

Date of filing : 03.12.2012

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BEFORE THE DISTRICT CONSUMER'S FORUM: KURNOOL

Present: Smt.S.Nazeerunnisa, B.A., B.L., President

And

Sri.M.V.R.Sharma, B.A., Member

Tuesday the 6th day of June, 2017**C.C.No.100/2012****Between:**

B.Nagendrudu,
S/o B.Nagaiah,
Aged about 27 Years, Agriculturist,
H.No.2-6, Chennur Village-518 583,
Sirivel Mandal, Kurnool District.

...COMPLAINANT**-VS-**

1. Dr.G.V.Krishna,
Urologist,
C/o Gowri Gopal Hospital Private Limited,
D.No.46-87, Budhawarpeta,
Kurnool-518 002.

2. Gowri Gopal Hospital Private Limited,
Represented by its Managing Director,
D.No.46-87, Budhawarpeta,
Kurnool-518 002.

3. The Secretary,
Indian Medical Association (IMA),
IMA Building, First Floor,
Esamia Bazar,
Hyderabad-500027.

(Added as per order in
IA No.96/2015 dated
30.04.2015).

...OPPOSITE PARTIES

This complaint is coming on this day for orders in the presence of Sri.K.Lokeswar Reddy and Sri.R.Ananda Rao, Advocates for complainant and Sri.K.Sreedhar, Advocate for opposite party No.1, Smt.D.S.Sai Leela , Advocate for opposite party No.2 and Sri.D.Srinivasulu, Advocate for opposite party No.3 and upon perusing the material papers on record, the Forum made the following.

ORDER**(As per Smt.S.Nazeerunnisa, President)****C.C. No.100/2012**

1. This complaint is filed under section 12 of Consumer Protection Act, 1986 praying to direct the opposite parties:-

- (a) To pay a sum of Rs.3,00,000/- towards past medical expenditure with interest at 18% per annum.

- (b) To pass an award for a sum of Rs.15,00,000/- towards compensation and future medical expenditure with interest at 18% per annum.
 - (c) To pass an award for a sum of Rs.2,00,000/-towards mental agony and cost of the complainant caused by the opposite parties 1 and 2 with interest at 18% per annum.
- And
- (d) To such other relief or reliefs as the Honourable Forum fit and proper in the circumstances of this case.

2. The case of the complainant in brief runs as follows:- The complainant is a resident of Sirivel Mandal, Kurnool District. Opposite party No.1 is a doctor who treated the complainant. Opposite party No.2 is Gowri Gopal Hospital Private Limited, Kurnool. Opposite party No.3 is the Secretary of Indian Medical Association (IMA), Hyderabad. In the month of April, 2010 the complainant suffered with pain in right loin and approached opposite party No.1 and on the advice of opposite party No.1 the complainant got admitted in opposite party No.2 hospital and investigations (i.e.,) Ultra Sonography Abdominal, I.V, X-Ray, KUB Surgical Package are done and finally diagnosed that the complainant was having upper urethra stone and a stag horn calculus in the left kidney upper pole. In order to prevent block in ureter stone, the opposite party No.1 adopted URSL (Ureteroscopic Lithotripsy) Management Procedure and Double "J" DJ Stents inserted and advised to review after one month. The complainant approached opposite party No.1 after one month with a complaint of abdominal pain and as per his advised he got admitted in opposite party No.2 hospital, again investigations are done and advised that the complainant has to undergo surgical procedure of open pyelolithotomy. A surgery was conducted and discharged on 24.06.2010 and advised to review after one month. The complainant approached opposite party No.1 with a complaint of getting pain while passing the urine, opposite party No.1 prescribed medicine but the complainant was suffering with same problem of abdominal pain and bleeding while passing the urine. The opposite party No.1 advised to approach Dr.V.Chandra Mohan at Prasad Hospital, Hyderabad. Accordingly the complainant approached him on 10.07.2010, at that time the opposite party No.1 informed that while performing the open pyelolithomy

surgery to complainant on 14.06.2010, Nephrectomy was done in unavoidable circumstances. Dr.V.Chandra Mohan also made entry in Clinical observations of existing a solitary kidney with right renal calculi and URSL DJ Stents also existing. A simple surgery of RIRS (Retrograde Intra Renal Surgery) was done after conducting RGP (Retro Grade Pyelography) by Dr.Chandra Mohan on 11.07.2010 at Prasad Hospital, Hyderabad and subsequently the complainant had undergone five surgeries under the supervision of Dr.Chandra Mohan at Preeti Urology and Kidney Hospital, Hyderabad. On 01.05.2012 he removed the DJ Stent inserted by the opposite party No.1 and failed to remove it. The complainant had been suffered a lot of abdominal pain and fever for two years. The opposite party No.1 without adopting any medical management procedure, he removed the left kidney and due to negligent attitude of opposite parties 1 and 2. The complainant is forced to approach the Prasad Hospital and Preethi Urology and Kidney Hospital, Hyderabad in number of times and incurred expenditure of Rs.2,00,000/- and opposite parties 1 and 2 collected the final bill from Government of Andhra Pradesh "Arogya Sree" and collected amount from complainant. Due to negligent attitude of opposite party No.1 complainant suffer with Nephrectomy and he has to live his entire life with solitary kidney. Opposite party No.1 did not remove the renal calculi through URSL and stents inserted by him amounts to deficiency of service on the part of opposite parties 1 and 2 and caused mental agony to the complainant. Hence this complaint.

