BEFORE THE TELANGANA STATE CONSUMER DISPUTES REDRESSAL COMMISSION:HYDERABAD

C.C.51/2013

Between :

1.T.Ravindranathan, (Died)
S/o.Thanikachalam,
Aged about 73 years, Occupation : Advocate,
Resident of Flat No.301, Mangesh Mansion
H.No.695, Street No.17, Nallakunta,
Hyderabad – 500 044.

2. R.Diwakar, S/o.T.Ravindranathan,
Aged about 40 years, Occupation Software Engineer,
Resident of Texas, USA.

3. R.Vanitha, D/o.T.Ravindranathan,
Aged about 32 years,
Occupation Asst.Pharmacist at London,
Presently residing at her father's residence,
Resident of Flat No.301, Mangesh Mansion,
H.No.695, Street No.17, Nallakunta,
Hyderabad. .... Complainants

And

1.Apollo Hospital,
Represented by its Chairman Dr.Prathap C.Reddy &
Managing Director –Dr.Preetha Reddy,
Jubilee Hills, Hyderabad (AP)-500 033.

2. Dr.Jairamchander Pingle,
S/o.not known to complainants,
Aged :Major, Occupation Orthopaedic Surgeon at
Apollo Hospital,
Jubilee Hills, Hyderabad – 500 033.

3. Dr.J.N.Reddy,
S/o.not known to complainants,
Aged :Major, Occ:Anaesthetist at
Apollo Hospital,
Jubilee Hills, Hyderabad – 500 033.

4. Dr.K.Vani,
D/o.not known to complainants,
Aged :Major, Occ:Duty Doctor at
Apollo Hospital,
Jubilee Hills, Hyderabad – 500 033.

5. Dr.Anjum,
D/o. not known to the complainants,
Aged :Major, Occ:Employed with
Apollo Hospital,
Jubilee Hills, Hyderabad – 500 033.

6. Dr.Mukarram,
S/o.not known to complainants,
Aged :Major, Occ: Dr. at ICU,
Apollo Hospital,
Jubilee Hills, Hyderabad – 500 033.

7. Dr.Asha Subhalekha,
W/o. not known to complainants,
Aged :Major, Occ: Gastro-enterologist at
Apollo Hospital,
Jubilee Hills, Hyderabad – 500 033.

8. Dr.Badrinarayana,
S/o. not known to complainant,
Aged :Major, Occ: Cardiologist at
Apollo Hospital,
Jubilee Hills, Hyderabad – 500 033.

9. Dr.Y.Ganesh,
S/o.not known to complainants,
Aged :Major, Occ: Physician at
Apollo Hospital,
Jubilee Hills, Hyderabad – 500 033.

10. Dr.Rajasri Deb,
S/o.not known to the complainants,
Aged :Major, Occ: MET Doctor at
Apollo Hospital,
Jubilee Hills, Hyderabad – 500 033.

11. Ms.Sangeetha,
D/o.not known to the complainants,
Aged :Major, Occ: Duty Nurse at
Apollo Hospital,
Jubilee Hills, Hyderabad – 500 033.

12. Ms.Nisha,
D/o. not known to the complainants,
Aged :Major, Occ: Duty Nurse at
Apollo Hospital,
Jubilee Hills, Hyderabad – 500 033.

Counsel for the Complainants : M/s.Katta Laxmi Prasad

Counsel for the opposite parties : M/s.Indus Law Firm-O.Ps.1 to 4 & 7 to 10.

CORAM : Hon'ble Sri Justice M.S.K. Jaiswal, President.
And
Hon'ble Smt. Meena Ramanathan, Lady Member

WEDNESDAY, THE THIRD DAY OF NOVEMBER,
TWO THOUSAND TWENTY ONE .

Oral Order:

1. This is a complaint filed by the complainant under Section 17(1)(a)(i) of the Consumer Protection,1986 against the opposite parties praying to direct them pay Rs.27,65,500/- or as calculated under the Loss of Notional Earnings

of Rs.26,83,500/- along with interest @ 12% p.a. from the date of filing the complaint till the date of payment and also to refund the medical expenses incurred by him.

