

CC/850/2016

Date of filing: 17.06.2016  
Date of Disposal: 23.01.2024

**BEFORE THE BANGALORE URBAN II ADDITIONAL  
DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,  
SHANTHINAGAR, BANGALORE - 560027**

**DATED THIS THE 23<sup>rd</sup> DAY OF JANUARY 2024**

**CONSUMER COMPLAINT NO.850/2016**

**PRESENT:**

**SRI.VIJAYKUMAR.M.PAWALE, B.A., LL.B., (Spl)., ... PRESIDENT**

**SRI B.DEVARAJU, B.A.L., LL.B., PGDCLP., (NLSIU) ... MEMBER**

**SMT.V.ANURADHA, B.A., LL.B., ... MEMBER**

**COMPLAINANT:**

Smt.Shahida Khanum,  
W/o Sri.M.A.Saleem Khan,  
Aged about 61 years,  
Since deceased by her LR  
Mr.M.A.Saleem Khan,  
S/o M.A.Azeem Khan,  
Aged about 78 years,  
R/at #406, I Floor,  
2<sup>nd</sup> Main, Ist Cross,  
M.E.S.Road, Bahubali Nagar,  
Bangalore - 560 013.

(Rep. by Mr.R.Kothwal, Advocate)

V/s

**OPPOSITE PARTIES:**

1. Acura Speciality Hospital,

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No.105, Acura Hospital,  
17<sup>th</sup> 'C' Main Road, V Block,  
Koramangala,  
Bangalore - 560 095.

2. Dr.Mohammed Irshad Ahmed,  
Ortho Surgeon,  
Acura Speciality Hospital,  
No.105, Acura Hospital,  
17<sup>th</sup> 'C' Main Road, V Block,  
Koramangala,  
Bangalore - 560 095.

Also at:-

#2489, 16<sup>th</sup> C Main,  
HAL II Stage (Opp.BESCOM),  
Bangalore - 560 038.

3. Dr.Shafiq.A.M,  
Consultant,  
Department of Orthopaedics,  
Specialist Hospital,  
A Unit of Specialist Health Systems Pvt. Ltd.,  
#216, 7<sup>th</sup> Main, 80 Feet Road,  
I Blocok, HRBR Layout,  
Kalya Nagar,  
Bangalore - 560 043.

(OP No.1 is Rep. by Mr.S.A.H.Razvi, Advocate)  
(OP No.2 is Rep. by Mr.J.Abdul Hameed, Advocate)  
(OP No.3 is Rep. by Mr.Sandesh.J.Chouta and Deleted as  
per Court order dated 14.09.2023)

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**By SRI.VIJAYKUMAR.M.PAWALE, PRESIDENT:**

**// JUDGMENT //**

1. This complaint is filed by the complainant under Section 35 of the Consumer Protection Act, 2019 against the opposite parties (herein after referred as OPs) seeking order directing OPs to pay compensation of Rs.18,00,000/- with 18% interest per annum from the date of filing of the complaint till date of payment, and to pay costs of the complaint and also to grant such other further reliefs as this Commission deems fit and proper.

2. The facts averred in the complaint, in brief, are as shown below:

The deceased original complainant was admitted to the OP No.1's hospital on 29.08.2015 complaining about pain in the right knee. She was diagnosed by the OP No.2 doctor and asked to undergo several tests and she was under continuous with medication. Since, she did not get any expected results, OP No.2 being Consultant Orthopaedic Surgeon in the OP No.1 hospital, who treated the complainant had suggested

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the complainant to undergo surgery i.e., total knee replacement surgery and assured that after operation, the complainant could walk easily within a short span of time. So, the complainant had given consent for surgery and on 31.08.2015 surgery was conducted. After surgery she had been shifted to ward and she was asked to undergo physiotherapy and one person who was not a professional was doing physiotherapy to the complainant without knee brace, which is must for physiotherapy, physiotherapy was done to the complainant. When the complainant stood up, due to infection in the operated portion got bursted and stitches were come out. After coming to know about the same, the OP No.2 rushed to ward and put stitches once again by using stapler hurriedly without conducting any further operation by taking to Operation Theater. Later the complainant left the hospital and she was brought to her house. Thereafter, the OP No.2 went abroad. The complainant was discharged on 15.09.2015. During the course of treatment in the OP No.1 hospital, the complainant had spent sum of Rs.3,00,000/- towards hospital expenses and for purchasing all medicines.