3. Opposite party No.1 filed written version stating that the complaint is neither just nor maintainable in law or on facts of the case and denied the allegations levelled against opposite party No.1 in complaint. It is submitted that the complainant approached opposite party No.1 with a complaint of pain in both kidneys, after due clinical investigation it was found that his both kidneys contained right upper ureteric calculus and with stag horn calculus. On 23.04.2010 the complainant was admitted in opposite party No.2 hospital under "Rajiv Aarogya Sree" Scheme. The opposite party No.1 has done surgery

of URSL (Ureteroscopic Lithotripsy) and double J DJ stents and discharged on 30.04.2010 and advice him to come after one month for removal of stone in left kidney. On 09.06.2010 the complainant got admitted in opposite party No.2 hospital under "Rajiv Aarogya Sree" Scheme with a complaint of vomiting and pain in left side of abdomen. After clinical examination on 14.06.2010 the opposite party No.1 did operation with a consent of complainant and his wife and found that left kidney is full of puss and infected which requires nephrectomy, therefore removed it and specimen was sent to Pathology Department it is preserved till today in the Pathology Department of opposite party No.2 Hospital and the complainant was discharged on 24.06.2010 and advise him to review after 10 days. As the opposite party No.1 noticed small stone in the right kidney, he advised for laser lithotriphy which is available in Prasad Hospital, Hyderabad. The complainant has taken laser treatment (RIRS) from Dr.V.Chandra Mohan, Prasad Hospital, Hyderabad and opposite party No.1 paid charges. On 11.07.2010 he removed the DJ Stent and exchanged with new one. On 16.08.2010 the complainant admitted with a complaint that he was unable to pass urine since two days. The opposite party No.1 removed all pieces of small stones and inserted new DJ stents and discharged on 18.08.2010 and instructed that DJ stent will be removed within three months and exchange it. The complainant consulted opposite party No.1 and the DJ stents was exchanged on different dates 01.02.2011, 24.03.2011 and 15.07.2011, when he came on 09.01.2012. Opposite party No.1 noticed that DJ stents is present in his kidney was encrustations formed not unfolding. Opposite party No.1 advised the complainant for laser treatment and sent him to Dr.Chandra Mohan, Prasad Hospital, Hyderabad for removal of DJ stent and he arranged a hand loan of Rs.15,000/- to Mr.Naganna who is a father of complainant. The said doctor removed the same with laser treatment. After that the complainant did not approach opposite party No.1. Due to calculi pyelonephrosis to save the complainant life from septicemia and death, simple nephrotomy was done. The DJ stent passed as a treatment for the (Stricture) right upper ureter, he has not come for removal in time resulted struck DJ

stent. Opposite party No.1 being an experienced retired urologist from Medical College, Kurnool put best efforts to save the life of complainant. Hence there is no negligence and no deficiency of service on the part of opposite party No.1 and the complaint is liable to be dismissed.

Opposite party No.2 filed Written Version by denied the allegations levelled against opposite party No.2 in the complaint. It is submitted that the complaint is not maintainable. As per the advice of opposite party No.1 the complainant got admitted in opposite party No.2 hospital on 24.04.2010. After clinical investigations URSL and DJ stents inserted in his right ureter on 26.04.2010 and due to stag horn calculus with abscess in left kidney, during the surgery opposite party No.1 found that his left kidney is infected, so nephrotomy was done and removed the kidney with the consent of complainant and his wife. The opposite party No.2 did not know the later complications of the complainant and the subsequent surgeries done by Dr.Chandra Mohan at Prasad Hospital, Hyderabad. The complainant admitted under Rajeev Aarogya Sree Scheme, so the treatment, clinical examinations, surgery charges, hospital charges and medicines were served with free of costs. The opposite party No.2 had taken proper medical care and proper medical management during his stay at opposite party No.2 hospital, there is no deficiency of service on the part of opposite party No.2. Hence the complaint is liable to be dismissed.