2. The brief facts of the case are as follows:

The complainant no.1 submits that his wife Smt.R.Pushpalatha aged 56 years was having pain in the right knee and was advised to undergo 'total knee replacement surgery' by Dr.Jairamchander Pingle – opp.party no.2 at opposite party no.1 hospital. She was operated on 8.3.2011 at 8.00 a.m. and was shifted from the ICU to Room No.303 B at about 5 pm. At 9 p.m. she was fed a little solid food (curd rice) and the patient vomited soon after. It is his case that the duty doctor (O.P.No.4) who attended to the patient failed to take any precautionary measures and on 9.3.2011, the patient was stated to be having oral secretions and though the Doctor tried to resuscitate, the patient was declared dead at 6.30 a.m. i.e. within 20 hours after the surgery.

It is his submission that after the surgery, the patient who was a known case of Asthma, Hypertension and Hiatus Hernia was not kept in the ICU and was not monitored. She was not given the due care and attention and for this gross negligence, the present complaint has been filed seeking the reliefs as stated supra.

3. Opposite parties 1 to 4 and 7 to 10 filed their Written Version contending that the patient Smt.R.Pushpalatha - 56 years old was diagnosed to be suffering from Bilateral Osteoarthritis of both knees. Right knee was more severe than the left. The patient was a known case of Hypertension, Bronchial Asthma and had Hiatus Hernia and Diverticulosis. After a thorough pre-operative evaluation, she underwent TKR of right knee with Styker Scorpio Knee Implants under spinal anesthesia on 8.3.2011. Post operatively patient recovered well and during the night, the patient became unconscious and unresponsive. She was immediately shifted to IPICU where she was intubated and mechanical ventilation was initiated. Inspite of all the measures to resuscitate, the condition of the patient deteriorated and she developed cardiac arrest and was declared dead on 9.3.2011 at 6.30 a.m. The allegation that death was caused because of food particles entering into the lungs is false and the expert opinion obtained by the complainants are baseless. Post operative vomiting is not uncommon and the patient was well managed. The complainants despite being well aware of the risks involved are attributing negligence against the opposite parties without any basis. With the above submissions, they seek dismissal of the complaint.

4. On behalf of the complainants, Evidence Affidavit and Additional Evidence Affidavits of the complainant no.1 as PW.1, Chief Evidence Affidavit of Dr.B.Ravi Kumar as PW.2, Chief Evidence Affidavit of Prof.P.K.Sharma – former Addl.Professor & Head of the Dept. of Forensic Medicine, All India Institute of Medial Sciences, New Delhi as PW.3 filed. On behalf of the complainants Exs.A1 to A8 are marked. Chief Affidavit of opposite party no.2 filed. On behalf of the opposite parties, Ex.B1 marked.

5. Heard both sides and perused the entire material available on record.

6. The points that arise for consideration are:

(i) Were the opposite parties negligent and deficient in not monitoring the patient /deceased closely after shifting her to the room?

(ii) If yes, are the complainants entitled to the reliefs as claimed for ?

7. The facts not in dispute are:-

i) The patient R.Pushpalatha aged 56 years – wife of the 1st complainant was suffering from bilateral osteoarthritis . She was a known case of Hypertension, Bronchial Asthma, Hiatus Hernia and Diverticulosis.

ii) The patient/deceased underwent TKR after thorough pre operative evaluation done by the Cardiologist, physician, anaesthesiologist and Gastroenterologist.

iii) Surgery was conducted by opposite party no.2 on 8.3.2011 and she was shifted to OT recovery room at 11.15 a.m. She was monitored there till 4 p.m. and then shifted to the ward.

8. It is the case of the complainants that the patient was shifted to the ward at 4 p.m. She was advised not to be given any solid food for 4 hours. At about 8 p.m. she was made to consume 2 or 3 spoons of curd rice and thereafter at 9 p.m. she vomited. At the time the patient vomited, only the duty doctor - opp.party no.4 attended to the patient and did not call in a specialist and this complacency proved fatal. In this regard, we have carefully perused Ex.A5 (also filed as Ex.B1)- Medical Emergency Team – Criteria And Assessment/Action Sheet maintained by opposite party no.1 hospital.
Page 28 of Ex.A5 - the surgeon has instructed that "NBM for 4 hours liquid followed by normal diet". This is dated soon after the surgery. Prior to surgery, the patient was thoroughly evaluated by a team of specialists and in this regard we refer to the advise given by Dr.Badrinarayan on pg.36 dt.6.3.2011 "Pt. can be taken xx for surgery with mild risk". Patient was received from OT at 4.15 p.m. and Dr.Vani checked on her at 6 pm. Dt.8.3.2011. At 9 p.m.

