2024 INSC 330

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO……..OF 2024
(Arising out of Special Leave Petition (C) No.242 of 2016)

JYOTI DEVI … APPELLANT(S)

VERSUS

SUKET HOSPITAL & ORS. … RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

Leave granted.

2. In ordinary circumstances, a procedure concerning appendicitis is considered to be routine. It did not turn out to be so for Jyoti Devi[1]. She was admitted to Suket Hospital, Sundernagar, Mandi, Himachal Pradesh on 28th June 2005 and had her appendicitis removed by Dr. Anil Chauhan, Senior Surgeon, Suket Hospital. Post surgery, she was discharged on 30th June 2005. However, her ordeal did not end there. She suffered continuous pains near the surgical site, as such she was admitted again on 26th July 2005 but was discharged the next day with the assurance that no further pain would be suffered by her. She was further

1 Hereafter, 'claimant-appellant'

treated by one Dr. L.D. Vaidya of Mandav Hospital, Mandi, on the reference of Dr. Anil Chauhan respondent no.2 herein. Yet again, there was no end to her suffering. This process continued for a period of four years.

3. The claimant - appellant eventually landed up for treatment at the Post Graduate Institute of Medical Science, Chandigarh. Upon investigation, it was found that a 2.5 cm foreign body (*needle*) "*is present below the anterior abdominal wall in the preveside region just medial to previous abdominal scar (Appendectomy)*" for which a further surgery had to be performed for its removal.

4. Alleging negligence on the part of the respondent - Suket Hospital, a claim was brought for the "*huge pain and spent money on treatment*" totalling to Rs.19,80,000/-.

5. The District Consumer Disputes Redressal Forum, Mandi, H.P.[2], while adjudicating Complaint Case No.262 of 2011 vide award dated 18th December, 2013 under Section 12 of the Consumer Protection Act, 1986, concluded as under:-

> "15. In the case at hand, the complainant has suffered physical pain for more than five years due to negligence of opposite parties no. 1 and 2. …we feel that compensation for Rs.5,00,000/- in lump sum is just and proper to meet out the injury of the complainant. …Opposite parties no. 3 and 4 have taken plea that they are only liable for bodily injury as per the contract for death, injury, illness or disease of or any person. In the present case the complainant was operated by opposite party no.2 for appendicitis but after operation, the complainant developed pain and pus started oozing out from stitches and she was operated at PGI where needle was extracted by the doctor from her abdomen. Therefore, the case of the complainant is covered under injury and illness and opposite parties no.3 and 4 are liable to pay compensation awarded against opposite parties no.1 and 2 being the insurers"

2 For short, 'District Forum'

6. On appeal preferred by the present respondents (First Appeal No.70 of 2014 dated 23rd September 2014) the H.P. State Consumer Disputes Redressal Commission, Shimla[3] observed that:-

> "…needle was not left at the site of surgery, at the Hospital of the appellants, when the complainant was operated for removal of appendicitis, yet from an overall reading of the pleadings and evidence on record, it can be said that surgery conducted at the clinic of the appellants, was the cause of pain, which the complainant had been having at-least upto December, 2008, when the pus was drained out."

7. The respondents herein were held liable to compensate the appellant for the physical pain, mental agony, and expenses incurred by her, to the tune of Rs.1,00,000/-, thereby partly allowing the respondent's appeal.

8. The National Consumer Disputes Redressal Commission[4], in the Revision Petition 57 of 2015 arising out of the order of the State Commission observed that the post-operative care provided by the respondents was casual and fell short of the standard of medical care. They had failed to investigate the non-healing surgical wound thereby constituting a deficiency in service. The NCDRC refused to accept the argument that since the appellant had received care at other hospitals as well it would be difficult to determine who was responsible for the needle in the abdomen.

9. The egg-skull rule was applied to hold an individual liable for all consequences of their act. The compensation awarded by the State Commission was enhanced to Rs.2,00,000/-.