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The OP No.2 suggested to one Mr.Kumar to visit the complainant's house for dressing the complainant and after few dressings, the said Kumar found certain black patches on the knee of the complainant and so he strongly felt that there might be some infection and advised the relatives of the complainant to get checked the complainant by doctor. Later on the complainant was seen by Dr.A.M.Shafiq, Consultant Orthopaedic Surgeon of Specialist Hospital who after careful study and after deeply examining the complainant, opined that the Knee Cap of the complainant has been badly damaged due to infection and so the same requires to be removed and accordingly, it was removed.

3. Further, in the complaint it is stated that after discharge from the OP No.1 hospital the complainant had developed severe, uncontrollable pain in the operated area and so she was unable to move and finding difficult even to withstand the pain caused to her after surgery which led to severe complications. The complainant's knee and leg diametrically become upright. So, the complainant being unable to tolerate the pain, she had consulted a Specialist on 09.10.2015

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and it was told to the complainant that the OP No.2 who treated the complainant and conducted surgery on her in the OP No.1 hospital had wrongly diagnosed her and has given wrong treatment to the complainant which was not supposed to have been prescribed for the said problem. On account of the wrong treatment given by OP No.2, the complainant developed severe pain after surgery and the complainant permanently disabled due to medical negligence on the part of the treating doctor OP No.2. Further, in the complaint it is stated that the complainant has been bedridden for the past 8 months and unable to move. Hence, arranged nursing care to the complainant and spent Rs.15,000/-. Further, in the complaint it is stated that the OP No.2 has stated that he has conducted Wound debridement + right knee on 09.10.2015 under S.A. and Wound Debridement + Implant Removal + Ex. Fix Application on 15.10.2015. But inferior metal was used during implantation to the complainant due to which complainant's knee and foot had become straight and because of the same the complainant was unable to walk or move. So, the OP No.2 had not taken proper care and not properly diagnosed the

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complainant before treating the complainant and not given proper medication. The complainant to overcome from the said problem had spent more than Rs.5,00,000/-. Further, in the complaint it is stated that the complainant got issued a legal notice to OP No.2 on 13.04.2016 calling upon him to pay a compensation of Rs.10,00,000/- to the complainant as she has become victim in the hands of the OP No.2 suffering permanent disability due to medical negligence committed by OP No.2. But OP No.2 has sent a very vague untenable reply to the said legal notice. Therefore, the complainant has filed this complaint against OPs alleging medical negligence, deficiency of service and unfair trade practice on the part of the OPs. The complainant has prayed for compensation of Rs.10,00,000/- and Rs.2,00,000/- for mental harassment and mental agony and Rs.6,00,000/- compensation for permanent disability and future medical expenses and also prayed for awarding compensation towards litigation charges.

4. It is to be noted here that earlier this case was disposed of by passing order dated 28.12.2022 stating

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that the complainant's complaint is not maintainable for want of pecuniary jurisdiction on the date of filing the complaint in the year 2016 and complaint cannot be continued under new Act and returned the complaint with documents to complainant for presentation before the Hon'ble State Commission. Accordingly, the complainant submitted the complaint before Hon'ble State Commission and same was numbered as CC No.16/2023. In the said CC No.16/2023 Hon'ble State Commission by passing order on admission on 27.02.2023 ordered and directed this Commission directing to restore the complaint No.850/2016 on its original number and dispose of the case on merits expeditiously. In view of the said order of the Hon'ble State Commission, the complaint was restored on 13.07.2023.

- 5. Earlier to restoration of this complaint,** after registering the complaint, notices were issued to the OPs and in response to the said notices the OP.Nos.1 & 2 appeared through their respective counsels and filed their respective written versions to the complainant's complaint. After filing the written

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versions of OP Nos.1 & 2, the complainant had got impleaded OP No.3 in the complaint and OP No.3 appeared through Counsel. Later on 14.09.2023 the OP No.3 has been deleted in view of IA No.8 filed by the complainant.

