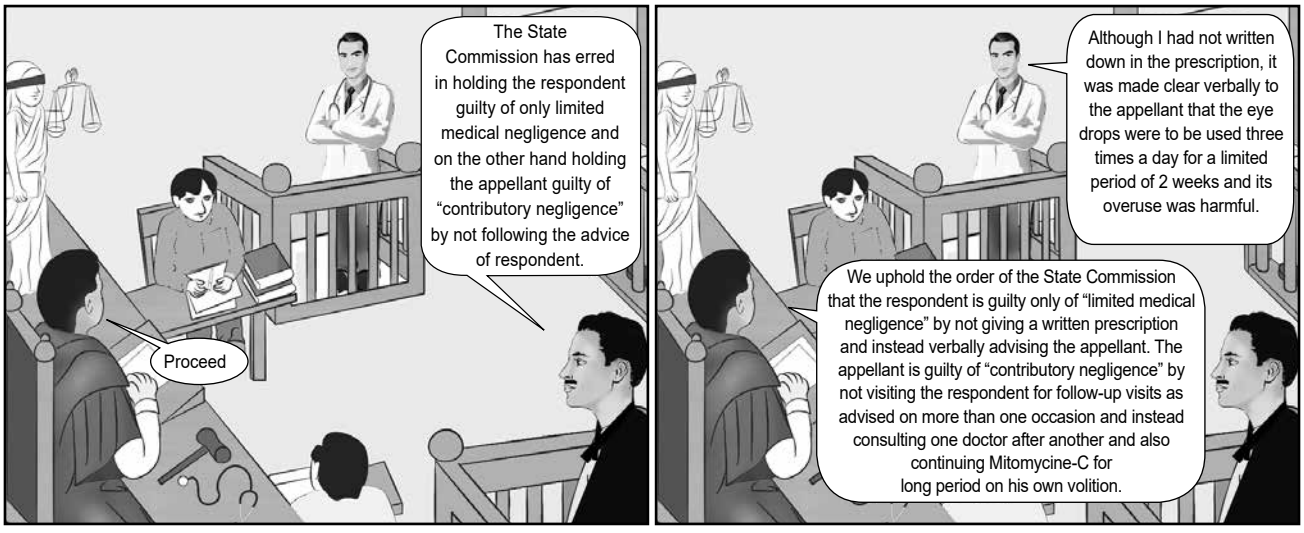
# Case of Limited Negligence on Part of the Doctor and Contributory Negligence by the Patient




**Lesson:** The order dated 31.08.2006 in Complaint Case No. C-21/95 of the State Consumer Disputes Redressal Commission Delhi stated "By not prescribing in writing in the prescription that medicine Mitomycine-C should be used, at first instance, only for 2 weeks, OP has committed an offence of limited medical negligence as complainant also cannot be excused for contributory negligence by not approaching the treating doctor after few days and hopping from one doctor to another and continued using the medicine for long resulting in dry-eye syndrome causing loss of vision in the eye."

## COURSE OF EVENTS

- June 1993: Following a minor complaint of a cosmetic nature in his left eye, the appellant consulted respondent, who is an eye surgeon, in his clinic in Daryaganj, who after examining him informed that he was suffering from an innocuous growth known as pterygium and since there was likelihood that the growth may increase, excision was advised through a minor surgery, which would ensure that the appellant's eye would become normal within 5 days. Appellant, therefore, agreed to undergo this surgery.
- October 1993: The respondent conducted the surgery on the appellant at his clinic and the appellant was thereafter prescribed medicines for both local application, which included Mitomycine-C, as also oral medication. However, soon after, the appellant's left eye became red and there was acute pain and irritation, which persisted, and therefore he consulted the respondent, who assured him that if he continues to regularly use Mitomycine-C, his eye would become normal. However, during the course of using this medicine, appellant's eye further deteriorated and became very dry and there was loss of vision in that eye. Appellant complained about this to the respondent, who changed the medicine, which only further aggravated the condition.
- The appellant consulted another ophthalmologist Dr G, who informed him that his left eye had become very dry due to wrong prescription of Mitomycine-C and he was advised to consult Dr P at Hospital A, New Delhi.
- Dr P confirmed that the eye had got damaged due to prolonged use of Mitomycine-C.
- The appellant thereafter went to hospital B where this diagnosis was confirmed by a cornea specialist, Dr A. He was advised to stop using all the medicines, including Mitomycine-C.
- Being aggrieved because of the medical negligence and deficiency in service on the part of respondent, because of which the appellant's eye became dry,

he issued a legal notice to respondent to pay him Rs. 10 Lakhs as compensation but received no response.