Opposite party No.3 filed written version stating that the complaint is not maintainable and there is no cause of action for filing this complaint and the complaint is baseless. There is no averment regarding the payment by complainant to opposite party No.3 to avail services. The complainant availed services from opposite parties 1 and 2 under "Arogya Sree" Scheme notified by Government of Andhra Pradesh. The investigations, diagnosis and treatment have been done free of cost in opposite party No.2 hospital. As per the records the complainant was referred to opposite party No.1 by Arogya Mitra under "Arogya Mitra Scheme". It was diagnosed that the complainant suffering with

right upper urethery calculus, and left kidney stag horn calculus. The opposite party No.1 has done URSL and DJ for removal of right upper urethery calculus. This treatment is on the right lines and surgical procedure done is standard prescribed one. The complainant got admitted on 09.06.2010 for left kidney stag horn calculus. On 14.06.2010 open surgery was conducted and on opening it was found that the kidney was with full of puss, therefore informed the complainant and his relations and with the approval of them, nephrectomy was done. For removal stag horn calculus open surgery in only not by adopting "PCNL" (Percutanium Nephro Lithotomy). The Aarogya Sree trust is informed the diagnosis and surgical procedure done with due approval of the said trust. The opposite party No.1 found in post operative check X-Ray that small stone in the right kidney, opposite party No.1 sent him to Prasad Hospital, Hyderabad. The complainant has turned up on 01.02.2011, 24.03.2011 and 15.07.2011 for changed the DJ Stents. On 24.08.2012 advised the complainant for laser treatment of removal of DJ Stent. The opposite party No.1 has followed the standard procedure and proper care in treating the complainant and no negligence can be attributed to opposite party No.1. The total treatment and expenditure involved is under the supervision, approval by "Arogya Sree" trust and expenditure is borne by the "Arogya Sree" trust. There is neither negligence nor deficiency of service on the part of opposite party No.1 as such the complaint is not maintainable and liable to be dismissed.

4. On behalf of the complainant Ex.A1 to Ex.A11 are marked and sworn affidavit and additional affidavit of complainant is filed. On behalf of the opposite parties Ex.B1 to Ex.B22 are marked and sworn affidavit and additional affidavit of opposite party No.1 is filed, sworn affidavit of opposite parties 2 and 3 are filed and Sri.Dr.G.V.Krishna, (opposite party No.1), Retired Professor of Urologist, Kurnool Medical College is examined as RW1.

5. Complainant and opposite parties 1 to 3 filed written Arguments and additional written arguments of opposite party No.1 filed.

6. Now the points that arise for consideration are:

- (i) Whether the services rendered by opposite parties 1 and 2 comes under the definition of service under section 2 (1) (o) of Consumer Protection Act, 1986.
- (ii) Whether the treatment given by the opposite parties was as per the standard practice or not and is there any negligence and deficiency of service on the part of opposite parties?
- (iii) Whether the complainant is entitled for the reliefs as prayed for?
- (iv) To what relief?

7. **POINT No.i:-** It is the case of opposite parties that the complainant has not paid any fees or charges to opposite parties 1 and 2 hospital for conducted investigations, diagnosis, surgeries, and treatment and the complainant did not filed any receipt with regard to payment of charges to opposite party No.2 hospital and fees to opposite party No.1. Hence the service rendered by opposite parties 1 and 2 with free of cost under the "Arogya Sree" Scheme notified by Government of Andhra Pradesh and hence the service rendered with free of cost is not comes under the definition of 2 (1) (o) of Service under the Consumer Protection Act, 1986. The learned counsel appearing for complainant cited decision reported in **AIR 2004 Page 5088 Supreme Court** in Smt.Savita Gary -Vs- The Director, National Heart Institute wherein the Honourable Supreme Court held that the service rendered free of charge to patients by doctors/hospitals whether non Government or Government who render free service to poor patients but charge fee for services rendered to other patients would, even though it is free, not be excluded from the definition of service in section 2 (1) (o) Consumer Protection Act, 1986. Admittedly the opposite party No.2 hospital is a private hospital, rendering services on payment of consideration and in the present case, the Arogya Sree Mitra paid to opposite parties 1 and 2 the cost incurred in treating the complainant during his stay at opposite party No.2 hospital, in the light of cited decision

though the service rendered by opposite parties with free of cost to complainant, it would be a service and the complainant is a Consumer under Consumer Protection Act, 1986.

8. POINT No.ii:- Admittedly on 22.04.2010 the complainant approached opposite party No.1 with a complaint of abdominal pain and on the advice of opposite party No.1 he got admitted in opposite party No.2 hospital on 23.04.2010 and clinical investigations are done (i.e.,) I.V.P, X-Ray, KUB Abdominal Sonography and it reveals that the complaint was having right ureter stone and stag horn calculus in left kidney upper pole. Ex.A1 is the plain X-Ray Abdomen for KUB report dated 22.04.2010. Ex.B1 is the photo copy of I.V.P. Report dated 23.04.2010. Ex.A9 is the original blood report and serum creatinine report, dated 22.04.2010. On 26.04.2010 opposite party No.1 has done surgery of URSL and DJ Stent in order to remove the block in right upper ureter stone. Ex.B2 is the Discharge Card and discharged on 30.04.2010. Ex.A2 is the Discharge Summary. The complainant got his treatment under "Arogya Sree" Scheme. Again on 09.06.2010 the complainant got admitted in opposite party No.2 hospital for stone removal in his left kidney as he was suffering with abdominal pain. After due investigations, opposite party No.1 diagnosed that the complainant has to under gone open pyelolithotomy surgery for removal of stag horn calculus. Ex.A11 is the original blood group and serum creatinine report dated 12.06.2010. Ex.B3 is the KUB examination report dated 10.06.2010. It is the case of complainant that the opposite party No.1 advised him to undergone open pyelolithotomy surgery with DJ stent in left kidney and the complainant accepted for the said operation, but without consent of complainant or his relatives the opposite party No.1 has done nephrectomy operation instead of done pyelolithotomy, after thought opposite parties 1 and 2 fabricated the signatures of complainant and his wife and write down the consent and authorization in progress sheet of opposite party No.2 hospital, that the complainant gave assent for nephrectomy. After the second surgery (i.e.,) nephrectomy the patient

