

Details	DD	MM	YY
Date of Judgment	13	10	2021
Date of filling	06	08	2014
Duration	07	02	07

**IN THE CONSUMER DISPUTES REDRESSAL  
COMMISSION, GUJARAT STATE AT AHMEDABAD.  
Court-2**

**COMPLAINT CASE NO. 218 of 2014**

1. Anil Sukumaran
2. Mr. Sunil Sukumaran
3. Mrs. Radha Sukrmaran  
B/39,Nandanvan Duplex,  
Nandanvan Co. Op. Housing Society,  
Opp. Naroda GEB,  
Nava Naroda,  
Ahmedabad-382330 ...Complainants

Vs.

1. M/s. Apollo Hospitals International Ltd.  
No.1, Tulsibaug Society,  
Opp. Doctor House,  
Ellisbridge,  
Ahmedabad-380006.
2. Apollo Hospitals International Ltd.  
19,Bishop Gardens,  
R A Puram, Chennai.-600028
3. Apollo Hospitals International Ltd.  
Plot No. 1,Bhat GIDC Estate,  
Dist:Gandhinagar.  
382448
4. Reliance General Insurance Co. Ltd.  
570,Naigam Cross Road,  
Next to Royal Ind. Estate Wadala (W),  
Mumbai-400031. ...Opponents

Appearance: Mr. Rajiv N. Mehta legal representative

For the Complainants  
Ld. Advocate Mr. S.K.Shah  
For the Opponent No.1,2 and 3  
Ld. Advocate Mr. Darshil Parikh  
on behalf of Mr.V.P.Nanavaty  
For the Opponent No.4

Coram : Shri M.J.Mehta Judicial Member

**Order by Shri M.J.Mehta, Judicial Member**

1. The complainant has filed the consumer complaint u/s. 17 of the Consumer Protection Act, 1986 due to deficiency in service, negligence and unfair trade practice on the part of opponents.
2. The complainant no 1 and 2 are brothers, whereas the complainant no.3 is their mother and wife of Mr. P C Sukumaran, who lost his life due to non-availability of proper treatment for want of timely diagnosis, sheer negligence and carelessness on the part of the staff & doctors during his hospitalization at the opponent no. 3 hospital which occasioned in the month of October 2013. The complainant No.1 states that deceased Mr. P C Sukumaran was retired executive of Food Corporation of India and even at the age of 68 he was living disciplined life.
3. Further it is contended that the opponent no. 2 is the main office/ administrative /registered office and the opponent no.1 and 3 are the branches of the opponent hospitals. The complainants state that to the best of their knowledge, the opponent hospital has consultation facility at the address mentioned for the opponent no.1 and thereafter patient are being advised for

hospitalization at the opponent no.3 hospital. As such all these opponents are one and same and carrying on its business in the state of Gujarat through different branches. The complainants state that the opponents claim that the Apollo Hospital at Gandhinagar is spread over 10 acres and has a built up area of over 440000 sq feet and it keeps ideology of "patient first" and provides world's best care to its patients.

4. Further it is submitted that diseased Mr. P C Sukumaran had history of back pain and occasional breathlessness for which the complainants have consulted Dr. Vipul Kapoor at Narayana Hrudayalaya. The complainants state that after examination he was advised for stenting and accordingly he had undergone double vessel stenting as advised. The complainants state that despite stenting when he did not find himself relieved from pain he then consulted again where he was informed that in such case it is very much necessary to undergo Coronary Angiogram Report and renal angiogram. The complainants state that the said procedure was carried out at Narayana Hrudayalaya which revealed that CABG (Coronary Artery Bye pass Grafting) would be necessary.
5. Further it is submitted that deceased Mr. P C Sukumaran was taken to Opponent no.3 hospital through opponent no.1 on 9<sup>th</sup> Oct 2013 where Dr Parag Sheth was consulted. The complainants state that he was Shown the case papers of treatment taken at Narayana Hrudayalaya. Considering the reports of angiography and other treatment papers, Dr. Sheth advised for indoor hospitalization for Coronary Artery Bye-pass Grafting (Popularly known as CABG), The complainants state that when Dr. Sheth had examined

patient, he was also informed about patient's complaint of cough, general weakness, regent complaint of constipation etc. over and above the chief complaint of pain which starts from back but ends at the chest. The complainants state that keeping in mind the history given, the doctor choose to have pathological investigations before venturing to surgery and therefore prescribed investigations like, WBC, SGPT, Bilirubin, and Serum Creatinin. The complainants state that the said analytical tests were carried out and it was ascertained that all these are within normal limits. The complainants state that considering normal reports and clinical condition of the patient, Dr. Sheth advised for the operative surgery CABG to be scheduled on next day i.e. 10<sup>th</sup> oct. [4]. The complainants state that patient was taken to theater and CABG was performed in the afternoon. The complainants state that the doctor claimed that the operation was uneventful and patient was than transferred to post-operative ward. The complainants state that when the patient was in post operative ward, relatives were not allowed to seat nearby the patient and relatives were asked to see him from distance. The complainants state that it was observed from the distance that though the patient was complaining (as he had feeling) of discomfort but the attendants were not paying any attention to his complaints. The complainants state that belatedly on the same evening, the relatives were allowed to meet the patient.

6. The complainants state that again on 13<sup>th</sup> evening, when complainants met the patient, he complained that he is feeling fullness of abdomen is looking like distended

since morning. The complainants state that when it was reported to the staff, they explained that it is because of Gas trouble. The complainants state that it is because of Gas trouble. The complainants state that when this was reported to doctor on duty and nursing in-charge, they came, examined patient clinically and informed us that they will report it to the concerned doctor soon. The complainant state that after bout couple of hours when no positive action is seen despite distention observed, the complainants once again called them and inquired whether doctor has been informed or not. However the said nurse then relied that doctor has already been informed and he would come, examine patient and will suggest the line of treatment to put everything under control. The complainants state that even after no action was taken till next morning.