- Appellant, therefore, approached the State Commission with a complaint of medical negligence and deficiency in service against respondent and requested that he be directed to pay Rs. 10 lakhs as damages and compensation since there was total loss of vision in appellant's left eye, which had adversely affected both his professional and personal life, as also any other relief as deemed appropriate.
- Respondent on being served filed a written rejoinder denying the above allegations, which he termed as false, frivolous and vexatious. It was contended that appellant approached him with a condition known as pterygium, which is a growth of extra skin and if it reached the pupil area of the eye, it could permanently hamper the appellant's vision. Surgery was, therefore, necessary, which was satisfactorily conducted. The appellant thereafter advised both oral medication as also medicine through local application.
- After a week, when the healing of the appellant's eye was completed, respondent advised the respondent to use Mitomycine-C for 2 weeks since this was necessary to prevent recurrence of pterygium. This medicine, which comes in the form of injection, was converted into eye drops for use three times a day and appellant was verbally told that over use of this medicine for more than 2 weeks is harmful.
- Unfortunately, the appellant did not heed this advice and instead of coming back for a further check up appears to have continued using Mitomycine-C and taking treatment from various other doctors as per his own whim and fancy.
- It was only on 03.03.1994 i.e. after over 4 months that appellant visited the respondent and told him that he was still continuing the use of Mitomycine-C. Respondent immediately asked him to discontinue the same and to come back after 15 days.
- The appellant again did not heed this advice and consulted the respondent after 3 months i.e. on 22.06.1994 when he was prescribed natural tear drops and lacri-lube ointment.
- A perusal of these facts clearly indicate that it was the appellant who was responsible for the damage caused to his left eye by prolonged use of Mitomycine-C on his own volition and against medical advice given by respondent. There was, therefore, no deficiency in service or medical negligence of respondent.
- The State Commission after hearing the parties and on the basis of evidence produced before it held the respondent guilty of "limited negligence" by not advising the appellant in writing to use Mitomycine-C only for a particular limited period. The relevant part of the order of State Commission reads as follows:

"*By not prescribing in writing in the prescription that medicine Mitomycine-C should be used, at first instance, only for 2 weeks to OP has committed an offence of limited medical negligence as complainant also cannot be excused for contributory negligence by not approaching the treating doctor after few days and hopping from one doctor to another and continued using the medicine for long resulting in dry-eye syndrome causing loss of vision in the eye. OP is guilty of this limited medical negligence amounting to deficiency in service due to which the complainant has lost his vision of one eye though he can also be not absolved from contributory negligence which is a mitigating circumstance for awarding compensation.*"

The State Commission, therefore, held that a lump-sum compensation of Rs. 50,000/- to the appellant would meet the ends of justice.

- Being aggrieved by the lesser compensation, the present first appeal has been filed before National Consumer Disputes Redressal Commission (NCDRC).

## ALLEGATION OF THE APPELLANT

- Learned counsel for the appellant contended that the State Commission erred in holding the respondent guilty of only limited medical negligence and on the other hand holding the appellant guilty of "contributory negligence" by not following the advice of respondent.
- Following the surgery, the appellant did visit the respondent doctor for further check-up prior to 03.03.1994. According to appellant, respondent had prescribed him Mitomycine-C on 18.10.1993 and the prescription did not indicate either the duration for taking the medicine or its possible harmful side effects.
- The appellant was also not advised when he should come back for a follow-up check. Further, when the appellant visited the respondent on 03.03.1994 with a serious complaint regarding his operated

eye, respondent again sought to hide the correct facts by recording that the condition of appellant's eye as also the vision was normal.

- Since the appellant had already started losing his eyesight and he was having acute pain in his eye, he was constrained to approach other doctors, who advised the appellant to immediately stop the use of Mitomycine-C. It was these doctors who informed him that the problem in his left eye had occurred due to over use of Mitomycine-C, which should not have been used for more than 2 weeks.
- Counsel for the appellant further stated that the conduct of the respondent was suspect before the State Commission as is evident from the fact that he did not produce the necessary documents on the ground that these had been destroyed in a fire. Because of the medical negligence and callousness on the part of respondent, appellant lost the vision in his left eye causing him a great deal of mental agony and adversely affecting his work as a senior clerk in the Supreme Court of India.