condition was not improving and he was suffering with pain and bleeding while passing urine. The opposite party No.1 referred the complainant to Dr.Chandra Mohan, Prasad Hospital and informed the fact of nephrectomy at that time. On 11.07.2010 surgeries of RIRS was performed in Prasad Hospital. Ex.A5 is the discharge summary of Prasad Hospital for the period from 11.07.2010 to 13.07.2010.

It is further case of complainant that though he has approached opposite party No.1 several time for removal of DJ stent on different dates. The opposite party No.1 fails to remove the same again the complainant approached to Dr.Chandra Mohan at Preeti Hospital, Hyderabad. Dr.Chandra Mohan removed the DJ stents inserted by opposite party No.1 and fails to remove the same at Kurnool. Ex.A6, Ex.A7, Ex.A8 and Ex.B22 are the discharge summary of Preeti Hospital.

It is the case of opposite party No.1 that the complainant consulted opposite party No.1 with pain in both kidneys, after clinical investigations found that both kidneys contained right upper Ureteric calculus and left with stag horn calculus. The opposite party No.1 did surgery of URSL ureteroscopic lithotripsy and DJ stents with the consent of complainant on 26.04.2010 and discharged on 30.04.2010 and advised him to come back after one month. The complainant came back with a complaint of sever vomitings and pain in left side. As the complainant was unfit for operation, he has prescribed antibiotic. On 09.06.2010 again he got admitted after examination the complainant agreed to get operated on his left kidney. On 14.06.2010 opposite party No.1 did open operation surgery with the consent of complainant and his wife and opposite party No.1 found that his left kidney was in full of puss and with infected material which requires nephrectomy. Therefore removed it and specimen was sent to pathology department in opposite party No.2 hospital, and discharged him on 24.06.2010. Ex.B1 to Ex.B13 are diagnosis reports and discharge card and histopathology report issued by opposite party No.2 hospital. Post operative X-Ray report reveals that small stone in the right

kidney with DJ stent, opposite party No.1 advised him to approach Dr.Chandra Mohan, Prasad Hospital, Hyderabad for laser lithotripsy. Accordingly the complainant approached him, wherein he underwent RIRS on 11.07.2010 and removed previous stent and put the new DJ stent. Ex.B14 is the discharge summary of Prasad Hospital, Hyderabad dated 13.07.2010. Subsequently the complainant approached opposite party N.1 and exchanged DJ stents on 01.02.2011, 24.03.2011 and 15.07.2011 and 09.01.2012 opposite party No.1 noticed in X-Ray KUB, blood tests, serum creatinine, serum calcium, serum uric acid were found advised him to remove DJ stent immediately. But he came back on 28.04.2012 for removal of DJ stent opposite party No.1 sent him to Dr.Chandra Mohan, Hyderabad arranged hand loan of Rs.15,000/- to his father Mr.Naganna for removal of DJ stents. After that the complainant did not turn up to opposite party No.1. Ex.B15 to Ex.B21 are the discharge cards issued by opposite party No.2 hospital during the period of DJ stent exchange. Ex.B22 is the discharge summary of Preethi Hospital, Hyderabad for the period from 01.05.2012 to 03.05.2012.

The learned counsel appearing for opposite party No.1 argued that due to calculus pyelonophrosis to save life of complainant from septicemia and death, simple nephrectomy was done by opposite party No.1, and DJ stent passed as a treatment for stricture right upper ureter. The complainant did not examine any expert to establish that the opposite party No.1 is negligent in pre-operative and post operative period of time while treating the complainant. All the investigation treatment, surgery doctor Arogya Sree trust with free of cost. Nephrectomy conducted with the consent of complainant and his wife (Ex.B6) the specimen is still today preserved in Pathology Department (Ex.B9 to Ex.B11). As the DJ stent was bend, laser treatment is required which is not available at Kurnool, so refer to Prasad Hospital and opposite party No.1 financially help him, there is no documentary evidence on record to prove that the complainant incurred medical expenditure. The signature of complainant and his wife is not sent to expert. There is no deficiency of service on the part of opposite party No.1. The complainant filed this case only with malafide

intention to grab money from the opposite party No.1. Opposite party No.1 is examined as RW1.

