

Date of filing: 16.02.2022
Date of Disposal: 21.03.2024

**BEFORE THE III ADDITIONAL BANGALORE URBAN
DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION, BENGALURU - 560 027.**

DATED THIS THE 21st DAY OF MARCH 2024

CONSUMER COMPLAINT NO.42/2022

PRESENT:

SRI. SHIVARAMA K : PRESIDENT
SRI. CHANDRASHEKAR S NOOLA : MEMBER
SMT. REKHA SAYANNVAR : MEMBER

Sri. Rajith Babu @ Ranjith,
S/o. Kunhambu,
Aged about 57 years,
R/at No. 17, 3rd Cross,
Sreechakra Nagar, Andrahalli,
Bengaluru-560091.
Presently at:
House No. 1326, C Block,
Jahangiri Puri,
Near Dr. Gulati Poly Clinic,
Delhi-110033.
(Sri. Kumar. M.C, Advocate)

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COMPLAINANT

V/s



1. Dr. Devaprashanth. M,
Aged Major,
General and Laproscopic
Surgeon Suresh Hospital and
Maternity Home, Hegganahalli
Main Road,
Bengaluru-560091.

2. Suresh Hospital and Maternity
Home, Hegganahalli Main Road,
Bengaluru-560091.
Rep. by its Administrative Officer.
(Sri. K. Srinivasa, Advocate)

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OPPOSITE PARTIES

// JUDGEMENT //**BY SRI.SHIVARAMA K, PRESIDENT**

The complainant has filed this complaint u/sec. 35 of the Consumer Protection Act-2019 seeking for a direction to the opposite party to pay a sum of Rs.50,00,000/- as compensation and such other relief as this commission deems fit in the circumstances of the case.

2. It is not in dispute that on 02.05.2021 opposite party No. 1 had conducted surgery on the complainant in the hospital at opposite party No. 2 pertaining to the Fistula in the anus. Further, it is not in dispute that on 03.05.2021 the complainant was discharged from the hospital. Further,



it is not in dispute that the complainant got admitted to the hospital on 01.05.2021. It is not in dispute that the complainant got issued legal notice vide Ex.P7 dated: 16.07.2021 to opposite party No. 1 & 2.

3. It is the further case of the complainant that since the complainant had developed severe pain and oozing from the anal region and had unbearable pain and discomfort he contacted opposite party No. 2 hospital and got the surgery conducted from opposite party No. 1. Further, the cost of the surgery was Rs.40,750/- apart from some initial expenses on test, x-ray, consultation, post-operative care, including medicines and other miscellaneous expenses were Rs.25,000/-. Hence, the complainant had incurred total expenses on account of the treatment and surgery in the hands of opposite party No. 1 who conducted surgery at opposite party No. 2 hospital was Rs.70,000/-. Further, since complainant did not get any relief even after having medicines as prescribed and there was no improvement even after post-surgery with medication and rest and the same has not been cured as assured by opposite party No. 1 that within 5 days post-surgery the complainant would recover completely. Since, the pain has not been subsided he had consulted another Doctor at Shridi Sai Hospital and informed about the pre surgery at there, the Doctor at there after conducting the test required ascertained that the "Left Anterior Perianal Low Level Fistula" has not been removed through the surgery conducted. The complainant was



shocked to know of said fact and it was informed that the complainant had to spend another Rs.75,000/- to Rs.90,000/- for the next surgery. Since, the complainant was not able to spend that much of amount he intended to take appointment with opposite party No. 1 & 2 but he could not get appointment, later through a fake name he got appointment and consulted opposite party No. 1 at opposite party No. 2 hospital and opposite party No. 1 did not hear the problem and a scuffle broke out and a complaint came to be lodged on 29.06.2021 in petition No. 195/2021. Therefore, the complainant took Ayurvedic treatment at Sri. Dhanvantri Ayurveda Hospital, Bangalore and had felt some relief.

4. It is the further case of opposite party that the complainant had signed the consent form for the surgery and the said disease even after surgery cannot be completely cured and it depends on diet habits and the follow check-up and maintaining the food prescribed and the said disease is not permanently curable. Further, opposite party No. 1 had conducted the prescribed procedure as a prudent medical professional would do in the facts and circumstances of the case. Further, on 19.05.2021 the complainant had visited the hospital and has purchased the ointment prescribed and changed antibiotics and opposite party had explained the course of treatment. Further, opposite party No. 1 had in-depth knowledge of 6 years of practice in surgery and there was no black mark on the Doctor who performed the surgery.



Further, this complaint is filed to extract money from opposite party

5. To prove the case, the complainant (PW-1) has filed affidavit in the form of his evidence in chief and got marked Ex.P1 to P7 documents. Opposite party No. 1 (RW-1) has filed affidavit in the form of his evidence in chief and got marked Ex.R1 to R9 documents. Counsels for the complainant and opposite party No. 1 & 2 have filed their respective written arguments.

6. The points that would arise for consideration are as under:

i) Whether there is deficiency of service on the part of the opposite party?

ii) Whether the complainant is entitle for the relief sought ?

iii) What order?

7. Our findings on the aforesaid points are as follows:

Point No.1: In affirmative

Point No.2: partly in affirmative



Point No.3: As per the final order for the following;

REASONS

8. POINT NO.1 & 2:- In order to avoid the repetition of facts, we have discussed both the points together. PW-1 & RW-1 have reiterated the fact stated in their respective pleadings, in the affidavits filed in the form of their evidence in chief. It is the contention of the learned counsel for the complainant that even though opposite party No. 1 had assured that there would not be any problem after the surgery, the pain has accelerated rather coming down. Further, post-surgery pain had become bad and worst and it was assured by opposite party No. 1 that after surgery the problem would be cured completely.

9. It is the contention of the learned counsel for the opposite party No. 1 & 2 that opposite party No. 1 had conducted surgery as a prudent Doctor would do in the circumstances of the case and opposite party No. 1 had depth knowledge of 6 years of practice in surgery and had followed the standards adopted by medical profession. Further, opposite party No. 1 & 2 have no knowledge about the treatment said to have been obtained by the complainant from Dhanvantri Ayurveda hospital for his problem. In support of the contention counsel for opposite party No. 1 & 2 relies the judgment reported in AIR 2018 Supreme Court



4625 Dr. S.K. Jhunjhunwala v/s Mrs. Dhanwanti Kumar and another. In the said judgment in the circumstances it is held that no medical evidence produced to prove any specific kind of negligence on the part of doctor except raising issue of non-giving of express consent and the complainant had failed to prove the ailments allegedly suffered by her after discharge from the hospital and were due to faulty surgery performed by doctor. Further, counsel also relies the judgment reported in AIR 2010 Supreme Court cases 1050 Kusum Sharma and others v/s Batra Hospital and Medical Research Centre and others. In the said judgment it is held that medical professionals are not to be unnecessarily harassed or humiliated so that they can perform their duties without fear and apprehension and Malicious prosecution against medical professors/hospitals for extracting uncalled for compensation is not maintainable.

10. In the case on hand with regard to the treatment taken complainant has produced Ex.P1 to Ex.P3 documents and RW-1 has produced Ex.R1 to R9 documents. There is no dispute with regard to the surgery been conducted. It is the case of the complainant that since opposite party No. 1 & 2 did not give appointment subsequent to the surgery and after an opinion been obtained by the complainant that the surgery was not properly made, the complainant in the fake name had got an appointment and opposite party No. 1 & 2 did not hear the problem of the complainant and a scuffle as



taken place at there. Further, an FIR came to be registered. To substantiate the same the complainant has produced Ex.P6 the acknowledgment given by police, in which it is alleged that even after the surgery the complainant has not been completely cured and in Shridi Sai hospital he had shown the decease and the Doctor gave a report that proper treatment was not given and no ill-will has been attributed by the complainant against opponent. Hence, Ex.P6 is a piece of evidence that the complainant had the problem. Further, it is the case of the complainant that he had shown the problem at Shirdi Sai hospital and the prescription obtained from the said hospital is at Ex.P5. On perusal of the same it appears that the complainant had obtained treatment at Shridi Sai hospital on 26.05.2021 and the scanning and diagnostic report issued by Imaging and diagnostic centre dated: 26.05.2021 indicates that the complainant had the problem of "Left Anterior Perianal Low Level Fistula". Further, the complainant has produced treatment charges receipt dated: 10.07.2021 issued by Shree Dhanvantari Ayurveda Hospital. Further, it appears that on 27.05.2021 the complainant was admitted to Shree Dhanvantari Ayurveda Hospital and discharged on 29.05.2021. Further, "Kshara Sutra" treatment procedure was given and the patient was kept under observation for one day and discharged on 29.05.2021. Further, the total bill of Rs.49,550/- was paid by the complainant to the Ayurveda hospital at there. We feel that itself indicates that the complainant had the problem and with the surgery by



