

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 3005 OF 2023

(Against the Order dated 06/12/2023 in Appeal No. A/1735/2018 of the State Commission
Uttar Pradesh)

1. DR. HARISH GUPTA

4/42, RAJ NAGAR, GHAZIABAD, U.P. 201002

GHAZIABAD

UTTAR PRADESH

.....Petitioner(s)

Versus

1. KUMARI KRITIKA & ORS.

HOUSE NO.120 A , NEW GANDHI NAGAR, NEAR HARI
MANDIR ,GHAZIABAD, U.P.

GHAZIABAD

UTTAR PRADESH

2. VINOD ARORA

R/O. HOUSE NO. 120 A, NEW GHANDHI NAGAR , NEAR
HARI MANDIR,

GHAZIABAD

UTTAR PRADESH

3. DR. S.D. TAYAL

SJ - 22, SHASTRI NAGAR, GHAZIABAD, UTTAR
PRADESH - 201002.

GHAZIABAD

UTTAR PRADESH

4. THE NEW INDIA ASSURANCE CO. LTD.

1/89, FIRST FLOOR , R.D.C., RAJNAGAR, GHAZIABAD

GHAZIABAD

UTTAR PRADESH

.....Respondent(s)

REVISION PETITION NO. 655 OF 2024

(Against the Order dated 06/12/2023 in Appeal No. A/1735/2018 of the State Commission
Uttar Pradesh)

1. DR. SURYA DEV TAYAL

SJ 22, SHASTRI NAGAR, GHAZIABAD, UTTAR
PRADESH, 201001.

GHAZIABAD

UTTAR PRADESH

.....Petitioner(s)

Versus

1. MS. KRITIKA KUMARI

.....Respondent(s)

HOUSE NO. 120, GANDHI NAGAR, NEAR HARI MANDIR,
GHAZIABAD UTTAR PRADESH.

GHAZIABAD

UTTAR PRADESH

2. MR. VINOD ARORA

HOUSE NO. 120, GANDHI NAGAR, NEAR HARI MANDIR,
GHAZIABAD UTTAR PRADESH.

GHAZIABAD

UTTAR PRADESH

3. DR. HARISH GUPTA, EYE SURGEON

4/42, RAJ NAGAR, GHAZIABAD, UP.

GHAZIABAD

UTTAR PRADESH

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING
MEMBER**

FOR THE PETITIONER :

IN RP/ 3005/2023

FOR THE PETITIONER : MR. MANOJ R. SINHA, ADVOCATE
MS. NISHA, ADVOCATE

IN RP/655/2024

FOR THE PETITIONER : MR. KAPIL SHARMA, ADVOCATE
(THROUGH VC)

FOR THE RESPONDENT :

IN RP/ 3005/2023

FOR THE RESPONDENTS : MR. RAJEEV SHARMA,
ADVOCATE FOR R1 & R2

MR. KAPIL SHARMA, ADVOCATE FOR R3

MS. AAKRITI GOEL, ADVOCATE FOR R4

IN RP/655/2024

FOR THE RESPONDENTS : MR. RAJEEV SHARMA,
ADVOCATE FOR R1 & R2
(THROUGH VC)

MR. MANOJ R. SINHA &

MS. NISHA, ADVOCATES FOR R3

Dated : 21 November 2024

ORDER

1. This order shall decide both Revision Petitions Nos. RP No. 3005 of 2023 filed by Dr. Harish Gupta/OP-1 and RP No. 655 of 2024 filed by Dr. Surya Dev Tayal/ OP-2 under Section 58(1)(b) of the Consumer Protection Act, 2019 (the "Act") arising from the impugned Order dated 06.12.2023 passed by the State Consumer Disputes Redressal Commission, Uttar Pradesh ('State Commission') in FA No.1735/2018, wherein the State Commission partially allowed the Appeal of Complainant and set aside Order dated 31.08.2018 passed by the District Forum, Ghaziabad (the 'District Forum').