The learned counsel appearing for opposite party No.1 cited decision report in Gajendra Singh Thakur -Vs- Dr.Sanjeev Jain, where in it was alleged that Dr.Sanjeev done lithotripsy negligent which resulted damage to ureter and that caused obstruction and requisite treatment was not timely provided Dr.Lalit Shah urologist had also seen the patient at opposite party No.1 hospital and filed affidavit stated that the treatment with antibiotic and other medicine as prescribed by Dr. Jain and mentioned in the record were appropriated and adequate to treat the condition. It was held that as per record, the treatment given to patient was on correct lines as given by Dr. Jain and no expert opinion in rebuttal of expert opinion of Dr.Lalit Shah as been filed. Appeal dismissed. The facts of cited case is not applicable to present case on hand. Opposite party No.1 is not filed any affidavit of expert doctor.

R.P.No.3932/2012, M/s Handa Nursing Home -Vs- Ramkali, the complainant not followed the instructions given by Aims and taking Ayurvedic Medicine which developed further complications in not going for plain X-Ray/Non-Contrast CTKUB study of GFR prior to giving treatment is not a negligence.

According to opposite party No.2 the complainant got admitted in opposite party No.2 hospital on the advice of opposite party No.1, all the clinical examinations treatment surgeries and hospital charged medicines are done with free of cost under "Aarogya Sree" Scheme. The opposite party No.2 hospital authorities staff and nurses had been taken proper medical care and proper medical management during his every stay at opposite party No.2 hospital and opposite party No.2 hospital had taken consent from complainant and his wife and opposite party No.1 did open surgery and informed the same Rajiv Aarogya Trust that his pre-operative diagnosis left stag horn calculus but operative diagnosis calculi pyonephrosis and nephrectomy was done and the same was accepted by Rajiv Aarogya trust. The opposite party No.2 did not

know the later complications of the complainant and the subsequent surgeries done by Dr.Chandra Mohan at Prasad Hospital, Hyderabad.

The learned counsel appearing for opposite party No.2 contended that expert is not examined to prove the contention of complainant that the doctor and hospital are negligent while rendering the services to the complainant. The Honourable Supreme Court report in **2005 (6) SCC Page 1** held that "Negligence is breach of duty caused by omission to do something which a reasonable man guided by those consideration which ordinarily regulate the conduct of human affairs would do, are doing something which a prudent and reasonable man could not do".

The contention of opposite party No.3 is that the complainant right kidney was operated first as it is better kidney and DJ stent kept after URSL and for drainage of the stone pieces after one month it was planned to conduct open surgery of left kidney and was done on 14.06.2010. Due to calculus phenephosis the left kidney was removed. The complainant was treated by following safest procedure for removed of DJ stent. PW2 in his evidence nowhere stated that there is negligence in removal of DJ stent. There is no negligence on the part of opposite parties.

In order to substantiate the version of complainant, the complainant examined Dr.Chandra Mohan, Preethi Hospital, Hyderabad as PW2 by Advocate Commissioner appointed as per the orders passed by this Forum in I.A.No.25/2014. PW2 deposed that the complainant admitted under his care in Prasad Hospital with complaint of right side kidney stone RIRS (Retrograde Intra Renal Surgery) was conducted on 11.07.2010 and discharged on 13.07.2010 and advised him after one month for removal of it. Again the complainant came on 01.05.2012 with failed attempts to remove the stent in Kurnool. Again RIRS and stent encrustation removed and fresh stent put and discharged on 03.05.2012 and the complainant came on 26.06.2012, 04.08.2012 for stent removal.

The learned counsel appearing for complainant contended that the opposite party No.1 has not followed the standard procedure and without

taking any proper care as a prudent man has indulged in removal of left kidney of the complainant, he could have referred the complainant to any expert at Hyderabad or some other place, there was no imminent danger nor any inevitable circumstances which warranted the doctor to remove the kidney itself. As per Ex.B1 report ureter is normal and Ex.A9 and Ex.A11 creatinine report, the functioning of the kidneys are good and normal. In Ex.B3 ultra sound examination and KUB the opposite party No.1 added the words with pen as stag horn and abscess in records to save his skin. The complainant had only renal stone and same is evidenced by Ex.A3 discharge summary. It is also goes to show that as per Ex.A6 and Ex.B22 opposite party No.1 did not choose to remove the stents in the right kidney at any point of time and he blocked only right ureter by putting DJ stents and retained DJ stent for one year will leads many complications, as it is not removed after three weeks, it caused mental agony to the complainant, expert opinion is must when the criminal action is initiated against the doctor. The burden is on the doctor to prove that he is not negligent and there is no fault on his part as per the decision in:-

- a. **AIR 2004 S.C Page 5088** Smt.Savita Garg -Vs- The Director, National Heart Institute.
- b. He cited another decisions reported in **Civil Appeal Nos.368/2013 and 269/2013**, dated 09.01.2013 A.Sriman Narayana -Vs- Dasari Santakumari and another wherein the Apex Court held that Res ipsa loquitur is only a rule of evidence and operates in the domain of Civil Law specially in cases of torts and helps in determining the onus of proof in actions relating to negligence.
- c. **Civil Appeal No.2867/2012**, Dr.Balram Prasad -Vs- Dr.Kunal Saha and others, the Honourable Supreme Court held that Right to health of a citizen is a fundamental right guaranteed under Article 21 of the Constitution of India. The doctors, hospitals, the nursing homes establishment are to be dealt with strictly if they are found to be negligent.

d. 2015 (5) ALD Page 123 (SC) the Supreme Court of India, V.Krishna Kumar -Vs- State of Tamil Nadu and others. The Apex Court held that the hospital is vicariously liable for acts of its doctors.

