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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 6th February, 2023

+ **W.P.(C) 11916/2022 & CM APPL. 35561/2022**
G.M MODI HOSPITAL A RESEARCH CENTRE FOR MEDICAL
SCIENCES Petitioner

Through: Mr. Vijay Sharma, Ms. Swagoti and
Ms. Shakti Chaturvedi, Advocates
(M: 9312274280).

versus

VISHNU PRIYA GIRI (DECEASED) THROUGH LRS
AND ANR Respondents

Through: Mr. Jalaj Agarwal and Mr. Atul
Agarwal, Advocates for R-1.
Mr. Amit A. Tiwari, Mr. Amit
Panigrahi & Ms. Tanima Gaur,
Advocates for R-2.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner - G.M. Modi Hospital & Research Centre for Medical Science, New Delhi challenging the impugned judgment/ final order dated 13th May, 2022 passed by the National Commission Disputes Redressal Commission (NCDRC). By the said order, the NCDRC held that, the Petitioner and the Respondent No. 2/Doctor - Dr. A.K Panigrahi are jointly and severally liable to pay compensation of Rs.25,00,000/- along with interest at the rate of 6% per annum from the date of filing of the Complaint by the Respondent No. 1 - Vishnu Priya Giri (deceased) through legal heirs.
3. The case arises out of a complaint bearing no. C.C.No.246/2007

preferred in 2007, by the Respondent No.1 before the State Consumer Disputes Redressal Commission, New Delhi (SCDRC) titled as ***Smt. Vishnu Priya Giri vs. The Principal Secretary Health & Family Welfare Development & Ors.*** wherein several allegations were made against the doctors and the Petitioner hospital.

4. Respondent No. 1, unfortunately, passed away on 22nd January, 2008. The SCDRC had, initially, awarded a sum of Rs.50,00,000/- as compensation which was set aside by the NCDRC and finally, vide judgment dated 25th October, 2018, the SCDRC granted a sum of Rs.20,00,000/- without interest to the Respondent No.1. The said order of the SCDRC was challenged before the NCDRC wherein vide the impugned order dated 13th May, 2022 the compensation amount was enhanced and interest was also granted. The operative part of the impugned order passed by the NCDRC is as under:

“15. Adverting to the question of quantum of compensation in the medical negligence cases, the principle laid down by the Constitution Bench in the case of Lata Wadhwa v State of Bihar and in National Insurance Company Ltd. v Pranay Sethi . In the instant case, the Surgeon failed in his duty of care and it was not a reasonable standard of practice, thus he was negligent. The State Commission ignored the medical negligence of the Surgeon; and for the qualitative change awarded Rs.20 lakh as compensation. In our view, the medical negligence is attributed to the doctor and hospital, therefore, the Complainant deserves the compensation. Accordingly, we modify the Order of State Commission that Rs. 20 lakh to be paid as just and fair compensation for the medical negligence causing death of the patient. We further endorse the view taken by State Commission for the need of

qualitative change in functioning of hospital, therefore, the Hospital shall pay Rs.5 lakh more to the Complainant. It is evident that, the incident occurred in year 2005, the Complaint was filed in year 2007 and we are in 2022 beyond 1 ½ decade. Thus as discussed above (para 8 & 9) the Complainant deserves interest on the total quantum of award.

16. To conclude, the impugned Order is modified to the extent that the treating Surgeon was liable for medical negligence; as well, the hospital is vicariously liable. The hospital needs qualitative change and systemic improvement also. Therefore, on the basis of foregoing discussion, the OP/Respondents No.1 and 2 shall pay jointly and severally total compensation of Rs.25 lakh with interest of 6% per annum from the date of filing of the Complaint to the Complainant within 6 weeks from today, failing which it will attract interest @ 9% per annum till its realisation. The cost of litigation shall remain to Rs.1 lakh only.”

5. In the present petition on the last date, this Court vide order dated 15th November, 2022 had observed as under:

“3. Prima facie and on consideration of the submissions which have been addressed by Mr. Puri, learned senior counsel who appears in support of the writ petitioner, the Court is of the considered opinion that the matter would merit further consideration. The Court further notes that out of the total sum which was awarded, the petitioner is already stated to have deposited a sum of Rs. 9 lakhs. However, and bearing in mind the findings of medical negligence which have come to be recorded concurrently, the Court provides in the interim that subject to the petitioner depositing a further sum of Rs. 11 lakhs with the Registrar General of the Court within a period of two weeks from today, the operation of the impugned order dated 13 May 2022 qua the petitioner hospital insofar as it also

provides for the payment of interest shall remain stayed.”

6. The said amounts have been deposited and released in favour of the Respondent No.1. In addition, a sum of Rs.5,00,000/- is stated to have been deposited by the Respondent No.2 /Doctor vide fixed deposit dated 25th November, 2016 in favour of the Registrar, SCDRC. The said amount is also stated to have earned interest.

7. Today, Id. Counsel for the Respondent No.2/Doctor seeks early closure of this matter and, submits that considering his client is a medical professional the matter may be closed with a reasonable compensation. In response to this Id. Counsel for the Respondent No.1 submits that instead of 9% interest, the Respondent No.1 is willing to accept 6% interest per annum in terms of the impugned order passed by the NCDRC. Id. Counsel for the Petitioner submits that Rs.11,00,000/- have been deposited by the Petitioner.

8. The only objection to the impugned order, on behalf of the Petitioner is that the Petitioner was willing to pay Rs.20,00,000/-, in terms of the order dated 25th October, 2018, passed by the SCDRC, however the same could not be tendered as an appeal had been filed by Respondent No.1. Thus, the interest for the period between 25th October 2018 till 13th May 2022, ought not to be saddled upon the hospital.

9. On a query from the Court as to whether the amount of Rs.20,00,000/- was tendered without prejudice, Id. Counsel for the Petitioner submits that as per paragraph 20 at page 20 of the writ petition an email was sent by the Petitioner that it is willing to pay the sum of Rs.20,00,000/-.

10. Considering the fact that the Respondent No.1 is entitled to avail of its appellate remedy, the mere fact that the Petitioner may have offered to pay

the compensation in terms of the SDCRC's order would not in any manner obviate the Petitioner's liability to pay interest in terms of the impugned order passed by the NCDRC.

11. Considering the overall conspectus of the matter, the fact that the complaint was filed by the Respondent No.1 way back in 2007, as also the intention of the Respondent No.2/Doctor to honour the impugned order passed by the NCDRC at 6% interest, in the opinion of the Court, the Petitioner ought not to be permitted to delay the early disposal of this petition. The *interim* order dated 15th November, 2022 passed by this Court was for deposit of Rs.11,00,000/- which has already been made by the Petitioner.

12. In view of the aforementioned stand of the Respondent No.1 to agree for 6% interest per annum, the impugned judgment of the NCDRC is modified to the extent that the Respondent No.1 shall be paid a total compensation of Rs.25,00,000/- with interest at 6% per annum calculated in terms of the impugned order of the NCDRC dated 13th May, 2022. The entire amount lying with the SDCRC shall also be released in favour of the Respondent No.1 and adjustment shall be given for the said amount to Respondent no.2.

13. The outstanding payment by the Petitioner and by the Respondent No.2, shall be computed and agreed by the Id. Counsel for the parties within one week. The amount shall be released within four weeks thereafter. If the amount is not released within the said four-week period, interest at the rate of 9% per annum would be liable to be paid and the agreement of Respondent No.1 to accept 6% interest per annum would no longer hold good.

14. With these observations, the present petition, along with all pending applications, is disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 6, 2023

dj/kt

