suspicion cannot take place of proof and a doubt is not conclusive evidence of an alleged negligence. The facts indicate that the child was suffering from severe leukaemia and, therefore, the treatment then available, including chemotherapy, had been administered to the child. It is not the case of the Complainant that proper medicines had not been administered or an adequate dose. The complaint appears to be that the attendants of the patient were negligent. We are unable to agree to this inasmuch as had the doctors been negligent, there would have been no treatment that was undertaken. The disease was diagnosed and treated and, therefore, merely because the patient was kept in the general ward or

shifted to isolation ward does not reflect upon medical negligence per se.

51. Coming to the issue of the management of the patient and taking care of him, there is no complaint about nursing facilities; rather it is the place and the location of the patient which has been made the basis of the complaint to allege that the patient went unattended. We do not find any such finding recorded by the State Commission on the basis of any material to come to the conclusion that the shifting of the patient from the general ward or otherwise in 1994 to the isolation ward in any way has affected the treatment of the patient. We, therefore, having considered all these submissions also find that the complaint was not about wrong hospitalization nor the facts alleged were pleaded in a manner so as to construe a case regarding medical negligence.

52. No expert evidence was led except for the downloaded material that has been pasted by the State Commission in the impugned order.

53. To hold the Paediatrician to be responsible is also not founded on the ground that the treatment was wrong or had not been consulted and referred to doctors dealing with the subject matter. The inferences drawn by the State Commission in the paragraphs also quoted above are, therefore, not based on relevant evidence and the findings have been arrived at on irrelevant considerations.

54. The impugned order which has proceeded to award Rs.30 Lakhs for mental agony and torture and Rs.14 Lakhs towards compensation does not demonstrate any proportionate consideration under the heads for which the compensation has been awarded. We, therefore find that this calculation also is bereft of any appropriate logic and, therefore, the impugned order does not seem to be sustainable.

55. The question, therefore, is as to whether the complaint should be dismissed outright on account of the peculiar procedure adopted by the

State Commission to decide the matter or should the matter be reassessed afresh on the basis of the material available on record.

56. The first question is as to whether the procedure adopted by the State Commission is appropriate or not? Since this is a Complaint that was filed under the 1986 Act, we may gainfully refer to Section 13 and Section 14 of the said Act. Section 13 provides for a procedure on admission of a Complaint. Section 13(1)(a) specifies that after the Complaint is admitted, the Opposite Party is to be directed to give a version of the case within a period of 30 days. While giving its version, the Opposite Party has to either deny or dispute the allegations as is evident from Section 13(1)(b) of the Act. Section 13(c) requires that where the Complaint alleges a deficiency that cannot be determined without proper analysis or tests that may be necessary with a view to find out the nature of the deficiency, then a direction can be given by the Commission to a laboratory or such authenticating authority to make an analysis or test and submit a report. The same Section provides that if any of the parties disputes the correctness of the findings of the laboratory or any analysis then a reasonable opportunity is to be given and then an appropriate order to be passed under Section 14 of the Act. The manner and procedure to be adopted is further explained in Section 13(4) of the 1986 Act which requires the reception of evidence on affidavits. Section 13(4) is extracted as hereinunder:

> *"4. For the purpose of this Section, the District Forum shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:-*
>
> *(i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath,*
>
> *(ii) the discovery and production of any document or other material object producible as evidence,*
>
> *(iii) the reception of evidence on affidavits,*
>
> *(iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source,*
>
> *(v) issuing of any commission for the examination of any witness, and*

(vi) any other matter which may be prescribed."

57. It is thereafter that findings are to be recorded and then the relief available under Section 14 of the Act, under the parameters laid down therein, can be granted.

58. The entire procedure, therefore, envisages the allegation to be made by the Complainant and then it been disputed or admitted by the Opposite Party whereupon the parties are to be provided opportunity to support their cases with appropriate evidences. In the event some expert opinion is obtained in terms of Section 13(c) then the Commission has to afford a reasonable opportunity to the Complainant and the Opposite Party as well to be heard on the correctness or otherwise of such a report.