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3 For short, 'State Commission'
4 For brevity, 'NCDRC'

10. Hence, the claimant-appellant prefers the present appeal, seeking enhancement of compensation. We may state, for ample clarity, that, the present dispute arose within the contours of the Consumer Protection Act, 1986, the predecessor legislation to the current Consumer Protection Act, 2019.

11. The factum of negligence on the part of the respondent Hospital as well as respondent No.2 has not been doubted, across fora. Although the State Commission had differed with the District Forum on the presence of the needle, the NCDRC, in para 5 of the impugned judgment and order, found the medical record to testify to the presence of a needle in the abdomen and also found that the respondent Hospital was found wanting in terms of post-operative care.

12. The primary ground alleged, in submitting that the finding of medical negligence is unjustified, was that there has been a recorded gap of time where the appellant did not suffer from any pain (1½ years). However, we notice the NCDRC to have observed her period of suffering to be more than 5 years, implying thereby that the gap in suffering aspect has not been accepted. No material has been placed before us to take a different view therefrom. The respondents are not the ones who have approached this Court. As such, we are only required to examine the sufficiency of compensation as awarded by way thereof. The same, though, cannot be appositely done without having appreciated pronouncements of this Court on the scope and purpose of the Consumer Protection Act; medical negligence; and compensation in such cases as also, the rule of tort law known as the '*eggshell skull*' rule.

12.1 Scope of the Consumer Protection Act

12.1.1 An examination of the decisions of this Court in ***C. Venkatachalam v. Ajitkumar C. Shah and others*** [5]and **J.J. *Merchant (Dr) v. Shrinath Chaturvedi***[6] and ***Common Cause v. Union of India***[7] among a host of other pronouncements, reveals the following in this regard:-

i. It is a benevolent, socially orientated legislation, the declared aim of which is aimed at protecting the interests of consumers;
ii. Its goal is to provide inexpensive and prompt remedies for the grievances of consumers against defective goods and deficient services;
iii. For the above-stated objective, keeping in view the accessibility of these grievance redressal bodies to all, to all persons, quasi-judicial bodies have been set up at the district, state, and national levels;
iv. These bodies have been formed to save the aggrieved consumer from the hassle of filing a civil suit, i.e., provide for a prompt remedy in the nature of award or where appropriate, compensation, after having duly complied with the principles of natural justice;

12.2 The Law on Medical Negligence

12.2.1 Three factors required to prove medical negligence, as recently observed by this Court in ***M.A Biviji v. Sunita & Ors.***[8], following the landmark pronouncement in ***Jacob Matthew v. State of Punjab***[9], are :-

5 (2011) 12 SCC 707
6 (2002) 6 SCC 635
7 (1997) 10 SCC 729
8 (2024) 2 SCC 242
9 (2005) 6 SCC 1

> "**36.** As can be culled out from above, the three essential ingredients in determining an act of medical negligence are : (1.) a duty of care extended to the complainant, (2.) breach of that duty of care, and (3.) resulting damage, injury or harm caused to the complainant attributable to the said breach of duty. However, a medical practitioner will be held liable for negligence only in circumstances when their conduct falls below the standards of a reasonably competent practitioner."

12.2.2 To hold a doctor liable, this Court in ***Dr. Mrs. Chanda Rani Akhouri v. Dr. M.A. Methusethupati***[10] observed: -

> "…. a medical practitioner is not to be held liable simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference to another. In the practice of medicine, there could be varying approaches of treatment. There could be a genuine difference of opinion. However, while adopting a course of treatment, the duty cast upon the medical practitioner is that he must ensure that the medical protocol being followed by him is to the best of his skill and with competence at his command. At the given time, medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field."
>
> (Emphasis supplied)

12.2.3 Observations in ***Harish Kumar Khurana v. Joginder Singh***[11] are also instructive. Bopanna J., writing for the Court held:

> **"…**It is necessary that the hospital and the doctors are required to exercise sufficient care in treating the patient in all circumstances. However, in unfortunate cases, though death may occur and if it is alleged to be due to medical negligence and a claim in that regard is made, it is necessary that sufficient material or medical evidence should be available before the adjudicating authority to arrive at a conclusion."
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> *(emphasis supplied)*

These observations, although made in the context of a patient having passed away in the course of, or as a result of treatment, nonetheless are essential even in cases where the claimant has suffered an injury.

