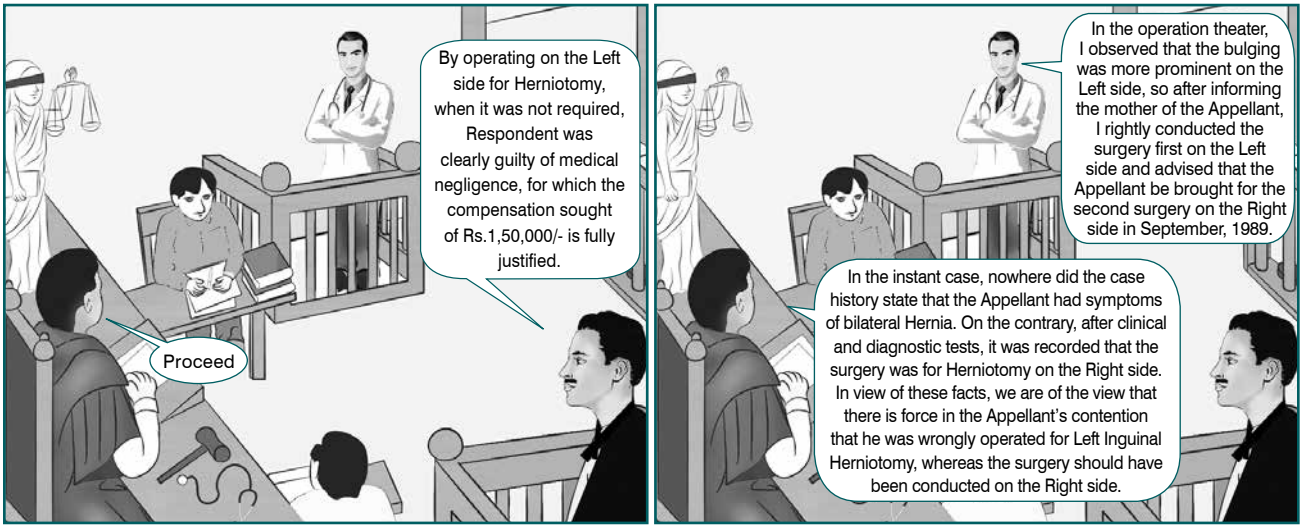
# Wrong Site Surgery: An Act of Gross Medical Negligence




**Lesson:** In the Case No. 494 of 2007, the National Consumer Disputes Redressal Commission (NCDRC), the Commission ruled in the favor of the Appellant holding the Respondent guilty of medical negligence since he had wrongly operated for Left Inguinal Herniotomy, whereas the surgery should have been conducted on the Right side and directed him to pay the Appellant Rs.1,00,000/- as compensation for the unnecessary suffering and agony caused to him and to his family.

## COURSE OF EVENTS

- Appellant, a 6-year-old boy was admitted to Respondent Hospital with complaint of temporary Inguinal Hernia (R) and after diagnostic tests, it was confirmed that he was suffering from Inguinal Hernia (R), and was thus advised surgery. He was taken up for surgery. However, instead of operating on the Right side, Appellant was operated for Left Inguinal Hernia and Herniotomy. This mistake was noted by the main doctor of the hospital.
- **26.08.1989:** The Appellant was discharged with advice to come back in September, 1989.
- **07.09.1989:** Appellant's father got him back to Respondent Hospital, when he was informed that an operation, Right Inguinal Herniotomy, is required.
- Appellant's father refused to get another surgery done and he was taken to Hospital B, where after a medical check-up he was informed by Dr A that Respondent had made a mistake in conducting the first surgery on the Left Inguinal Hernia.
- Being aggrieved by the medical negligence on the part of Respondent, Appellant filed a complaint before the State Commission and requested that Respondent be directed to pay him Rs. 1,50,000/- as compensation.
- Respondent on being served denied these allegations and stated that Hernia in children are often bilateral, as is in the instant case. Since, it is well-established that surgery cannot be done on both sides at the same time, Appellant's parents were informed that both sides would have to be operated through two separate surgeries, which they had agreed.
- At the operation theater, RW-2, the doctor conducting the surgery noted that the Left side scrotum was bulging more and, therefore, it was necessary to conduct an operation on the Left side first, about which the Appellant's mother, who was waiting outside the operation theater, was duly informed. The surgery was successfully conducted and after the wound was sutured on 26.08.1989. Appellant was discharged and was asked to