7. The complainant state that around 10.00 am on the next morning, relatives were called and were informed that patient had developed infection inside and they have aspirated chocolate brown colored fluid through Ryle's tube. At this point of time relatives replied them that when patient is hospitalized it is expected from the hospital and staff to take proper and reasonable care so as to prevent infection but because of their carelessness and inhuman casual approach had provided an opportunity to set on infection. On the vary evening, the complainants were shocked to learn that condition of the patient is deteriorated and not so good. The doctors on duty then recommended pathological tests which were carried out thereafter and it was revealed form the reports thereof that all pathological investigations which were showing normal values before the operation, have

now became abnormal and it is suggestive of deteriorated condition.

8. The complainants state that around 10.00 am on the next morning, relatives were called and were informed that patient had developed infection inside and they have aspirated chocolate brown colored fluid through Ryle's tube. At this point of time relatives replied them that when patient is hospitalized it is expected from the hospital and staff to take proper and reasonable care so as to prevent infection but because of their carelessness and inhuman casual approach had provided an opportunity to set on infection. On the very evening, the complainants were shocked to learn that condition of the patient is deteriorated and not good. The doctors on duty then recommended pathological tests which were carried out thereafter and it was revealed from the reports thereof that all pathological investigations which were showing normal values before the operation, have now become abnormal and it is suggestive of deteriorated condition. After clinical examination, complainants were informed that spread of infection is fast and it has badly affected movement of intestine so that contents therein are not moving smoothly. The doctors then aspirated chocolate brown. colored fluid using special tube and sent for further investigation. A team of doctors called thereafter and in the meanwhile patient's condition deteriorated and sonography of chest was recommended. The complainants state that when sonography was performed, it came to know that fluid like material has been observed near pleural! surfaces. The complainants state now the doctors awakened and performed GI endoscopy during evening hours to find out the real

cause of concern. The complainants' state that in the middle of endoscopy, relatives were informed that blood supply to the bowel is inadequate may be either because of blockage or because of disruption. The complainants state that it was also explained that restoring blood supply is not the only problem but slow pulse rate is also of important and therefore they now declared that the condition of the patient is critical.

9. It is further contended that it was well within the control and management of the hospital staff to take reasonable care and caution to prevent infection after surgery, but since they did not care and ultimately patient had suffered. The complainants state that there is nothing wrong if complainants, being citizen, expect that hospitals are not to be instrument or institute for spreading of infection. The spread of infection in this case, lead to an alarming situation where condition of the patient was so deteriorated which compelled the doctors to perform another surgery and. that too for saving life of patient, further it is submitted that Dr. Chirag Desai was called and he performed Laparotomy and found that some part of bowel had developed gangrene and there was no option but to remove surgically. And further it was explained by the doctor that to avoid any further infection inside the abdomen, two end parts of bowel has been kept out side. And further state that after second surgery, for few hours, patient became stable and was able to recognize some persons. As soon as the patient became stable, again the doctors started behaving in casual manner and it resulted into serious and permanent damage to the patient.

10. Further it is submitted that because on 18th morning, patient was not able to open his eyes and he was found drowsy. When the doctors were informed about this, even without examining the patient, they replied that it may be because of sedation and waited for about few more hours to see response to the medicines. On 20th the complainants were told that patient's pulse rate has become rapid and rhythm of heart is also irregular and for that cardiologist will have to be consulted. Further it is stated that condition of the patient so worsened that when a specialist doctor came and tried to regularize heart and pulse rate, he failed. It is further added that when the question regarding health status of the patient was asked, the doctors replied that if patient survives with the help of ventilator even for 15 days, there are possibilities of recovery of patient and he can go by walk however it will cost up to 15 Lacs. The complainants state that from the reports of pathological tests it is clear that patient's kidney is damaged to a large extent and tissues have been destructed due to bacteria or because of its toxins which lead to higher ammonia. Looking to the condition of the patient, treating doctors then planned for CT scan to see whether bowels are in order or infection has developed further. Since there was no confirm diagnosis from the team of doctors with regard to ailment that lead to present condition.

11. After clinical examination, complainants were informed that spread of infection is fast and it has badly affected movement of intestine so that contents therein are not moving smoothly. The doctors then aspirated chocolate brown colored fluid using special tube and sent for further investigation. A team of doctors called



thereafter and in the meanwhile patient's condition deteriorated a sonography of chest was recommended. The complainants state that when sonography was performed, it came to know that fluid like material has been observed near pleural surfaces. The complainant state now the doctors awakened and performed GI endoscopy during evening hours to find out the real cause of concern, The complainants' state that in the middle of endoscopy, relatives were informed that blood supply to the bowel is inadequate may be either because of blockage or because of disruption. The complainants state that it was also explained that restoring blood supply is not the only problem but slow pulse rate is also of important and therefore they now declared that the condition of the patient is critical.

12. The complainant state that it was well within the control and management of the hospital staff to take reasonable care and caution to prevent the infection after surgery, but since they did not care and ultimately patient had suffered. The complainants state that there is nothing wrong if complainants, being citizen, except that hospitals are not to be instrument or institute for spreading of infection. The spread of infection in this case, lead to an alarming situation where condition of the patient was so deteriorated which compelled the doctors to perform another surgery and that too for saving life of patient! The complainants state that Dr. Chirag Desai was called and he performed Laparotomy and found that some part of bowel and developed gangrene and there was no option but to remove it surgically, the complainants' state that it was also further explained that to avoid any further infection inside the abdomen,

two end parts of bowel has been kept out side. The complainants state that after second surgery, for few hours, patient became stable and was able to recognize some persons. As soon as the patient become stable, again the doctors started behaving in casual manner and it resulted into serious and permanent damage to the patient.

