

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-I,****U.T. CHANDIGARH**

Consumer Complaint No.	:	CC/513/2021
Date of Institution	:	9/8/2021
Date of Decision	:	22/11/2023

Mr. Raj Paul S/o Sh. Kartar Singh resident of House No.2188, Sector 41-C, U.T., Chandigarh.

... Complainant

**V E R S U S**

1. Dr. Virender Sarwal, resident of House No.1184, Sector 8-C, U.T., Chandigarh.
2. Shalby Multispecialty Hospital, Phase IX, SAS Nagar, Mohali. (through its Managing Directors).
3. Divisional Manager ICICI, Lombard General Insurance Company Limited ground and 4<sup>th</sup> floor, interface 11, office N.401 and 402, New Link Road, Malad (West), Mumbai 400064. Through its Managing Director.

. ... Opposite Parties

**CORAM :**

<b>PAWANJIT SINGH</b>	<b>PRESIDENT</b>
<b>SURJEET KAUR</b>	<b>MEMBER</b>
<b>SURESH KUMAR SARDANA</b>	<b>MEMBER</b>

**ARGUED BY :** Sh. Devinder Singh Soundh, Advocate for complainant.  
 Sh. David Sardana, Advocate proxy for Sh. Puneet Sharma, Advocate for  
 OP No.1  
 None for OP No.2  
 None for OP No.3.

**Per SURESH KUMAR SARDANA, Member**

Briefly stated the complainant was suffering from heart diseases and already taking treatment from PGI. Since the PGI has given long date for surgery the complainant approached OP No.1 for consultation who told the complainant that his condition is very critical and suggested to visit OP No.2 for surgery. On this the complainant apprised the OP No.1 that his surgery at PGI was postponed due to COVID19 and enquired that whether this surgery could be done. OP No.1 told the complainant that OP No.2 is ensuring all COVID19 protocols and they are conducting the surgeries over there and ensured the complainant that he is in safe hands. Accordingly the complainant approached OP No.2 who admitted him on 22.2.2021. After conducting various tests an estimate of Rs.4,60,000/- was given to the complainant. It is alleged that the surgery was scheduled for 26.2.2021 and all the preparation for surgery were made but suddenly the Ops denied to conduct the surgery on the ground of COVID19 norms and threatened the complainant if he does not deposit the charges he will be closed with corona patient for left him to die. It is alleged that the complainant deposited Rs. 2,30,000/- with the Ops but they refunded only Rs.1,25,917/- only and usurped the remaining

amount without giving any service. It is further alleged that due to negligence act of OPs the complainant received a cardiac attack in July 2021 and his life could hardly be saved. Alleging the aforesaid act of Opposite Parties deficiency in service and unfair trade practice on their part, this complaint has been filed