Dr.Vani has seen her again and complaints of vomiting are recorded. Vitals are stable and patient is conscious.

The next recording by the Doctor is on 9.3.2011 (pg.39) at 5:15 a.m. – the SP02 reading is extremely low 30-33% and MET doctor was duly informed. The patient at this point was found to be the responsive. We now correlate this to the nursing Assessment and Clinical Chart – Pg 30 & 31. Special attention is given to the date of surgery- 8.3.2011. Patient was duly monitored at 6 p.m., 10 p.m. and 2 a.m. on 9.3.2011.

As per the monitoring chart for SPO2, BP and patient's conscious level filed vide Ex.A5 pg.62. The patient was continuously checked every hour from 4 p.m. on 8.3.2011 to 5 a.m. on 9.3.2011 her SPO2 reading was very alarming – 38%. It is necessary to be a little critical at this point. The Nurse has recorded :

93% SPO2 at 4 a.m. on 9.3.2011
38% SPO2 at 5 a.m. on 9.3.2011
65% SPO2 at 5.05 a.m. on 9.3.2011

9. The onset of hypoxia was sudden and no proper explanation has been provided for this by the opposite parties. Till almost 4 a.m. on 9.3.2011, her SPO2 level was not falling but in the last hour the reading was extremely alarming and this has not been reasoned out by the opposite parties. The complainants have provided the expert medico legal opinion by Prof.R.K.Sharma vide Ex.A2. His comments are reproduced below:

> "1. Patient had history of long standing bronchial asthma, such patients need extra care post-operatively as their cough reflexes are not as strong as compared to non-bronchial asthma patients and such patients are liable for aspirations.
> 2. When the patient has vomited at 2100 hours on 8-3-2011, immediately her stomach would have been cleared by suction to prevent aspiration.
> 3. Patient was not examined for full 8 hours fully by a doctor from 2100 hours on 8.3.2011 to 0515 hours on 9-3-2011 as there is no entry.
> I find that it is a gross negligence in taking post-operative care which resulted in aspiration of food in lungs resulting in death. I find doctors and hospital grossly negligent in providing care to the patient."

This is further fortified by the opinion provided by Sinergy Medico Legal Foundation – vide Ex.A3. In both these exhibits, the fact that no doctor has attended on the patient after 9 p.m. on 8.3.2011 till 5.15 a.m. on 9.3.2011 is emphasized. Post operatively the patient had to be monitored for 48 hours carefully. Although the nurses have made their hourly checks and assessments, the post operative monitoring by the doctor is notably absent

especially in the given situation where the patient had a history of long standing Bronchial Asthma and had vomited soon after surgery.

10. The opposite parties have disputed these contentions stating that vomiting in the post operative period is not uncommon and subsequent to vomiting Dr.Vani - opposite party no.4 revisited the patient, examined her and found the condition of the patient quite stable – post vomiting. Unfortunately, the opposite party no.4 only checked on the patient at 9 p.m., soon after she vomited and did not revisit her till the next morning on 9.3.2011 at 5.15 a.m. when her SPO2 reading was at an all time low.

11. Immediately after the death , the body was kept at the hospital mortuary and the complainant went to Banjara Hills Police Station to lodge a complaint of medical negligence. The complaint was registered as FIR.No.227/2011 u/s.174 Cr.P.C. at 15:15 hrs. The body was apparently embalmed by opposite party no.1 hospital without the consent of the family which ought not to have been done before conducting the postmortem as it destroys the medico legal evidence. The cause of death as per the post mortem report, filed as Ex.A5 (pg.93) is given as "acute cardio-respiratory failure in a patient suffering with the Hypertensive Heart Disease".
This opinion is only suggestive and cannot be treated as conclusive when correlated with the Case Sheet findings and medical opinion adduced by Prof. Sharma vide Ex.A2. In this case the patient's BP on admission never exceeded 130/90 mm of hg and she was regular with her B.P. medication. Moreover, the patient underwent the complete pre operative evaluation where 2D Echo was also conducted and she had no h/o cardiac symptoms. This is not in dispute.

