
(2015) 05 NCDRC CK 0097

In the National Consumer Disputes Redressal Commission

Case No : 333 of 2013

POST GRADUATE INSTITUTE OF MEDIAL

APPELLANT

Vs

AMIT SARKAR & ORS.

RESPONDENT

Date of Decision : 21-05-2015

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 12](#) - Manner in which complaint shall be made.

Citation : 2015 3 CPJ 357 : 2015 3 RCR(Civ) 410

Hon'ble Judges : V.B. Gupta, Suresh Chandra

Advocate : Rajesh Garg, M.K. Tripathi, Pankaj Chandgothia, Gaurav Librehan

Final Decision : Appeals Partly allowed

Judgement

1. Above appeals are being disposed of by this common order, as these appeals arise from common impugned order dated 1.4.2013, passed by State Consumer Disputes Redressal Commission, U.T. Chandigarh (for short, "State Commission") in C.C. No.43 of 2012.

2. Brief facts are, that only daughter of Complainants-Ms. Anupama, aged about 16 years, studying in Class XI was travelling in a CTU bus on 17.07.2012 from her school to her residence. The bus was being driven rashly and negligently by the bus driver. It is stated, that in the absence of the conductor, she fell down from the bus and her left leg was crushed under the rear tyre of the same. She was taken to Post Graduate Institute of Medical Education & Research, Chandigarh (for short, "PGI") where she died on 24.07.2012, due to medical negligence. It is stated that injured Ms. Anupama was taken to Advance Trauma Centre of PGI (for short, "ATC") by the police, where her left leg was bandaged by Dr. Jujhar, Junior Resident (OP No.3). It is alleged that bandaging was done in a most incompetent manner, as blood kept on oozing out. It is further stated, that complainants were told that injured girl required an emergency operation which was being arranged by the Doctors concerned, whereas X-rays and other tests were carried out. It is alleged, that the required operation was never

arranged and injured continued to suffer in excruciating pain, both mentally and physically. The condition of injured started deteriorating day by day, but no medical attention was given to her by PGI doctors, after the initial bandaging. So much so, even the bandage was not changed nor the wounds washed for days together, by ATC doctors. The attitude of doctors on duty was most insensitive and opposed to the medical norms. Ultimately, it resulted in development of gangrene and septicemia and Opposite Party No.1-Hospital amputated the left lower limb of Ms.Anupama, in a projected attempt to prevent the gangrene from spreading to other parts of the body. The doctors of Opposite Party No.1 failed to check or control the spread of gangrene, leading finally to the untimely death of Ms.Anupama on 24th July, 2012 at O.P. No.1-Hospital. It is further stated, that O.P. No.1-Hospital itself conducted the post-mortem vide PMR No. 16969 dated 24.7.2012. The perusal of PMR clearly showed, that Ms.Anupama was duly admitted to O.P. No.1-Hospital on 17.7.2012. Thus, there was medical negligence on the part of O.P. No.1-Hospital and its concerned doctors.

3. It is further stated that O.P. No.1-Hospital was taking the plea of over-crowding in its OTs. However, the precious life could have been saved even without operation, had adequate medical care and treatment been provided. The cause of infection and gangrene was because the dressings and bandages of the patient were never changed. The deep wounds were never washed hygienically and medical treatment prior to operation was not adequately provided. In case, O.P. No.1-Hospital was unable to provide adequate and proper medical care to the patient, it should have referred her to some other Hospital, which also it failed to do. It is further alleged, that O.P. No.1-Hospital was deliberately keeping the treatment history and medical papers of the deceased under wraps, so that the same could be manipulated to their advantage and help them escape the charge of medical negligence and apathy.

4. It is further stated that Opposite Party No.5, Chandigarh Transport Undertaking (for short, "CTU"), was also guilty of deficiency in service, because the bus which caused the accident, was not insured. In fact, none of the buses of CTU were insured. They are being plied in violation of the Motor Vehicle Act, which mandates that a vehicle can neither be registered nor be plied on road without a valid insurance cover. It is further stated that present case is a case of "Res Ipsa Loquitor" . It is further stated that family of complainants is poor and indigent. Their only daughter Ms.Anupama, was their future hope and bread-earner for the family. Ms.Anupama was a bright student who had just cleared her Xth Class with over 70% marks in First Division and had a promising future ahead. But her life and prospects were cut short, on account of negligence of the Opposite Parties. It is further stated, that aforesaid acts of the doctors of O.P.No.1-Hospital amounted to medical negligence and deficiency in rendering service. Therefore, a complaint under Section 12 of the Consumer Protection Act, 1986 (for short, "Act") was filed seeking the following reliefs. a. Rs. One lakh towards re-imbusement of medical and other expenses;

b. Rs.50 lakhs towards loss of future earnings and dependency of their only daughter. Anupama was the only daughter of the complainants and their only future hope in the evening of their life. She was a bright student having passed her 10th in First Division with over 70 % marks. In the death of Anupama, the complainants have lost all meaning and worth of their life.