opposite party No. 1 the Fistula problem of the complainant has not been removed completely. If the surgery had been conducted properly there would not have the problem and the pain of the complainant as asserted. Further, it appears to us that nobody would visit and get admitted to the hospital post-surgery as the complainant did without any problem. It is not the case of opposite party that the medical bills and the documents issued by Shree Dhanvantari Ayurveda Hospital is a concocted one. Hence, we feel there was negligence on the part of opposite party No. 1 in conducting the surgery properly. The facts of the case in the cited judgment is entirely differed from the facts of the case in hand thereby the same is not applicable. Hence, for the above said reasons, there is deficiency of service on the part of opposite party No. 1 and as opposite party No. 1 has conducted the surgery at opposite party No. 2 hospital, we feel there is deficiency of service on the part of opposite party No. 2 also.

11. The complainant claimed a sum of Rs.50,00,000/- as compensation and damages to the tune of Rs.30,00,000/- and such other relief. On the documents produced by the complainant issued by the Ayurveda hospital indicates that for the post-surgery the complainant had spent Rs.49,550/- at Ayurveda Hospital and a sum of Rs.2,300/- on 13.07.2021 at Dhanvantri Pharmacy. According to the complainant he had incurred expenses at opposite party No. 2 hospital a sum of Rs.70,000/- and he has paid the same. By considering the



pain and suffering undergone by the complainant and the extra expenses at Ayurveda hospital, we feel the complainant is entitle for a sum of Rs.60,000/-. Further, for the mental agony and suffering undergone complaint is entitle for a sum of Rs.20,000/-. Further, the act of opposite party made the complainant to get issued legal notice vide Ex.P7 and to approach this commission. The complainant is entitle for a sum of Rs.10,000/- towards litigation cost. Accordingly we answer point No. 1 in affirmative and point No. 2 partly in affirmative.

12. POINT No.3:- In view of the discussions made above, we proceed to pass the following;

ORDER

Complaint is allowed in part. The Opposite Party No. 1 & 2 are jointly and severally liable to pay a sum of Rs.60,000/- towards extra expenses incurred by the complainant in the form of damages and a sum of Rs.20,000/- towards mental agony and sufferings undergone and a sum of Rs.10,000/- towards litigation cost.

2. The opposite party No. 1 & 2 shall comply the order within 45 days. In case the opponents fail to comply the same within the above said period, the above



said amount of Rs.90,000/- carries interest at the rate of 9% per annum from the date of order till realization.


3. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.

4. Supply free copy of this order to both the parties and return extra copies of the pleading and evidence to the parties.

(Dictated to the Stenographer, typed by him, the transcript corrected, revised and then pronounced in the open Commission on **21st day of March 2024**)


 21/03/2024.
(Rekha Sayannvar)
MEMBER


(Chandrashekhar S Noola)
MEMBER


 21/03/2024
(SHIVARAMA K)
PRESIDENT

//ANNEXURE//

Witness examined from the side of complainant:

Sri. Ranjith Babu, the complainant (PW-1).

Documents marked from the side complainant:

1. Prescription is marked as Ex.P1.
2. Copy if the Haemmtology report is marked as Ex.P2.
3. X-Ray film is marked as Ex.P3.
4. Copy of the Bank transaction is marked as Ex.P4.
5. Copy of the discharge summary, Prescription and Hospital bills and reports issued by Suresh Hospital and Maternity

Home, Mallige Diagnostics center and Shree Dhanvantari Ayurved Hospital are together marked as Ex.P5.

6. Copy of the acknowledgment given by the police is marked as Ex.P6.
7. Copy of Legal notice and postal Acknowledgment thereon is marked as Ex.P7.

Witness examined from the side of opposite party:

Sri. Devaprashanth.M, the opposite party (RW-1).

Documents marked from the side of Opposite Party:

1. Copy of admission form and case sheet is marked as Ex.R1.
2. Copy of doctor notes is marked as Ex.R2.
3. Copy of consent form for surgery is marked as Ex.R3.
4. Copy of operation record dated: 02.05.2021 is marked as Ex.R4.
5. Copy of anaesthetic record is marked as Ex.R5.
6. Copy of treatment chat dated: 01.05.2021 is marked as Ex.R6.
7. Copy of nurses daily record is marked as Ex.R8.
8. Copy of intake/output chat is marked as Ex.R8.
9. Copy of lab report is marked as Ex.R9.


21/03/2024.
(Rekha Sayannvar)
MEMBER


(Chandrashekhar S Noola)
MEMBER


21/03/2024
(SHIVARAMA K)
PRESIDENT