59. In the present case what we find is that the State Commission has itself contributed by reproducing material in the shape of some articles that seem to be material downloaded through internet services from the information of some websites like Google. The nature of the recital of almost 60 pages of reproduction, demonstrates that the Learned Members have relied on the said material and have considered it appropriate to reproduce the same while delivering the order. This material reflects on the decision making by the State Commission and is a material which relates to the subject matter concerning the disease of the patient, the skill of the Appellants-Doctors and matters relating to duty to take medical care and management. In our considered opinion, this material which has been reproduced has been applied by the State Commission to record its conclusions and treat the act of the Appellants to be of negligence and omissions resulting in serious deficiency for which compensation has been awarded. We find that the said reproduced material has been virtually applied as the foundation to

conclude that the Appellants were negligent in their performance of duties in whatever capacity and then legal maxims for a judicial approximation have also been applied without discussing their relation to the context of the allegations made and the reply of the Appellants.

60. The Complaint is a very short drafted complaint which does not contain any allegation about some of the findings recorded by the Commission and, as an illustration, there is no allegation regarding consent not having been taken prior to conducting the bone marrow test or lodging of a tube in the Trachea of the patient. These allegations are not available in the Complaint and, therefore, the Learned Counsel for the Appellants seems to be correct in his submission that without there being any pleadings, the State Commission could not have recorded findings regarding absence of consent on the basis of *res ipsa loquitor* principle.

61. As pointed out above, allegations have to be made, howsoever brief it may be, to allege a deficiency of medical negligence that has to be scanned in the light of the material available on record.

62. In the instant case, the pleadings are, therefore, not upto the mark and even otherwise not supported by relevant material to arrive at a conclusion.

63. The observations made by the State Commission about competence of the doctor is once again not based on any material. It is an assumption made for which there is neither a plausible reason nor any specific allegation regarding the qualification of the doctors attending on the patient including the Appellants. As a matter of fact the treatment was undertaken in 1992 and again in 1994 from the same set of doctors in the same Institute. Not only this, after detection the treatment was continued for the diagnosis made by the same physician and therefore their competence on the strength of an argument about

qualifications cannot be countenanced. It is not that the patient was not treated as per the protocol of the line of treatment for Leukemia.

64. The issue of the treatment being negligent also does not appear to be correct inasmuch as even if a Widal test had been prescribed, the patient was diagnosed after carrying out investigations immediately thereupon to be suffering from Leukaemia. The treatment given in the year 1992 and its diagnosis in 1992 itself demonstrates that reasonable and appropriate steps that were needed to attend to the patient were undertaken.

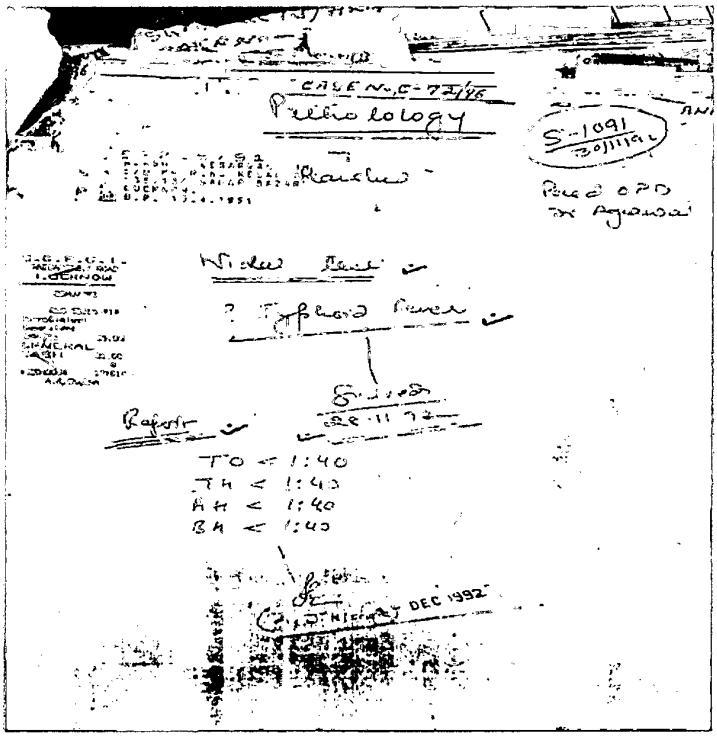
65. We cannot ignore the nature of the serious disease from which the child was unfortunately suffering namely 'blood cancer'. It was diagnosed and he was treated whereupon he did seem to have shown some signs of improvement. The treatment had begun after diagnosis in 1992 itself. It is for this reason that the Complainant again went back to SGPGI for treatment, reposing faith in the institute and its doctors. In 1994, the period of 22 days spent in the hospital has been criticized by the Respondent-Complainant contending that the tests were conducted in a very casual manner and that the child was admitted in a general ward and then shifted to a room and ultimately against the wishes of the Complainant he was sent to the isolation ward where possibly no treatment was available and his only child passed away. The contention appears to be that placing the child in an isolation ward was detrimental and with no proper treatment the child could not survive.