13. The complainants state that on 18<sup>th</sup> morning, patient was not able to open his eyes and he was found drowsy. When the doctors were informed about this, even without examining the patient, they replied that it may be because of sedation and waited for about few more hours to see response to the medicines, On 20<sup>th</sup> the complainants were told that patient's pulse rate has become rapid and rhythm of heart is also irregular and for that cardiologist will have to be consulted. The complainants state that condition of the patient so worsened that when a specialist doctor came and tried to regularize heart and pulse rate, he failed. The complainants state that when the question regarding health status of the patient was asked, the doctors replied that if patient survives with the help of ventilator even for 15 days, there are possibilities of recovery of patient and he can go by walk however it will cost up to 15 Lacs. The complainants state that from the reports of pathological tests it is clear that patient's kidney is damaged to a large extent and tissues have been destructed due to bacteria or because of its toxins which lead to higher ammonia. Looking to the condition of the patient, treating doctors then planned for CT scan to see whether bowels are in order or infection has developed further. Since there was no confirm diagnosis from the

team of doctors with regard to ailment that lead to present condition of the patient and that too despite incurring huge expenses, the relatives with no other option in hand, asked them about the possibility of shifting of patient to another hospital. The complainants state that it is at this juncture the doctors in charge of treatments found themselves in difficulty and they were trying to shift their burden to others.

14. The complainants state that when it was observed that there was difference of opinion among themselves which will not yield any fruitful result and therefore the complainants had no option but to shift the patient to another hospital and therefore asked for discharge. The complainants state that doctors in charge were not ready to give discharge and therefore they put a condition that complainants shall have to sign a letter for Discharge Against Medical Advice. The complainants state that when patient was shifted to Kakdia Hospital on 22<sup>nd</sup> he was having multiple organ failure due to uncontrolled infection and his condition was in irreversible phase. And although after the best efforts were done at Kakadiya hospital for retrieval of patient, but patient succumbed to the ailment and lost his life. The doctor on duty has certificate that Mr. P C Sukumaran lost his life due to cardio-respiratory arrest because of MODS followed by CABG and Laparotomy.

15. Further added that before admission to the hospital, patient Mr. P. C Sukumaran was living normal life except the ailment for treatment was required for cough, general weakness, recent complaint of constipation etc. over and

above his chief complaint of pain which starts from back but ends at chest. The complainant says and submits that pathological investigations have proved it that patient's vital parameters were within normal range and the same have been affected due to carelessness and negligent attitude on the part of the staff and doctors of the hospital and in such case the hospital is answerable to the relative of the patient. The complainant says and submit that causing of gangrene followed by infection is a serious matter and it clearly shows negligent attitude on the part of treating staff. The complainant also says and submit that it is matter of even laymen's knowledge that gangrene sets in from the development of phase of infection and if the treating doctor is not keeping his eyes on the development of infection then he cannot be said to have diligently and is guilty of negligence.

16. It is further submitted that loss of life of person gives a great shock to his/her family members and especially when it is ultimately death. Mr. P C Sukumaran, an eminent administrator, lost his life because there was no administration control over the staff members of the opponent hospital and there was total failure to diagnose correct ailment at an appropriate time and infection was not detected at initial stage which resulted into stoppage of movements of waste inside the body. It is contended that it is also known even to layman that stoppage of movements of waste inside body would cause further damage to the person but the treating doctor ignored or over looked this aspect and therefore it spread like anything and lead to multiple organ failure.

17. The complainants say and submit that the opponent hospital has recovered around Rs.7,47,000/- towards hospital bill and despite that patient and his relatives had to suffer because life could not be saved. The complainants say and submit that reasonable care and caution was not taken while rendering treatment to patient Mr. P C Sukumaran. The complainants say and submit that causal approach of the staff members and resident doctors have been proved ignition point for grave infective condition. The complainants say and submit that repeatedly they were given information regarding patient's complaints but did not acted upon and their casual approach for rendering service caused delay in diagnosis which ultimately worsened the condition of the patient.

18. Thereby this is say and submit that life of an experienced person is an important asset to the family. Thereby a disciplined administrator had lost his life, that too untimely, certainly gives cause of action to his family members qua the hospital, staff and also the doctors in charge of treatment. his family had lost the great shelter and by no stretch of imagination value of his life and experienced guidance can be assessed in terms of money. However, considering his age, his dignity, experience, social status and the limitations of his life expectancy etc., it would not be exaggerated if Rs. 15,00,000/- is claimed for loss of his life and values of his services to his family and also to the society. The complainants say and submit that the complainant no. 3 lost her life companion/ spouse and she is also entitle to consortium which can safely be assessed for Rs. 1,00,000/- for the rest of her life. The complainants say

and submit that they have incurred expenses of about 8 Lacs for treatment of deceased Mr. PC Sukumaran of which more than Rs. 7,00,000/- have been paid to the opponent hospitals. The complainants say and submit that the amount so expended did not yield desired result and that too because of carelessness of doctors and staff and therefore the said amount is required to be refunded to the complainants. The complainants say and submit that the afore said amount was not paltry amount so that complainants forgo their right to recover the same but even for the sake of setting an example to doctors and staff that in case of negligence and carelessness even the bill amount of treatment is to be refunded.

19. Opponents has submitted their reply at Exh.6 at page no.118. opponent submitted that the present complaint is not maintainable in law and is false. The no cause of action has arisen against Opp. Parties and therefore, complaint be dismissed. The complaint is barred by limitation and laches; Opp. Parties denies that the present Forum/Court has jurisdiction to try this case.

