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

**DATED THIS THE 30<sup>th</sup> DAY OF JANUARY 2024**

**CONSUMER COMPLAINT NO.279/2021**

**PRESENT:**

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

Smt. Mamatha P.  
W/o. Rohit Nagarjun Reddy D,  
Aged about 28 years,  
R/at No. 32, Garden City  
Enclave Layout, Near Crystal  
Apartment, Hallehalli,  
Kithanagar Road, KR Puram,  
Bengaluru-560049.  
(Sri. Anil Reddy. S, Advocate)

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**COMPLAINANT**

V/s



1. Phoenix Hospital,  
1510, 19<sup>th</sup> Main Road,  
Vanganahalli Sector,  
HSR Layout,  
Bangalore-560102.  
Rep. by its Director.  
(Sri. Raghunath. J, Advocate)
2. Dr. Naveen P.G,  
Pristyn Care,  
610, 1<sup>st</sup> Floor, 'C' Block,  
AECS Layout,  
Kundalahalli,  
Bangalore-560037.
3. United India Insurance Co. Ltd.,  
No. 42-C, III Floor,  
Moolchand Commercial Complex,  
New Delhi-110024.  
(Sri. Krishna Kishore, Advocate)

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**OPPOSITE PARTIES**

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**// 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 opposite party to pay Rs.1,42,094/- towards various charges and cost of medicines to the complainant and such other relief as this commission deems fit in the circumstances of the case.



2. Opposite party No. 3 came to be impleaded during the pendency of the complaint. It is not in dispute that opposite party No. 2 had operated the complainant through Laser Sphincterotomy with fissure oblation and Laser Haemorrhoidopexy with excision of external piles on 19.12.2020 and she was discharged on 20.12.2020 and the complainant had paid an amount of Rs.60,000/-. Further, it is not in dispute that operation was conducted at opposite party No. 1 hospital. Further, it is not in dispute that the complainant had issued legal notice to opposite party on 06.02.2021 vide Ex.P7 and opposite party No. 1 & 2 had replied on 13.02.2021 vide Ex.P8.

3. It is the further case of the complainant that a week after the operation on 28.12.2020 she had developed swelling in anal region in irresistible pain and bleeding from the operated part due to which the complainant was about to unconscious level and she was rushed in an emergency to Manipal hospital and the complainant got admitted at there as an inpatient from 28.12.2020 to 01.01.2021 and had incurred expenditure of Rs.80,294/- as because of the negligence of opposite party No. 1 & 2 for not conducting the operation properly and leaving the complainant to her own fate. Hence, the complaint came to be filed.

4. It is the further case of opposite party No. 1 to 3 that this commission has no subject wise jurisdiction and



grievance to the complainant could be agitated before Civil Court. Further, there is no guarantee and assurance of total 100% cure of fissures/haemorrhoids was given to the complainant either orally or on the website. Further, the complainant was admitted and operated by opposite party only after the complainant was apprised of the consequences and care for the same. Further, even though it was advised to the complainant to follow up to the opposite party No. 2 and review in OPD of opposite party No. 1 after 7 days of surgery with prior appointment but the complainant had utterly failed to do so. Further, the complainant was well aware of apprehended consequences of post operation. Further, the complainant rated the service '4' on the scale of 5 indicating her satisfaction with the treatment and services. Further, the burden of proof of negligence is only on the complainant and the same has to be proved by way of producing expert evidence. Further, the root of recovery is depending on various factors.

5. It is further contended by opposite party No. 2 that instead of contacting opposite party No. 2 the complainant had been to another hospital. Further, opposite party No. 2 had operated with proper care and skill as an ordinary medical practitioner would do. Further, opposite party No. 2 had obtained professional Indemnity from opposite party No.3.



6. It is the further case of opposite party No. 3 that there was no promise and assurance given to the complainant by opposite party No. 1 & 2 about full recovery of fissures and piles and opposite party No. 2 had explained the consequences of surgery before getting consent from the complainant. Further, the complainant did not obtain any medical certificate or medical record from an expert and produced before this commission. Further, opposite party No. 3 had issued policy in favour of opposite party No. 2 and it was a professional indemnity Doctors Policy in between 20.08.2020 to 19.08.2021. Further, the insurer is required to indemnify only claims arising out of bodily injury or death of any patient alleged to have been caused by error. Hence, there is no negligence on the part of opposite party No. 1 & 2. Hence, it is sought to dismiss the complaint.