10 2022 SCC OnLine SC 481
11 (2021) 10 SCC 291

12.3 Determination of the Quantum of Compensation

12.3.1 This Court has held that in determining compensation in cases of medical negligence, a balance has to be struck between the demands of the person claiming compensation, as also the interests of those being made liable to pay. It was observed in ***Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka***[12] -

> **"88.** We must emphasise that the court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the court must not be chary of awarding adequate compensation. The "adequate compensation" that we speak of, must to some extent, be a rule of thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned.
>
> **89.** It must also be borne in mind that life has its pitfalls and is not smooth sailing all along the way (as a claimant would have us believe) as the hiccups that invariably come about cannot be visualised. Life it is said is akin to a ride on a roller-coaster where a meteoric rise is often followed by an equally spectacular fall, and the distance between the two (as in this very case) is a minute or a yard."

In the very same judgment, it was further observed, particularly in cases of the person being injured:-

> "**90.** At the same time we often find that a person injured in an accident leaves his family in greater distress vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity."

12 (2009) 6 SCC 1

12.3.2 It would also be instructive to refer to the concept of '*just compensation*'. The idea of compensation is based on *restitutio in integrum,* which means, make good the loss suffered, so far as money is able to do so, or, in other words, take the receiver of such compensation, back to a position, as if the loss/injury suffered by them hadn't occurred. In ***Sarla Verma v. DTC***[13] this Court observed that compensation doesn't acquire the quality of being just simply because the Tribunal awarding it believes it to be so. For it to be so, it must be, ***(i)*** adequate; (***ii)*** fair; and ***(iii)*** equitable, in the facts and circumstances of each case. This understanding was reiterated in ***Balram Prasad v. Kunal Saha and Ors***[14]***, V. Krishnakumar v. State of Tamil Nadu & Ors,***[15] and ***Nand Kishore Prasad v. Mohib Hamidi and Ors***[16]**.**

12.3.3 What qualifies as just compensation, as noticed above, has to be considered in the facts of each case. In ***Balram Prasad*** (supra) it has been observed that this court has been '*skeptical about using a straightjacket multiplier method for determining the quantum of compensation in medical negligence claims*'.

12.4 Eggshell Skull Rule

12.4.1 This rule (applied by the NCDRC) holds the injurer liable for damages that exceed the amount that would normally be expected to occur. It is a common law doctrine that makes a defendant liable for the plaintiff's unforeseeable and

13 (2009) 6 SCC 1
14 (2014) 1 SCC 384
15 (2015) 9 SCC 388
16 (2019) 6 SCC 512

uncommon reactions to the defendant's negligent or intentional tort. In simple terms, a person who has an eggshell skull is one who would be more severely impacted by an act, which an otherwise "*normal person*" would be able to withstand. Hence the term eggshell to denote this as an eggshell is by its very nature, brittle. It is otherwise termed as "*taking the victim as one finds them*" and, therefore, a doer of an act would be liable for the otherwise more severe impact that such an act may have on the victim.

12.4.2 This rule is well recognized and has often formed the basis of which compensation has been awarded in countries such as the United States of America. So much so, that a famous treatise records as follows "*Extensive research has failed to identify a single United States case disavowing the rule*"[17] Its origins, if not by that name, have been traced back to 1891 in a decision of the Washington State Supreme Court- ***Vasburg v. Putney***[18]. In this case, arising out of a common childhood altercation, Putney, a twelve-year-old child had kicked the fourteen-year-old Vasburg, which aggravated a previous injury (of which Putney was not aware), leading to his permanent incapacitation. Putney was held liable. The Court opined *"the wrongdoer is liable for all the injuries resulting directly from the wrongful act, whether they could or could not have been foreseen by him"*.