Due to negligent act of opposite party No.1 the complainant lost his left kidney he is incapacitated to do his normal work and also the agriculture work which is only the source of his livelihood and his family. The complainant spent Rs.2,00,000/- towards his medical expenditure in opposite party No.2 hospital and Rs.2,50,000/- for his further treatment in Preeti Hospital, Hyderabad. He is claiming compensation for Rs.20,00,000/- is below for loss sustained by him.

It is an admitted fact that the complainant consulted opposite party No.1 and got admitted in opposite party No.2 hospital on the advice of opposite party No.1 and after due investigations on 26.04.2010 the opposite party No.1 conducted 1st surgery (i.e.,) URSL putting DJ stents to prevent in right ureter stone and again on 14.06.2010 the opposite party No.1 planned to conduct open pyelolithotomy with DJ stent for remove the stag horn calculus in his left kidney. But the opposite party No.1 has conducted simple Nephrectomy. The complaint refer to Dr.Chandra Mohan, Prasad Hospital, Hyderabad for removal of DJ stent in right ureter. Subsequent to second surgery (i.e.,) simple Nephrectomy, the complainant got admitted in opposite party No.2 hospital and opposite party No.1 removed DJ stent in right ureter on several dates i.e., 16.08.2010, 16.11.2010, 09.08.2010 RIRS on 01.02.2011 RIRS DJ stent exchange on 24.06.2011 and on 15.07.2011 attempted to remove DJ stent on 28.04.2012 and patient referred to Dr.Chandra Mohan at Hyderabad for DJ stent removal. According to complainant the opposite party No.1 has not removed any stones from right ureter through URSL and subsequently sent him to Dr.Chandra Mohan for stone removal in right kidney and he removed the stone by conducted RIRS surgery on 11.07.2010 and also alleged that without the consent of complainant and his wife opposite party No.1 conducted Nephrectomy instead of open pyelolithomy and though the complainant got admitted several time for removal of DJ stents in right ureter opposite party

No.1 fails to remove it and refer to Dr.Chandra Mohan for removal of DJ stents from right kidney. According to opposite parties that opposite party No.1 has adopted the standard medical procedure to treat the complainant while conducted the surgeries to complainant. Due to unavailable circumstances and with the consent of complainant and his wife, Nephrectomy was done to avoid further complications to his right kidney. As the laser treatment is not available, the complainant referred to Dr.Chandra Mohan for removal of DJ stent to safe guard his right kidney.

In *Laxman Balkrishna Joshi -Vs- Trimbak Bapu Godbole and another*, **AIR 1969 SC Page 128** wherein the Honourable Supreme Court held that a person who holds himself out as ready to give medical advice or treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient, owes him certain duties, namely, a duty to care in deciding whether to undertake the case, a duty of care in deciding what treatment to give, and a duty of care in the administration of that treatment. A breach of any of these duties gives a right of action of negligence to the patient.

9. As seen from clinical reports Ex.A1 is the Plain X-Ray Abdomen for KUB and Ex.A9 is the serum cratinine report dated 22.04.2010 and Ex.B1 IVP report dated 23.04.2010 it is clear that the complainant kidneys shows normal and the renal function as assessed by serum creatinine report shows 0.9 mg., within normal limits and reveals that calculi in right ureter and stag horn calculi in left upper pole. As per Ex.A11 also serum creatinine report shows 0.8 mg., within normal limits dated 12.06.2010 prior to second surgery (i.e.,) nephroctomy done on 14.06.2010. It is also admitted by opposite party No.1 in his cross examination, that the serum creatinine test will reveals the functions of kidneys. The KUB reports (Ex.B3) did not reveal any damage of kidneys except the stent insite in right side and multiple calculi in left upper pole measuring 1 to 1.2 c.m. The renal scan may help to determine of the kidney has any significant function. As per the medical literature the kidney stones

are of many types and stag horn stone is describe a large stone. A multiple measures of treatment outcome are available for evaluation and there are three main techniques for kidney stone surgery and the choice of technique depends upon multiple factor increasing the size and type of stone, other medical problem and patient reference. The recommended techniques for kidney stone surgery is SWL shockwave lithotripsy for the management of small to medium size kidney stones and for exceptionally laser complex kidney stones the PCNL/ESWL percutaneous Nephrolithotomy. As per the "Aarogya Sri Health Care Trust" issued guide lines responding the surgery procedures at the time of Pre-Authorization. It is mandatory to submit "KUB film, USG Rim report or IVP/ Plain film report in case of doubtful evidence submitted NCCT films and reports (6) endoscopic procedure (URSL, PCNL).