6. The OP No.1 in the written version manly contended that the complainant's complaint is not maintainable since the Supreme Court of India has directed that no complaint can be admitted unless there is a report/certificate by a competent Doctor that there was medical negligence committed by the OP Doctor. Further, in the written version of OP No.1 it is contended that there is no iota of evidence to show that there is negligence on the part of the OPs. Further, in the written version in para No.3 contended that OP No.2 Doctor is a qualified Orthopedic Surgeon and was a faculty in a medical college and has over 25 years of experience and professional standing and he has performed many surgeries including knee replacements surgeries. His record is unblemished.
7. Further, in written version at Para 4 it is contended that OP No.1 hospital had a clean record and the

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complaint is filed to tarnish the image of the OP No.1 hospital. Further, in written version at Para No.5 it is contended that the implanted prosthesis is made by the most reputed licensed medical device manufacturer INOR Medical products which is the most commonly used brand and a market leader in Orthopedic implants. The Bone cement used was made by DePuy international of England.

8. Further, in written version at Para No.6 it is contended that despite clear instructions the patient did not follow the post operative advice, did not report any trouble or pain to the hospital and patient was not brought for follow up as required and did not consult any of the OP on any problem she claims. Further, in written version at Para 8 contended that there has been no error in diagnosis and treatment. Further, in written version at Para 9 contended that there is no any deficiency or negligence in service by OP No.1 hospital. The patient has not followed up and having neglected to follow up has chosen to get treated elsewhere. The complainant's case has been unnecessarily and sadly complicated by delay in

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seeking attention and subsequent hasty decisions of further surgeries elsewhere. Further, in the written version at Para 10 contended that the complainant was discharged on 15.09.2015 medically fit and she had no complaint whatsoever. The discharge summary dated 15.09.2015 reveals that culture sensitivity was negative, there is no bacterial growth, patient afebrile, fit for discharge, advised to come for follow up after three days. Further, in written version at Para 11 contended that the allegations made in Para 4 of the complaint are false and complainant be put to strict proof of the same. Further, in written version at Para No.12 and 13 denied the contention of Para 5 & 6 of the complaint are false. Further, in the written version at Para 14 contends that allegations made in the para 7 of the complaint are not within the knowledge of the OPs. Further, in Para 15 of the complaint it is contended that all the alleged pain could have been easily treated at the hospital if patient had come for the review as directed by the OP No.2. Further, in the written version at Para No.16 it is contended that the averments made in Para 8 of the complaint are false. Further, in Para 17 of the written

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version it is contended that treatment at the Specialist Hospital are a result of non follow up post surgery and gross negligence on the part of the complainant who did not do any follow up with the OPs for more than a month after surgery. There is no any negligence or wrong diagnosis by the OPs and hence prayed for dismissal of the complaint with cost.

9. The OP No.2 in his written version mainly contended that the claim and contention of the complainant are all false and the complainant is to be put to strict proof of each and every allegation stated in the complaint. Further, the OP No.2 in written version at Para No.3 contended that the complainant is knocking all the doors to make wrongful gain from the OP No.2 and OP No.2 is only a consultant doctor in OP No.1 hospital. Further, the OP No.2 in the written version at Para No.5 contended that the complainant has totally suppressed the vital information. **The complainant before giving a complaint against OP No.2 in this Commission had filed complaint before the Karnataka Medical Council.** The complainant had sent a lawyer's notice on 15.04.2016 and the OP

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No.2 had replied the same through his lawyer on 28.04.2016 suitably. Further, in written version at Para No.6 OP No.2 contended that in the complainant's legal notice dated 15.04.2016 and the present complaint has lot of contradictions, but in the legal notice dated 15.04.2016 the complainant did not state the allegations, what she had stated in Para No.6 of the complaint and it shows that the allegations are afterthought to make wrongful gain. Further, the OP No.2 in Para No.7 of the written version contended that the allegations in Para 4 of the complaint are total contradiction of the document 1 & 2 produced by the complainant which shows that the complainant was discharged on 03.09.2015 medically fit and she has no any complaint whatsoever, if complainant had any complaints she would not have gone home. The discharge summary dated 03.09.2015 reveals that culture sensitivity was negative no bacterial growth, patient afebrile, fit for discharge, advised to come for follow up after three days. After repeated reminders from the OPs the complainant came to hospital and got re-admitted on 15.09.2016, keeping her on observations for three days and she was discharged

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again reporting medically fit even the discharge summary dated 19.09.2015 clearly reveals that culture sensitivity was negative no bacterial growth, patient afebrile, fit for discharge and there is no sign of infections. The OPs after taking the lab test found that the culture and sensitivity routine pus shown as culture negative for bacterial growth. Further, contended that nothing happened as alleged in para 4 of the compliant and complainant is put to strict proof of the same. Further, the OP No.2 is not aware and concern of the allegations in para 6 of the complaint. Further, in written version at Para No.8 it is contended that the complainant was hardly stayed after the operation in the OP No.1 hospital for less than 3 days and she got discharged and this happens only when the patient is very normal and thereafter the complainant did not come for review but came only on 15.09.2015 and so her allegations in Para No.5 of the complaint that she got discharged on 15.09.2015 is totally false.

10. Further, in written version at Para 9 the OPs contended that the allegations in Para 8 of the

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complaint are not correct, if the complainant had developed severe pain she would have reported the same to the hospital and the hospital would have treated her. **Further, it is contended that metal was purchased by the son-in-law of the complainant and it was an ISI mark INOR BRAND Implant and same implant has been used on number of patients in the same hospital without any complications and the patients are hale and healthy.** Further, in the written version at Para 10 it is contended that the allegations made in Para No.5 of the complaint are false. The hospital actually informed the complainant to deposit a sum of Rs.1,50,000/- for the whole treatment, since the complainant did not have that much of money, the OP No.2's recommendation and request to the OP No.1 hospital a concession was given and the complainant was asked to deposit Rs.40,000/- only for the hospital expenses and accordingly the complainant's son-in-law deposited a sum of Rs.40,000/- and such amount was spent for operation theatre expenses and hospitalization. Further, in Para 11 of the written version the OP No.2 contends that the complainant after getting discharge from the hospital

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in good condition never turned up to OP No.1 hospital for any kind of consultation or follow up after 19.09.2015. Further, in Para 12 of the written version the OP No.2 contended that allegations in para 10 of the complaint are all false and imaginary. Further, in written version at Para No.13 it is contended that the OP No.2 that allegations at Para 11 are all false and allegations in Para 12 of the complaint are also false and the medical bills produced not belong to the OPs except one and prayed for dismissal of the complaint.

11. Record discloses that the complainant to prove her case, got filed the affidavit evidence of her Power of Attorney Holder on 26.02.2018. When the case was posted for OPs side evidence, on 29.06.2018 Advocate for OP No.2 filed memo stating that complainant has filed parallel proceedings before the KMC for the same relief before the expert doctors and in view of the same this case be closed and render justice by producing the notice issued by KMC to OP No.2 and copy of complaint filed before KMC which is number as ENQ/31/2016. To the said memo, the complainant filed objection on 27.08.2018. Further record

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discloses that Advocate for OP No.2 had filed IA-II U/s 151 of CPC to keep the complainant's complaint in abeyance till the disposal of the complaint pending before KMC and said application came to be rejected by passing order on 01.08.2019. Further, record discloses that on 05.05.2022 order was passed for bringing LR of the complainant on record due to death of the original complainant. As already stated above on 28.12.2022 the complainant's complaint was returned to present it before the Hon'ble State Commission as there was no pecuniary jurisdiction as on the date of filing the complaint in the year 2016. Further as already stated above the Hon'ble State Commission by passing order directed this Commission to restore the complaint and dispose of the case on merits. Further record discloses that the complainant had filed IA No.8 for deleting the OP No.3 from the complaint and on 14.09.2023 said IA came to be allowed and case was posted for arguments. Further it is to be noted here that after restoration of the case though notice was issued to OP No.1 & 2 but OP No.1 & 2 did not appear before this Commission. On 11.12.2023 LR of the deceased complainant

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produced additional documents 6 documents and same are marked Ex.P1 to P6. Prior to restoration OP No.2 had filed affidavit evidence and produced 5 documents. After restoration of the case, OP No.1 & 2 have not appeared before this Commission and not submitted any additional evidence. The complainant filed written arguments. Heard oral arguments also from the Advocate for the complainant. We have perused the entire records.

12. The points that arise for our consideration and determination are as under:

1. **Whether the complainant proves that there is a deficiency of service on the part of the opposite parties?**

2. **What order?**

13. Answers to the above said points are as under;

**POINT NO.1:** In the Affirmative;

**POINT NO.2:** As per final order for the following;

### **REASONS**

14. **POINT NO.1:-** GPA Holder of the complainant who happens to be husband of the complainant and after

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the death of the complainant who has come on record as LR of the deceased complainant in his affidavit evidence stated, more or less as stated in the complaint and later on got marked documents Ex.P1 to P6. OP No.2 doctor who treated and made Right Total Knee Replacement surgery to the complainant on 31.08.2015 has also, to prove his case, filed affidavit evidence and produced 5 documents under list dated 17.01.2019.