20. The Complaint is required to be dismissed on the ground of non- joinder for necessary and proper parties. The deceased Mr. P.C. Sukumaran has produced document showing that he has taken treatment at Narayan Hrudayalaya, a multi speciality hospital at Ahmedabad. Dr. Vipul Kapoor, Dr. Parag Sheth, Dr. Nitin Jain, Dr. Paresh Shah, Dr. Hardik Koshti, Dr. Shavan Vohra, Dr. Dipal M. Shah, Dr. Neha Shah, Dr. Bhavesh Prajapati, Dr. Sanjay Saxena, Dr. Chirag Desai, Dr. Swati Upadhyay. Dr. Rajesh Sheth, Dr. Shanti Bhushan, Dr. Chirag Shah, Dr. Shamik Shah, Dr. Viral Shah, Dr.

Kamal Sharma, Dr. Suchita Mudgekar, Kakadia Hospital, Dr. Paresh gohel, Dr. Yogesh Makwana.

21. The patient-P.C. Sukumaran died at Kakadia Hospital under treatment of Dr. Paresh Gohel. In view of above, as this case relates to medical negligence and deceased P.C. Sukumaran has taken treatment from so many doctors. It is necessary to join the above-mentioned doctors and hospital in the present complaint to decide completely, effectually and therefore, a complainant has not joined necessary and proper parties, the complaint is required to be dismissed.

22. The Complainant has not produced complete case papers of Kakadia Hospital. Narayan Hrudalaya Miti-Speciality Hospital and all other doctors. Therefore, the complainant has concealed true facts and therefore, complaint is required to be rejected.

23. Further it is submitted that Opp. Parties have filed Application dated 12.11.2014 opposing admission of the complaint, the same forms part of this reply for brevity. the same is not repeated here as it is already on record of this Hon'ble Commission and opp. Parties reiterate the same.

24. Opp. Parties denies all the allegations of negligence, deficiency of service, etc. made against Opp. Parties in the complaint. Opp. Parties denies that complainant is entitled to Rs.20,00,000/- Rs.51,000/- + Rs.40,000/- as claimed by complainant in Para-16 of also the complaint.

25. Further it is submitted that Opp. Parties submit that the true facts are as mentioned in its discharge Summary (Discharge against Medical Advice) and the Consent form which is signed by Mr. P.C. Sukumaran's son, Anil Sukumaran who is complainant No.1. Further, they have taken discharge against medical advice and therefore, on the face of it, telling the hospital is negligent is prima facie false as on the principle of res-ipse-locutor that the, "the things speak for itself". When they themselves decided and taken medical treatment as they thought fit against the opinion of the medical doctor/hospital and hence files this complaint on Medical Negligence, the complaint is required to be dismissed. Specially when the patient has died on 23.10.2013 at 4.45 p.m. at Kakadia Hospital and he was Discharged Against Medical Advice on 22.10.2013 at 1.09 p.m. from the Apollo Hospital, i.e. patient died after 16 hrs. and what transpired in that 16 hrs. is not explained by the complainant and hence, the complaint is required to be rejected as complainant has not come out with complete true facts and records.

26. Further it is submitted that with regard to para-1 of the complaint, Opp. Parties denies the contentions and submit that Opp. Parties are not aware whether complainant no. 1 & 2 are brothers and No.3 is mother and wife of Shri P.C. Sukumaran was retired executive of Food Corporation of India and therefore, does not admit the same, the complainants must prove the same. Opp. Parties are not aware that deceased-P.C. Sukumaran was retired executive of Food Corporation of India and therefore, do not admit the same. Opp. Parties denies the allegation that deceased-P.C. Sukumaran lost his life



due to Opp. Parties negligence and carelessness as alleged.

27. With reference to para-2 to 11 of the complaint, the averments, contentions and allegations raised against opp. Parties are denied. Opp. Parties reiterate that the treatment done by opp. Parties is correct and there no deficiency of service and negligence on the part of the Opp. Parties.

28. With reference to para-12 & 13 of the complaint, the contention and allegation about the charges etc, are not correct and not admitted. Complainant has taken discharge of the deceased against medical advice. Therefore, complaint be dismissed. There is no negligence on the part of the doctor/hospital as the complainant shifted deceased-Mr. P.C. Sukumaran against medical advice, to Kakadia Hospital where the patient died.

29. With regard to para-14 of the complaint, opp. Parties denies that no cause of action arises against opp. Parties as patient has died in another hospital. Hence, this complaint is not maintainable against the opp. Parties- Apollo Hospitals.

30. Opp. Parties submit that proper medical treatment was given and proper care was taken by them and there is no medical negligence or deficiency in service on the part of the Opp. Parties. Complainant has got discharged patient from opp, Parties' hospital against medical advice.

31. In view of the above, there is no negligence or carelessness on the part of the opp. Parties and the

treatment given by their staff/doctors. Therefore, the complaint of the complainant is required to be dismissed.

32. With reference to para-15 & 16 of the complaint, opp.

Parties denies that complainant is entitled to claim money as claimed by them in the complaint. The complaint is false so it be rejected with heavy cost.

33. Heard both the sides, gone through the records of this case in details, facts and circumstances to this complaint is very short one ,whether the hospitals were negligent to treat the patient in time? or is there any deficiency in service after post operation treatment and care.

34. Legal representative Mr. Mehta on behalf of the complainants has submitted before me that patient was admitted in the opponent hospital for the treatment of CABG and it was duly done by the hospital and there was no problem at that time, now the remaining issue is about the postoperative circumstances, only the attending staff in the ward it is very clear situation on record disclosed that immediately after completion of operation of CABG patient was not attended by relatives, and patient was only under control and supervision of hospital staff it is admitted position and thereby immediate if any problem suffer or feels by the patient, the patient was not in the position to give intimation to the attending staff but because it was a duty of attending and ward staff to look after the patient physically and clinically and that duty was not duly performed by the attending staff in time.