Indication for PCNL i.e.,

- (1) Multiple renal stones.
- (2) Large stones.
- (3) Stag horn stones.
- (4) Stones in lower calyces.

Renal stones

- (1) Kidney stones > 1.5 cm needs PCNL
- (2) Kidney stones < 1.5 cm needs ESWL
- (3) Kidney stones Stag horn stone need ESWL + PCNL Sandwich Therapy.

As per the KUB report Ex.B3 dated 09.06.2010 the left kidney shows multiple calculi upper pole measing 1 cm to 1.2 cm.

The symptoms of Pyonephrosis is anemia, fever, and swelling in the loin, when the condition arises as an infected hydronephrosis, the swelling may be very and large and phyrexia very high. The progress sheet of opposite party No.2 hospital Ex.B6 and Ex.B7 dated 11.06.2010, 12.06.2010 and 13.06.2010 does not show any anemia or swelling loin. The opposite party No.1 prescribed inj Zorten and tab Dolo 600 mg and tab Rantac to the complainant during the above period.

The opposite party No.1 choose to remove the stag horn calculi by adopted the open pyelolithotomy stone surgery. While conducting the

surgery, opposite party No.1 has taken a hasty decision to done the nephrectomy. According opposite party No.1 it is still in preservation in laboratory. Ex.B10 is the histopathology report shows that there is no evidence for malignancy. If the complainant left kidney was damage, what is it need to kept in preservation till this date, except the pathological report, the opposite party No.1 never show the removed kidney either to complainant or his relatives. If the kidney is in damage condition, the renal function assessed by serum creatinine did not show within the normal functioning as 0.8 mg., prior two days of his nephroctomy surgery. Instead of conducted nephroctomy, the opposite party No.1 ought to have to refer the complainant to higher institute for removal of stag horn calculi through modern technical procedure. PW2 deposed that in renal calculus disease removal of kidney is done only when kidney is completely damaged. Generally uncontrolled fever bleeding in kidney large stone with kidney Para rencyma is damaged, kidney function assessed by IVP, DTPS, Scan. In calculus phnonephrosis if the stent does not go if nephrostomy also cannot be put, open drainage also not possible due to bleeding, then nephroctomy can be done. Though the IVP report KUB reports and serum creatinine report does not shown any kidney damage except the stones in kidneys, the opposite party No.1 while conducting open pyelolithotomy, he removed the left kidney amounts to negligence on the part of opposite party No.1. As seen from Ex.B22=Ex.A6 dated 03.05.2012 it is clear that the opposite party No.1 retained stent for one year on right side and failed attempt to remove and referred to Preeti Hospital, for removal of DJ stent, though the complainant got admitted on 28.04.2012, 15.07.2011, 24.03.2011, 01.02.2011, 16.11.2010, 16.08.2010, 09.08.2010 and Ex.B15 to Ex.B21 issued by opposite party No.2 hospital, shows the removal of stent, but in fact it remain for one year. As per the evidence of PW2 the DJ stents will be removed after three weeks and further deposed that if the stent is removed before 3 months the stones might have not formed on the stent. But the opposite party No.1 remained the stent one year and failed to remove the same inserted by himself and kept silent for one year and after raised complications

then referred the complainant to Preeti Hospital for removal of DJ stents amounts to deficiency of service on the part of opposite party No.1. There is no allegations against the management and staff during the pre-operation and post operative care of opposite party No.2 hospital, the decision taken by opposite party No.1 for removal of kidney is not binds to opposite party No.2 hospital. The opposite party No.1 is a government surgeon and after his retirement, he worked as consultant to opposite party No.2 hospital and later he has resigned to opposite party No.2 hospital. He is not the permanent employee of opposite party No.2 hospital.

10. POINT No.iii:- The complainant claiming for Rs.3,00,000/- towards past expenditure and Rs.15,00,000/- towards compensation and future medical expenditure and Rs.2,00,000/- towards mental agony. Basing on the evidence available on record, the complainant rendered services from opposite parties 1 and 2 through "Arogya Sree Mitra" and "Arogya Sree Trust" borne the medical expenditure of complainant in opposite party No.2 hospital. Admittedly he has approached to Prasad Hospital and Preeti Hospital for conducting RIRS for removal DJ stents, in right side ureter, therefore he is entitled for Rs.30,000/- towards past expenditure and due to his solitary kidney he has been taking treatment and medicine in future also hence he is entitled for a sum of Rs.4,00,000/- compensation, and Rs.20,000/- towards mental agony. As the opposite party No.1 is member of medical association of Andhra Pradesh State Unit Floated a Scheme calling as "Professional Protection and Welfare Scheme" and paid the premium. Due to negligence of doctor if any patient suffers with medical expenditure the medical association will be indemnified the liability to pay compensation on behalf of doctor. We have already discussed Point No.ii that there is a negligence and deficiency of service on the part of opposite party No.1. Hence opposite party No.3 is directed to pay compensation of Rs.4,00,000/- and Rs.30,000/- towards past expenditure and Rs.20,000/- towards mental agony to complainant. We found there is no deficiency of service on the part of opposite party No.2.