come back for the second surgery in September, 1989 during school vacations. In the meantime, Appellant was administered medicine and injection for the second surgery.

- However, when the Appellant was readmitted for repair of the Right side Herniotomy, his father for reasons best known to him got him discharged without waiting for the surgery. It was specifically denied that the Appellant's parents were informed that surgery was required only on the Right side. Thus, there was no medical negligence on the part of the Respondent.
- The State Commission after hearing the parties dismissed the complaint filed by the Appellant against the Respondent by stating as follows: *"The fact remained that the mother of the Complainant was aware of the operation of the Left side hernia as she had given consent for herniotomy which meant operation of both sides as explained by RW-2. Further, right through the treatment and surgery of the Complainant, only the mother of the Complainant was present and only on 08.09.1989, the father had as suggested in the cross-examination, had compulsorily asked for the discharge of the Complainant. This was with an intention to extort money from the opposite party. He had projected a false stand as if he was present throughout from the beginning till the complainant was discharged. RW-2 had also in her evidence clearly stated that in children, the swelling would appear and disappear and that was the reason why while operating a child for hernia, the consent was got only for herniotomy, which related to both sides of the scrotum. The opposite party had taken due care in the discharge of their duties and there was no negligence whatsoever in operating the complainant. As a competent surgeon, RW-2 had taken the necessary care and caution so that the child's life could be saved. The Complainant's father had also stated that he had consulted one Dr A. But, no evidence was produced to show that any other doctor had been consulted. There was also no proof produced by the Complainant with regard to the expenses incurred."*
- The State Commission also cited medical literature entitled "The Surgical Clinics of North America" [Vol. 65/Number 5, October 1985], confirming that Hernias in children are often bilateral but both may not always be diagnosed during a medical examination and further that Inguinal Herniotomy also has a silent side, which may not always be apparent on sight.
- Being aggrieved by the dismissal of his complaint, Appellant has filed the present first appeal.

## ALLEGATION OF THE APPELLANT

- Learned Counsel for the Appellant stated that the State Commission erred in not taking cognizance of the medical records pertaining to the Appellant's case history in Respondent Hospital, which was in evidence before it.
- As per these records, a clear diagnosis of obstructed Inguinal Hernia on the Right side was made, which was also recorded. This diagnosis was again confirmed in the detailed case history recorded on 13.08.1989.
- On 25.08.1989 when the Appellant was admitted for surgery, it was again clearly noted that he was "Posted for (R) Herniotomy on 25.08.1989". However, it was only on 26.08.1989, i.e., just prior to the surgery that it was noted in the case sheet that Appellant had Left Inguinal Hernia, which required to be operated.
- Counsel for the Appellant stated that Respondent's contention that the Hernia was bilateral and that before the surgery, the Appellant's mother was informed that the surgery would be first done on the Left side, is not factually correct because nowhere does the diagnosis in the case history indicate that the Appellant was suffering from bilateral Inguinal Hernia.
- By operating on the Left side for Herniotomy, when it was not required, Respondent was clearly guilty of medical negligence, for which the compensation sought of Rs. 1,50,000/- is fully justified.

## REJOINDER OF THE RESPONDENT

Learned Counsel for Respondent stated that the State Commission had rightly relied upon the medical literature as also the evidence on record to conclude that there was no medical negligence. It was clear from the record that the Appellant was suffering from bilateral Herniotomy, i.e., both on the Right and Left sides, which is a common phenomenon in children, and in the operation theater when a well-qualified pediatric doctor observed that the bulging was more prominent on the Left side, after informing the mother of the Appellant, she rightly conducted the surgery first on the Left side and advised that the Appellant be brought for the second surgery on the Right side in September, 1989.