17 Mark A. Geistfeld, Proximate Cause Untangled, 80 Md L. Rev. 420 (2021)
18 50 N.W 403 (Wis 1891)

12.4.3 The jurisprudence of the application of this rule, as has developed, (*needless to add, in countries other than India*) has fit into four categories[19]- ***first***, when a latent condition of the plaintiff has been unearthed; ***second***, when the negligence on the part of the wrongdoer re-activates a plaintiff's pre-existing condition that had subsided due to treatment; ***third,*** wrongdoer's actions aggravate known, pre-existing conditions, that have not yet received medical attention; and ***fourth,*** when the wrongdoer's actions accelerate an inevitable disability or loss of life due to a condition possessed by the plaintiff, even when the eventuality would have occurred with time, in the absence of the wrongdoer's actions. As these categories and, the name of the rule itself suggest, the persons to whose [20]cases this rule can be applied, are persons who have pre-existing conditions.[21] Therefore, for this rule to be appropriately invoked and applied, the person in whose case an adjudicatory authority applies must have a pre-existing condition falling into either of the four categories described above.

12.4.4 It would be opportune to refer to a few judgments across jurisdictions to better discern the application of this rule.

❖ The King's Bench in ***Dulieu v. While & Sons***[22] while speaking in reference to American cases cited at that Bar where the New York Court had refused to pay compensation for 'fright' to a woman who while waiting for a tram, was nearly

19 Steve P. Calandrillo & Dustin E. Buelher, Eggshell Economics: A Revolutionary Approach to the Eggshell Plaintiff Rule, 74 Ohio St. L.J 375 (2013)
20 Restatement (Third) of Torts: Liability For Physical and Emotional Harm, American Law Institute, 2010.
21 Geistfeld, 2021 (supra)
22 (1901) 2 KB 669

run-over by a horse-drawn cart, and as result of the same fainted, suffer a miscarriage and subsequent illness; observed:

> "It may be admitted that the plaintiff in this American case would not have suffered exactly as she did, and probably not to the same extent as she did, if she had not been pregnant at the time; and no doubt the defendants' horses could not anticipate that she was in this condition. But what does that fact matter? If a man is negligently run over or otherwise negligently injured in his body, it is no answer to the sufferer's claim for damages that he would have suffered less injury , or no injury at all, if he had not had an unusually thin skull or an unusually weak heart.

❖ Griffiths LJ, in ***White and Others*** v. ***Chief Constable of South Yorkshire and Others*** observed in regards to this rule, as follows-

> "…The law expects reasonable fortitude and robustness of its citizens and will not impose liability for the exceptional frailty of certain individuals. This is not to be confused with the "eggshell skull" situation, where as a result of a breach of duty the damage inflicted proves to be more serious than expected. It is a threshold test of breach of duty; before a defendant will be held in breach of duty to a bystander he must have exposed them to a situation in which it is reasonably foreseeable that a person of reasonable robustness and fortitude would be likely to suffer psychiatric injury…"

❖ The Supreme Court of Canada, in an appeal arising out of the Court of Appeal for British Colombia, ***Athey v. Leonati***[23] observed that this case in its own words, is one of *"straightforward application of the thin skull rule."* The application of the rule as made herein, underscores the existence of pre-existing conditions. The relevant paragraphs are as follows:-

> 43 The findings of the trial judge indicate that it was necessary to have both the pre-existing condition and the injuries from the accidents to cause the disc herniation in this case. She made a positive finding that the accidents contributed to the injury, but that the injuries suffered in the two accidents were "not the sole cause" of the

