STATE CONSUMER DISPUTES REDRESSAL COMMISSION, MAHARASHTRA, MUMBAI

CONSUMER COMPLAINT NO. SC/27/CC/13/2013

Sau. Rajani Prakash Malik,
R/at – Flat no. 202, Shiv Parvati CHS Ltd.,
3rd floor, Patherli Road, Gograswadi, Dombivali (East),
Dist. Thane ……. Complainant

V/s

Dr. (Shri) Ashok T. Bhole,
Heramb Eye Hospital, Archis Apartments,
B – wing, First Floor, Tandon Road, Dombivali (East),
Dist. Thane. ……. Opposite Party

CORAM:

Hon'ble Mr. Mukesh V. Sharma, Presiding Member
Hon'ble Ms. Poonam V. Maharshi, Member

APPEARANCE: For Complainant: Adv. S. Bhimani i/b The Law Suits
For Opposite Party : Adv. Mishra. Adv. Vishwakarma, Adv. Chaudhary

JUDGMENT

(Dated: 13/03/2026)

Per: Mukesh V. Sharma, Presiding Member

1. The present consumer complaint has been preferred by the complainant Smt. Rajani Prakash Malik under the provisions of the Consumer Protection Act, 1986 against the opposite party Dr. (Shri) Ashok T. Bhole, who is an ophthalmic surgeon by profession, alleging deficiency in service

and medical negligence on his part in the course of the eye surgery performed by him upon the complainant, and seeking compensation for the permanent loss of her eye and the consequent physical, mental and financial hardship suffered by her.

2. The case set out by the complainant, briefly stated, is that she was suffering from a vision-related ailment in her eye, on account of which she consulted the opposite party at his clinic. The opposite party, holding himself out as a qualified and experienced eye surgeon, after examination, advised her to undergo surgery in the affected eye, with an assurance that the procedure was simple and routine, carried a high success rate, and that her vision would be restored upon its completion. Reposing complete faith in the professional standing and assurance of the opposite party, the complainant agreed to undergo the said surgery, and a sum was paid by her towards the charges thereof.

3. The complainant has further pleaded that prior to the surgery, her signature was obtained by the opposite party on a pre-printed consent form which was placed before her as a routine formality. There was no meaningful discussion or disclosure by the opposite party of the nature of the procedure, the attendant risks, the possible complications, or any reasonable alternative line of treatment available to her. In particular, the complainant was at no stage informed that the surgery carried any risk of permanent loss of vision or of the eye itself, nor is any such risk mentioned anywhere in the consent form said to have been signed by her. The complainant submitted that had she been so informed, she would have had occasion to reconsider her decision or to seek a second opinion before subjecting herself to the surgery for cataract of her right eye.

4. The complainant has stated that the surgery was thereafter performed by the opposite party. In the immediate post-operative period, however, she

developed severe pain, redness, watering and progressively diminishing vision in the operated eye, accompanied by general distress including repeated episodes of loose motions and weakness. The said complaints were brought to the notice of the opposite party on more than one occasion, but, instead of taking them seriously, the opposite party is alleged to have brushed them aside as ordinary post-operative reactions and continued the same conservative line of treatment, without subjecting the eye to any further investigation, without seeking a second opinion, and without referring the complainant to a higher centre or to a specialist in time, notwithstanding the rapidly deteriorating condition of the eye.

5. As the condition of the operated eye continued to worsen, the complainant was referred another hospital/specialist Dr. P. Suresh for further opinion and treatment. Further upon examination and investigation, she was diagnosed with a serious post-operative complication, on account of which she had to undergo further surgery and treatment, at Fortis Hospital at Mulund and incurred considerable expenditure. Despite all such efforts, the vision in the operated eye could not be salvaged and the complainant has, ultimately, suffered permanent loss of vision in, and of, the said eye. Attributing the said loss to the failure of the opposite party in obtaining proper and informed consent, and to the deficient and negligent manner in which the surgery and the post-operative care were rendered by him, the complainant approached this Commission on 21/01/2013 by way of the present complaint, praying for compensation on account of cost of loss of her eye, further medical treatment, physical pain and suffering, mental agony, loss of earning and earning capacity, and litigation expenses, along with such further and other reliefs as this Commission may deem fit and proper in the facts and circumstances of the case.