66. From the treatment documents it is evident that the child was being administered chemotherapy and in order to provide comfort to him that he was shifted to the isolation ward near the nursing corner of the hospital. In our assessment the admission or otherwise of a patient in one particular ward or the other may not be that relevant unless it can be shown that any particular or special facilities had not been made

available to the patient. From the record it appears that the Appellants who were looking to the welfare and the health of the child and were aware of the past diagnosis, were continuously attending on the child and, therefore, the contention that there was negligence does not seem to be borne out from the record.

67. What the Complainant alleges is that consequences resulting in the death of the child is *res ipsa loquitor,* as found by the State Commission. We find that the State Commission has abruptly arrived at the conclusion that there was a degree of carelessness and there was lack of post-operative care. The reasoning given by the State Commission is as follows:

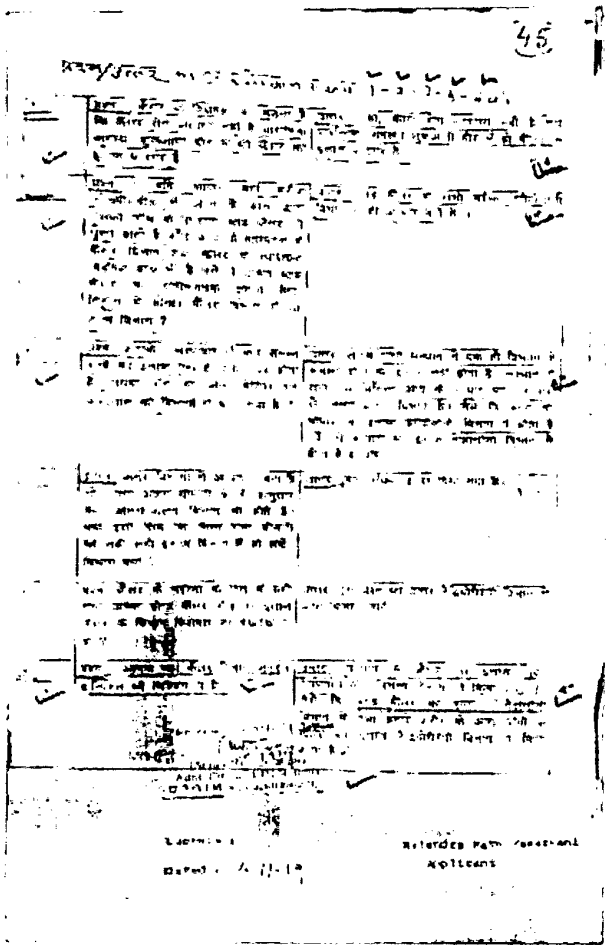
> *In the present case the complainant has levied serious allegations regarding treatment of his minor son in SGPGI. We have seen the written evidence filed by opposite parties. The opposite parties stated on oath that the patient Harshit Kesarwani was allotted registration number in 1991. It means when the registration number allotted to Master Harshit, he was about four years old. As per evidence of the opposite parties, the patient was diagnosed as a patient of Acute Lymphoblastic Leukaemia (ALL). Commonly it is known as Blood Cancer. The opposite parties further stated on oath that the basic component of the treatment program for such patient includes induction therapy until the bone marrow no longer shows leukaemic cells prophylactic treatment to the central system and a continuation of systematic treatment from 2.5 years to 3 years. The opposite parties further said that the patient was not admitted for Widal Test but for other necessary investigations like bone marrow etc.*
>
> *We have seen the Widal Test report showing Typhoid Fever. This is report is of 28.11.92. So it is clear that Widal Test was performed on 28.11.92 and on 01.12.92, patient was advised to be admitted in General Hospital. Some medicines were prescribed and it has been written that blood to be arranged and arrange for bone marrow tomorrow. On 02.12.92 as per case sheet, fresh blood transfusion took place but there is no note regarding bone marrow while it has been clearly written on the case sheet of 01.12.92 for the arrangement of bone marrow tomorrow i.e.02.12.92. Advice for arrangement of bone marrow arrangement clearly shows that the doctor had knowledge about blood cancer, that's why the consent doctor advised for a arrangement of bone marrow but on the next day we did not find the bone marrow arrangement and nothing has been written on the sheet as to why it was not taken in consideration.*