7. To prove the case, the complainant (PW-1) has filed affidavit in the form of her evidence in chief and got marked Ex.P1 to P10 documents. Opposite party No. 1 (RW-1) has filed affidavit in the form of his evidence in chief and got marked Ex.R1 to R4 documents. Opposite party No. 2 (RW-2) has filed affidavit in the form of his evidence in chief. Counsels for the respective parties have filed their respective written arguments.

8. 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?

9. 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**

**10. POINT NO.1:-** PW-1, RW-1 & RW-2 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 since opposite party No. 2 did not conduct the operation properly she was admitted to Manipal hospital and got operated and she had taken treatment as an inpatient from 28.12.2022 to 01.01.2023 at there. Hence, there is negligence on the part of opposite party No. 2 and since the operation was done at opposite party No. 1, opposite party No. 1 is equally responsible for the same. It is the contention of the learned



counsel for the opposite party No. 1 that there is no 100% cure in the operation of fissures and the same was informed to the complainant orally and on the website and after giving proper information, complainant was admitted at opposite party No. 1 hospital and operated on 19.12.2020 and was discharged on 20.12.2020. Further, the complainant was advised to follow up with opposite party No. 2 and review of OPD of opposite party No. 1 after 7 days of surgery with prior appointment. However, complainant utterly failed to do so. Hence, there is no negligence on the part of the opposite party No. 1 & 2.

**11.** In support of the contention counsel for opposite party No. 1 relies the judgment rendered by Hon'ble NCDRC reported in 2013 SCC online NCDRC 772 Rajiv Navath v/s Dr. Shajahan Yoosaf Sahib and others. The fact in the said case is that the complainant was treated by laser and radiofrequency under spinal anesthesia by opposite party No. 2 with proper skill and it is the contention that the pain persisted after the treatment. In the circumstances it is held that the complainants sufferings were result of infection caused due to his negligence as he did not follow the instructions of the doctors. Hence, the doctor cannot be made guilty of negligence since he had acted in accordance with the practice accepted as proper by a responsible body of medical men skilled in that particular art.



**12.** Further, counsel also relies the judgment reported in 2022. SCC online SC 481 Hon'ble Apex Court Dr. (Mrs.) Chanda Rani Akhouri and others v/s Dr. M.A. Methusethupathi and others. In the said case it is observed in para no. 25 that while deciding whether the medical professional is guilty of medical negligence, following well-known principles must be kept in view. i.e., medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Further, counsel also relies the judgment reported in 2021 SCC online SC 1149 (Apex Court). In the said judgement it is observed that simply because a patient has not favourably responded to the treatment given by the Doctor or surgery has failed, the Doctor cannot be held straightaway liable for medical negligence by applying the doctrine of Res IPSE loquitur. Further, counsel also relies the judgment reported in 2021 (10 Supreme Court cases) 291 Dr. Harish Kumar Khurana v/s Joginder Singh and others, in its judgment it is held that in the absence of supporting medical evidence the allegation of medical negligence cannot be proved.

**13.** Contrary to that in support of the contention counsel for opposite party No. 2 & 3 rely the judgment rendered by Hon'ble Apex Court and Civil Appeal No. 6507/2009 Dr. Chanda Rani Akhouri and others v/s Dr. M.A. Methusethupathi and others and the same has also been relied by the counsel for complainant as stated above.





**14.** In support of the contention that opposite party No. 2 had adopted wrong procedure, counsel for complainant relies Ex.P6 discharge summary issued by Manipal hospital. On perusal of the same it appears that the Doctor at their gave a finding that circumferential mucosal injury with hemorrhoid in 7oclock position with bleeding, incomplete sphinctrotomy noted, diffuse bleeding from mucosa. Further, Manipal hospital had again conducted the operation and stated with regard to the procedure done in the said report itself. The said finding was given by a specialist in the said hospital.