11. In the result, the complaint is partly allowed directing the opposite party No.3 to pay a sum of Rs.4,00,000/- (Rupees four lakhs only) compensation and Rs.30,000/- towards past expenditure and Rs.20,000/- towards mental agony to the complainant and Rs.2,000/- as a costs of the case. Time for compliance is one month from the date of receipt of this order. The complaint against opposite party No.2 is dismissed without costs.

Dictated to the stenographer, transcribed by her, corrected and pronounced by us in the open bench on this the 6th day of June, 2017.

**Sd/-
MEMBER**

**Sd/-
PRESIDENT**

APPENDIX OF EVIDENCE
Witnesses Examined

For the complainant:- Nil

For the opposite parties: RW1

List of exhibits marked for the complainant:-

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|--------|--|
| Ex.A1 | Lab X-Ray Report dated 22.04.2010 issued by opposite party No.2 to the complainant. |
| Ex.A2 | Photo copy of Discharge Summary dated 30.04.2010. |
| Ex.A3 | Discharge Summary dated 24.06.2010. |
| Ex.A4 | Lab Report dated 10.07.2010 issued by the opposite party No.2 to the complainant. |
| Ex.A5 | Photo copy of Discharge Summary dated 13.07.2010 issued by Prasad Hospital, Hyderabad. |
| Ex.A6 | Photo copy of Discharge Summary dated 03.05.2012 issued by Preethi Urology and Kidney Hospital, Hyderabad. |
| Ex.A7 | Photo copy of Discharge Summary dated 04.07.2012 issued by Preethi Urology and Kidney Hospital, Hyderabad. |
| Ex.A8 | Photo copy of Discharge Summary dated 11.08.2012 issued by Preethi Urology and Kidney Hospital, Hyderabad. |
| Ex.A9 | Lab Report dated 22.04.2010. |
| Ex.A10 | X-Ray. |
| Ex.A11 | Lab Report dated 12.06.2010. |

List of exhibits marked for the opposite parties:-

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|-------|---|
| Ex.B1 | Photo copy of Preliminary Diagnosis Report of Complainant dated 23.04.2010. |
| Ex.B2 | Photo copy of Discharge Card dated 29.04.2010. |

Ex.B3	Photo copy of Ultra Sound Examination Report dated 09.06.2010.
Ex.B4	Photo copy of Consent Letter of complainant dated 09.06.2010.
Ex.B5	Photo copy of Health Agreement of complainant in Aarogya Sri, dated 10.06.2010.
Ex.B6	Photo copy of Consent Letter and Treatment Progress Sheet of complainant dated 14.06.2010.
Ex.B7	Photo copy of Operation Notes of complainant dated 14.06.2010.
Ex.B8	Photo copy of Intimation Letter to Aarogya Sri, Hyderabad dated 15.06.2010.
Ex.B9	Photo copy of Receipt of Histopathology Department dated 19.06.2010.
Ex.B10	Photo copy of Report of Histopathology Department dated 19.06.2010.
Ex.B11	Photo copy of Certificate of Specimen of Complainant Left Kidney dated 31.12.2012.
Ex.B12	Photo copy of Patient wise Diagnostic Bill Details from 01.06.2010 to 24.06.2010.
Ex.B13	Photo copy of Discharge Card of Simple Nephrotomy dated 24.06.2010.
Ex.B14	Photo copy of Discharge Summary of Prasad Hospital, Hyderabad dated 13.07.2010.
Ex.B15	Photo copy of D.J.Stent Removed and Discharge Card of complainant dated 10.08.2010.
Ex.B16	Photo copy of Inserted D.J.Stent and Discharge Card of complainant dated 18.08.2010.
Ex.B17	Photo copy of D.J.Stent exchange and Discharge Card of complainant dated 17.11.2010.
Ex.B18	Photo copy of D.J.Stent exchange and Discharge Card of complainant dated 03.02.2011.
Ex.B19	Photo copy of D.J.Stent exchange and Discharge Card of complainant dated 25.03.2011.
Ex.B20	Photo copy of D.J.Stent exchange and Discharge Card of complainant dated 16.07.2011.
Ex.B21	Photo copy of Refer to Dr.Chandra Mohan for Removal of D.J.Stent and Discharge Card dated 30.04.2012.
Ex.B22	Photo copy of Discharge Summary from Preethi Hospital, Hyderabad dated 03.05.2012.
RW1	Sri.Dr.G.V.Krishna, Retired Professor of Urologist and Head of the Department of Kurnool Medical College, Kurnool is examined.

**Sd/-
MEMBER**

**Sd/-
PRESIDENT**

// Certified free copy communicated under Rule 4 (10) of the
A.P.S.C.D.R.C. Rules, 1987//

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