- 15.** It is the specific case of the complainant that because of OPs negligence particularly OP No.2's negligence who conducted complainant's right knee replacement surgery, complainant suffered lot as she was unable to walk causing permanent disability in respect of right leg. Later on she got it corrected by approaching some other Specialist Hospital by spending huge amount. On the contrary, case of the OPs particularly OP No.2 is that because of negligence of the complainant herself she suffered and there was no any negligence on the part of the OPs as she did not come up for follow-up treatment and hurriedly taken treatment in some other hospital. So, there is no

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dispute about fact that the deceased complainant had taken treatment at OP No.1's Hospital and OP No.2 doctor has treated and conducted Right Total Knee Replacement Surgery to the complainant. Further it is also admitted fact that the complainant had also approached KMC by giving complaint against OPs in respect of her grievance. Under this background, the evidence on record has to be looked into to ascertain whether there is a deficiency of service on the part of the OPs.

- 16.** As already stated above the complainant has produced totally 6 documents which are marked as Ex.P1 to Ex.P6 in support of her case. Ex.P1 is the copy of the Discharge Summary dated 03.09.2015. This document makes it clear that the deceased complainant had got admitted in the OP No.1 hospital on 29.08.2015 and Right Total Knee Replacement Surgery under Spinal Anaesthesia has been conducted by OP No.2 on 31.08.2015 and she was discharged on 03.09.2015 with direction to come for review by OP No.2 after 3 days and regularly. Further it is to be noted here that as per Ex.P1 the complainant was not

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having any past h/o DM /TB/TB/BA/Convulsions/Allergies except Rheumatoid arthritis/HTN. Ex.P2 is the copy of the Discharge Summary dated 19.09.2015. This document makes it clear that the deceased complainant once again admitted in the OP No.1's hospital on 15.09.2015 in respect of Post OP Right TKR and she was discharged on 19.09.2015. In Ex.P2 under the caption of hospital course it is written as under:

“Mrs.Shahida Khanum aged 62 yrs old female patient admitted with above complaints. She was started on IV fluids, I/V antibiotics, Physiotherapy, analgesics, IV PPI and other supportive medications, Floxsafe IV BD and syntazo 4.5 gm IV. Her sutures were reviewed on 18.09.2015 and dressing changed by Dr.Mohd Irshad Ahmed. Patient remained afebrile throughout the hospital course and she was discharged home on oral medications. Wound swab reported negative for Bacterial growth”.

17. So looking to Ex.P2 it appears that even after lapse of 15 days from the date of operation complainant was

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not good and wound was not yet healed even after taking prescribed medicines.

18. Ex.P3 is the copy of the IP Receipt/Cash Receipt issued by Specialist Hospital and said document discloses that the complainant got admitted in the specialist hospital in Orthopedics department on 09.10.2015 and she has been discharged on 29.10.2015 and it discloses that the complainant has taken treatment by spending Rs.2,00,088/- at specialist hospital.

19. Ex.P4 is certificate dated 24.03.2016 issued by Specialist Hospital. In Ex.P4 it is mentioned as under:

**"TO WHOMSOEVER IT MAY CONCERN**

THIS IS TO CERTIFY THAT THE ABOVE MENTIONED PATIENT CAME TO ME ON 09/10/2015 WITH PAIN RIGHT KNEE AND INABILITY/TO WALK CLINICAL FINDINGS WERE LARGE NON HEALING WOUND OVER THE RIGHT KNEE JOINT WITH DISCHARGING SINUS WITH METAL IMPLANTS EXPOSED. SHE HAD UNDERGONE TOTAL KNEE REPLACEMENT ELSEWHERE ABOUT A MONTH AGO. SHE WAS TAKEN UP FOR IMMEDIATE WOUND