35. Legal representative Mr. Rajiv Mehta on behalf of the complainants has submitted that as he referred at page

No. 10 CABG operation was performed and thereafter inside the abdominal infection was developed and patient was having discomfort due to that the concern staff was intimated and thereby it was assured by the staff that there is nothing to worry about it is just a regular discomfort after the operation and also assured that necessary treatment will be given. The assurance for the said treatment was not performed in time by the attending staff and required attention to patient was not obtain, and nothing is on record as the concerned staff intimated doctors? and what step is taken by the doctor? for that Mr. Rajiv Mehta submitted before me that no such treatment records are produced by the opponent hospital and thereby it is duty casted upon that this point established by the complainant side and it is duty casted upon burden of proof is shift upon to the opponent side.

36.As patient was fully under control and in supervision of hospital. It is thereby concern of doctor and concern staff has to serve the patient duly and proper care of any emergency arisen after post operation treatment and whole body treatment are to be availed in time there by initially all this things are established on record that there is no problem of CABG operation only but the post operation issue was occurred and suffer from the pain etc. the necessary intimation given to the staff is there on record.

37.Mr. Rajiv Mehta has referred at page no.4 Para 5 is submitted that the pre operation test was carried out and schedule the operative surgery on next day i.e. 10.10.2013 every reports disclosed the normal situation

of the patient on that day and then how such type of whole body report after operation on 14.10.2013 is contrary report is to be looked into that question is there.

38. Before operation the patient is quite normal and subsequently after the operation on 13.10.2013 he started to suffer physically and ultimately second surgery advised to as it is necessity because of aspirated chocolate brown color fluid through the Ryle's tube. And second surgery was performed called Laparotomy and found that some part of the bowel had developed gangrene and that issue of developing infection through bacteria and it is to be controlled in advance in time after the clinical observation and having necessary pathological reports but it was not carried out in time as per the submission of Legal Representative Mr. Mehta and also added that it was casually taken by attending staff, nor did it was investigated and diagnosed on time regarding chocolate brown fluid collected in the intestine due to that ultimately patient undergone to the second operation as it was required however patient was not control even after the treatment given and by performing operation.

39. on 20.10.2013 heart become irregular, kidney was damage as per the report of the hospital and against advise of the medical staff of the hospital patient took discharge from the Apollo hospital and shifted to Kakadiya hospital, on next day patient was expire and the medical certificate was given from the Kakadiya hospital wherein cause of death is narrated that such postoperative problems occurred with the patient and ultimately he died and so that in coming up with the

question regarding postoperative damage and thereby patient cannot be saved by the hospital in question.

40. Mr. Mehta has drawn my attention at page no.17,32-35 is clearly suggest that after the first operation complication has happen with the patient and thereby report in question arisen as per the page no.35 in report of USG (BED SIDE) it suggest that Mild to moderate right pleural effusion noted. Minimal left Pleural effusion is also seen, considering this immediately necessary treatment is required to be given to the patient is not given otherwise patient might have saved his life.

41. Regarding that Ld. Advocate Mr Bhargav Pandya has submitted before me that hospital has taken proper care and all the necessary treatment was given to the patient and thereby such type of complaint is not tenable in eye of law but looking to the facts as narrated by legal representative of the complainants Mr. Mehta submitted that if the necessary steps were taken by the hospital in that circumstances after report of 14.10.2013, wherein chocolate brown color fluid was found in much quantity in at page no.37 Bio-chemistry report where in SGOT-AST,SGPT-ALT where found in much quantity in the report and therefore necessary steps in required to be taken by the hospital.

42. As page no.38,39,40 and 79 clearly suggest that there is requirement to give medical attention on such type of physical health by the hospital during the postoperative stage but it is taken or not is nowhere established on record thereby it suggest that in absence any strict proof on record by opponent side this medical papers that

which treatment was given in response of this report and in that circumstances complainant is succeed to establish that the proper treatment was not given to the hospital in time ant that's why ultimately patient was required to shift to other hospital due to financial issue and second opinion is required to obtain for the treatment and thereby against the medical advice patient obtained discharge from the hospital as per the page no.94.

43. Legal Representative of the complainant Mr. Mehta has drawn my attention at page no. 103 and as it was not given any information regarding which treatment was given and it is not established on record thereby he can definitely be came to conclusion that no proper treatment was given to the patient.

44. Further Legal representative Mr. Mehta submitted before me that on 22.10.2013 discharge was taken from the opponent hospital and he was shifted to Kakadiya hospital on 23.10.2013 and immediate death occurred reason given for death is cardio-respiratory arrest because of MODS followed by CABG and Laparotomy.

45. Legal representative Mr. Mehta further drawn my attention on the cross-examination of Dr. Abhijat Sheth at page no. 204, as he has filed an affidavit in defending the facts and declared that so many points about the treatment and patient was duly taken care by the hospital.

46. In that cross examination legal representative Mr. Mehta initially questioned to the Dr. Abhijit Sheth that he has not participated in any treatment to the concerned

patient hear in, only he has examine the case papers, discharge summery, investigation report and death certificate and relied upon this study he has given the affidavit before the commission, that's why here it is necessary to question that when the person has only studied the papers and not participated in treating the patient than only by way of papers reading or paper study he cannot give appropriate opinion.

47. Further Dr. Abhijat Sheth has submitted during his cross-examination that he has studied the indoor case papers of patient but it is question before me that if the case papers are studied by Dr. Abhijat Sheth and then what was the difficulty or issue about not submitting the indoor case paper before the commission and that's why adverse inference is required to be drawn that some facts are hidden by the hospital and there was suppression of material facts according to the submission of Mr. Mehta as there is deficiency in service regarding treating the patient properly.

48. Further Mr. Mehta submitted before me that Doctor was not in a position to advance before the court that what treatment, what medicine was given to the patient is not disclosed before the commission and therefore the Dr. Abhijat Sheth evidence cannot be looked into as a material because he was not aware about what complaint patient was having and what treatment he was given , he was not in a position to give that answer, by only referring the discharge summery, case papers, death certificate he can not justify the situation of patient so this evidence is not considered in the position of the case.