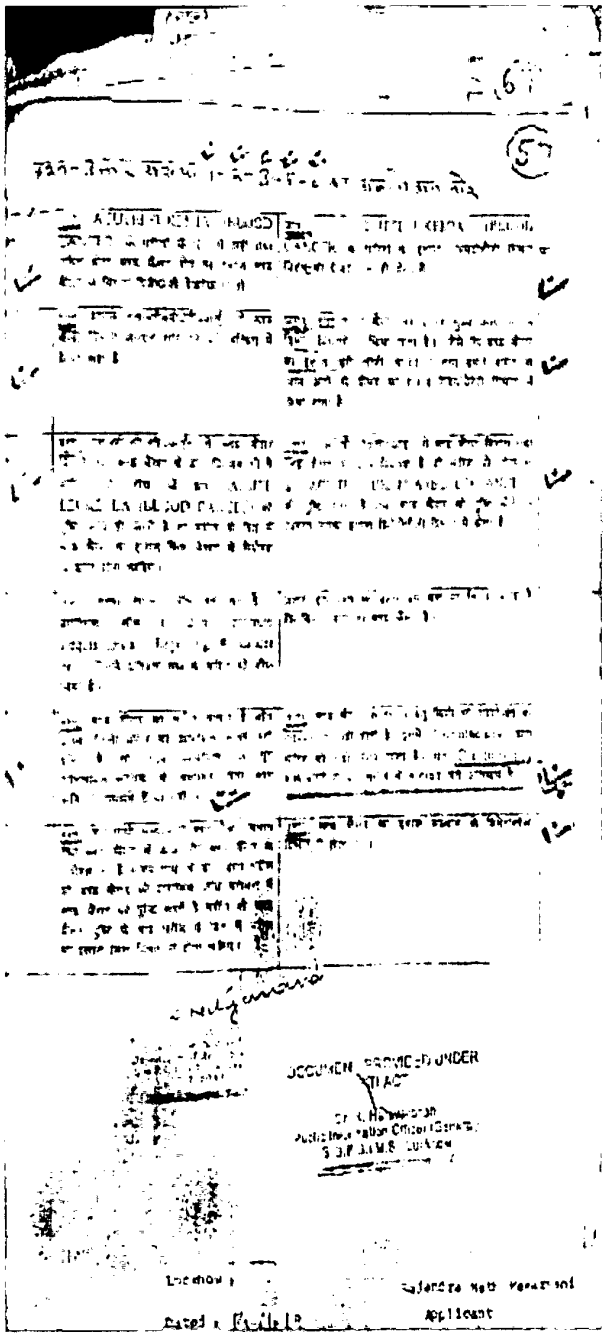
The opposite parties in their evidence has further stated that patient was admitted at Gen Hospital for necessary investigations like bone marrow et cetera. In this ward there was no special facilities. So it is clear that the patient was admitted to Gen Hospital although the concerned Dr came to know about leukaemia on 01.12.92: In a RTI, SGPGI has replied that the patients of blood cancer are treated in haematology department and specifically stated that the treatment of patients of acute leukaemia (Blood Cancer) is done under the supervision of Haematology Department. Further in RTI, the SGPGI replied as follows:

There are expert Dr of Blood Cancer Department and Blood Cancer they confirm the patient of acute leukaemia by investigation and after confirmation of blood cancer, their treatment is performed in haematology department.