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DEBRIDEMENT AND ON TABLE THE FINDINGS WERE ABUNDANT PURULENT MATERIAL, TOTAL DISRUPTION OF PATELLAR TENDON AND LOOSENING OF THE METAL IMPLANTS. BASED ON THESE FINDINGS THE DECISION WAS MADE TO EXCISE THE PATELLA AND REMOVE THE IMPLANTS. AT THE SAME SITTING WOUND WAS THOROUGHLY DEBRIDED AND ATTEMPT WAS MADE FOR ARTHRODESIS WITH SERIAL DEBRIDEMENTS AND DRESSINGS ALONG WITH APICPRIATE ANTIBIOTICS BASED ON CULTURE AND SENSITIVITY REPORTS. THE WOUND HEALED AND AFTER STITCH REMOVAL SHE WAS PUT ON AN ABOVE KNEE PLASTER CAST CURRENTLY SHE IS CONTINUING ON THE PLASTER AS THE ARTHRODESIS IS STILL NOT SUCCESSFUL DUE TO THE PRE INFECTIVE STATUS OF THE KNEE JOINT. SHE IS ALSO NON AMBULANT FOR THE SAME REASON.”

20. Ex.P5 is in-patient settlement receipt issued by Bhagwan Mahaveer Jain Hospital which discloses that the deceased complainant has taken treatment at Bhagwan Mahaveer Jain Hospital from 26.09.2019 to 11.10.2019 in respect of heart disease by spending Rs.1,81,990/-.

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21. Ex.P6 is the copy of order dated 04.06.2022 passed by the Karnataka Medical Council in respect of KMC/ENQ/31/2016. In Ex.P6, under the caption of "**FINDINGS**" it is stated as under:

"Having peered into the oral and documentary evidence available on record, it beckons the fact that the patient has suffered pain in the right knee and even after medical treatment was provided for 4 to 5 days, the same could not be improved and the patient was asked to consult a specialist. Thereafter on 29.08.2015 the patient was admitted in the Acura Speciality hospital and she was operated by Dr.Irshad Ahmed on 31.08.2015 and she was discharged on 15.09.2015. **It appears that the good quality of implant was not used and as a result, the wound got infected and the patient was not managed by the proper follow-up and medication.**

Further, the records divulge the fact that again the patient was admitted in another hospital i.e. Specialist Hospital for debridement and removal of the implant and thereafter, there was slowly leaving immovable knee joint and bed sores.

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**The wound was infected and there was no proper follow-up for the prevention of the infection and these are the crux points of the case for which, the Ist Respondent Dr.Mohammed Irshad Ahmed is responsible.**

Hence, in all perspective, the Council is of the considered view that there is a medical negligence on the part of the Respondent (1). Since there is no evidence against Respondents (2) and (3) regarding medical negligence, they are entitled to be exonerated of the charges leveled against them.

In the result, the following:

**ORDER**

**It is held that there is medical negligence on the part of Respondent (1) VIZ., Dr.Mohammed Irshad Ahmed.**

Further it is held that there is no medical negligence on the part of Respondent (2) Dr.Shafiq A.M. and Respondent (3) M/s.Acura Speciality Hospital and thus, Respondent (2) and (3) are ordered to be exonerated of the charges leveled against them.

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**The KMC Registration Number 29357 of Dr.Mohammed Irshad Ahmed is ordered to be removed from the K.M.C. Registry for a period of six months by way of punishment.**

The order issued by Karnataka Medical Council will be effective after expiry period of appeal i.e., 60 days from the date of issue of order of K.M.C.

“A Medical practitioner or Professional who is aggrieved by any action taken by a State Medical Council may prefer an appeal to the Ethics and Medical Registration Board against such action as per Section 30(3) of the National Medical Commission Act, 2019 to NMC”.

22. On perusal of this Ex.P6 order stated supra, it cannot be stated that there is negligence on the part of complainant which is the contention taken by OP No.2 in his written version. But on the contrary, it is clear that there is a deficiency of service on the part of OP No.2 Dr.Mohammed Irshad Ahmed who treated the deceased complainant by conducting Right Total Knee Replacement Surgery on 31.05.2015 by using substandard quality of implant for Right Total Knee

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Replacement Surgery. Further it is to be noted here that the order passed by KMC in Ex.P6 appears to have become final since OP No.2 has not at all produced any evidence to show that he has preferred appeal against the order passed by KMC in Ex.P6 to the National Medical Commission and Ex.P6 order has been set aside. Further, OP No.2 contended that implant which was used for complainant's Right Total Knee Replacement Surgery was brought by son-in-law of the complainant etc. But to this effect OP No.2 has not at all adduced any evidence except his self interested and tainted affidavit evidence.