49. Moreover he has answered about page no.97 to 102 are discharge summery and is relevant papers but in addition to that he said that he cannot say about any other papers available and as we have discussed earlier that fact about the proper treatment was not established on record if the hospital was having the indoor treatment papers which is normally kept with the ward in charge, where in whole the treatment is time to time noted and narrated as that is with the possession of the hospital and that have to be produced on record to establish their version of the case that patient was given due proper care and treatment it is absent on record and it should be main factor to be considered at the time of liability and the responsibility of the hospital.

50. As per the cross-examination Dr. Abhijat Sheth is a Medical Director he has not came across with the patient, he has not investigated anything about the patient and he has also disclosed that he has not directly examine the patient during his treatment and therefore whichever he disclosed the facts during the cross-examination before the commission is merely from the case papers studies, that's why his answers is to be looked into there was complaint of the patient on the next day of the operation regarding abdomen pain, how he can opine whether it was post-operative infection developed or not and that's why he has given the random answer before the commission that there may be a so many reasons about the abdomen pain of the complaint of the patient but if he was not came across with the patient treatment and then how can he gave such random answer regarding the patient having pain due to gas



trouble or any surgery pain, here itself suggest that something is hidden. therefore, I am of the opinion that doctor's evidence is on the contrary give raise reasonable presumption in favor of the complainant that there was no determine in time for diagnose by attending doctor or export Doctor.

51. There is evidence that on the second day of the operation patient complaint to the attending staff and doctor on duty. And it is necessary for doctor to examine and informed to the export Doctor and export doctor will give the treatment, thereafter whether the intimation was given to the export doctor or not is not found on the papers not any acceptable evidence are brought on record by the opponent side.

52. Dr. Abhijat Sheth very well admitted that the abdomen pain and flatulence (rise of stomach) is to be examine by the doctor and it is duty of the doctor to diagnose the complaint about the patient, so that it is also established as we have discussed here nothing is on record whether doctor has examine and which treatment was given and thereby we have looked into at page no. 97 as the infection fluid was found so it was answered referring discharge summery but there was nothing on record to suggest that such infectious fluid was sucked or not it is not mentioned in the discharge summery that's why in my mind I confirm my view that the proper treatment was given is nowhere established by opponent side and if the infectious fluid is not there not established than it can be presume that cardio-respiratory arrest resulted due to non-compliance of proper treatment, ideal treatment is to be given under circumstances of fluid

collected in the intestine, ultimately the pulse of the heart are slow down and that's why it become an emergency as opine by the Dr. Abhijat sheth and it was also answered that under such case internal infection result into cardiac respiratory arrest was quite possible. it is also admitted that breathlessness also occurred to the patient, and thereby oxygen deficiency in the body of the patient and it is also admitted that ultimately the situation occurred to the patient under the circumstances in the present case Dr. has also agree that almost patient under the cardiac arrest itself suggest that there was a deficiency in proper treatment by the hospital staff in time.

53. Further Dr. Abhijat Sheth has admitted that two end of the bowel was cut and kept open and physical position was disturb due to that patient went into coma the Dr. Abhijat Sheth further has admitted that two cuts of the bowel was kept open due necrosis so it was kept open and gangrene was developed, further doctor was asked that patient's stomach was reopened and in that regard Doctor submitted during the cross examination that he has not recollect that information but on regarding discharge summery patient was suggested for second operation.

54. Further he has submitted that at the page no.103 cause of death was due to cardio-respiratory arrest because of MODS it is admitted that infection developed in the whole body of the patient there is a possibility of MODS resulted and it is also admitted that infection can cause secondary complication for cardiac respiratory arrest.

55. Considered all this evidence relied upon above all this evidence legal representative of the complainant Mr. Mehta submitted before me that in absence of medical papers on record adverse inference is required, as per the cross examine of the Dr. Abhijat Sheth as an expert person give answer in the matter as it is traced out that gangrene was developed in the intestine and that's why it was advice to remove even therefore it is very well established on record that the gangrene was developed and that's why the two end of bowel was cut down and kept open.

56. In concluding the argument Mr. Mehta has submitted that hospital was negligent toward patient by attending staff, and even the Doctors taken care is to be question mark and it can be presume information about the treatment by the Abhijit Sheth and he has answer on the affidavit suggest that document regarding indoor treatment are in the possession of the hospital however are not produced before the forum to looked into and that's why some suppression and hidden facts are there and that's why commission has to go under presumption adverse inference whichever the duty to produce the evidence before the commission and fails to produce than court has to accept the story and submission on behalf of the complainant side.

57. Accordingly it should be required to be concluded that hospital was fails to perform its duty properly and that was negligency as initial the complaint has advanced and narrated each and every factual aspect and submitted that pathological report each and every suggest that before the operation of CABG position of the patient was

normal are reported and subsequently under which circumstances such infection are occurred and why it was not control in time if there was a proper treatment given than there was possibility of saving the life of the patient so in support of this submission.

58. Legal representative Mr. Mehta has submitted before me that the judgement IV (2004) CPJ 40 (SC) Supreme Court of India Smt. Savita Garg Vs. The Director, National Heart Institution where in it is observed that in when complainant as material established through his complaint than complainant have not such a heavy burden on the patient or the family members/relatives to implead all those doctors who have treated the patient or the nursing staff to be impleaded as party. Thereby issue raised on behalf of the opponents side individual Doctor or staff are not a party it is not a fetal, once a claim petition is filed and the claimant has successfully discharged the initial burden that the hospital was negligent and as a result of such negligence patient dies than in that case the burden lies on the hospital and the concerned doctor who treated that patient that there was no negligence in the treatment. Since the burden is on the hospital, they can discharge the same by producing that doctor who treated the patient in defense to substantiate their allegation there was no negligence. In fact it is the hospital who engage the treating doctor thereafter it is their responsibility. The burden is greater on the institution/hospital than that of the claimant. The institution is private body and they are responsible to provide their efficient services and if they discharge their efficient services there are couple of weak links which has caused damages to the patient and hospital to

justify the same and it is not possible for the claimant to implead all of them as parties. To read with this judgement is clearly disclosed that once the initial burden is established by the complainant side than all the duties to established contrary is required on the part of the hospital.