This is evident from the consent letter signed by Appellant's parents as also the case history recorded on 07.09.1989.

## OBSERVATIONS OF THE NCRDC

- It was noted from the recorded case history of the Appellant, that right from the time when he was brought to the hospital, i.e., on 12.08.1989, he was subjected to a number of diagnostic and clinical tests and on the basis of these tests, a clear cut diagnosis of obstructed Inguinal Herniotomy (R) was made. These findings were confirmed on 13.08.1989 following a physical examination when it was specifically noted that the Appellant was a known case of Inguinal Hernia (R) and there was no other complaint. This diagnosis was confirmed at the time of his admission for the required surgery on 24.08.1989 and again on 25.08.1989, when it was stated that the Appellant was posted for (R) Herniotomy.
- It was only on 26.08.1989 at the time of the operation that for the first time it was stated that this was a case of Left Inguinal Herniotomy. The consent letter signed by the Appellant's parents (since he was a minor) only states that the Appellant's mother had given permission for operation of Herniotomy. No mention is made about bilateral Herniotomy.
- Respondent has not been able to produce any evidence that Appellant's parents were informed that Appellant was suffering with bilateral Herniotomy or that just prior to the surgery they were informed that the surgery would be conducted on the Left side and not on the Right side.
- The letter dated 07.09.1989 only states that the Appellant is posted tentatively for Right Herniotomy, which does not help the Respondent and only proves the Appellant's contention that a surgery on the wrong side was carried out on 26.08.1989.
- In view of the overwhelming documentary evidence from Respondent's own hospital discussed in the foregoing paras, we are unable to agree with the finding of the State Commission that as per the evidence on record there was no medical negligence in the treatment of the Appellant. Clearly, Appellant was diagnosed for conducting a surgery for Right Inguinal Hernia, whereas without any evidence that it was the Left side which required the surgery, this surgery was conducted. Had the Respondent advised the Appellant's parents during their visit to the hospital that the Appellant had bilateral hernia, then perhaps there would be some case for the Respondent to explain how the surgery was conducted on the Left side. In the instant case, nowhere did the case history state that the Appellant had symptoms of bilateral hernia. On the contrary, as stated above, after clinical and diagnostic tests, it was recorded that the surgery was for Herniotomy on the Right side. In view of these facts, we are of the view that there is force in the Appellant's contention that he was wrongly operated for Left Inguinal Hernia, whereas the surgery should have been conducted on the Right side.
- What constitutes medical negligence is now well-settled through a number of judgments of this Commission as also of the Hon'ble Supreme Court of India. One of the principles to test medical negligence is whether a doctor exercised a reasonable degree of care and caution in treating a patient [Supreme Court Case Indian Medical Association v. V.P. Shantha (1995) 6 SCC 651 and this Commission case Tarun Thakore v. Dr Noshir M. Shroff (OP No. 215 of 2000)].

## ORDER OF NCDRC

- In the instant case, the facts clearly indicate that the required reasonable degree of care and caution was not taken by Respondent in the treatment of the Appellant and, thus, Respondent was guilty of medical negligence, for which the Appellant should justifiably be compensated.
- In view of these facts and respectfully following the judgment of the Hon'ble Supreme Court cited above, we are unable to uphold the order of the State Commission and set aside the same. Respondent being guilty of medical negligence is directed to pay the Appellant Rs. 1,00,000/- as compensation for the unnecessary suffering and agony caused to him and to his family within 2 months from the date of this order.
- The present appeal stands disposed of on the above terms. No costs.

## REFERENCE

1. NCDRC First Appeal No. 494 of 2007; Order dated 31.01.2013.

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