c. Rs.5 lakhs as compensation for the pain and suffering suffered by the deceased during her treatment and by the complainants, equally.

d. Rs.10 lakhs for the life-long pain and suffering caused to the complainants. They have lost their only daughter and their only reason to live in this world.

e. Rs.10 lakhs as token compensation and damages be awarded against the Opposite Party No.5, CTU, for committing deficiency in service and unfair trade practice by running un-insured buses.

f. Rs. 10 lakhs as punitive damages against all the Opposite Parties to be credited in favour of the UT State Legal Services Authority.

5. In their written statement, Opposite Parties No.1 to 4 denied that the bandage was done in an incompetent manner. According to them, the blood oozing from the dressing was because of the wound. It is denied that operation was never arranged. It is stated that as per record, Ms.Anupama was planned for surgery-debridement-external fixator at the time of admission. Complainants have themselves stated in their complaint, that on 18.07.2012, operational medicines and implant were ordered for the patient, which is indicative of the fact that the surgery was duly planned. The Central Registration File (Cr File) shows, that patient was transfused blood. Due to heavy rush of the patients, she was taken up for surgery on the night of 19.07.2012, as on an average in those days were 80-90 patients admitted in the Department of Orthopedics in ATC against available 17 beds. Out of these 8 similar serious open fracture surgeries were pending. Out of two operation tables in the ATC, one was exclusively dedicated to these "serious open fracture surgeries" i.e. 50% of the available infrastructure. Ms.Anupama could not be given preference over those 8 patients, as it would have amounted to sacrificing other 8 patients' interest. As it was, in spite of approximately 40 patients pending for surgery, she was put on priority list among 8 patients of "serious open fracture surgeries".

6. It is further stated that due to heavy rush of the patients, the patient was first taken up for surgery on 19.07.2012. The statistics of the relevant period i.e. 17th to 19th July, 2012 regarding total cases with ATC has been reproduced, in para 4 of the written statement. It is also stated, that patient was found unfit for anesthesia and was shifted back to the operation theatre recovery. Further, it was recorded in CR file that after mid-night of 19.07.2012, the patient was anemic and blood pressure was 85/50.

7. As per record, patient was actually taken up for surgery at the operation theatre but since she was haemodynamically unstable, she was transfused 4

units of blood and two units of fresh frozen plasma. Further, the patient was taken up for surgery on the morning of 20.07.2012, when she underwent hip disarticulation and debridement of the anterior abdominal wall. It is denied, that patient was not given medical attention or that the bandage was not changed, which resulted into gangrene and septicemia. It is further stated, that gangrene and sepsis could also set in, following severe wound contamination due to the mechanism of injury (crushing) and place of injury (road side accident). Further, dressing was changed three times before surgery, one each on 17th, 18th and 19th July, 2012. It is denied, that attitude of the doctors on duty was either insensitive or opposed to medical norms. It is denied, that patient lost consciousness on 20.07.2012 due to pain and trauma.

8. It is further stated, that despite the surgery for hip disarticulation, patient went into shock and CPR was given and a defibrillator was used to revive the heart. She was intubated and put on a ventilator with triple inotropes. Due to persistent low blood pressure, she developed decreased urine output on 21.07.2012. Peritoneal dialysis was started and it continued. Further, Ms.Anupama suffered cardio-respiratory arrest on 24.07.2012 and unfortunately she expired. It is also stated, that the crushed nercotic tissue needed removal and disarticulation of the limb was a life saving measure. It is denied that infection and gangrene were due to bandaging and dressing not being changed. The gangrene and sepsis could also set in following due to severe wound contamination due to mechanism of injury. The patient's relatives were given a detailed death summary, which was duly recorded in the CR file. It is further stated, that as per the prevalent practice medical file (detailed medico legal record) was not handed over to the patient, but was kept in the record of Central Record Department. Thus, there was no medical negligence or deficiency in service, on the part of O.Ps.No.1 to 4 as alleged.

9. Respondent No.3-CTU, (F.A. No.333 of 2013) in its written version stated that complainants have already received a sum of Rs.3 lacs as compensation, on humanitarian grounds from CTU. It is admitted, that Ms.Anupama met with an accident on 17.07.2012. However, it denied that the accident took place due to rash and negligent driving of the bus by its driver. It is stated, that all students including Ms.Anupama tried to board the fully loaded bus when the same reached at the bus stoppage. Inspite of refusal/instructions of the conductor Sh.Harpal Pal. Ms. Anupama, tried to board the running bus without any signal to the bus driver and conductor. However, she could not succeed and fell down on the road and thus suffered injuries on her leg. It is further stated that buses of CTU were exempt from insurance being Govt. Vehicles. There is no deficiency on the part of CTU.