59. Further Mr. Mehta submitted judgment that once the allegation is made that the patient was admitted in particular hospital evidence is produced to because of lack of proper care and negligency than the burden is lies on the hospital to justified there was no negligency on the part of the treating doctor or hospital therefore in any case the hospital was in better possession to disclosed that what care, what treatment and what medicine was given to the patient it is duty of the hospital to satisfy that there was no negligence on the part of their side. And thereby as we have elaborately discussed the judgement that and referring to the cross-examination of Dr. Abhijat Sheth it is very well traced out transpire that by which treatment by what care and which medication is given to the patient that there has to established by producing necessary documentary proof which was in possession of the hospital it is not brought on record it is required to accept the version on legal representative Mr. Mehta that there was negligency in service and it is totally resulted there non produced among the necessary documents and that has to be produced by the hospital as per the submission of Supreme Court as cited by the Legal representative Mr. Mehta for the complainant and has disclosed as per the submission that the opponent side that no case papers are produced about treating the patient nor any effective evidence are brought on record

and that's why which ever the events are narrated in the complaint are fully acceptable negligency and failure can be concluded on the part of the hospital only assurance was given not any effective evidence about the treatment was established and here duty to maintain the record of the hospital.

60. and thererby referring to the judgement Ld. Representative that IV(2009) CPJ 1(NC) Sukesh Jain Vs. Dr. Mukesh Jain & Ors. wherein head note 2. that Medical Negligence Documents/Medical Record non-maintenance amounts to deficiency in service.

61. Thereby legal representative Mr. Mehta insisted me to look there evidence and argument as advance in complaint very well narrated the part regarding negligence and carelessness is to be contravene by producing document and that document are maintain as per the evidence of Dr Abhijat Sheth it is referred and given the answer in cross examination questionery itself suggest that whether it was maintained or not maintained if not maintain than it is a according to the judgement here in above is required referred as the deficiency in service of the hospital.

62. I am coming to the conclusion that necessary treatment is given by the hospital staff and doctor and it is their duty to treat the patient immediately and such treatment are not given as per the medical norms and patient ultimately loss his life for want of immediate treatment in time availed by the hospital to the patient and it suggest that service was duly given proper treatment are to be established through the documentary evidence

which is normally a duty of the hospital to maintain, but no such answer is given on the point for was suppression document before the commission.

63. Further I am of the opinion that in absence of family members, postoperative hospitalization in the ward, the patient under the effect of the medicine and he was not in a position to inform to concern attending staff and if the family, relative are with him than it might possible to draw attention regarding complaint of the patient in time, moreover if the arrangement for family member not remain with patient than it is high level liabilities to observe the patient in time and that is why failure in the case.

64. Moreover in absence medical papers of treatment whether the primary or pre operation necessary medicine was given to them to decrease the infection is also absent and that's why whether the proper care are required for pre operation treatment is to be given to decrease the possibility of infection is also not disclosed here in the case by the hospital side, that's why it is my view is there was possibility and than in absence of proper post operative treatment are not disclosed on record fully simply halfheartedly answer by Dr.Abhijat Sheth cannot be accepted as evidence .

65. That's why thereby however no document produce by the opponents side and itself suggest for the conclusion it is deficiency in service so far as doctor and hospital are concern and medical council of india has prescribe norms and internationally also medical records are expected to be well recorded and are to be safe guard

than under such situation is to be in practice for the pre and post operation treatment here it is absent as we have discussed than naturally, I am incline to accept the argument advance on complainant side.

66. Moreover Ld. Mehta has drawn my attention IV CPJ 834 NC Bangalore children's hospital & research centre vs. Shri Sridhar Holalkere & Ors. where in it is observed that Document produced have not been proved since signature of doctors who has attended on patient and prescribed medicines are not available on prescriptions nor have these been confirmed by affidavits of any doctors. Hereby medical examination cannot excuse acceptable any negligency committed by their own staff and deficiency in service through referring this judgement I endorse my view here in the case nothing produced on record that treated doctors affidavit are on record nor any treating staff was there present and which manner they have treated are not record simply medical director of the hospital has given the evidence cannot be accepted and tenable it is duty of the commanding doctor of that time to produce the documentary evidence to prove there service was perfectly given. And the norms of the Medical Council of India is also nowhere established by the hospital here in the case.

67. Ld. Advocate Mr. Bhargav Pandya has submitted before me that only because of complainant story and sympathy cannot take place of truth that's why it is the duty of complainant side to establish whichever the cases advanced in compliant, because the patient was treated in different hospitals as he was treated in Narayan Hrudayalaya hospital and that was not brought on



record, no where anything produced before the commission about pre-admitting in the Apollo hospital probability and possibility is there complication might have with the patient to according to my view we have elaborately discussed about the situation of patient post operation treatment given to the hospital and there was no single one complaint about the operation of CABG but post operation care are not taken duly and that's why which ever the complication occurred in the infection developed high level and the patient was operated for the second time in the hospital but than the patient has operation he obtained discomfort and because there was second opinion was desire by their relatives and that's why only because is there I can accept the version on behalf of the hospital.