23 [1996] 3 S.C.R. 458

> herniation. She expressly found that "the herniation was not unrelated to the accidents" and that the accidents "contributed to some degree" to the subsequent herniation. She concluded that the injuries in the accidents "played some causative role, albeit a minor one". These findings indicate that it was the combination of the pre-existing condition and the injuries sustained in the accidents which caused the herniation. Although the accidents played a lesser role than the pre-existing problems, the accidents were nevertheless a necessary ingredient in bringing about the herniation.
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> 44 The trial judge's conclusion on the evidence was that "[i]n my view, the plaintiff has proven, on a balance of probabilities, that the injuries suffered in the two earlier accidents contributed to some degree to the subsequent disc herniation". She assessed this contribution at 25 percent. This falls outside the *de minimis* range and is therefore a material contribution: *Bonnington Castings, Ltd. v. Wardlaw*, *supra*. This finding of material contribution was sufficient to render the defendant fully liable for the damages flowing from the disc herniation.
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> 45 The finding of material contribution was not unreasonable. Although the plaintiff had experienced back problems before the accidents, there was no evidence of herniation or insult to the disc and no history of complaints of sciatica. When a plaintiff has two accidents which both cause serious back injuries, and shortly thereafter suffers a disc herniation during a mild exercise which he frequently performed prior to the accidents, it seems reasonable to infer a causal connection.
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> 46 The trial judge found that the plaintiff's condition was improving when the herniation occurred, but this also means that the plaintiff was still to some extent suffering from the back injuries from the accidents. The inference of causal link was supported by medical evidence and was reasonable.
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> 47 This appeal involves a straightforward application of the thin skull rule. The pre-existing disposition may have aggravated the injuries, but the defendant must take the plaintiff as he finds him. If the defendant's negligence exacerbated the existing condition and caused it to manifest in a disc herniation, then the defendant is a cause of the disc herniation and is fully liable.

❖ Let us now turn to, illustratively, the application of this rule in the USA. Richard Posner J., speaking for the 7th Circuit Court of Appeals in ***James E. Niehus and Denise Niehus v. Vince Liberio and Frank Vittorio***[24]**,** noted as hereinbelow:

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24 973 F.2d 526 (7th Cir. 1992)

> "Niehus was sufficiently drunk when his car was struck that he mightn't have felt the pain of a broken cheekbone. But at least according to the defendants' lawyer he had (though this seems improbable) sobered up a lot by the time the altercation in the station house began several hours later, yet still he said nothing about a pain in his cheek until after the fight. The doctors testified as we said that the break was consistent with a kick though it could of course have been caused by Niehus's striking his head against the door of the car in the accident. If the jury believed, as it had every right to do, that Niehus was kicked in the left side of his face by the defendants, the fact that the cheekbone might have been broken already would not help the defendants. If you kick a person's freshly broken cheekbone you are likely to aggravate the injury substantially, and the "eggshell skull" or "thin skull" rule, would make the officers liable for the full consequences of their kicks even if, had it not been for a preexisting injury, the consequences would have been much less injurious. Oddly, the leading "eggshell skull" case also involved a kick."

❖ We may also refer to another instance, from the same Court. In ***Lancaster v. Norfolk and Western Ry. Co***.[25], this rule was applied thus:-

> "All that really matters, moreover, is that Tynan's misconduct be attributable to the railroad, as is easily done under a thoroughly conventional interpretation of respondent superior. It was he (the jury could have found) who pushed Lancaster over the edge. That Lancaster may have been made especially susceptible to such misconduct by earlier acts for which the railroad might or might not be liable would be no defense. Under the "thin skull," or more colorfully the "eggshell skull," rule, the railroad would be fully liable for the consequences of Tynan's assault. See, e.g., Vosburg v. Putney, 80 Wis. 523, 50 N.W. 403 (1891); Stoleson v. United States, 708 F.2d 1217, 1221 (7th Cir. 1983)."