There is no need of any operation for blood cancer patient but they are treated by way of Chemotherapy. It is necessary to get the signature of the patient before starting chemotherapy.



In reply of another question under RTI, the SGPGI has replied that the investigation of Bone Marrow Requisition and Reporting is done by the doctors of Pathology and Haematology department and the disease is confirmed by the doctors of Haematology Department. The treatment of Acute Lymphoblastic Leukaemia Blood Cancer is done in the Haematology Department of this institution. It has been clearly replied by the SGPGI that the testing procedure regarding Bone Marrow Requisition and Reporting can only be done by the expert doctors of Haematology Department and none others. It is also replied by the SGPGI that ***the treatment of Acute Lymphoblastic Leukaemia (Blood Cancer) has been started in Haematology Department from June 2003, and before it the treatment was being done at Immunology Department of the Institute****.*



(8)

ANNEXURE (7)

प्रश्न/उत्तर सं0 9-9-10-12 का अवलोकनार्थ

प्रश्नः SGPGI लखनऊ में आपके यहां ब्लड कैंसर विभाग है ब्लड कैंसर के विशेषज्ञ डा० भी है। Bone Marrow Requisition and Reporting जांच में SGPGI के डा० द्वारा मरीज को Acute Lymphoblastic Leukemia Blood Cancer की पुष्टि आपके डा० तथा आपकी ही पैथेलॉजी करती है ऐसे उपर्युक्त मरीज का इलाज कहां तथा किस विभाग में होना चाहिए या जनरल हास्पिटल में जहां कि उपर्युक्त मर्ज का इलाज नहीं होता है = ही दल विभाग ही है और न ही विशेषज्ञ भी नहीं हैं ऐसे में इलाज कहां होगा।	उत्तरः Bone Marrow Requisition and Reporting जांच संस्थान के पैथेलॉजी एवं हिमेटोलॉजी विभाग के डाक्टरों द्वारा की जाती है और बीमारी की पुष्टि हिमेटोलॉजी विभाग के डाक्टर ही करते है। Acute Lymphoblastic Leukemia Blood Cancer का इलाज संस्थान के हिमेटोलॉजी विभाग में होता है।
प्रश्नः मरीज के हित में प्रारम्भिक Bone Marrow Requisition and Reporting स्टीन तथा मोटी नीडिल के द्वारा बहुत पेनफुल टेस्टिंग प्रक्रिया है क्या कोई भी डा० इस प्रक्रिया को कर सकता है या विशेषज्ञ डा० के द्वारा होना चाहिए।	उत्तरः Bone Marrow Requisition and Reporting की टेस्टिंग प्रक्रिया दूसरे डाक्टर नहीं कर सकते है। केवल हिमेटोलॉजी विभाग के विशेषज्ञ-डा० द्वारा ही किया जाता है।
अर्पित कैसरवानी पुत्र राजेन्द्रनाथ कैसरवानी का स्वर्गवास दिनांक ३१-०५-१९९४ को आईसोलेशन रूम नं०-२ में हुआ था और किस कारण से हुआ था बताने का कष्ट करें।	प्रश्नः इसकी सूचना इसलिये उपलब्ध नहीं कराई जा सकती है क्योंकि दिनांक ०४-११-२०१५को संस्थान के एनिमल हाउस के बेसमेन्ट में लगी आग के कारण वहां रखे गये मेडिकल रिकार्ड ,पत्रावलिया (Case file) संस्थान के नियमानुसार Wedded out करने के उपरान्त रखी गयी थी। जिससे सम्बन्धित कार्यालय आदेश संख्या-पी०जी०आई०/पी०ओ०एस०/सी०एन०एस०/५३५/२०१६ दिनांक ०३/०२/२०१६ आपके अवलोकनार्थ संलग्न है।
प्रश्नः दिनांक २१-०५-१९९४ को मृतक अर्पित कैसरवानी का शव मरचरी से प्राप्त हुआ हमारे बच्चे के शव को किस कारण से वहां रखा गया था जबकि हमारा परिवार वहां उपस्थित था।	उत्तरः संस्थान के नियमों के अनुसार शवों को वार्ड से मरचरी में भेजा जाता है और वहां से परिवार के सदस्यों को हस्तगत कराया जाता है।
प्रश्नः SGPGI लखनऊ में कोई (Acute Lymphoblastic Leukemia Blood Cancer का इलाज होता है अगर होता तो किस वर्ष से हो रहा है।	उत्तरः Acute Lymphoblastic Leukemia (Blood Cancer) का इलाज एस०जी०पी०जी० आई० लखनऊ के हिमेटोलॉजी विभाग में वर्ष २०१३ से हो रहा है इससे पूर्व इसका इलाज संस्थान के इम्यूनोलॉजी विभाग में होता था।