6. The consumer complaint was admitted on 21/02/2013 and notice was issued to the Opposite Party. The opposite party has resisted the complaint by filing his written statement, denying each and every adverse allegation made by the complainant and praying for dismissal of the complaint with costs. At the threshold, the opposite party has raised preliminary objections to the maintainability of the complaint, contending that the complaint is false, frivolous and vexatious; that no cause of action has arisen in favour of the complainant; that the complaint suffers from suppression of material facts; and that the complainant has approached this Commission with unclean hands with a view to extort money from the opposite party by levelling baseless allegations against a duly qualified medical practitioner of long standing.

7. On merits, the opposite party has pleaded that he is a duly qualified, registered and experienced ophthalmic surgeon, and that he has been in active medical practice for several years, having attended to a large number of patients with satisfactory outcomes. It is stated that the complainant approached him with a vision-related complaint in her eye, and that, after carrying out the necessary pre-operative examination and investigations, he advised her to undergo surgery as per the standard line of treatment indicated in such a case. The opposite party has specifically asserted that the surgery was performed by him with due care, caution and diligence, in accordance with the accepted standards of medical practice and under all aseptic precautions, and that the procedure was, as such, uneventful.

8. With reference to the question of consent, the opposite party has pleaded that the nature of the procedure, the manner in which it would be carried out and its general implications were explained to the complainant in a language which she understood, and it was only thereafter that her

signature was obtained on the consent form maintained by his clinic. It is contended that the consent so obtained was a valid consent in the eyes of law; that the printed consent form is the form ordinarily used in his clinic for all patients; and that the complainant, being a literate and adult person, signed the same with full understanding. The opposite party has denied that any material fact, risk or complication was withheld from the complainant.

9. As regards the post-operative course, the opposite party has pleaded that the complainant was duly examined by him on the post-operative follow-up visits, and that all such medication, eye drops and advice as were called for were duly prescribed and administered. It is stated that the complaints of pain, redness and diminution of vision, as and when reported, were attended to by him with due promptitude, and that there was no occasion or clinical indication for any earlier reference to a higher centre than was made by him.

10. The opposite party has further pleaded that the episodes of loose motions and general weakness allegedly suffered by the complainant in the post-operative period were entirely unrelated to the eye surgery performed by him, and could not, by any stretch, be laid at his door. According to the opposite party, the unfortunate outcome in the operated eye is attributable to a known and recognised complication, which can arise notwithstanding due care on the part of the operating surgeon, and the same does not, by itself, amount to negligence.

11. The opposite party has further taken the stand that the burden of establishing medical negligence rests squarely upon the complainant, and that she is required to prove the same by cogent and reliable evidence,

including independent expert medical opinion. It is contended that no such expert opinion has been brought on record by the complainant, nor has any deviation from the accepted standard of medical practice been demonstrated against the opposite party. In support of his defence, the opposite party has placed reliance upon affidavits of certain fellow medical practitioners affirming the appropriateness of the treatment rendered, and upon the principles laid down by the Hon'ble Supreme Court in *Jacob Mathew v. State of Punjab*, *Kusum Sharma v. Batra Hospital and Medical Research Centre*, *Martin F. D'Souza v. Mohd. Ishfaq*, *C. P. Sreekumar (Dr.) v. S. Ramanujam* and *Vinod Jain v. Santokba Durlabhji Memorial Hospital*, as also the decision of the Hon'ble National Commission in *Dr. M. Kochar v. Ispita Seal*, contending that a medical professional who has acted with reasonable skill and care cannot be mulcted with liability merely because the outcome was unfortunate, and praying that the complaint be dismissed with exemplary costs.

12. The complainant, in support of her case, filed her own affidavit by way of evidence, along with the documents on which she has placed reliance, including the prescriptions, the consent form, the medical papers of the opposite party's clinic, the records of the hospital where she received further treatment, the bills and receipts towards medical expenses incurred by her, and the photographs of the affected eye. The opposite party has likewise filed his affidavit of evidence, together with the affidavits of certain fellow medical practitioners and the copy of the consent form, in support of his defence. Written notes of arguments have been filed on behalf of both sides, and a compilation of judgments has been tendered by each party in aid of its respective contentions.