2. For convenience, the parties are referred to as placed in the original Complaint before the District Forum.

3. Brief facts of the case, as per the complainant, are that in 2015, Complainant No. 1, Km. Kritika, experienced mild swelling in her right eye. She visited Dr. Harish Gupta (OP-1), along with her father on 23.09.2014, seeking treatment. OP-1 referred her to OP-2, Dr. S.D. Tayal, a senior eye surgeon, who prescribed Pred-Forte, advising her to use two drops

twice daily for three months. She did but found no relief, and instead, her symptoms worsened. On her return visit, OP-2 advised her to continue with the drops. Before using Pred-Forte, her vision number was 2, with no other issues except mild swelling. However, by her follow-up on 22.12.2014, she reported a gradual loss of vision. OP-2 changed her prescription to PATADAY drops, conducted an eye exam, issued a new prescription and noted emerging issues in her left eye. After three months, on 10.03.2015, she reported further deterioration, and OP-2 re-prescribed Pred-Forte, increasing the dosage to three times daily for three months. Her symptoms continued to worsen, and on 04.07.2015, she consulted Dr. Nitin Dua at Aznam Sunetra Hospital. Dr. Dua diagnosed cataract, 60% in her right eye and 40% in her left, attributing it to prolonged Pred-Forte use, and advised her to avoid sunlight. Being distressed, she met with OP-1 on 07.07.2015, stating that due to OP-2's negligence, she had developed cataracts in both eyes, affecting her life and studies. OP-1 confirmed that prolonged Pred-Forte use could likely cause the cataracts and issued a new lens prescription, which differed from Dr. Dua's. When she raised these issues with Dr. Tayal, he allegedly responded aggressively, using abusive language and directing his staff to remove her from his office. Aggrieved the complainant filed the present complaint.

4. In reply before the District Forum, OP-1 asserted that he had not treated the complainant and the entire treatment was by OP-2, an expert eye specialist, and therefore OP-1 claimed no involvement in any alleged negligence.

5. OP-2 stated that upon the complainant's visit on 23.09.2014, he examined her, prescribed Pataday & Pred-Forte and advised against wearing spectacles. When she returned on 22.12.2014, Pred-Forte was discontinued and continued Pataday, noting her right and left eye SPH as 5.25 and 5.0 respectively. She returned on 10.03.2015, reporting some improvement. OP-2 advised her oral steroids for four days. He advised her against spectacles/lenses and to consult him as needed, but she had continued wearing lenses and using medications without further consultation. OP-2 denied any negligence, asserting that he had acted within professional standards as a senior eye specialist. OP-3, the insurer, stated that although they insured OP-1, he had not performed the treatment. They had no insurance coverage for OP-2, and therefore bore no liability in the matter.

6. The learned District Forum vide Order dated 31.08.2018, dismissed the complaint with the following order:

"Learned counsel for the complainant has argued that there was negligence on the part of Dr. Tayal and the opposite party No. 1 advised him to consult Dr. Tayal Therefore, both the doctors are responsible for negligence. He has drawn the attention of the Forum towards 2015 (111) CCC 0 112 (SC) (Supreme Court) V. Krishnakumar / State of Tamil Nadu etc. and has said that on the basis of this ruling, both the doctors are civil. The said precedent of the Hon'ble Supreme Court was carefully studied by the Forum and it was found that the said ruling is applicable in the case of the complainant because in the said case it was a case of a pre-mature born child who was under the care of a doctor and in such a situation, the child was The doctor was held responsible for the loss of vision but it is not so here, here the complainant has taken advice from opposite party no. 2, after which he did not take any advice for three months and it is also not proved that he Worn or not wearing spectacles when opposite party No. 2 had clearly advised that spectacles should not be used by him. Learned counsel for the