10. The State Commission, vide impugned order partly allowed the complaint with cost. It directed Opposite Parties No.1 to 4 to pay jointly and severally a sum of Rs.7 lacs as compensation to the complainants and to pay Rs.25,000/- as cost of litigation.

11. Being aggrieved, Complainants have filed (F.A. No.320 of 2013) for enhancement, whereas Opposite Parties No.1 to 4, have filed (F.A. No. 333 of 2013) for dismissal of the complaint.

12. We have heard the learned counsel for the parties and gone through the record as well as the written arguments.

13. It is submitted by Shri Rajesh Garg, Ld. Senior Counsel, that due to heavy rush of the patients, the patient was taken up for surgery in the night of 19 th July 2012, as there were 90 patients admitted for Department of Orthopedics in ATC against available 17 beds. Out of these, 8 similar serious open fracture surgeries were pending. Out of two operation tables in the ATC, one is exclusively dedicated to these "serious open fracture surgeries", i.e. 50% of the available infrastructure. The patient could not be given preference over these 8, as it would have amounted to sacrificing other 8 patient" interest. As it is, in spite of being the 91 st patient, she was put on priority list among 8 patients of "serious open fracture surgeries". Due to heavy rush of patients (approximately 90) the patient was first taken up for surgery on 19 th July, 2012. However, the patient was found unfit for anesthesia and was shifted back to the operation theatre recovery. After mid-night of 19 th July, 2012, the patient was anemic and blood pressure was 85/50. Since, she was haemodynamically unstable, she was transfused 4 units of blood and 2 units of Fresh Frozen Plasma. The patient was again taken up for surgery in the morning of 20 th July, 2012 when she underwent hip disarticulation and debridement of the anterior abdominal wall.

14. It is further submitted, that the first enquiry report does not attribute any deficiency in service or medical negligence on the part of OPs. In the concluding part of the report it has been recorded, that the reason for patient not being taken up for surgery was, that the average waiting period for surgery of such patients at AC ranges between 42-72 hours. The turn of Ms. Anupama for surgery came in the night of 19 th July, 2012. Till then, she was given intravenous fluids and other injections for managing of her vital para-meters, but due to her poor condition she could only be taken up for surgery, the next date after adequate blood transfusion but still she remained under the category of high risk. By the time, the first attempt for surgery was made. She had developed sepsis by 19 th July, 2012, which delayed any definitive surgery.

15. It is also submitted that Committee has concluded, that there has been no individual negligence and no official can be blamed for the delay, as Operation Theatre was never free and patients with similar injuries who had come earlier to the patient in question, were being operated sequentially. Since, complainants had expressed apprehension against the first enquiry dated 27.7.2012, the second fact finding enquiry conducted by 5 members Committee has factually concluded on the same lines, in addition to giving recommendation for improvement of services, which are in the nature of certain immediate steps, short term steps and long term measures. Thus, as obvious the reformatory issues have no fall out on the deficiency part of the case at hand. Reviews as in

every Institute, are a constant process of evolution for which need is felt from case to case basis. In support, learned counsel has relied upon following judgements; "1. Kusum Sharma and others Vs. Batra Hospital and Medical Research Centre and others, (2010) 3 Supreme Court Cases 480;

2. Malta Boat Tragedy Probe Mission through its Chairman Sh. Balant Singh Khara, Phagwara Road, Hoshiarpur Vs. Union of India and others, (CWP No.16089 of 2011 decided on 9.2.2012 by High court of Punjab and Haryana);

3. H.S. Tuli Vs. Post Graduate Institute of Medical Education & Research, I (2008) CPJ 392 NC;

4. T.T. Antony Vs. State of Kerala, (2001) 6 Supreme Court Cases 181;

5 . Noorul Huda Maqbool Ahmed Vs. Ram Deo Tyagi and others, (2011) 7 Supreme Court Cases 95 and

6 . T. Fenn Waller and others Vs. Union of India and others (2002) 6 Supreme Court Cases 184"

16. On the other hand, it is submitted by Shri Pankaj Chandgothia, learned counsel for complainants, that present case is a case of "Res Ipsa Loquitor". Negligence of O.Ps. No.1 to 4 as evident from the facts of the case, is writ large. O.P.No.1-Hospital is itself conscious of the negligence of its doctors as it had been constituting, Committee after Committee to inquire into the circumstances leading to the death of the patient. The Inquiry Report by Experts Committee appointed on 2.8.2012 to carry out a "broad-based inquiry" into the cause of death of Anupama is crucial to the decision of the case.

17. It is further submitted that the findings and conclusions of the Expert Committee clearly prove the allegations of the complainant, that Anupama died due to lack of medical attention and delay in operation by O.P. No.1-Hospital. The Committee also gave several recommendations for improvement of services of the O.P. No.1-Hospital. This also goes to prove the deficiency in service on the part of O.P. No.1-Hospital.

18. In support, learned counsel has relied upon following judgements; "1. Dr. Kunal Saha Vs. AMRI and others, Decided on 21 st October, 2011 by this Commission;

2. V. Krisha Rai Vs. Nikhil Super Speciality Hospital, Civil Appeal No. 2641 of 2010 decided on 8 th March, 2010 by Hon"ble Supreme Court;

3. Charan Singh Vs. Healing Touch Hospital and Others, Decided on 20 th September, 2000 by Hon"ble Supreme Court and

4. M/s. Spring Meadows Hospital and another Vs. Harjol Ahluwalia and another, Civil Appeal No. 7858 of 1997 decided on 25 th March, 1998 by Hon"ble Supreme Court."

19. The State Commission, while partly allowing the complaint observed; "11. Admittedly, the patient-Ms.Anupama was admitted in the Opposite Party No.1-Hospital on 17.07.2012 with crush injuries, on her left thigh. Whereas she was taken for surgery on the night of 19.07.2012 and the surgery could not be performed because she was anemic and blood pressure was 85/50. The perusal of Page 34 of the CR file also showed that she was haemodynamically unstable and 4 units of blood and two units of fresh frozen plasma was transfused. The perusal of the history file at Pages 3 to 7 of the deceased-Ms.Anupama shows that at the time of her admission in the hospital on 17.07.2012, as also on 18.07.2012 and 19.07.2012, there were no signs of gangrene and septicemia. In the notes on page 44 of the patient file it was categorically stated that "wounds Needs debridement". This was said repeatedly on 17th 18th and 19th July, 2012. It was for the first time that on 20.07.2012 that the patient developed gangrene and septicemia due to which her left leg was amputated. However, the condition of the patient deteriorated and ultimately she expired on 24.07.2012. From the facts and circumstances of the case, as also from the enquiry reports, it is apparent that there was considerable delay in properly treating the patient. Had the doctors of the Opposite Party No.1-Hospital properly treated the patient within the reasonable period after her admission and done the needful to prevent the gangrene and septicemia, then the complications would not have arisen and the life of the only daughter of the complainants would have been saved. But due to non-availability of the proper medical treatment, in time, the condition of the patient deteriorated badly, gangrene and septicemia developed for which disarticulation of the hip and debridement of the anterior abdominal wall was done and her life could not be saved. This fact is corroborated from the enquiry reports placed, on record. The same cannot be brushed aside, as the same have been given by the experts/doctors in the medical field. Hence, the objection of the Counsel for Opposite Parties No.1 to 4 that the enquiry reports could not be read into evidence is baseless and the same is rejected. Since the enquiry reports have been furnished by the team of doctors who are experts in the medical field, the objection of the Counsel for Opposite Parties No.1 to 4 that no expert opinion was led by the complainants in support of their contention is without any merit and substance and the same is rejected accordingly. However, we find force in the submission of the Counsel for the complainants that it is a clear case of *res ipsa loquitur* (the things speak themselves). Thus, we hold that the death of Ms.Anupama took place due to per se negligence of the treating doctors of Opposite Party No.1-Hospital by not treating the patient with due care and skill. Had the concerned doctors exercised due care and skill they would have followed the requisite protocol by performing the operation on the crushed leg of the patient on the very day of her admission, as a result whereof, development of gangrene and septicemia would have been avoided and her life would have been saved. The complainants lost their only daughter of about 16 years, on account of the palpable negligence and carelessness of the Opposite Party No.1-Hospital and its concerned doctors, which caused a lot of mental agony and physical harassment to the complainants and thus, they are liable to

be compensated on this count.

12. The Govt. pleader for Opposite Party No.5 submitted that the buses of Opposite Party No.5 are exempt from insurance under Section 146 of the Motor Vehicles Act, 1988. However, the perusal of Section 146 (3) clearly shows that the Government may exempt from the operation of sub Section (1) any vehicle owned by any of the following authorities:-

"a) The Central Government or a State Government, if the vehicle is used for government purposes connected with any commercial enterprise.

b) any local authority;

c) any State Transport undertaking Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in accordance with the rules made in that behalf under this Act for meeting any liability arising out of the use of any vehicle of that authority which that authority or any person in its employment may incur to third parties".

But Opposite Party No.5, failed to place, on record, any notification issued by the Government exempting its buses from insurance under the provisions of the Motor Vehicles Act, 1988 and, as such, Opposite Party No.5 is also liable to compensate the complainant, as it was deficient in rendering service, by not getting the bus, in question, insured, which crushed the leg of Ms.Anupama who ultimately died on account of the said injury.

13. Now coming to the quantum of compensation, according to Opposite Party No.5, a sum of Rs.3,00,000/- on humanitarian grounds has already paid to the parents of the deceased-Ms.Anupama by the Chandigarh Administration and this fact has not been denied by the Counsel for the complainants. Since CTU is one of the Departments of the Chandigarh Administration and working under its control, amount of Rs.3 lacs paid by the latter can be said to be adequate compensation on behalf of the former. Opposite Party No.5, is thus, not liable to pay more compensation.

14. The complainants have claimed a compensation of Rs.86 lacs under different heads as mentioned above. Taking into consideration the entirety of facts and circumstances of the case, we are of the considered view that the ends of justice would be met if a lump sum amount of Rs.7 lacs is awarded to the complainants as compensation on account of the expenditure incurred by them on the medical treatment of Ms.Anupama, the amount she would have contributed for supporting her parents upto the date of her marriage, had her life been not cut short untimely; and mental agony, physical harassment and emotional trauma, her parents would suffer, throughout their life as they lost their only daughter, in addition to Rs.3,00,000/- already paid to the parents of the deceased-Ms.Anupama on humanitarian grounds by the Chandigarh Administration. The amount of compensation of Rs.7 lacs shall be paid by Opposite Parties No.1 to 4,

jointly and severally. 15. For the reasons recorded above, the complaint is partly allowed with costs. Opposite Parties No.1 to 4 are jointly and severally directed to pay a sum of Rs.7 lacs, as compensation, to the complainants. Opposite Parties No.1 to 4 are also jointly and severally directed to pay a sum of Rs.25,000/- to the complainants as cost of litigation."

20. It is apparent from the record that present case is a clear case of "Res Ipsa Loquitor" for the reasons to be recorded hereinafter. It is an admitted fact, that deceased-Anupama had sustained injuries in a road accident on 17.7.2012. She was admitted in O.P. No.1-Hospital on 17/7/2012 at 2.45 p.m. as per bed ticket.

21. It is complainants' case that in the hospital, no proper care was taken as doctor on duty did not change the dressing/bandage of the deceased, which ultimately resulted in development of gangrene and septicemia. In para no.6 of the complaint, the complainant averred; "6 . What to talk of the operation, the ATC doctors did not even change the dressing/bandage of Anupama, which ultimately resulted in the development of Gangrene and septicemia. Once, another bandage was put over the earlier one itself, which is against medical ethics. The OP Hospital amputated the left lower limb of Anupama, in a projected attempt to prevent the gangrene from spreading to other parts of the body. The Doctors of the OPs failed to check or control these, leading finally to the untimely death of Anupama on 24 th July, 2012 at the OP Hospital."

22. In response, OP No.1-Hospital in its written statement averred; " 6 . That the contents of para 6 of the complaint are incorrect and denied. As already stated in paragraph 5, it is incorrect to state that the bandage and dressing were not changed which resulted into gangrene and septicemia. Gangrene and Sepsis can also set in following sever wound contamination due to the mechanism of injury (crushing) and place of injury (road side accident). It is incorrect to state that another bandage being put over another is against medical ethics. Pressure bandaging is a known and effective bandaging technique in which another bandage is applied over the top of the existing bandage in an attempt to put pressure on the wound to decrease oozing of blood."

23. Further, OP No.1-Hospital in its written statement has averred; "As per record the patient was planned for surgery -debridement + External fixator at the time of admission. In para 7 of the complaint, the complainants have themselves stated in their complaint, that on 18 th July, 2012 operational medicines and implant were ordered for the patient, which is indicative of the fact that the surgery was duly planned. Page 105 of the Central Registration File (Cr File) also shows that patient was transfused blood. Due to heavy rush of the patients, she was taken up for surgery on the night of 19 th July, 2012, as on an average in those days were 80-90 patients admitted in the Department of Orthopedics in ATC against available 17 beds. Out of these 8 similar serious open fracture surgeries were pending. Out of two operation tables in the ATC, one is exclusively dedicated to these "serious open fracture surgeries" i.e. 50% of the available infrastructure. Ms.Anupama could not be given preference over those 8

patients, as it would have amounted to sacrificing other 8 patients' interest. As it was, in spite of approximately 40 patients pending for surgery, she was put on priority list among 8 patients of "serious open fracture surgeries". Due to heavy rush of the patients, the patient was first taken up for surgery on 19 th July, 2012.

24. Thus, it is clear that gangrene has developed in the deceased case on 19.7.2012. Development of gangrene within 48 hours after the accident itself goes on to show that condition of patient was quite grave and very serious.

25. Had OP No.1-Hospital taken necessary preventive steps, development of gangrene could have been avoided and there could have been no amputation. Be that as it may, as per record, patient died on 24.7.2012 at 5.16 a.m. i.e. within a period of six days, after her admission in the hospital.