13. We have heard the learned Advocate for the complainant and the learned Advocate for the opposite party at length, and have perused the entire material placed on record with their assistance. On a consideration of the rival pleadings, the evidence on record and the submissions advanced at the Bar, the following points/issues arise for our determination, on which we record our findings as set out hereunder, for the reasons stated thereafter:

Sr. No.	Points for Determination	Findings
1	Whether the complainant is a "consumer" within the meaning of Section 2(1)(d) of the Consumer Protection Act, 1986?	In the affirmative.
2	Whether the complaint is within limitation?	In the affirmative.
3	Whether the complainant has proved deficiency in service and medical negligence on the part of the opposite party?	Partly in the affirmative, only on the ground of failure to obtain proper and informed consent.
4	What order?	As per final order.

R E A S O N S

As to Point No. 1 — Whether the complainant is a "consumer"?

14. It is not in dispute between the parties that the complainant approached the opposite party for treatment of her eye, that she was advised surgery by the

opposite party, and that the surgery was performed by him on payment of his professional charges. The relationship between the parties is, therefore, plainly that of a service-provider and a recipient of service for a consideration. In view of the law settled by the Hon'ble Supreme Court in *Indian Medical Association v. V.P. Shantha*, medical services rendered by a doctor for consideration squarely fall within the ambit of "service" as defined under Section 2(1)(o) of the Consumer Protection Act, 1986, and the person availing such service is a "consumer" within the meaning of Section 2(1)(d) thereof. Accordingly, we hold that the complainant is a "consumer" within the meaning of Section 2(1)(d) of the Consumer Protection Act, 1986, and that this Commission has the jurisdiction to entertain and adjudicate upon the present complaint. Point No. 1 is, therefore, answered in the affirmative.

As to Point No. 2 — Whether the complaint is within limitation?

15. The cause of action in the present case arose with the surgery performed on 04/07/2011 by the opposite party and the loss of vision which the complainant suffered in the operated eye in the post-operative period, followed by the further treatment which she had to undergo at another centre. The present complaint came to be filed before this Commission on 21/01/2013, which is well within the period of two years prescribed under Section 24-A of the Consumer Protection Act, 1986, computed from the date on which the cause of action. Accordingly, the complaint is held to be within limitation, and Point No. 2 is answered in the affirmative.

As to Point No. 3 — Whether deficiency in service and medical negligence is proved?

16. The case sought to be made out by the complainant against the opposite party falls broadly under two heads — firstly, that the opposite party failed to obtain proper and informed consent from her before subjecting her to

the eye surgery in question; and secondly, that the surgery itself and the post-operative care extended by the opposite party were sub-standard and negligent, on account of which the complainant has suffered permanent loss of vision in, and of, the operated eye. We propose to consider each of these two limbs separately, since the standard of proof and the nature of evidence required to establish each of them is distinct.

17. So far as the first limb, namely, the failure to obtain proper and informed consent, is concerned, the principles of law are by now well settled. A medical practitioner, before subjecting a patient to any procedure or surgery, is under an obligation in law as well as in professional ethics to disclose to the patient, in language which the patient can understand, the nature of the proposed procedure, the manner in which it is to be performed, its attendant risks and reasonably foreseeable complications, the available alternative modes of treatment, if any, and the consequences of declining the procedure. It is only upon such disclosure being made that the patient can be said to have given a real, valid and informed consent to the procedure. The complainant has, in this regard, placed reliance on the decision of the Hon'ble National Consumer Disputes Redressal Commission in *Dr. Dilip C. Shah v. Subhashchandra*, 2014 SCC OnLine NCDRC 764, wherein the Hon'ble National Commission has, in turn, drawn upon the authoritative pronouncement of the Hon'ble Supreme Court in *Samira Kohli v. Dr. Prabha Manchanda*, (2008) 2 SCC 1, which expounded the said principles in unambiguous terms and has been consistently followed thereafter.