Provided Under R.T.I. Act

(Anjani Kumar Bhatt)
Admn. Officer & P.I.O. (H.A.)
S.G.P.G.I.M.S., Lucknow-226014

A. Nityanand

By these replies it has become clear that before June 2003, the treatment of the Acute Lymphoblastic Leukaemia (Blood Cancer) was being done in the Immunology Department of the Institute. It has also become clear that Bone Marrow Requisition and Reporting can only be done by the expert doctors of Haematology Department and none others. Now it is clear that in 1992, Acute Lymphoblastic Leukaemia (Blood Cancer) was being treated in the Department of Immunology and not in general ward. From the perusal of the history sheet it is clear that on 28 November 1992, the patient was undergone Widal test confirming typhoid fever. Payment of Rs.1000.00 is of 01.12.92. There is direction of Dr P Bhattacharya to admit the patient in Gen Hospital. Some medicines were prescribed on 01.12.92 and also it has been written "arrange for bone marrow tomorrow". On 02.12.92 the same Dr has written "transfusion of blood one unit start slowly." But nothing has been written about bone marrow for which direction was given one day earlier. For the next two days the patient was under the treatment of paediatrician. We have seen the pathology report of 02.12.92 in which it has been written column of diagnosis/conclusion Acute Lymphoblastic Leukaemia. So it is clear That the Acute Lymphoblastic Leukaemia has been diagnosed on 02.12.92 and as per version of SGPCI the patient should immediately be transferred to Department of Immunology. After 02.12.92 the patient was still under the treatment of paediatrician. Under what circumstances he was being treated by the petition when pathology report has confirmed Acute Lymphoblastic Leukaemia? Is it not the negligence on the part of the doctor and institute? The complainant has said that his son was being treated at Gen Hospital even after the diagnosis of Acute Lymphoblastic Leukaemia.

In this case documents were summoned from SGPGI. In reply of RTI, the SGPGI had assured that recovery from Acute Lymphoblastic Leukaemia depends on age of the patient, WBC count, different kind of molecular examination, and thereafter the percentage is from 20 to 80%. It is also clear that bone marrow requisition and reporting cannot be done by any other Dr except the doctors of haematology department or say when this department was not in existence, Department of immunology. But here paediatrician treated the child even after knowing that he was suffering from Acute Lymphoblastic Leukaemia. There is a paper in the record sent by SGPGI showing that the patient was referred for x-ray test by paediatrician Dr P Bhattacharya on 18.12.92 meaning thereby that the patient was under the treatment of Dr P Bhattacharya till 18.12.92. We have seen other report of Department of pathology dated 19.12.92 in which the Dr name mentioned is of Dr P Bhattacharya. The SGPGI has also stated that the injection to the patient of blood cancer is only given by the specialised doctor of Cancer Department and none other. But in this case it is not so.

