

The Doctor could come out of the clutches of Law and penalty of Rs.4.5 lakhs towards damages!!

It is not mandatory for the operating surgeon to see the condition of CBD and remove the stones while operating Gall Bladder.....

Even in the best hands, the complications which the patient faced could happen.....”

The National Commission relied on the opinion of an Expert Witness (A Surgeon)

Facts of the Case in nutshell-

OM KUMAR CHHABRA V/s. DR. RAJ KUMAR GARG & ANR. REVISION PETITION NO. 4112 OF 2012.

Decided on 05 Jan 2016.

<http://cms.nic.in/ncdrcusersWeb/GetJudgement.do...>

The complainant, Om Kumar Chhabra, was advised for immediate operation after he was diagnosed that there were stones in the Common Bile Duct (CBD) and some stones in Gall Bladder. Due to persistent multiple collection of Pus in the abdomen, the complainant had to undergo another operation. The complainant filed the case for Medical Negligence for claiming damages of Rs.4.5 lakhs alleging that he had constant pain and trauma, as there was a persistent biliary leakage from the drainage tube. It was due to missed stones in the CBD and possibility of injury to CBD. It was further alleged that Doctors did not take proper care during the stay of the patient in the hospital.

The National Commission relied upon the expert evidence of expert Surgeon-

“.....It is not mandatory for the operating surgeon to see the condition of CBD and remove the stones while operating Gall Bladder.....Even in the best hands, the complications which the patient faced could happen.....”

He also opined that in 2-3% cases, CBD stones can be left.

It also came on record that prior to the treatment from Opponent Doctors, the complainant had also visited AIIMS, New Delhi. The ultrasound report of AIIMS report also revealed stones in gall bladder and Common Bile Duct (CBD)

Lastly The national Commission relied on the following observations in the judgment of Apex court in the case of Dr Laxman B. Joshi Vs Dr.Trimbak Bapu Godbole & Anr., AIR 1969 SC 128

"The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law require"