12. The specific allegation of the complainants is that the act of negligence commenced right from 4 p.m. of 8.3.2011 when the patient was shifted to the ward with a specific direction to be kept on fluids for 4 hours. She was administered food supplied by the opposite party no.1 hospital which caused her to vomit and led to the complications which were not attended to by any of the competent people. Had she been attended to by the competent doctors under whose care she underwent the surgery, this tragedy could have been averted. The opposite parties have not provided any substantiative evidence to show that the crucial hours of the patient were carefully attended to by competent doctors. The Expert Opinions marked as Exs.A2 & A3 have not been challenged by the opposite parties, hence their testimony remains unchallenged and uncontroverted. The other independent evidence that is

placed on record is that of PW.2 namely Dr.B.Ravi Kumar from Trivandrum. After analyzing the entire material, PW.2 gave his opinion as under:

> " At 9.00 P.M. the patient has vomited ? due to increased intracranial pressure due to cerebrovascular accident which was not detected in time. A Medical specialist should have been summoned at that point of time. No post operative rounds taken by the surgeon."

13. Now we refer to the Discharge Summary provided by the opposite party no.1 hospital and filed vide Ex.A5 – pg .68 & 71 "Post operatively patient developed aspiration into lungs and became unconscious and unresponsive. Immediately she was shifted to IP-ICU, intubated & connected with mechanical ventilator. ET Tube has full of secretions (? food products)".

Only at 4.45 am. on 9.3.2011 the Duty Nurse found the patient was having oral secretions, was very drowsy and informed the Duty Doctor-opp.party no.4. The medical emergency team was called and the doctor found there was some stridor and saturation was 90% . This is stated by the opposite parties in their Written Version. The fact that there was stridor was not noticed earlier by the nurses constantly checking on the patient every hour. Stridor is a harsh vibrating noise when breathing, caused by obstruction of the wind pipe or larynx. The fact that the patient was exhibiting these symptoms of respiratory distress, the opposite parties gravely neglected to attend on her earlier as stridor is often a medical emergency and securing the airway may be necessary.

14. The patient was a known case of Bronchial Asthma and if her airways become influenced and produced oral secretions, it makes it difficult for her to breathe

There are several things to be considered if the patient has asthma. An increased risk of surgical complications may arise because of asthma. To reduce the complications an assessment of asthma control and lung function is a must- for the pre-operative evaluation. Surgical anesthesia will need to be planned with the asthma condition in mind.

After surgery, the patient with an asthmatic condition will need close monitoring as well as post operative strategies to reduce her chances of developing respiratory issues.

Aspiration is when something enters the airways or lungs by accident. It may be food, liquid or some other material. This can cause serious problems.

If the asthma is optimally controlled the risk of surgery is very small with insignificant asthma complications. On the other hand the pre surgical evaluation must include pulmonary tests, review of medications and past

medical problems. Surgery may cause an asthma flare or related bronchospasm.

15. The patient vomited at 9 p.m. - was the necessary treatment carried out immediately is the important question. It is suggested that the patient's head is down in right lateral position to drain vomit away from the airway. Suction laryngoscopy to clear the airway. Consequences of pulmonary aspiration range from no injury at all to death within minutes from asphyxiation. These consequences depend upon the volume, particle size and underlying health status of the person.

16. In the instant case, the patient, a known case of asthma had just undergone knee replacement surgery. Hospitalized patients are especially at greater risk and more especially those who have just undergone a major surgery. The depressed level of consciousness and impaired airway defenses are contributory factors. Anesthesia certainly depresses the level of consciousness and increases the risk of aspiration in the semi conscious.