## REJOINDER OF THE RESPONDENT

- Learned counsel for respondent denied the above allegations and stated that it is not factually correct that respondent had prescribed Mitomycine-C to the appellant on 18.10.1993 i.e. immediately following the surgery. In fact, he was prescribed other medicines and ointments after the surgery and it was only after a week when the eye had healed that Mitomycine-C was prescribed to the appellant.
- It is a proven fact in ophthalmology medical literature that Mitomycine-C is successful in checking the recurrence of pterygium, which has a very high incidence of recurrence and is routinely prescribed for limited periods following such surgeries. It was under these circumstances that respondent rightly prescribed this medicine to the appellant. Although not written down in the prescription, it was made clear verbally to the appellant that the eye drops were to be used three times a day for a limited period of 2 weeks and its over use was harmful.
- This is further confirmed by the fact that respondent converted only one vial of Mitomycine-C injection into eye drops, which would have lasted at the most for a little over 2 weeks. From this fact alone, it is clear that the Appellant had been procuring this medicine and getting it converted into eye drops from some other doctor(s) and in this way using it for several weeks i.e. till 03.03.1994 when he next visited the respondent, who immediately directed him to discontinue the use of this medicine.
- Learned counsel for respondent pointed out that a senior ophthalmologist of hospital A, Dr M, has confirmed to him in writing that appellant had consulted him and also informed him that he was continuing to use Mitomycine "on his own".
- Appellant continued to disregard medical advice of Respondent even after 03.03.1994 by not coming for follow-up visits, which he was advised to do by respondent, who had prescribed him some other medicines and wanted to assess their effect.
- From the above facts, it is clear that appellant, who was not an illiterate person and who had been clearly orally advised to use Mitomycine-C eye drops only for a limited duration by respondent, failed to follow this advice and continued to use the medicine on his own, for which respondent cannot be held responsible, particularly since appellant did not even come for the follow-up visit after 2 weeks. There was no medical negligence or deficiency in service on the part of respondent, who had prescribed the right medicine and given correct advice regarding its limited period of use. The present first appeal, therefore, having no merit deserves to be dismissed.

## OBSERVATIONS OF NCDRC

- The appellant visited the respondent's clinic with a complaint in his left eye and was detected with pterygium, for which a minor surgery was conducted is not in dispute.
- It is also a fact that appellant was prescribed Mitomycine-C by respondent, which is a drug of choice, to ensure that pterygium does not recur since it has a high degree of recurrence.
- While it is a fact (as also observed by the State Commission) that no directions were given by respondent in writing to appellant regarding the duration for which the drug should be used or any written precaution against its prolonged use, we find force in the contention of respondent that since he had converted only one vial of Mitomycine injection into eye drops, this itself indicates that the intention was clearly for its limited use for about 2 weeks and not for several months.
- When specifically asked by us, learned counsel for the appellant also fairly conceded that respondent had converted only one vial of Mitomycine injection into eye drops, thus confirming the respondent's clear intention regarding its use for a limited period. It is, thus, apparent that appellant

had been using this medicine for several weeks by getting the Mitomycine injection converted into eye drops through some other source and not by the respondent, for which respondent cannot be held responsible.

- It was under these circumstances that the State Commission had held the respondent guilty of only "limited medical negligence" for not having put down in writing the dosage and duration of the medicine in the prescription slip.

## ORDER OF THE NCDRC

We agree with this finding. We further agree that the appellant is guilty of "contributory negligence" by not visiting the respondent for follow-up visits as advised on more than one occasion and instead consulting one doctor after another and also continuing Mitomycine-C for long period on his own volition, which resulted in the dry eye syndrome and consequent loss of vision in the left eye. To sum up, we uphold the order of the State Commission that respondent is guilty only of "limited medical negligence" by not giving a written prescription and instead verbally advising the appellant, for which a compensation of Rs. 50,000/- is reasonable and we, therefore, confirm the same. The present first appeal is dismissed. Respondent is directed to pay a sum of Rs. 50,000/- to the appellant within 6 weeks, failing which it will carry interest @ 6% per annum for the period of default. No costs.

## REFERENCE

1. Case no. 692 of 2006, NCDRC; Order date 16.01.2013.

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