> XXXX

> The fact that the railroad had weakened Lancaster by earlier misconduct for which it could not be held liable would be irrelevant to its liability for Tynan's assault and to the amount of damages it would have to pay. The tortfeasor takes his victim as he finds him (emphatically so if the victim's weakened condition is due to earlier, albeit time-barred, torts of the same tortfeasor); that is the eggshell-skull rule. The single act of Tynan made the railroad fully liable for all the damages that Lancaster sought and the jury awarded."

13. Let us now turn our attention back to the facts *in presenti*. Keeping in view the afore-noted position of law in regard to the benevolent purpose of the

25 773 F.2d 807, 820 (7th Cir. 1985)

Consumer Protection Act, the aspects required to be established to allege medical negligence, the determination of compensation in a case where a person is injured, we find the manner in which compensation stood reduced by the State Commission as also the NCDRC, *vis-à-vis* the District Forum to be based on questionable reasoning.

14. The State Commission has recognized that the appellant herein had not been treated "*with the care expected at a medical clinic*"; she had been suffering from persistent pain right from 2005 until December, 2008; and that post-surgical care was deficient which undoubtedly constitutes a deficiency in service and yet found it appropriate to reduce the compensation to a mere Rs.1 lakh. This clearly is not in line with the balance of interests required to be borne in mind while determining compensation.

15. The NCDRC observed that the claimant-appellant's treatment at the respondent-Hospital was '*casual*'; that the excuse of having sought treatment at other hospitals was not available to the respondents and that she had suffered pain for more than 5 years apart from the case having been dragged on for more than a decade, and yet lumpsum compensation was only Rs.2 lakhs.

16. How could such compensation be justified, after observations having been made regarding the service rendered by the Hospital, being deficient, and the continuous pain and suffering on the part of the claimant-appellant, is something we fail to comprehend. Compensation by its very nature, has to be just. For

suffering, no part of which was the claimant-appellant's own fault, she has been awarded a sum which can, at best, be described as '*paltry*'.

17. In regard to the application of the Eggshell-Skull Rule, we may observe that the impugned judgment is silent as to how this rule applies to the present case. Nowhere is it mentioned, as to what criteria had been examined, and then, upon analysis, found to be met by the claimant-appellant for it to be termed that she had an eggshell skull, or for that matter, what sort of pre-existing condition was she afflicted by, making her more susceptible to such a reaction brought on because of surgery for appendicitis. All that has been stated is,

> "9. Therefore, OP cannot take a plea that; patient took treatment from few other hospitals which might have caused the retention of needle in the abdominal wall. In this context we apply the "Egg Skull Rule" in this case, wherein liability exists for damages stemming from aggravation of prior injuries or conditions. It holds an individual liable for all consequences resulting from their activities leading to an injury, even if the victim suffers unusual damage due to pre-existing vulnerability or medical condition"

If we take the rule as exposited by the NCDRC, even then it stands to reason that the record ought to have been speaking of a pre-existing vulnerability or medical condition, because of which the victim may have suffered '*unusual damage*'. However, none of the orders - be it District, State Commission or the NCDRC refer to any such condition.

18. Considering the discussion as aforesaid, we deem it fit to set aside the Awards of the NCDRC as also the State Commission and restore the Award as passed by the District Forum, meaning thereby that a sum of Rs.5 lakhs ought to be paid expeditiously by the respondents to the appellant for being medically

negligent and providing services deficient in nature. The sum of Rs.5 lakhs shall be accompanied by interest simple in nature @ 9% from the date of the award passed by the District Forum. The same be paid within a period of four weeks from the date of this judgment. Additionally, a cost of Rs.50,000/- be paid in terms of the cost of litigation. The appeal is accordingly allowed.

……..……..…..J.
(SANJAY KAROL)

……...……..J.
(ARAVIND KUMAR)

New Delhi;
April 23, 2024.