26. In the present case, after death of deceased, two Committees were constituted for conducting inquiry to look into the cause of death of the deceased.

27. First Inquiry Committee was headed by Prof. Rajender Singh, Chairman, which in its report dated 27.7.2012, concluded as under; "Conclusion :-

The patient Ms. Anupama was brought to PGI with run over traffic injury and was in a state of shock. She was managed as per protocol and surgery was planned at the earliest slot available due to pending list of patient with similar injuries. The average waiting period for surgery of such patients at ATC is 48 to 72 hours in pressing at circumstances. Her turn for surgery came in the night of 19 th July, 2012, till then she was managed on intravenous fluid, injection Rantac injection PCM and maintaining all the vital parameters. Antibiotic Ortil was started on 19 th July, 2012. However, due to her poor condition she could only be taken up next day after adequate blood transfusions, but still under the category of high risk. It looks that she had developed frank sepsis by 19 th July, 2012 when first attempt for surgery (Disarticulation) was made. As such the patients with the extensive soft tissue and bony trauma (road side open injuries) are highly prone to develop sepsis more so if definitive surgery is delayed. The Committee is of the opinion that there has been no individual negligence and no official can be pin pointed for the delay, if any, since the OT was never free and the patients with similar injuries who had landed earlier to this patient were being operated sequentially."

28. Thereafter, second inquiry committee, headed by Prof. S.S. Gill was constituted to carry out broad based inquiry into the cause of patient late Ms. Anupama. This Committee gave its report alongwith recommendations for improvement of services. Its conclusions are reproduced as under; " Conclusion: -

After detailed examination of records pertaining to the case, visit to ATC and Emergency Deptt., PGIMER, Chandigarh and examination of the medical and nursing staff, the Committee observed that patient Ms. Anupama Sarkar who had sustained severe injuries in a road traffic accident on 17.7.2012 and was brought

to ATC, PGIMER. After initial medical management and investigations, she was kept in the pre-operative ward under monitoring and all the modalities for surgery were arranged. As there were other patients waiting for surgery in the ATC, the operation of this patient got delayed. It would have been appropriate for the treating team to periodically reassess all the patients and reprioritize the OT schedule according to the seriousness of this case vis-à-vis the other cases. The mechanism of injury of this patient should have raised a high index of suspicion that the patient had sustained crush injury of the thigh and was likely to develop serious complications. However, the team decided to stick to their previous waiting list and hence this patient could not be taken for surgery till 19.7.12. This was an error of judgement.

Though the Orthopaedics team insisted that there were serious cases which could not have been delayed, the Committee feels that priority should have been rearranged for this patient. All the doctors who deposed before the Committee accepted that there was a delay which was due to heavy rush of many serious patients. However, the Committee opined that this patient should have been given due priority over other cases. Recommendations for improvement of services:-

Based upon the overall circumstances, which lead to the death of patient Ms. Anupama Sarkar, the Committee recommends the following Immediate, Short-term and Long-term measures:-

1. As the present arrangement of Faculty Incharge, ATC seems inadequate and lack supervision since it is on a part time basis, therefore, ATC and the Emergency Department of PGIMER should be put in the charge of a Professor/ Additional Professor drawn from any of the following specialities. General Surgery, Orthopaedics, Neurosurgery, Anaesthesia, Plastic Surgery and Internal Medicine.
2. It is recommended that all doctors and nurses belonging to ATC and Emergency Department such as General Surgery, Anaesthesia, Orthopaedics, Neurosurgery, Internal Medicine who are involved in the care of injured patients must undergo Advanced Trauma Life support (ATLS) and Advanced Trauma Care for Nurses (ATCN) Courses respectively.
3. At the entry point where the patient is first received, there should be one senior resident who would be responsible for screening and prioritizing. A junior resident should assist him.
4. There should be a facility to track the management of each serious patient. There should be an adequate number of doctors, phlebotomists, nurses, paramedics and class IV staff for examination/ treatment, transport, taking blood samples, collecting reports, getting x-ray and CT scan done. The staff on duty should have mobile phones provided by the hospital.
5. All categories of manpower such as doctors, nursing staff, operation theatre

technicians, hospital attendants, sanitary staff, security guards, medical social workers should be adequately augmented and trained.

6. The Incharge ATC should ensure that weekly audits of the functioning of the ATC are carried out, presented and discussed.

7. The Medical Superintendent should ensure weekly coordination meetings of different sub-specialities involved in the services of trauma patients in ATC and Emergency Department.

8. To improve regular flow of patients, all patients from ATC and Emergency Department should be moved out to the respective department after short listing of the patients. One officer should be designated who would be empowered and the responsible to ensure the movement of patients and thereby ensuring adequate number of beds in ATC and Emergency Department.