2. The Opposite Parties NO.1 in its reply while admitting the factual matrix of the case stated that the complainant had approached him after hearing much about his reputation and stellar performance in cardiac surgeries. On seeing the history of the investigations i.e. angiography, which the complainant had got conducted in PGI on 15.05.2019 i.e. almost 2 years from first time when the complainant consulted answering OP and the advice of CABG-Coronary Artery Bypass Grafting. The answering OP being engaged for conducting cardiac surgeries at Opposite Party No.2-Hospital had informed the complainant with respect to such surgeries being conducting at Opposite Party No.2 by Opposite Party No.1. In furtherance thereof, it was out of own volition/choice that the complainant after making due verifications opted to get operated by Opposite Party No.1 at Opposite Party No.2-Hospital. Accordingly the complainant got himself admitted on 22.02.2021 (being an elective surgery which in fact the complainant had been procrastinating since last almost 2 years for the reasons as has been detailed in the medical record of PGIMER, Chandigarh (Ex.C1) thereby showing that it was not excruciating urgency for the patient/complainant) and the complainant underwent the various investigation in furtherance of the previous investigation. It is averred that the complainant is a smoker since the last 20-25 years along with LVETf-50%. The provisional diagnosis at the time of admission was Triple Vascular Disease. The copy of the initial assessment form dated 22.02.2021 at the time of admission of the patient is annexed herewith as ANNEXURE OP-1/2. on 22.02.2021, it was clearly mentioned in the consultant note that the plan for the treatment of the patient would be CABG (Coronary Artery Bypass Grafting) in furtherance of which, the vitals of the patient were recorded and medication as per the protocol were also administered to the patient. The requisite investigations were undertaken which are part of the IPD record and on 23.02.2021 in order to prepare for the planned procedure i.e. CABG, the complainant was advised certain investigations and requirements i.e. Blood and urine investigations along with radiology and Echocardiography. Also, PRBCs, FFP (Fresh Frozen Plasma)-4 Units to be arranged, steam inhalation 8 hours, levoline 8 hours and betadine gargles. The echo-cardio gram conducted on 22.02.2021 at Opposite Party No.2-Hospital showed the involvement of the valve as well because of which the Opposite Party No.1 had also to further investigation as to the damage to the valve and the requirement of repair/replacement. The true copy of the entire IPD record from 22.02.2021 to 28.02.2021 along with all the informed consent for high risk surgery/procedure, coronary artery Bypass grafting (CABG), anaesthesia and for Cardiothoracic & Vascular Surgery (CTVS) as well, were also obtained from the patient and all the investigation reports, are annexed herewith as ANNEXURE OP-1/3. It is further averred that on 22.02.2021 the patient was admitted and pre-procedure investigations were undertaken while preparing the patient to undergo CABO, however at the same time, the reports of covid-19 upsurge during the second wave, had started pouring and by the end of February, the cases had been rapidly doubling which made it quite evident that second wave of covid-19 was peaking. Thus, the vigilant medical team headed by OP No.1 in discussion with the management of OP No.2, which were constantly keeping a watch on covid situation, eventually took a call to hold the elective surgeries. It is not out of place to mention here that the patient could not be operated till the investigations are complete and clearance has been obtained, however as certain investigation like blood culture etc. were reported only on 25.02.2020 thus initially the surgery was held up. The process of shaving and betadine are pre-procedure process which are to be performed to keep the patient ready for surgery particularly in case the patient encountered untoward incident during the hospitalization. The patient at the time of discharge was returned Rs.1,25,917/-, however the expenditure incurred on the investigations/medicines/stay of the patient from 22.02.2021 to 28.02.2021 was charged with the clearly understanding of the patient that as and when the second wave of covid-19 would subside and patient revisit for the surgery, the said amount of Rs.1,04,083/- would be adjusted towards the total bill and even though the patient would have to undergo all the tests/medication/stay in the hospital prior to surgery still nothing would be charged for the same. Denying all other allegations leveled in the complaint it is prayed that the complaint be dismissed.
3. OP No.2 in its reply while admitting the factual matrix of the case stated that it is a private reputed hospital with all high-class facilities, it can charge as per the services it rendered to its patients. Due to lack of monetary funds and because of any reasons and any circumstances and it's on patient to take or not to take treatment. All basic knowledge is used to provide to the patients at the time of his/her admission. The Complainant was admitted in Shalby Multi-Specialty Hospital on 22.2.2021 and all basic information is shared with him on the day he visited. On that day he did not raise any queries and

objections in relation with excess payment by Respondent no. 2 and is very well aware that he visited during pandemic, the Shalby Hospital is the hospital with high span where we do not compromise with anything as it is the matter of our patients. Shalby Hospital, after completing all necessary formalities and taking consent by signature postponed complainant's surgery due to rise in Covid-19 cases, as the answering OP cannot risk the life of patient in that crucial period. At that time complainant haven't raise any query and objections in relation to postpone his surgery. So, the allegations of negligent, casual, and deficient Services against Shalby Hospital i.e., is baseless, an afterthought and ill founded. All other allegations made in the complaint has been denied being wrong.