17. The opposite parties should have taken the care to reduce the risk of pulmonary aspiration. The vomitus produced by the patient should have been drained out instead of going back down her pharynx. Was immediate care provided to the patient when she vomited at 9 p.m.? Repeatedly the same question surfaces and a thorough perusal of the records submitted by the complainant and the hospital reveal that the patient was not closely monitored. Immediate management should have been provided by the surgeon and the anesthesia team. Anesthesia places patients at risk for aspiration. This risk results from the effects of medication, level of consciousness and loss of protective reflexes. (One of the pre disposing reasons can be asthma and hiatus hernia).

When the patient had regurgitated it was obvious that more careful monitoring was necessary. Having given the soft food to the patient – by the opposite party hospital, soon after surgery was rather negligent and deficient. (The time is critical).

It is critically important for surgeons and anesthesiologists to have an algorithm for minimizing aspiration events in patients. Was the head -down tilt position followed for the patient? Was her airway secured as rapidly as possible to prevent further soilage and to facilitate airway clearance- was it used on the patient? In cases of severe aspiration – cardio pulmonary arrest can occur. The opposite parties should have been aware of the risk factors, pre disposing conditions and immediate management options.

18. She vomited at 9 p.m. and passed away in the early hours of the morning. There was sufficient time to have safeguarded the patient against this fatal issue. Prompt suctioning of the airway would have lowered the risk of other complications and hypoxia. The knee replacement surgery by itself is not a life threatening procedure and had reasonable precautions been taken the ensuing complications could have been avoided and the tragedy averted. Had the opposite parties been more diligent and had the hospital staff monitored the patient closely soon after she vomited, the complication that resulted in the patient's death could have been avoided. The opposite parties failed to be continually mindful of the risk of aspiration. It was a preventable emergency and having the suction unit ready in high risk situations would have prevented the catastrophe.

The care was given entirely by the hospital staff comprising mainly of the nursing staff & duty doctor. They should have monitored the patient closely and especially after she vomited immediate response was totally lacking. Prompt care and attention was certainly lacking and the sequence of events is clearly indicative of negligence. The amount granted as compensation will never relieve the pain but may provide a modicum of solace to the complainants. We hold the opposite party no.1 – the hospital vicariously liable for the treatment given to the patient by their empanelled doctors and employees.

19. In the result, the complaint is partly allowed. Opposite party no.1 is directed to pay a sum of Rs.5 lakhs to the complainant along with costs of Rs.25,000/-. Time for compliance is 8 weeks, failing which the sum of Rs.5 lakhs will attract interest @ 7% p.a. thereafter till realization.

PRESIDENT LADY MEMBER

Dated : 03.11.2021

APPENDIX OF EVIDENCE
Witnesses examined

For the complainants

Evidence Aff. and Addl. Evidence Aff. of complainant no.1 as PW.1 filed.
Chief Evidence Affidavit of Dr.B.Ravi Kumar as PW.2 filed.
Chief Evidence Affidavit of Prof. P.K.Sharma as PW.3 filed.

For the opposite parties

Chief Evidence Affidavit of Opp.party no.2 filed

Exhibits marked on behalf of the complainants:

Ex.A1 - Photostat copy of FIR no.227/2011 dt.9.3.2011.
Ex.A2 - Photostat copy of Expert Medico-Legal Opinion dt.24.6.2011 given by Prof R.K.Sharma.
Ex.A3 - Photostat copy of Expert Opinion dt.2.7.2011 given by Sinergy Medico Legal Foundation.
Ex.A4 - Photostat copy of lr.dt.18.8.2011 from Dr.B.Ravi Kumar , Trivendrum to complainant no.1.
Ex.A5 - Photostat copy of Admission Card along with medical case sheet issued by opp.party no.1 hospital pertaining to Mrs.Pushpalatha.
Ex.A6 - Photostat copy of Bank Account statement of complainant no.2
Ex.A7 - Photostat copy of Passport of the complainant no.2
Ex.A8 - Photostat copy of Report of Post Mortem Examination.

Exhibits marked on behalf of the opposite parties :

Ex.B1 - Photostat copy of notice dt.11.3.2011 issued by Sub-Inspector of Police, PS Banjara Hills to the Medical Superintendent, Appolo Hospital/opp.party no.1, Reply Letters dt.15.3.2011 from opp.party no.2 and others along with Discharge Summary issued by opposite party no.1 hospital.

PRESIDENT **LADY MEMBER**

Dated: 03.11.2021