18. Tested on the bench mark of the said principles, the consent purportedly obtained by the opposite party in the present case is, in our view, plainly inadequate. The consent form placed on record by the opposite party is a pre-printed proforma carrying only the signature of the complainant. There

is no mention anywhere in the said form of the specific nature of the surgery proposed to be performed on the complainant, the attendant risks, the possible complications, or, most importantly, of the fact that the complainant may, as a consequence of the procedure, lose vision in, or even lose, the operated eye. There is no recital that any of these matters was, in fact, explained to the complainant. The form, in substance, is no more than a bare signature obtained on a printed sheet — and, in the eye of law, that is not the consent which the law requires.

19. The learned Advocate for the complainant has invited our attention, in this regard, to the principles enunciated by the Hon'ble National Commission and other Fora in *Dr. Dilip C. Shah v. Subhashchandra Tulsiramji Sevak Kokapur*, 2014 SCC OnLine NCDRC 764, where, on a similar pre-printed form, the operating doctor was held liable for failure to obtain a recorded informed consent, the principles in *Samira Kohli* having been applied. Reliance has likewise been placed on *Dr. Gagandeep Tathgur v. Veerpal Kaur*, 2021 (2) CPR 1, wherein, while reiterating the shift in jurisprudence from the *Bolam* test to the *Montgomery* standard of "reasonable patient", a consent form lacking in particulars and unsigned by the doctor was held to be no consent in the eye of law.

20. We agree with the principles laid down in the above decisions. Applying them to the present case, the complainant has lost vision in the operated eye, and in fact lost the eye itself. The consent form does not mention that the surgery carried any such risk. Had the complainant been told that the surgery could result in permanent loss of vision, or even loss of the eye, it cannot be said that she would still have agreed to undergo it at the hands of the opposite party. By failing to inform her of this risk and merely obtaining her signature on a printed form, the opposite party has not discharged his duty of disclosure. This, in our view, clearly amounts to

deficiency in service. Point No. 3 is, to that extent, answered in the affirmative.

21. We now come to the second part of the complainant's case, that the surgery and the post-operative care given by the opposite party were sub-standard and negligent, and that this led to the loss of the operated eye. The law on this point is well settled. A doctor cannot be held guilty of medical negligence merely because the treatment did not give the desired result, or because, looking back, some other line of treatment may have been better. To hold a doctor liable for negligence, the complainant must prove, by reliable evidence and ordinarily by independent expert medical opinion, that the doctor either did not possess the skill he claimed to have, or that he failed to use, with reasonable competence, the skill he did possess, and that this act or omission fell below the standard of a reasonably competent doctor of the same class. The Hon'ble Supreme Court in *Jacob Mathew v. State of Punjab*, *Kusum Sharma v. Batra Hospital and Medical Research Centre*, *Martin F. D'Souza v. Mohd. Ishfaq*, *C. P. Sreekumar (Dr.) v. S. Ramanujam* and *Vinod Jain v. Santokba Durlabhji Memorial Hospital*, on which the opposite party has placed strong reliance, has repeatedly held that the standard of care expected from a doctor is that of an ordinary competent doctor exercising ordinary skill, and not that of the highest expert in the field, and that the Courts must be cautious not to hold a doctor liable only on the basis of an unfortunate outcome or with the benefit of hindsight.

22. The burden, accordingly, was on the complainant to establish, by acceptable evidence, that the opposite party fell below the standard of a reasonably competent ophthalmic surgeon in performing the surgery in question and in rendering post-operative care to her. We have carefully perused the material placed by the complainant on record in this regard.

The complainant has placed on record her own affidavit, the prescriptions and bills, and the records of the hospital where she was subsequently treated. It is, however, conspicuous that no independent expert medical opinion has been brought on record on her behalf, nor has any reference been made to any medical board or specialist competent to opine on the question whether the surgery and the post-operative management by the opposite party fell short of the accepted standard of practice. The records of the subsequent treating hospital, by themselves, only establish that the complainant developed a serious post-operative complication and was thereafter treated for the same; they do not, on their own, establish that the said complication was attributable to any negligent act or omission on the part of the opposite party.