complainant says that the doctor had advised for three months but nothing like this has been written in the prescription. In the last prescription, pataday was given for only four days. Anyway, it is not clear from the prescription that advice was given for three months, in such a situation it was necessary that if the complainant had any problem then she should have continuously consulted the doctors. Opponent No. 1 is a doctor but he is not an eye doctor, hence he advised opposite party No 2 to see him, hence no negligence on his part can be considered. Opponent No. 2 is a competent expert senior ophthalmologist and unless the complainant proves that he committed any wilful negligence, there is no negligence on his part. It can be assumed that the Forum's attention from the opposition's side is on this point. (2016) CPJ 672 (NC) Sundar Lal etc. / Dr. Sanjeev Arora etc. and (1) (2009) CPJ 32 (SC) Martin F. D'Souza/Md. Isfaq. In which the Hon'ble Supreme Court has clearly laid down the principle It has been propounded that for medical negligence, unless an expert report is conducted and no negligence is proved by the expert report, no action for negligence can be taken against a competent/educated doctor. It has been stated on behalf of the complainant that Dr. Nitin Dua has clearly stated that the cataract formed in the complainant's eye is 60 percent in the right eye and 40 percent in the Y eye is due to a medicine called PRED-FORTE. Is made. Expert report should have been called for in this regard, which was not called for by the complainant, but still the thing to be noted here is that the complainant did not get treatment from opposition no. 2 continuously for three months, he showed the gaffe and that three There is no evidence on file as to whether she stayed at her home for a month, what medicines she took, whether she wore glasses or not. An oral statement has been made on behalf of the complainant that advice was given for three months but the complainant has not been able to prove anything like this. Therefore, the evidence available on file does not prove any negligence against opposite parties one and two. Accordingly, the complaint of the complainant deserves to be dismissed in the interest of justice.

Order

The complaint of the complainant is dismissed. Both parties will carry their own bands and expenses.”(From translated copy)

7. Being aggrieved by the District Forum Order, Complainants filed Appeal No. 1735/2018 and the State Commission vide Order dated 06.12.2023 allowed the appeal with the following order:-

“ORDER

1. The present appeal is allowed partially and the judgment and order of the learned District Consumer Forum dated 31.08.2014 passed in the complaint case no.345/2015, Km. Kritika & Anr. Vs. Dr. Harish Gupta & Ors. is set aside.

2. The opposite parties no.1 & 2 jointly and severally are directed to pay to the complainant Rs. 5 lakhs with interest at a rate of 12% from 04.07.2015 (the date on which she was shown to Dr. Nitin Dua of Hospital Aznam Sunetra) if paid within 30 days from the date of judgement of this appeal otherwise the rate of interest shall be 5% per annum from 04.07.2015 till the date of actual payment.

3. The opposite parties no.1 & 2 jointly and severally are directed to pay to the complainant Rs. 50,000 towards cost of the case with no interest if paid within 30 days from the date of judgment of this appeal otherwise the rate of interest shall be 12% per annum after 30 days from the date of judgment till the actual payment.

4. Regarding relief (da) of the complaint case, The opposite parties no.1 & 2 jointly and severally are directed to pay to the complainant Rs.2 lakhs towards mental torture, depression, harassment, negligence with interest at a rate of 12% from 04.07.2015 (the date on which she was shown to Dr. Nitin Dua of Hospital Aznam Sunetra) if paid within 30 days from the date of judgment of this appeal otherwise the rate of interest shall be 15% per annum from 04.07.2015 till the date of actual payment.”

8. Dissatisfied by the Order of the State Commission, both OP-1 and OP-2 filed the present Revision Petitions with the following prayer.

RP/3005/2023 – filed by OP 1/ Dr. Harish Gupta

“i. allow the present Revision Petition and set aside the impugned judgment and order dated 06.12.2023 passed by the Ld. State Consumer Disputes Redressal Commission, U.P. Lucknow in Appeal No. 1735 of 2018 qua the petitioner;

ii. restore the judgment and order 31.08.2018 passed by the Ld. District Consumer Forum in Complaint No. 345/15 dismissing the complaint of the Respondent nos. 1 and 2;

and/or

ii. pass such other order or orders as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

And for this act of kindness, the Petitioner, as is duty bound, shall ever pray.”