**15.** It is the contention of the learned counsel for opposite party that without an opinion from an expert and without the said Doctor had been examined, the said report cannot be accepted as it is. It is not the case of opposite party No. 1 & 2 that the complainant did not take treatment and got operated at Manipal hospital. Further, it is not the case of opposite party that the Doctor at Manipal hospital and the complainant were hand in glove and the complainant had an enmity with opposite party. Under such circumstances, we feel there is no merit in the contention of opposite party in that aspect and on the other hand for the just say that the report cannot be accepted, the report cannot be brushed aside.

**16.** It is the further contention of the learned counsel for opposite party that before the operation, the complainant had given consent for the surgery as per Ex.R1 and it was



properly advised to the complainant at the time of discharge as per Ex.R3. It is not the case of opposite party that because of the negligence of complainant there was bleeding from the anal and pain has been increased. For mere because the complainant had given consent for the operation, opposite party cannot take the advantage of the same and do whatever he likes. Hence, there is no merit in the said contention. We feel the opinion given by Doctor at Manipal hospital itself is sufficient to hold that the operation was not properly conducted by opposite party No. 2 and opposite party No. 2 did not use his skill of operation effectively.

**17.** It is the further contention of the learned counsel for the opposite party that this commission has no jurisdiction. We feel Section 2 (11) of CP Act 2019 attracts with regard to deficiency of service since it is the expectation while approaching the Doctor that he would perform the operation effectively. Therefore, there is no merit in the contention of the learned counsel for opposite party in that aspect. For the above said reasons we feel there was fault in conducting the operation by opposite party No. 2 and since opposite party No. 2 had did the operation at opposite party No. 1 hospital, opposite party No. 1 hospital is also responsible for same. Hence, we answer the point in affirmative.

**18. Point No. 2:-** Complainant claimed a direction to opposite party to pay Rs.1,42,094/- towards various charges and cost of medicines to the complainant. It is the contention of opposite party No. 2 that he had obtained



professional indemnity Doctors Policy for the period from 20.08.2020 to 19.08.2021 from opposite party No. 3. Opposite party No. 3 had admitted with regard to the policy claimed by the complainant for Rs.1,42,094/- towards the amount said to have been spent and the complainant did not produce any document in support of the same. Ex.P3 is the inpatient bill dated: 20.12.2020 and Ex.P2 is the receipt for having paid Rs.30,000/- to opposite party No. 1 hospital and Ex.P3 indicates that a sum of Rs.60,000/- was paid to opposite party No. 1 hospital. Further, Ex.P5 indicates the advance amount of Rs.10,000/- paid to Manipal hospitals and the complainant has also produced the receipt for having paid a sum of Rs.66,657/- to Manipal hospital for the said bill it is mentioned that the payor was United Healthcare India (Pvt. Ltd.,). It is not explained as to how it costs of Rs.1,42,094/- towards various charges and cost of medicine incurred by the complainant. Further, in Ex.P7 notice sent by the complainant also the complainant did not demand opposite party to pay specification medicine charges. It is the contention of the learned counsel for the complainant that the complainant had paid premium for insurance policy and the same cannot taken note of by opposite party. We feel for the mental trauma under gone and inconvenience caused to the complainant because of the negligence of opposite party No. 2, opposite party No. 2 has to pay a notional sum of Rs.1,00,000/- to the complainant and opposite party No. 1 is vicariously liable for the same.



19. Even though it is stated by opposite party No. 2 with regard to the coverage of insurance, opposite party No. 2 did not produce the policy. However, opposite party No 3 had admitted with regard to the coverage. It is only said by opposite party No. 3 that no medical certificate or medical records produced by the complainant issued by an expert and there was no promise/assurance given to the complainant by opposite party No. 1 & 2 about full recovery of piles nothing is stated. Further, the insurer has required to indemnify only to claims arising out of bodily injury of any patient alleged to have been caused by error, omissions or negligence in professional services rendered or which should have rendered by insurer. We feel since complainant claimed damage arising out of body injury caused by error and negligence in professional service rendered by opposite party No. 2, opposite party No. 3 has to indemnify the same. Further, since the act of opposite party No. 1 to 3 made the complainant to approach this commission and made the complainant to get issued legal notice, therefore the complainant is entitle for a sum of Rs.20,000/- towards litigation expenses. Accordingly, we answer this point partly in affirmative.