23. The complainant has also pointed to the fact that she suffered from repeated episodes of loose motions and general weakness in the post-operative period. While these facts may go to show that her condition during the said period was distressing, no medical opinion has been placed on record to demonstrate that the same had any causative connection with the eye surgery, or with any act or omission of the opposite party. It is equally possible, and indeed not improbable, that the said symptoms had an entirely independent aetiology unrelated to the surgery in question. In the absence of expert medical evidence linking the said symptoms to the management of the case by the opposite party, no adverse inference on the notch of medical negligence can be drawn from the mere fact of their occurrence.

24. The opposite party, on his part, has placed on record affidavits of certain fellow medical practitioners stating, in substance, that the line of treatment adopted by the opposite party was in accordance with the standards followed in the profession. The learned Advocate for the complainant, at

the hearing, raised a serious objection to the said affidavits, and brought to our attention that they appear to be in the nature of a *cyclostyled* or *pro forma* document, in which only the name of the deponent has been filled in by hand, and that all of them have been notarised on the same date. It has accordingly been submitted that the said deponents are, in effect, "interested" witnesses, brought into the field at the instance of the opposite party, and that no independent weight should be attached to such affidavits. We see considerable force in the said submission. We are, on the material placed before us, unable to treat the said affidavits as substitutes for an independent expert opinion, and we therefore proceed on the footing that the said affidavits cannot, by themselves, be relied upon as conclusive proof of the absence of negligence on the part of the opposite party.

25. However, the fact that the affidavits filed on behalf of the opposite party are not entitled to much weight does not, by itself, advance the case of the complainant. The burden of proving medical negligence in the matter of the surgery and post-operative care was, and remains, upon the complainant. The infirmity in the opposite party's defence evidence does not relieve the complainant of her own primary burden, nor does it constitute substantive evidence of negligence on the opposite party's part. The complainant having failed to place on record any independent expert opinion or any other material from which any specific act or omission falling below the accepted standard of medical practice can be inferred against the opposite party, we are constrained to hold that the second limb of her case, namely, of medical negligence in the surgery and the post-operative care, is not made out on the evidence on record.

26. The learned Advocate for the complainant placed strong reliance, in this connection, on the decisions in *Jawaharlal Institute of Post-Graduate Medical Education and Research (JIPMER) v. S. Varrery Srinivas*, 2012

(3) CPR 256, *Comtrust Eye Hospital v. V. Sirajudeen*, 2013 (2) CPJ 183, *Rajendra Prasad (Dr.) v. Tammisetti Venkata Narayana*, 2016 (2) CPJ 683 (NCDRC), *P. C. Jain v. Dr. R. P. Singh* (State Commission, Haryana), *Jaswinder Singh v. Dr. Neeraj Sud*, 2011 (4) CPJ 236, *Bhushan Raina v. Dr. S. K. Jain*, 2014 CPJ 601, and *Sheela Srivastava v. Rajiv Gandhi Cancer Institute and Research Centre*, 2018 (4) CPJ (NC) 504, to contend that medical negligence in the present case stands established. On a careful perusal of the said decisions, however, we find that they turn upon their own peculiar facts, none of which are on all fours with the case on hand. In each of those cases, there was either independent expert opinion, or an investigation report of a medical board, or contemporaneous medical records pointing to specific deviations from accepted protocol, on the strength of which the finding of negligence came to be returned. In the present case, no such material is forthcoming.

27. Particular reference may also be made to the decision of the Hon'ble Supreme Court in *Bherulal Bhimaji Oswal v. Madhusudan N. Kumbhare*, 2024 INSC 1035, relied upon by the learned Advocate for the complainant. In that case, the doctor had assured the patient of recovery, kept him in the dark about the actual failure of the procedure, withheld the contemporaneous medical records and produced ante-dated records along with the written statement, and the matter was eventually clinched by an independent expert opinion adverse to the doctor. None of those features is present in the case on hand. Here, the complainant was operated on 04/07/2011 and was referred to another centre for further treatment on 07/07/2011; the medical records of the opposite party have been produced and there is no allegation of any record being ante-dated; and, most importantly, no independent expert opinion is on record in the present proceedings. The said decision, with great respect, is therefore clearly

distinguishable on facts and is of no assistance to the complainant on the second limb.