**23.** Anyway, looking to the facts and circumstances of the case, admitted facts and evidence on record, we are of the considered view that the complainant has proved that there is a deficiency of service on the part of the OP No.2 only. Hence, point No.1 is answered in the affirmative in respect of OP No.2 only.

**24. POINT NO.2:** The complainant has claimed Rs.10,00,000/- compensation and Rs.2,00,000/- for mental agony and Rs.6,00,000/- compensation for

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causing permanent disability and future medical expenses.

- 25.** It appears that the complainant's claim in respect of compensation under various heads appears to be exorbitant and baseless. The complainant has not produced all the medical bills to show how much of amount was spent in OP No.1 Hospital. Only In-Patient bill in respect of second admission at OP No.1 Hospital is produced which has not been marked and it shows that Rs.15,550/- has been spent for the treatment of the deceased complainant in second time admission. Further, OP No.2 in his written version as well as in his affidavit evidence stated that the deceased complainant's son-in-law deposited Rs.40,000/- and same has been spent for operation theatre expenses and hospitalization. So, looking to this fact it appears that the complainant had spent Rs.55,550/- in OP No.1 hospital. Further, as per Ex.P3 the complainant has spent Rs.2,00,088/- in Specialist Hospital wherein treatment for debridement and removal of the implant etc was done. So, the complainant totally spent Rs.2,95,638/- in respect of

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Right Total Knee Replacement Surgery and for post operative treatment. Of course, the complainant has produced Ex.P5 in-patient settlement receipt issued by Bhagwan Mahaveer Jain Hospital which discloses that the deceased complainant has taken treatment at Bhagwan Mahaveer Jain Hospital from 26.09.2019 to 11.10.2019 in respect of heart disease by spending Rs.1,81,990/-. But there is no any pleading or evidence to show that because of medical negligence of OP No.2 the complainant suffered in respect of heart disease and further not produced discharge summary also taken from Bhagwan Mahaveer Jain Hospital. So considering all these facts, we are of the considered view that the complainant is entitled for Rs.2,95,638/- in respect of medical expenses. Further, the complainant is also entitled for Rs.1,00,000/- compensation towards mental agony and Rs.20,000/- towards litigation expenses. So, in view of answer on point No.1 and for the foregoing reasons, we proceed to pass the following:

**ORDER**

The complainant's complaint filed under Section 35 of the Consumer Protection Act,

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2019 is partly allowed as against OP No.2 only. Complaint against OP No.1 is dismissed.

The OP No.2 is directed to pay Rs.2,95,638/- (Rupees Two Lakh Ninety Five Thousand Six Hundred Thirty Eight only) to the complainant towards medical expenses spent.

The OP No.2 is also directed to pay Rs.1,00,000/- (Rupees One Lakh only) compensation towards mental agony and Rs.20,000/- (Rupees Twenty Thousand only) towards cost of litigation to the complainant.

The OP No.2 shall comply with the above said order within 60 days from the date of receipt of this order, failing which the OP No.2 shall pay interest at the rate of 6% per annum on amount of Rs.2,95,638/- (Rupees Two Lakh Ninety Five Thousand Six Hundred Thirty Eight only) till realization.

Supply free copy of this order to both parties through post.

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3. Ex.P4: Copy of Certificate issued by Specialist Hospital dated 24.03.2016,
4. Ex.P5: Bhagwan Mahaveer Jain Hospital Bengaluru, Medicals Bills dated 11.10.2019,
5. Ex.P6: Copy of Final Order of Karnataka Medical Council dated 04.06.2022.


**Witness examined on behalf of the Opposite Parties:**

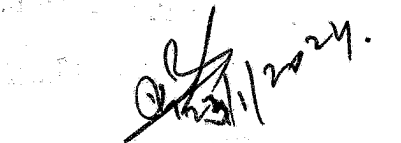
Dr.Mohammed Irshad Ahmed, who being the OP No.2 consultant Ortho Surgeon has filed his affidavit.

**List of documents filed by the Opposite Parties:**

1. Copy of Discharge Summary,
2. Copy of Discharge Summary,
3. Copy of Notice dated 28.04.2016,
4. Copy of Notice dated 23.06.2016,
5. Copy of Notice dated 13.04.2016.

  
(V.ANURADHA)  
MEMBER

  
(B.DEVARAJU)  
MEMBER

  
(VIJAYKUMAR.M.PAWALE)  
PRESIDENT