During argument when we quarried from the Advocate of opposite parties regarding chemotherapy, he could not answer at all. Except this he was not in a position to clarify all the things and questions related to the treatment of the child.

68. A perusal of the aforesaid findings recorded on an analysis indicates and confirms that the diagnosis of blood cancer had been made way back on 02.12.1992. The treatment was carried out but unfortunately in spite of the treatment administered, including Chemotherapy, there was a relapse in 1994 and it is during this period of admission in 1994 that the allegations were made by the complainant about the alleged mismanagement of the patient. It is therefore evident that the treatment that began in 1992 led to the survival of the patient till 1994. The diagnosis was of Acute Lymphoblastic Leukemia and it was a relapse of the same in 1994. The State Commission however has concentrated upon the treatment given in 1992. The State Commission has recorded that there was no Hematology Department in 1992 and it was only the Department of Immunology that was functioning then. The appellants/opposite parties in their written statement before the State Commission have stated that the child was a pediatric patient and therefore hospitalized in the Department of Pediatrics under Dr. Piyali Bhattacharya. What we find is that there is no allegation about a wrong line of treatment having been administered to the child. The conclusion drawn by the State Commission that the child was treated by a Pediatrician only does not seem to be correct, inasmuch as the child was treated by the Department of Immunology and Chemotherapy was administered in the prescribed doses. There is no evidence or any such allegation to indicate that the administration of Chemotherapy was wrong or otherwise. Blood transfusion was carried and the pathology reports have also been referred to by the State Commission itself. Thus, the diagnosis appears to have been correct and the line of treatment adopted could not be dislodged by any evidence to draw any adverse inference.

69. It is unfortunate that the child was brought once again to the Immunology Department where he was attended to by Dr. Sonia Nityanand, the opposite party no.3 in the complaint, on 09.05.1994 as a case of Relapsed Acute Lymphoblastic Leukemia. The written statement has categorically pleaded that the patient was brought in a severe condition of the disease and

it has also been stated therein that hopes of recovery of patient's suffering relapse is very poor with small percentage of 10 to 15%.

70. We find that these pleadings in the written statement have nowhere been noted in the order of the State Commission and the entire analysis is based on a downloaded literature from the Internet. The inferences which have been drawn, as quoted above, are based on general perceptions and concentrated on the fact that in 1992 the child had been treated by a Pediatrician. There was no complaint filed after the treatment in 1992 about the treatment undertaken at the initial stages, including the treatment in the Department of Immunology. The State Commission has drawn an inference that since the injections were given by the Pediatrician, the same was a negligence, inasmuch as it ought to have been given by some specialist doctor of the Cancer Department. This inference drawn by the State Commission is based on the perception of Dr. Piyali Bhattacharya having treated the child but it nowhere refers about the pleadings in the written statement where it has been stated that the treatment was carried out in accordance with the medical protocols with a correct diagnosis and the correct administration of medicines. To gather negligence merely because the child had been attended to by a qualified pediatrician cannot be construed as a negligence when the child was treated for the diagnosed disease of blood cancer and was administered medicines accordingly.

71. Coming to the incident in 1994, the written statement categorically indicates that the child was being looked after and on certain gastroenterological problems Prof. S.R. Naik, Head of Department of Gastroenterology, attended the patient. His recommendations were executed and when the patient's condition deteriorated further, the Sr. Resident on duty Dr. Chandrashekhar decided to shift the patient from private room no.3 to an isolated room. The said decision has been justified on the ground that since the isolation room is next to the Nursing and Doctors' Station, therefore, it was advisable to monitor the patient in an easier way looking to his serious condition, inasmuch as the private rooms were on the backside of the ward. It

was therefore for the reason of proximity for medical attendance that the shifting had been carried out. We do not find any error in the said decision at all.

72. It was also the allegation of the complainant that Tracheostomy was carried out without a consent. The same seems to have been done in an emergency and it was in the interest of the patient and not a negligent act so as to blame the doctors for the same.