28. The learned Advocate for the complainant also brought to our attention certain other proceedings stated to be pending against the opposite party — including a report in *The Times of India* concerning the death of a sportsperson, a criminal case said to be pending in the Court of the learned J.M.F.C., Kalyan, and another consumer complaint preferred against the opposite party before the District Forum, Thane. It was urged that the present case is not the first instance of alleged negligence on the part of the opposite party, and that the said proceedings reflect a pattern. We may, however, observe that each case must be decided on its own merits and on the evidence brought on record therein. Pendency of other proceedings against the opposite party, whatever their nature or stage, cannot operate as substantive evidence of negligence in the present complaint. The said material is therefore not of any assistance to the complainant in establishing the second limb of her case before us.

29. To summarise our findings on Point No. 3: we hold that the opposite party is guilty of deficiency in service in not obtaining a proper and valid informed consent from the complainant before subjecting her to the surgery in question, by being content with a bare signature on a pre-printed consent form which did not, by any stretch, satisfy the requirements of disclosure laid down in *Samira Kohli* and the line of decisions which has followed it. However, on the question of medical negligence in the actual performance of the surgery and in the post-operative care rendered by the opposite party, the complainant has failed to discharge the burden of proof which rested upon her, and, on that aspect, no case of medical negligence stands established against the opposite party. Point No. 3 is, accordingly, answered partly in the affirmative.

As to Point No. 4 — Quantum and Final Order

30. We are now left with the question of the appropriate compensation to be awarded in favour of the complainant on account of the deficiency in service so found against the opposite party. It is no doubt true that there is no mathematical formula by which the just compensation in a case of this nature can be computed, and the assessment must necessarily proceed on the well-recognised principles of being just, fair and reasonable on the facts and in the circumstances of the case.

31. We have, in this regard, kept in view, on the one hand, the seriousness of the consequences which followed i.e. the complainant having lost the vision in, and indeed lost her operated eye, which is a loss not capable of being adequately measured in terms of money, and the considerable amount of money which she has had to spend in undergoing further surgery, treatment, follow-up consultations and allied expenditure, besides the physical pain, mental agony and the disruption of normal life which she has had to undergo, including in her day-to-day functioning, on account of the loss of an eye. On the other hand, we are conscious that the only ground on which the opposite party has been found wanting is that of failure to obtain a proper and informed consent, and not of any proved negligence in the surgical or post-operative management, and that the compensation must, in fairness, be adjusted accordingly. Taking an overall and balanced view of all these factors, we are of the considered opinion that a sum of Rs. 7,00,000/- (Rupees Seven Lakh only) would meet the ends of justice as just and proper compensation in the facts and circumstances of the present case, in addition to a reasonable amount towards the cost of litigation, which we quantify at Rs. 50,000/- (Rupees Fifty Thousand only). Point No. 4 is answered accordingly.

32. In the result, we proceed to pass the following order:

:: O R D E R ::

1. The Consumer Complaint No. CC/13/2013 is partly allowed.

2. The opposite party — Dr. (Shri) Ashok T. Bhole —is directed to pay to the complainant Smt. Rajani Prakash Malik a sum of Rs. 7,00,000/- (Rupees Seven Lakh only) by way of compensation, on account of deficiency in service in not obtaining a proper and valid informed consent from the complainant.

3. The opposite party is also directed to further pay to the complainant a sum of Rs. 50,000/- (Rupees Fifty Thousand only) towards costs of the litigation.

4. The amounts at clauses (2) and (3) above shall be paid by the opposite party to the complainant within a period of Two Months from the date of receipt of a copy of this order, failing which the said amounts shall carry simple interest at the rate of 9% (Nine per cent) per annum from the date of this order till the date of actual realisation.

5. A copy of this order shall be furnished to both the parties, free of cost, as per rules.

(Mukesh V. Sharma)
Presiding Member

(Poonam V. Maharshi)
Member