4. OP No.3 in its reply stated that the complaint is not maintainable against the answering OP as the present complaint has been filed against the OP doctor who had treated the patient as per medical norms, standard and techniques. It is denied that the hospital/doctor was ever negligent in any manner while treating the patient at any stage or any. Thus the complainant is not entitled to any amount from the answering OP. As far as Professional Indemnity policy of Dr. Virender Sarwal from the answering respondent is concerned, he was insured with ICICI LOMBARD GEN, INS. CO. as per the policy particular vide Policy No. 4021/199149201/00/000 under professional indemnity any one accident limit for a sum of 100,00,000/- and aggregate limit for one year for Rs. 100,00,000/- during policy period w.e.f 24.10.2020 to 23.10.2021 retroactive date 24.10.2019 SUBJECT TO TERMS AND CONDITIONS. The policy is indemnity policy. Any award or payment pertaining to the case, if any, passed in this case, shall be firstly borne by the insured and in that eventuality the respondent company pleads that subject to the policy cover limit and other terms and conditions of the policy, the claim would be considered under the policy. The policy has exclusions and based on the facts established before the court, the insurer would be in the position to determine coverage under the policy and rule out applicability of any exclusion mentioned in the policy. Denying any deficiency on its part a prayer for dismissal of the complaint has been made.
5. Rejoinder was filed and averments made in the consumer complaint were reiterated
6. Contesting parties led evidence by way of affidavits and documents.
7. We have heard the learned counsel for the contesting parties and gone through the record of the case.
8. On perusal of the complaint, it is gathered that the main grievance of the complainant is that inspite of having carried out all the relevant tests after his admission in OP No.2 hospital, the surgery was not done and part payment of Rs.1,25,917/- was made out of the total payment made to OPs No.1&2 of Rs.2,30,000/-.
9. On perusal of Exhibit C-5, it is observed that an amount of Rs.1,25,917/- out of Rs.2,30,000/- was charged by the Shalby Multispecialty Hospital i.e. OP No.2.
10. On perusal of para 5 of the reply of OP No.2, it is gathered that OP No.2 has fairly admitted the factum that it postponed the complainant's surgery due to rise in COVID 19 cases on 28.2.2021.
11. Further from the perusal of para 6 of the reply of OP No.2, it is observed that the complainant was admitted in OP No.2's hospital on 22.2.2021 in critical condition and several tests were conducted on the complainant. Moreover, it is observed from record that no specific date was given for conduct of surgery.
12. No useful purpose was served for the tests carried out on the complainant as the surgery was postponed by the OP No.2, and there was sheer wastage of money paid by the complainant. As the planned surgery was postponed by OP No.2, the complainant cannot be made to penalized for the tests carried as no useful purpose served.
13. By non refunding the total money paid by the complainant OP No.2 indulged in unfair trade practice and are deficient in rendering service.
14. OP No.1 cannot be held liable for any deficiency as he has used one of the best practices for the examination and carrying out the necessary tests for the patient. The OP No.1 is very well qualified and one of the best practitioner in his area of work. Hence, the complaint qua OP No.1 is deserved to be dismissed.
15. In view of the above discussion, the present consumer complaint succeeds and the same is accordingly partly allowed. OP No.2 is directed as under:-
  - i. to refund Rs.1,04,083/- with interest @9% P.A. from 28.2.2021 when the date final bill issued till onwards.
  - ii. to pay Rs.20,000/- to the complainant as compensation for causing mental agony and harassment to him;
  - iii. to pay Rs.10,000/- to the complainant as costs of litigation.

16. This order be complied with by the OP No.2 within thirty days from the date of receipt of its certified copy, failing which, it shall make the payment of the amounts mentioned at Sr.No.(i) & (ii) above, with interest @ 12% per annum from the date of this order, till realization, apart from compliance of direction at Sr.No.(iii) above.
17. Complaint qua OPs No.1&3 dismissed.
18. Pending miscellaneous application(s), if any, also stands disposed off
19. Certified copies of this order be sent to the parties free of charge. The file be consigned

sd/-

**[Pawanjit Singh]**  
**President**

Sd/-

**[Surjeet Kaur]**

**Member**

Sd/-

**[Suresh Kumar Sardana]**  
**Member**

22/11/2023

*mp*