9. All patients in ATC and Emergency Department who are under observation as well as on treatment should be counted as admitted patients.

10. PGI policy should be amended to allow the referral of patients not requiring tertiary care to nearby hospital after initial care.

11. Proper recording of events shall be maintained in the patient's file i.e. date/time, name of examining consultant/residents, with legible signatures. This should include communication with the patient or his attendants.

12. Training of doctors/nurses/paramedical and class IV staff to strengthen their communication skill is recommended.

13. The condition/progress of their patients shall be communicated to the patient's attendants preferably by the attending senior doctor or nurse on a regular basis.

Short Term

1. It is recommended that PGIMER, Chandigarh develop a training site to provide certified Advanced Trauma Life Support (ATLS), Advance Trauma Care for Nurses (ATCN) Course and ACLS Course for residents and nurses who deal with trauma and emergency patients.

2. Each department associated with trauma patients should have consultants and residents posted for a continuous period of four weeks in trauma centre to maintain continuity and better patient care. The department should display a list of consultants/senior residents/junior residents on duty daily.

3. A cadre of Trauma Nurse Coordinator should be created to monitor the management of injured patients throughout their hospitalization and report to the administrative head of the ATC about any deficient management.

4. Referral slip of patients referred from other hospital should clearly mention the reasons for referring the name, designation and contact number of the doctor

referring.

5. The institute in consultations with other health authorities in UT should develop a common pool of emergency beds." Long Term

1. Establishment of an Academic Department of Emergency Medicine and Initiation of MD Course in Emergency Medicine at PGIMER, Chandigarh to provide immediate and efficient immediate care to severely injured patients like Anumapa.

2. After creation of such a department it should be put in the charge of a Professor/additional Professor drawn from any of the Specialities as follows: Emergency Medicine, General Surgery, Internal Medicine, Neurosurgery, Anaesthesia, or Orthopaedics, provided respective facility is willing to devote full time for the development of the speciality of Emergency Medicine at PGIMER, Chandigarh.

3. There should be a provision to appoint adjunct faculty from other specialities to work in the Department of Emergency Medicine.

4. Looking at the large number of injured patients coming for the treatment at PGIMER, Chandigarh, there is a need to increase operation theatres and trained manpower at all levels i.e. Faculty, Residents, Nurses, and paramedics and class IV. It will be highly appropriate to create dedicated Faculty Residents and Nurses for ATC on the same pattern as Apex Trauma centre, AIIMS. The Number of dedicated staff could be as follows: Faculty-Emergency Medicine -6 (for providing 24 hour faculty supervision in emergency Department), Orthopaedics-5, Surgery -5 , Plastic Surgery-4, Neurosurgery-5, Anaesthesia-6,

Intensivist/Critical Care physican -6, Urology-1, Otolaryngologist-1. Enhancement of manpower will help in making dedicated trauma teams.

5. MS/Mch Course in Trauma and Critical care is initiated at PGIMER, Chandigarh as soon as possible.

6. Specialized services of Plastic Surgery, Neurosurgery, Cardiology and Critical Care must be upgraded in other hospital of Chandigarh.

7. Improved coordination between hospitals located in Tricity (Chandigarh-Mohali-Panchkula) for dealing with certain category (low injury severity score ISS) of injured patients. It will allow PGIMER to deal with the most severely injured and polytrauma as tertiary care referral centre.

8. PGIMER authorities should take up the matter of opening up the satellite centres in Mullanpur (Punjab) and Panchkula (Haryana) so that patients are first seen and screened there and the patients requiring tertiary care only are referred to PGIMER, Chandigarh. These centres should be managed by PGIMER directly.

The Committee deeply sympathizes with the parents of Ms. Anupama Sarkar who

lost their daughter following a serious accident and severe injuries."

29. Therefore, cumulative effect of the entire material and documents placed on record including findings of the Committies' reports, the negligence on the part of the Opposite Party No.1-Hospital is writ large in this case. The OP No.1-Hospital has tried to take shelter on the ground that there were other serious patients who were ahead of the deceased for the purpose of having surgery. However, respondent no.1-Hospital has not placed any medical record of such patients.