73. The State Commission has recorded the theory of consent and has recorded that proper consent had not been taken. We do not agree with the said finding of the State Commission, inasmuch as from a perusal of the hospital sheets and the other documents on record the treatment and the steps taken for attending on the child cannot be said to be against any medical protocols. Merely because the consent form did not have the signature of the guardian, the same would not amount to an absence of informed consent.

74. The State Commission seems to have been influenced by the medical literature that was reproduced in the order and in effect the State Commission did not choose to obtain any expert opinion to clear its doubts nor did the complainant lead any such expert evidence to find medical negligence in the treatment of the child. On the other hand, as noted above, the child had been taken to the hospital once again in 1994 and if the child had not been able to receive any proper care in 1992, he would not have been brought to the same hospital for the said purpose.

75. Thus, we do not find clinching and convincing evidence so as to hold the hospital or the doctors negligent for the treatment of the child. It is unfortunate that at a tender age the complainant lost his only son but at the same time the doubts expressed by the State Commission in the findings recorded by it cannot be held to be a proof of negligence.

76. However, there is one issue which we may like to point out and the same is regarding the availability of records and the record keeping at the hospital. It is evident that the written statement which had been filed and the

evidence affidavit of the hospital did not contain any of the documents. This was possibly because the complaint itself and the evidence affidavit of the complainant were all very sketchy. However, the hospital was under a duty and an obligation to have disclosed the entire material on its own. It is the State Commission which seems to have called upon the hospital to provide the documents, some of which came to be filed by the complainant before the State Commission later on. That was received after making request through the Right to Information Act. This procedure of not providing the documents and then catering to it only after the Right to Information Act is resorted to cannot be appreciated as the institute is a fairly well established institute and we therefore find that it ought to have provided documents to the complainant which was not done. We find the appellant no.1 therefore to be partly responsible and negligent on this aspect.

77. The finding with regard to the documents is also reflected in the manner in which the consent forms were maintained and have been referred to hereinabove where the signatures of the guardian were not available. The consent form should have more expressly provided for information and to that extent we find that the documents which were maintained way back in 1992 to 1994 were not appropriately arranged and were not provided to the respondent complainant.

78. We therefore in above circumstances allow the appeal to the extent that the appellants no. 2 to 5 cannot be held to be negligent and the findings with regard to the diagnosis and treatment of the patient against these appellants cannot be sustained for all the reasons stated hereinabove and the same are set aside. In the absence of any convincing material to conclude that due care had not been taken by the appellants no. 2 to 5, they cannot be held liable for any negligence even though the incident of the loss of a child is painful and unfortunate. The doctors in spite of their best efforts could not save the child who was suffering from an acute stage of blood cancer which relapsed.

79. Coming to the appellant no.1/Institute, we find that the record keeping and the maintenance of documents and its facilitation to the concerned persons does not seem to have been appropriately handled nor does the written statement or the evidence affidavit of the appellants/opposite parties reflect the production of such documents. It is only after the intervention of the State Commission that the documents were retrieved by the State Commission which also did not suffice for a complete assessment. Nonetheless, no expert evidence was led to find any fault with the line of treatment or the diagnosis and consequently the appellant no.1/Institute was deficient on this count.

80. We therefore allow the appeal and set aside the impugned order dated 02.03.2022 insofar as it relates to the appellants no. 2 to 5 and set aside the findings recorded in respect of medical negligence. At the same time, we hold the appellant no.1/Institute to be liable for the deficiency of not providing the entire documents and the hospital sheets indicating the step-wise treatment of the child which itself is a deficiency and we therefore find it expedient to award a compensatory damage of Rs.5.00 Lakhs on the appellant no.1/Institute to be paid to the respondent complainant within two months from today. The compensation imposed and relief awarded while allowing the complaint are set aside. A cost of Rs.1.00 Lakh is imposed on the appellant no.1/Institute to be paid as a litigation cost to the respondent complainant. With the said modifications, the impugned order stands substituted accordingly.

81. The appeal stands disposed of on the above said terms.

Sd/-

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(A.P. SAHI, J.)
PRESIDENT

Sd/-

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(BHARATKUMAR PANDYA)
MEMBER

Sonia/rk/Naresh/Mukesh.