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



**ORDER**

Complaint is allowed in part. It is held that there is deficiency of service on the part of opposite party No. 1 & 2. The Opposite Party No. 1 to 3 are jointly and severally liable to pay the above said amount of Rs.1,20,000/- to the complainant. Since, the risk is covered in the policy issued by opposite party No. 3, opposite party No. 3 is liable to pay the same.

2. The opposite party No. 3 shall comply the order within 45 days. In case the opposite party No. 3 fails to comply the same within the above said period, the above said amount of Rs.1,20,000/- 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.

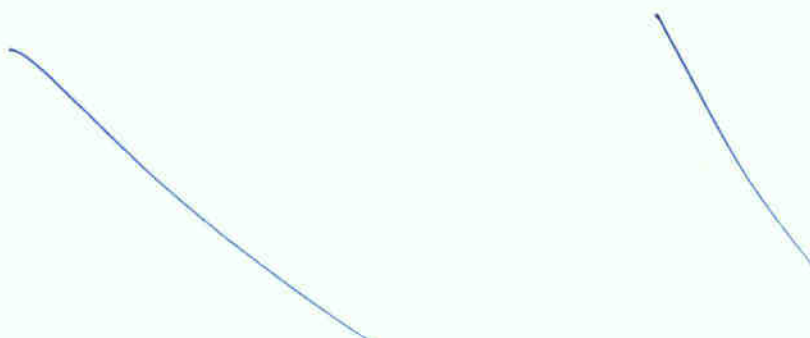
(Dictated to the Typist to online computer and typed by him and corrected and then pronounced in the open Commission on **30<sup>th</sup> day of January 2024**)

  
30/01/2024.   
(Rekha Sayannvar) (Chandrashekhhar S Noola) (SHIVARAMA K)  
MEMBER MEMBER PRESIDENT

**//ANNEXURE//****Witness examined from the side of complainant:**

Smt. Mamatha. P, the complainant (PW-1).

**Documents marked from the side complainant:**

1. Copy of the advice slip dated: 03.12.2020 is marked as Ex.P1.
  2. Copy of the payment receipt dated: 19.12.2020 is marked as Ex.P2.
  3. Copy of the inpatient bill dated: 20.12.2020 is marked as Ex.P3.
  4. Copy of the discharge summary dated: 20.12.2020 is marked as Ex.P4.
  5. Copy of the advance receipt of manipal hospital dated: 28.12.2020 is marked as Ex.P5.
  6. Copy of the discharge summary of manipal hospital dated: 01.01.2021 is marked as Ex.P6.
  7. Copy of the legal notice dated: 06.02.2021 is marked as Ex.P7.
  8. Copy of the reply legal notice dated: 13.02.2021 is marked as Ex.P8.
  9. Histopathology report dated: 26.02.2021 is marked as Ex.P9.
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10. Ultrasound scan report dated: 23.08.2021 is marked as Ex.P10.

**Witness examined from the side of opposite party:**

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

**Documents marked from the side of Opposite Party:**

1. Xerox copy of consolidated copies of pre operation consent form and declaration is marked as Ex.R1.
2. Xerox copy of consolidated copies of post operation records is marked as Ex.R2.
3. Xerox copy of discharge summary dated: 20.12.2020 is marked as Ex.R3.
4. Xerox copy of reply dated: 13.02.2021 is marked as Ex.R4.

**Witness examined from the side of opposite party:**

Sri. Dr. Naveen. P.G, the opposite party (RW-2).

**Documents marked from the side of Opposite Party:**

-Nil-

  
 30/01/2024.  
 (Rekha Sayannvar) (Chandrashekhar S Noola) (SHIVARAMA K)  
 MEMBER MEMBER PRESIDENT