30. As already observed, the State Commission in the impugned order has categorically held that; "From the facts and circumstances of the case, as also from the enquiry reports, it is apparent that there was considerable delay in properly treating the patient. Had the doctors of the Opposite Party No.1-Hospital properly treated the patient within the reasonable period after her admission and done the needful to prevent the gangrene and septicemia, then the complications would not have arisen and the life of the only daughter of the complainants would have been saved. But due to non-availability of the proper medical treatment, in time, the condition of the patient deteriorated badly, gangrene and septicemia developed for which disarticulation of the hip and debridement of the anterior abdominal wall was done and her life could not be saved. This fact is corroborated from the enquiry reports placed, on record. The same cannot be brushed aside, as the same have been given by the experts/doctors in the medical field. Hence, the objection of the Counsel for Opposite Parties No.1 to 4 that the enquiry reports could not be read into evidence is baseless and the same is rejected. Since the enquiry reports have been furnished by the team of doctors who are experts in the medical field, the objection of the Counsel for Opposite Parties No.1 to 4 that no expert opinion was led by the complainants in support of their contention is without any merit and substance and the same is rejected accordingly. However, we find force in the submission of the Counsel for the complainants that it is a clear case of *res ipsa loquitur* (the things speak themselves). Thus, we hold that the death of Ms.Anupama took place due to per se negligence of the treating doctors of Opposite Party No.1-Hospital by not treating the patient with due care and skill. Had the concerned doctors exercised due care and skill they would have followed the requisite protocol by performing the operation on the crushed leg of the patient on the very day of her admission, as a result whereof, development of gangrene and septicemia would have been avoided and her life would have been saved. The complainants lost their only daughter of about 16 years, on account of the palpable negligence and carelessness of the Opposite Party No.1-Hospital."

31. We fully agree with the aforesaid reasoning given by the State Commission and find no reason to disagree with the same.

32. It may be pertinent to note that O.P.No.1-Hospital is a prestigious medical institute. Therefore, it is expected from such institute that it should work not in a purely bureaucratic manner i.e. patient should be treated as per seniority in the

queue, but it should be run in a professional manner. The medical surgeries, operations and other emergency treatments are to be administered keeping in view the nature of ailment, seriousness and other exigencies as per the best judgement of the treating doctor. In the present case, it is an admitted fact that condition of the patient was quite serious from the time she was admitted in the Hospital. Keeping in view the nature of ailment from which the patient was suffering, O.P. No.1-Hospital should not have insisted on red tapism. On the other hand, it is really unfortunate that due to the bureaucratic approach and red tapism adopted by O.P. No.1-Hospital, a precious life of young girl could not be saved.

33. An inquiry conducted by the eminent doctors in this case, whose report has been placed on record which also categorically states that; " It would have been appropriate for the treating team to periodically reassess all the patients and reprioritize the OT schedule according to the seriousness of this case vis-?-vis the other cases. The mechanism of injury of this patient should have raised a high index of suspicion that the patient had sustained crush injury of the thigh and was likely to develop serious complications. However, the team decided to stick to their previous waiting list and hence this patient could not be taken for surgery till 19.7.12.

34. Therefore, we hold that negligence on the part of O.P. No.1-Hospital has been clearly established. Therefore, Appeal No.333 of 2013, is liable to be dismissed.

35. Now, coming to (First Appeal No.320 of 2013) for enhancement, the State Commission has awarded a sum of Rs.7,00,000/- (Rupees Seven Lacs only) to the complainants. In addition, CTU has already paid Rs.3,00,000/- (Rupees Three Lacs only) to the complainants on humanitarian ground.

36. The complainants have lost their only child who was aged about 16 years old. It is only the parents of such child can feel the trauma under which they have to go through past several years

and for future also they have to bear with this irreparable loss. No amount of money can compensate their sufferings and agony, since complainants have high hope from their brilliant daughter.

37. So, keeping in view the principles of law for awarding compensation in medical negligence cases, as laid down by Hon"ble Supreme Court in " Dr. Kunal Saha Vs. AMRI and others (supra)" we deem it appropriate to award a further sum of Rs.10,00,000/- (Rupees Ten Lacs only) to the complainants, since they have to bear with all the trauma, mental agony, pain and sufferings, throughout their remaining life.

38. Accordingly, (First Appeal No.320 of 2013) filed by the complainants is partly allowed. The appellants in this appeal, shall be entitled to a further sum of Rs.10,00,000/- (Rupees Ten Lacs only), in addition to sum of Rs.7,00,000/-

(Rupees Seven Lacs only) as already awarded by the State Commission besides Rs.3,00,000/- (Rupees Three Lacs only) already paid by the CTU. This amount shall be payable by O.P. No.1-Hospital.

39. The appeal filed by O.P. No.1 (F.A. No.333 of 2013) stand dismissed.

40. O.P. No.1-Hospital is directed to deposit the entire awarded amount by way of demand draft in the name of complainants with this Commission, within eight weeks. O.P. No.1-Hospital, shall make adjustment for the amount already paid to the complainants or deposited with consumer fora, if any.

41. In case, O.P. No.1-Hospital fails to comply the aforesaid directions, within the specified period, then it shall be liable to pay interest @ 9% p.a. till realization.

42. The awarded amount deposited by O.P. No.1-Hospital shall be paid to the complainants only after expiry of period of appeal or revision preferred, if any.

43. List for compliance on 31.7.2015.