68. Further Ld. Advocate Mr. Bhargav Pandya has drawn my attention considering the discharge summery at page no. 4-94,97 disclosed the facts that due proper treatment was given through the doctor has attained the patient that is Dr. Shraavan Bohra (Gastroenterologist's) reference was done, Dr. Shanti Bhushan (Critical Care), Dr. Chirag Shah (Oncologist), Dr. Shamik Shah (Nephrologist) and Dr. Viral Shah (Pulmonologist) were consulted attend the patient but I would like to question here that doctor was attend to treatment to the patient during the hospitalization what treatment what medicine when given is not on record that's why even treating the patient not fully satisfied to commission that due treatment given by the hospital only referring the name to the discharge summery it is to be looked that discharge summery can not take place as documentary evidence which is required as per the norms of the

medical council of India and international norms is to be followed and not followed traced out from the Dr. Abhijat sheth evidence cross-examination nowhere medical treatment given in possession even though medical treatment given are not produce on record .

69. Thereby as earlier I observed that adverse inference can be drawn there was no proper treatment was given if it is given so what was hurdle of hospital to established there evidence that taken proper care and proper treatment in their defense I would like to note only naming the doctors in the discharge summery is not satisfactory acceptable version even the hospital has taken the proper care given proper medicine and in time it was given because of the medical papers brought on record then definitely commission can reach and see that which treatment was given what medical was given is need to be obtain and which report is followed and required treatment was given in time is absent as we have discussed here in above and that's why I came to conclusion that argument advanced on behalf of the opponent side by Ld. Advocate Mr. Bargav Pandya is not helpful to the defense.

70. Ld. Advocate Mr. Bargav Pandya has submitted before me that complainants came up with the story only and it can be imaginary in mind of complainants to develop complaint, but Compliant must have to be come up with concrete document regarding expert evidence opinion regarding the question raised by the complainant in their complaint it is absence and that's why present complaint is not maintainable in form of a case advanced on behalf of the complainant side.

71. Moreover in this regards Legal representative Mr. Rajiv Mehta has submitted before me that if the complainant success and a case advanced here in above and the opponents duty to established their case and burden is fully on the part of the opponent side because there is failure to produce the treatment papers as required to be maintained as per the norms if that all are absent than the question raised by the opponent side that no export opinion has brought on record and regarding this there is a legal situation is there it is not mandatory nor complainant shall be with the support of export opinion but when surrounding circumstances cumulative evidence is record or considering the evidence of medical director Dr. Abhijat Sheth here in the defense witness elaborately, and analytically discussed is there and it is resulted and concluded by me herein above I am of the opinion that each and every case is not commanded to produce export opinion for supporting the complainant side but miserably there is darkness in area of duties to produce the evidence in their hand in the opponent even though they have not such light on that particular thing that they have advanced , I am of the opinion that complainant is not fetal only because nonproducing the export opinion in conclude that as I came to conclusion that there is no possibility to individually mark to his negligency is there but collectively hospital through its shift doctor and attending staff are not performed their prescribed duties and ideal treatment in such circumstances is to be given are failure, and thereby when such circumstance is there that non production of treatment papers is an important

weapon in the hands of the hospital itself support to the complainant case.

72. Thereby I came to conclusion that when there are no circumstances no commanding evidence is there than cumulative effect is there and hospital staff and Doctor. behavior and non-established the whole treatment medicine, times by whom is not there and it was failure cannot be trace out hospital staff and doctor behavior can be taken cumulative fault and ultimately resulted to come to conclusion that there was a deficiency in nonperform proper duties and treatment given to the patient and ultimately patient was expire and result of in time treatment so I would like to allow this complaint.

73. Ld. Advocate Mr. Darshil Parikh on behalf of insurance company has submitted before me unless and until hospital is liable to pay any compensation or even though any kind of award is there than it is duty of the hospital to indemnify to pay payment regarding with this order than insurance company can indemnify amount whichever is ordered by the court but it is a primary duty to realize the amount of the complainant then it can be release from the insurance company.

74. Further Legal representative Mr. Mehta has submitted before me that calculating everything the bill given by the hospital i.e. at page no.105 amount of Rs. 7,86,635.20/- and further he has submitted before me that considering the age and skill of the deceased and dignity and experience and status and limitation of his life expectancy it will be a proper to award Rs.15,00,000/- to be awarded to the complainants moreover deceased

wife's maintenance Rs. 1,00,000/- is that amount is more than Rs.23,00,000/-was requested to be awarded to the complainant as reason assign to the complainant so looking to the facts and circumstances of the case. Id. Advocate Mr. Bhargav Pandya has submitted before me that such type of calculation is not possible for present complaint there must be considering the age also whichever the award is claimed by the complaint is not maintainable in eye of law.

75.Looking to the facts and circumstances I am of the opinion that patient was admitted in hospital for CABG operation of package of Rs. 1,53,000/- and thereafter complication developed and thereby deceased was kept by hospital for post operation treatment and such advice given to the patient and therefore total bill given by the hospital was Rs. 7,86,635.20/- is not to be required paid to the complainant side by the hospital on page no.105 moreover on sad demise of the deceased legal award is to be requested is to be considered whether as they have a right for that, as elaborately discussed scrutiny of the circumstances available on record it that the patient was 68 years old at the time of sad demise I would like to not enter in that area of factual calculation collectively, I would like to award Rs. 5,00,000/- lum-sum amount to the complainants side with 7% interest within 30 days from the date of filing the complaint.

#### FINAL ORDER

- i) Complaint No.218 of 2014 is partly allowed.

- ii) Opponents are directed to pay Rs. 5,00,000/- with 7% interest from the date of filing the complaint within 30 days of the order of the complaint.
- iii) Rs. 10,000/- for the cost of complaint.
- iv) Opponents i.e. hospital and insurance company jointly and severally pay the award amount with interest as ordered to the complainant within 30 days.
- v) Copy of the judgment be provided to the parties free of charge.

Pronounced in the open court on 13<sup>th</sup> october, 2021.

(M.J.Mehta)  
Judicial Member