RP/655/2024 - filed OP 2/ Dr. Surya Dev Taya

“i. Allow the present Appeal and set aside the Judgement dated 06.12.2023 passed by the Hon'ble State Consumer Disputes Redressal Commission, Lucknow, Uttar Pradesh in Appeal 1735 of 2018 titled "Kritika & Another Versus Dr. Harish and Others ".

ii. Call for the records of the Hon'ble State Consumer Disputes Redressal Commission, Lucknow, Uttar Pradesh in Appeal 1735 of 2018 titled "Kritika & Another Versus Dr. Harish and Others"; and

iii Pass any other orders)/directions) in favour of the Petitioner as this Hon'ble Commission may deem fit and proper."

9. In his arguments the learned Counsels for Dr. Harish Gupta/OP-1 reiterated the contentions which were already taken in the Reply filed before the District Forum and grounds taken in the Revision Petition herein. He contended that the State Commission overlooked the fact that the OP-1 never prescribed any medicines or any line of treatment to hger prior to 07.07.2015 and it was only on 07.07.2015 that OP-1 prescribed non-steroidal medicines and advised standard review after 6 weeks as per standard medical practice. He argued that the only allegation against him is referring the complainant to OP-2. He relied on ***Martin F. D'Souza v. Mohd. Ishfaq***, (2009) 3 SCC 1, and ***Jacob Mathew Vs. State of Punjab***, AIR 2005 3 SC 3180. He contended that the State Commission wrongly applied the principle of *res ipsa liquitor* and that there was no negligence on the part of OP 1, thus, he prayed the impugned order be set aside.

10. In response to RP/3005/2023, Dr. SD Tayal (OP-2) stated that the complainant No. 1 had consulted him for allergy due to prolonged contact lens use. He had advised in his prescription that she should return for a follow-up after one week and discontinue wearing lenses. However, she neither stopped wearing lenses nor returned within the prescribed period. She was suffering Giant Papillary Conjunctivitis (GPC), a condition associated with extended contact lens wear. GPC was widely recognized in the medical community as an exogenous ocular inflammatory condition, commonly observed in regular contact lens users. It requires steroid administration and medical literature acknowledged the need to use anti-inflammatory agents, specifically steroids like Ped-forte (oral and topical) to treat ocular inflammation.

11. In his arguments, the learned Counsel for complainants reiterated the facts of the complaint and averred the findings in support of the State Commission order and relied on the following judgments:

a. V. Ganesh and Ors. v. K.S. Shamuga Sundaram and Ors. (13.10.2009 – MADHC), MANU/TN/2849/2009

b. Nand Kishore Prasad v. Mohib Hamidi and Ors., MANU/SC/ 0746/2019

12. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned counsels for both the parties.

13. It is an uncontested position that the Complainant No. 1 with indications of mild swelling in her right eye first visited OP-1, a Chief Eye Surgeon. He suggested her to visit OP-2 who was a Senior Eye Surgeon at the same hospital. The prescription dated 23.09.2014 indicated that she was advised to use Pataday eye drops, one drop twice daily, and Pred-forte, two drops three times daily, with explicit instructions to avoid contact lens use. After a period of three months, the prescription dated 22.12.2014 showed that Pred-forte had been discontinued, and only Pataday was recommended twice daily. When her condition showed no improvement, she revisited OP-2, who, in his prescription dated 10.03.2015, again recommended Pred-forte but with a reduced dosage of one drop three times daily, along with an oral tablet of Wysolone. The complainants contended that her deteriorated because of the medical negligence and deficiency in service of the OPs. In *M.A. Biviji v. Sunita & Ors.*, 2023 LiveLaw (SC) 931 decided on 19.10.2023, drawing from the precedents set in *Jacob Mathew v. State of Punjab* (2005) 6 SCC 1 and *Kusum Sharma v. Batra Hospital* (2010) 3 SCC 480, the Apex Court outlined the three essential elements to establish medical negligence: (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. The Hon'ble Court held that, a medical practitioner will be held liable for negligence only in circumstances when their conduct falls below the standards of a reasonably competent practitioner. It further stated that due to the unique circumstances and complications that may arise in different individual cases, coupled with constant advancements in the medical field and its practices, it is natural that there shall always be different opinions, including contesting views regarding the chosen line of treatment, or the course of action to be undertaken. It is acknowledged that, in such circumstances, just because a doctor opts for a particular line of treatment but does not achieve the desired result, they cannot be held liable for negligence, provided that the said course of action undertaken was recognized as sound and relevant medical practice. At this point I would also like to rely on **Jacob Mathew vs. State of Punjab**, (2005) 6 SCC 1, decided on 05.08.2005, wherein the Hon'ble Supreme Court observed that:

“When it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence.”

14. In the present case, it is evident that OP-2 exercised reasonable care and caution in prescribing the medications, as reflected in the prescription, which clearly states "NO C.L."— indicating a directive to avoid contact lenses. Additionally, the prescription of Pred-forte aligns with established medical standards for such treatment. Moreover, in **C.P. Sreekumar (Dr.), MS (Ortho) v. S. Ramanujam** (CA No. 6168 of 2008) the Hon'ble Supreme Court observed the following:

“37. We find from a reading of the order of the Commission that it proceeded on the basis that whatever had been alleged in the complaint by the respondent was in fact the inviolable truth even though it remained unsupported by any evidence. As already observed in Jacob Mathew case [(2005) 6 SCC 1: 2005 SCC (Cri) 1369] the onus to prove medical negligence lies largely on the claimant and that this onus can be discharged by leading cogent evidence. A mere averment in a complaint which is denied by the other side can, by no stretch of imagination, be said to be evidence by which the case of the complainant can be said to be proved. It is the obligation of the complainant to provide the facta probanda as well as the facta probantia.”

15. As rightly observed by the District Forum, there is nothing in the prescription to indicate that the advised use of the medication was intended for three months. I thus agree with the District Forum finding that her mere oral statement alleging that advice for 3 months use was insufficient to establish negligence by OPs, as she failed to prove the claim. Moreover, in matters of medical negligence, the expert evidence plays a vital role in determining the negligence, if any, as observed by Hon’ble Supreme Court in **SK Jhunjhunwala v. Dhanwanti Kau & Anr.**, (2019) 2 SCC 282, decided on 01.10.2018.

16. In the present case, there is no expert evidence suggesting that the medical negligence was caused due to a wrong prescription by OP-2. As regards the observations made by Dr. Dua, it is noted that his statement does not constitute an expert report but rather a second opinion obtained by the complainant, suggesting that her eye condition had worsened due to prolonged use of Pred-forte eye drops. In the absence of proof from the complainants that there were specific instructions to use these eyedrops continuously for three months—despite the accompanying literature cautioning against use for more than ten days—we find it difficult to accept the complainant's account, as they failed to meet their primary burden of proving negligence by OPs. Additionally, I find the State Commission’s conclusion that these eye drops were prescribed for six months and that it was the doctor’s responsibility to change the medication when the she did not experience relief are unsustainable. It is essential to note that a doctor cannot be expected to track every patient. Rather, it is incumbent upon the patient to return to the doctor if prescribed medication has any unexpected or adverse effects. Thus, I concur with the District Forum’s finding that if the complainant experienced blurred or impaired vision, she should have immediately contacted the OPs, as any reasonable individual would do in such circumstances.

17. Based on the discussion above, I do not find any deficiency in service or medical negligence on the part of the OPs. Consequently, both RP No. 3005 of 2023 and RP No. 655 of 2024 are allowed, and the impugned Order dated 06.12.2023 passed by the State Commission is set aside and the complaint is dismissed.

18. Keeping in view the facts and circumstances of the present case, there shall be no order as to costs.

19. All pending Applications, if any, stand disposed of accordingly.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER