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**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION, COLLECTORATE CAMPUS, COIMBATORE-18**

PRESENT: Thiru R.THANGAVEL, B.Sc., B.L., President
Thiru P.MARIMUTHU, M.A.M.L., Member
Tmt G.SUGUNA, B.A.B.L., Member

C.C.No.167/2023

Wednesday, the 28th day of August, 2024

Lakshmi,W/o.Selvaraj,
D.No.1, Avvaiyar Street, Kinathukadavu,
Coimbatore – 642 109.

..... Complainant

... Vs ...

1. Dr.Swathanthira Devi,
Chief Medical Officer,
Sri Hari Hospital, Saibaba Colony,
Coimbatore 641 011
2. Dr.Nandhini, Sri Hari Hospital,
Saibaba Colony, Coimbatore 641 011
3. Dr.Rajamani,
Govt Medical College and Hospital,
Coimbatore – 641 018.
4. Dr. Sathish Kumar,
Govt Medical College and Hospital,
Coimbatore – 641 018.
5. Dr.Dinakaran,
Govt Medical College and Hospital,
Coimbatore – 641 018.

.....Opposite Parties

This case having come on for final hearing before us on 12.08.2024 in the presence of M/s .D.Abirami and R.Muthulakshmi, Advocates for complainant and of Thiru. T.K.Vijayan, advocate for the opposite parties 1 to 5 and upon perusing the case records and hearing the arguments, and the case having stood over to this day for consideration, this Commission passed the following:

ORDER**TMT. SUGUNA, MEMBER-II**

The complainant filed a complaint under Sec. 35 of Consumer Protection Act, 2019 by the complainant seeking remedy for the medical negligence caused by the opposite parties 1 to 5

The brief averments of the complaint are as follows:

1. The complainant submitted that she was residing in the above address with her husband and two sons. She was working as a tailor and her husband was a two wheeler mechanic. On April 2019, the complainant was suffering from abdomen pain and she approached Shanthi Social Service, Coimbatore and underwent full body checkup. She was advised that the uterus is weak and was suggested to remove it. Upon the suggestion, of the complainant's relative Sathyabama who was working in Sri Hari Hospital, the complainant on 26.11.2019 approached the 1st opposite party (OP-1) Dr.Swathanthira Devi, head doctor Sri Hari Hospital and 2nd opposite party, (OP-2) Dr.Nandhini, on 26.11.2019 for consultation. They instructed to undergo surgery on the same day 26.11.2019 itself on the payment of Rs.40,000. The complainant arranged the amount and paid it for surgery. The surgery was performed on the same day 26.11.2019 by 3rd the opposite party (OP-3) Dr.Rajamani, along with the 4th opposite party (OP-4) anaesthetist, Dr.Sathish Kumar. During surgery, the complainant cried with pain, but (OP-4) asked her to be quiet and completed the surgery without giving anesthesia. After surgery, the complainant was taking treatment in Sri Hari Hospital as inpatient. She felt urine leakage. When she consulted OP-2, she was asked to wear diaper and was instructed that the urine leakage will stop within 2 days and discharged her from the Hospital without discharge summary. Even after three days, the urine leakage did not stop and the complainant had severe pain in the area where surgery was done. When she approached the hospital, she was asked to take scan by OP-2. The complainant spent Rs.10,000 and took scan in Aran Scan Centre. After viewing the scan report, she was told that during surgery, the urinary tube was damaged and OP-1 instructed that surgery has to be done to place stent. Due to unbearable pain, the

complainant accepted the stent surgery and paid Rs.10,000 and the surgery was performed on 05.12.2019 by the 5th opposite party (OP-5) Dr.Dinakaran. The complainant was discharged from the hospital on the same day without any discharge summary. Even though a correction surgery by placing stent was performed the complainant suffered urine leakage for about 55 days and she has to manage by wearing diaper. Due to Covid-19 lockdown she has to stay in the house with severe pain and later consulted OP-1, but she replied in an inconsiderate manner that they have performed the surgery as per norms and that they will not do any further support. As the doctors who performed surgery were working in the Government Hospital, with no other go, the complainant got admitted in the Government Hospital, Coimbatore on 03.12.19 to undergo treatment for the urine leakage. The treatment which was given to her did not stop the urine leakage. Due to unbearable pain and nonstop of the urine leakage she got discharged from the Government Hospital and admitted herself to Kongunad Hospital, Coimbatore. The complainant was thoroughly checked and she was suggested that a surgery has to be performed in order to stop the urine leakage. A correction surgery was performed in the Kongunad Hospital and they informed that the urinary tubes are damaged and that in future, a surgery has to be performed to replace it. The complainant submits that she has been put to severe mental agony, pain and emotional distress to undergo many surgeries due to the negligence of the opposite parties. The complainant prays to direct the opposite parties No. 1 to 5

- a. to pay Rs.50,00,000/- as compensation for the mental agony caused due to the deficiency of service and medical negligence,
- b. to pay Rs.2,17,996 being the amount spent on medical expenses,
- c. to pay the cost of the complainant.

The brief averment of the written version filed by the 2nd opposite party adopted by 1st and 3^d opposite parties is as follows:-

2. The complaint against the opposite parties is vexatious as well as totally unsustainable both factually and legally. There is no single cause of action to file the complaint before this Honourable Commission, and that the alleged cause of actions are

utter false, baseless, and nothing but fictitious. The complainant had stated that she had undergone a self-Master Health Check-up at Shanti Social Service on 29.04.2019, and the Ultrasound Scan report showed that her,

Uterus : Uterus anteverted and appears bulky in size (107 x 68 x 63 mm) Endometrial (thickness measures 9 mm) echoes normal. Fibroid measuring 35 x 33 mm in anterior wall. Anterior myometrium appears thickened with heterogeneous echotexture. In the IMPRESSION column

@ Bulky uterus with possible anterior wall adenomyosis

@ Uterine fibroid

The complainant visited the 1st and 2nd opposite parties on 26.11.2019, at the 1st opposite party hospital at about 10 AM, and stated that she had a severe abdominal pain with increased menstrual flow during her menstrual cycle, which happens once in 15 days after her second child birth, and had produced the Ultrasound Scan report that was taken on 29.04.2019. It is further stated that the complainant visited this opposite party after seven months of taking the Ultra Sound Scan of her severe sickness. The complainant was put into thorough examination and the necessitated pathological tests were done. The complainant had undergone the following ailments and the same can be seen in the 3rd page of the Patient Record under the heading Doctor Notes of the 1st opposite party's hospital.

1. Medical Termination of Pregnancy
2. LSCS
3. Sterilization was done

The consent forms, entire case sheets, Doctor's notes, nurse's record, graphic and vital sign charts, progress notes, blood test report (26.11.2019), Histopathology Report (29.11.2019) and a hospital copy of the discharge summary are filed. Necessary pathological tests were carried out and based on the results, the drugs were administered to the complainant. Necessary test injection for prevention of allergy was given and the general anaesthesia, pros and cons of the surgery were explained to the complainant. Anaesthetist opinion and a written consent for surgery and anaesthesia were obtained. Proper instructions were given

to the staff of the operation theatre and to the ward on the preparation of the complainant for the surgery. On receipt of the written consent from the complainant, the staff was instructed to shift to the OT on call; that could be seen in the patient record. On 26.11.2019 from the time of the entry, the complainant was constantly monitored at a regular intervals and the necessary tests were done, and at about 2 pm, the complainant's BP was 110/80, the Oxygen level was 99%, Pulse rate was 84/mte. She felt better, comfortable and was afebrile. At about 5 pm, the complainant's BP reading was 110/70, the Pulse Rate was 70/minute and her Oxygen level was at 100%. The complainant was observed by the OP at all levels and her general condition was observed periodically. On confirmation of the fitness she was shifted to OT for the surgery. The complainant was shifted to operation theatre and the entire details were maintained and recorded in the anaesthetic record such as the diagnosis (Fibroid Uterus with Adenomyosis), type of operation LAVH(Laproscopic Assisted Vaginal Hysterctomy) and the team of doctors (OP-2) Gynaecologist Dr. Nandhini, (OP-3) Dr. Rajamani, Laproscopic Surgeon, and (OP-4) Dr, Sathishkumar, Anaesthetist. The complainant underwent MTP, LSCS and Sterilization earlier to this surgery. Due to previous surgeries, there were chances that the blood could had leaked into the peritoneal fallopian tube during the handling of the organs at the time of the open surgery, and sterilization, and adhesion from washing of the fluid when cleaning the organs. In , Modis Medical Jurisprudence and Toxicology, by C.A. Franklin, it is stated,

"SURGEONS, DOCTORS AND NURSES ARE NOT INSURERS. THEY ARE NOT GURANTORS OF ABSOLUTE SAFETY. THEY ARE NOT LIABLE IN LAW MERELY BECAUSE A THING GOES WRONG...."

The complainant was given General Anaesthesia by OP-4 and the OP-3 had performed the surgery with the assistance of OP-2. While performing the surgery, the adhesions that were happened due to pervious surgeries were carefully separated and the surgery was performed (LAVH) with full effort. Under General Anaesthesia, abdomen and perineal parts were painted and draped. Three ports were made, and pneuroperitorem was deacted.

Laproscopy revealed a bulky uterus with dense bowel and omental ligation. The uterus was adherent to anterior abdominal wall with a previous scar. The bowl adhesion was released, and the uterus was also released from the surrounding adhesion. Both ureter tubes were released from the adhesion and the uterus and were safeguarded. Uterus with bilateral tubes and ovaries was ligated and cathetised, and the specimen was removed through the vaginal approach. Hemostas was secured, the drain was kept, and the ports were closed with vicrye. The urine drained was clear and the specimen was sent for HPE. The surgery was a success. It is ridiculous to state that the complainant regained consciousness while performing the surgery. The surgery (hysterectomy) that was performed on the complainant was a major surgery and could not be performed without anaesthesia. For an argument, if the complainant was conscious while performing the surgery, then the surgery could not be continued at any circumstance. The complainant would had become uncooperative and had to be sedated, and if any untoward incident had taken place, the same would had been recorded in the case sheets of the complainant. The complainant was treated well with appropriate medicines and intensive care was given by qualified doctors who are well experienced and have sufficient knowledge in their field through substantial service. On completion of the surgery, the anaesthetist (OP-4) brought the complainant into conscience and allowed her to speak with the accompanying kith and kin. The complainant was treated with experienced, qualified doctors and with appropriate drugs that were necessitated and as stated in the standard medical texts accepted in medical science. The opposite party physically examined the complainant and did not find any leakage and if found, had advised to wear diapers. When the complainant came for the review on 03.12.2019, the opposite party advised for a CT scan to confirm the leakage if it exists. The CT scan report dated 04.12.2019 of the complainant showed that there was a leak from the right ureter. The opposite party advised for a stent to arrest the leakage and further stated that the stent would be removed after six weeks. The opposite party clearly explained to the complainant that the leakage was due to adhesion from previous surgeries and not from the present LAVH surgery. While performing the LAVH to the complainant, the adhesion were separated

carefully, and due to the separation of the adhesion of the ureter, the wall of the ureter became weak, which cannot be avoided. Though the team of doctors who performed LAVH on the complainant are from the Government Hospital, they have the Government order that they can perform the surgery to the patients in any private hospital. On receipt of the confirmation and consent from the complainant, the stent was fixed by the 5th opposite party on 05.12.2019. When the treating doctor feels that the hospital care is not required, they will advise for the discharge of the patient from the hospital. However, before the discharge, the patient will undergo a thorough examination, and on satisfaction of the doctor and as the patient will be discharged. Once the discharge of the patient is confirmed, the discharge summary would be given immediately without any delay or excuse. Accordingly, the discharge summary was given on the same date respectively. In this case, the complainant had narrated to her own whims and fancies that she was informed to collect the discharge summary at the time of review, which is condemned and denied by this opposite party. The complainant has stated that she was not given proper treatment at the Government Hospital, Coimbatore and hence she got discharged on request and admitted herself at the Kongunad hospital where the leakage was corrected. Even in the discharge summary of the Government hospital nothing is commented about the opposite parties or the surgeries or the treatment performed by them. The complainant complained about the opposite parties to

1. Grievance cell of CM of Tamil Nadu
2. The management of the hospital
3. District Collector of Coimbatore
4. Inspector of Police
5. Coimbatore Medical College

Despite the complaints sent, she did not get a response initially and hence, she sent advocate notices to the opposite parties and the same was accepted by the 5th opposite party. It was pertinent to note that the 1st and 2nd opposite parties were not in their stations at that time and the notices were returned to the complainant's advocate as "Addressee

absent, Intimation served". As soon as the opposite parties returned, they approached the Post office where they were told that the cover was returned to the sender, and nowhere as stated in the complaint that it was endorsed as 'REFUSED' by the opposite party on the cover of the notices. The notice was sent to the 3rd opposite party where he was not in service. In other words, the intention of the complainant was that the notice should not be served. Hence, it was returned to the sender with no endorsement. On receipt of the complaint of the complainant, the Inspector of Police, C-3 Police Station conducted an enquiry and instructed to give the reply in writing and this opposite party gave the reply in writing. The opposite parties received a summon dated 23.12.2020 from the Joint Director of Medical and Rural Health Services, based on the communication from the special wing of the Chief Minister of Tamil Nadu for calling upon an enquiry on the complaint of the complainant on 29.12.2020 at 11 AM. The enquiry was conducted by the constituted team of doctors. A copy of the findings and the report dated 03.08.2022 was sent only to the complainant. The report of the enquiry officers sent to the complainant hereunder for reference.

“விசாரணை அறிக்கையை ஆய்வு செய்ததில் நோயாளிக்கு அறுவை சிகிச்சையின்போது Intestine, omentum, uterus and urinary bladder (dense adhesions) ஆகியவை மிகவும் இறுக்கமாக ஓட்டி இருந்ததால் சிறுநீர் குழாய் பாதிப்பு ஏற்பட வாய்ப்பு உள்ளது. அறுவை சிகிச்சைக்குப் பின்னர் 3 முதல் 14 நாட்கள் கழித்து இதுபோன்ற விளைவுகள் தெரிய வாய்ப்புள்ளது. இது போன்ற விளைவுகள் as per the reference (pumped) 0.7 to 1% வரை ஏற்பட வாய்ப்புள்ளது. ஸ்ரீஹரி மருத்துவமனையில் அவருக்கு அதற்குரிய சிகிச்சைகள் முறையாக வழங்கப்பட்டுள்ளது. இருப்பினும் நோயாளி மீண்டும் பரிசோதனைக்கு வராமல் தன்னிச்சையாக வேறு மருத்துவமனைக்கு சென்று சிகிச்சை பெற்றுள்ளார் எனவும், நோயாளிக்கு முறையான வலி நிவாரணிகள் மற்றும் ஸ்டென்ட் பொருத்தப்பட்டு முறையான சிகிச்சையே அளிக்கப்பட்டுள்ளது என தெரிவிக்கப்பட்டுள்ளது என்பதை மனுதாரருக்கு தெரிவித்துக் கொள்ளப்படுகிறது.”

The enquiry report is self-explanatory. The opposite party had provided the best and standard treatment to the complainant as of now and there was no deficiency or malafide intentions in the same. There are no dishonest intentions to make money and such accusation is totally unwarranted, baseless and defamatory. The complainant's claim before this Honourable Commission is fanciful and that the allegations were not supported with any acceptable medical proof. There was no negligence or deficiency in the services rendered to the complainant and the opposite parties are not liable to pay any fanciful compensation or cost. It is prayed that this Honourable Forum may be pleased to dismiss the above complaint with exemplary costs.

The brief averment of the written version filed by the 4th opposite party is as follows:-

3. The complaint is vexatious and wholly unsustainable both in law and facts of the case. The complainant is put to strict proof of his case except as to the matters that are specifically admitted herein. This opposite party is an anaesthetist and was in the team of the other opposite parties and provided anaesthesia to the complainant at the time of surgery. The duty of this opposite party is to make sure that the complainant is unconscious and should not know the suffering or pain while performing the surgery. Accordingly, the complainant was administered with the appropriate dosage and was made comfortable till the end of the surgery by this opposite party. The complainant had stated that during the surgery, she recovered consciousness, suffered unbearable pain and informed this opposite party. It is ridiculous to state that the complainant regained consciousness under general anaesthesia while performing the surgery. The surgery LAVH that was performed on the complainant was a major surgery and could not be performed without anaesthesia. The anaesthetic drugs (Fentanyl 250 micro, Dexmed Infusion, Halothane 1%, Paracetamol 1gm) were administered as necessitated and appropriate dosages were given to the complainant and the same was recorded in the case sheets and no such incidence took place to the complainant as alleged in the complaint. If the complainant was conscious while performing the surgery, then the surgery could not be continued at any circumstance. The complainant

would have become uncooperative and had to be sedated, and if any untoward incident had taken place, the same would have been recorded in the case sheets of the complainant. The complainant was treated well with appropriate medicines and intensive care was given by qualified doctors who are well experienced and have sufficient knowledge in their field through substantial service. On completion of the surgery, this opposite party brought the complainant to consciousness and allowed her to speak with the accompanying kith and kin. If at all the complainant had experienced consciousness, she would have stated about her suffering to her relations but did not. She was sent to the post-operative post anaesthesia care unit where further treatment was accelerated.

The complainant obeyed for commands afibrile:

Her pulse rate was: 88 / minute

BP was: 120 / 70 mmHg

Her Oxygen level was: 99%

Even in the discharge summary of the Government Hospital, Coimbatore, nothing was commented about the opposite parties or the surgeries or the treatment performed by them. When the cover of the legal notice was not brought to the notice of this opposite party on 06.03.2023, how could it be refused?. The summon from the Joint Director of Medical and Rural Health Services, was duly answered and the enquiry report filed by the complainant is self-explanatory. The allegations of the complaint are nothing but defamatory, and she had caused serious damage to the reputation of this and the other opposite parties, apart from causing mental agony for doing services without considering monetary benefits. There are no dishonest intentions to make money, and such accusation is totally unwarranted, baseless and defamatory. It is prayed that this Honourable Forum may be pleased to dismiss with exemplary costs.

The brief averment of the written version filed by the 5th opposite party is as follows:-

4. The complaint filed by the complainant against this opposite party is vexatious as well as totally unsustainable both factually and legally. The complainant has

wantonly suppressed the facts of the case with a view to create a false claim. The complainant was given a General Anaesthesia by OP-4 and the OP-3 had performed the surgery with the assistance of OP-2. While performing the surgery, the adhesions that were happened due to previous surgeries were carefully separated and the surgery was performed (LAVH) was a success. She was advised for a stent to arrest the leakage and that the stent would be removed after six weeks. On receipt of the confirmation and consent from the complainant, the stent was fixed by this opposite party on 05.12.2019 and it was informed that the stent shall be removed after a span of six weeks and the leak would settle by then. In the discharge summary of The Government Hospital, Coimbatore, nothing was commented about the opposite parties or the surgeries or the treatment performed by them, and if anything was wrong, the same could have been seen in their discharge summary. In the discharge summary of Kongunad Hospital, no comments were registered about the previous surgery or fixation of stent or about the treatment of the opposite parties. The hospital at where the complainant was finally treated was not added as a necessary party in the proceedings; the non-joinder of the necessary party to the proceeding is fatal to the prosecution. The enquiry was conducted by the Joint Director of Medical and Rural Health Services and their report filed by the complainant is self-explanatory. The complainant had suppressed the communications that were sent to many of the State and Central Government Authorities in the complaint for no reason, and the reply that might have received were also suppressed. The allegations of the complainant are defamatory, and she had caused serious damage to the reputation of this and the other opposite parties, apart from causing mental agony for doing services without considering monetary benefits.. The complaint against the opposite party is unfounded and devoid of truth. There was no negligence or deficiency in the services rendered to the complainant and the opposite parties are not liable to pay any fanciful compensation or cost. This Honourable Forum may be pleased to dismiss the above complaint with exemplary costs.

5. The complainant has filed her Proof Affidavit and Ex.A1 to Ex A24 have been marked. The opposite parties 1 to 3 have filed their Proof Affidavit and Ex.B1 to Ex.B6 have been marked. The 4th opposite party has filed his Proof Affidavit and no exhibit has been marked. The 5th opposite party has filed his Proof Affidavit and no exhibit has been marked.

6. The points for consideration in this complaint are:

- 1) Whether the complainant has proved the allegation of negligence and deficiency in service against the opposite parties?
- 2) What are the reliefs the complainant is entitled to?

Point No.1:

7. The 1st opposite party (OP-1) Dr. Swathanthira Devi is the Head doctor of Sri Hari Hospital and 2nd opposite party (OP-2) Dr.Nandhini, is a gynecologist attached to Sri Hari hospital, Coimbatore. The 3rd opposite party (OP-3) is Dr.Rajamani, Coimbatore, who performed surgery. The 4th opposite party (OP-4) is Dr.Sathish Kumar, Anesthetist and 5th opposite party (OP-5) is Dr. Dinakaran, Coimbatore who performed stent implanting surgery.

Submissions of the Complainant:

8. The case of the complainant is that she approached Shanthi Social Service in April 2019 for severe abdominal pain and was diagnosed with a uterine problem. She was advised to undergo a hysterectomy. Subsequently, on 26.112019, she visited OP-1 Hospital, where OP-2 prescribed immediate surgery. She paid Rs. 40,000 and underwent a LAVH surgery on the same day. The surgery was performed by OP-3 and OP-4, with the assistance of OP-2.

9. During the surgery, she suffered significant pain due to inadequate anaesthesia. Post-surgery, she experienced urinary incontinence and was advised by OP-2 to wear a diaper, as the leakage was expected to subside shortly. However, the leakage persisted, and following OP-2's instructions, the complainant underwent a scan at Aran Scan

Centre and paid Rs 10,000. The scan report dated 04.12.2019 revealed damage to her urinary tube. OP-2 advised a stent surgery to control the urine leakage. This stent surgery was performed by OP-5 on 05.12.19, for which she paid an additional Rs.10,000. Despite this procedure, the urine leakage continued. The hospital issued discharge summary for the hysterectomy on her request and refused to give discharge summary, medical report for the stent surgery.

10. Due to lack of further financial resources, Sri Hari Hospital not inclined to give treatment regarding the urine leakage and as OP-1 advised to approach the Government Hospital where OP-3 and OP-5 are working. Hence she got admitted to the Government Hospital in Coimbatore on 13.12.19. However, the treatment did not resolve her issues. Due to unbearable pain and continued urine leakage, she was discharged from the Government Hospital and admitted to Kongunad Hospital, where a corrective surgery was performed. She was informed that her urinary tubes had been damaged, necessitating future surgeries.

11. The complainant alleged that the LAVH was performed without proper preoperative tests and without obtaining informed consent. She claims that due to the negligence of the opposite parties during hysterectomy, she suffered substantial damage to her bladder, requiring multiple major surgeries within two months and facing the prospect of additional future surgeries. The complainant was forced to wear a diaper for nearly two months, causing her severe mental agony and emotional distress.

12. The complainant asserts that she has not fully recovered and continues to endure significant suffering. The complainant alleges negligence and deficiency in service against the opposite parties, seeking compensation and the cost of the proceedings.

Submissions of Opposite Parties 1 to 3:

13. The opposite parties (OPs) 1 to 3 argued that the complainant underwent a health check-up at Shanthi Social Service on 29.04.2019 and was advised to have a hysterectomy. The complainant sought treatment from OP-1 on 26.11.2019 for severe abdominal pain and heavy menstrual flow. OP-2 thoroughly examined the complainant. A

scan report dated 29.04.2019 showed that her uterus was bulky, with possible anterior wall adenomyosis and uterine fibroids. The complainant had a history of MTP (Medical Termination of Pregnancy), LSCS (Lower Segment Caesarean Section), and sterilization. After a comprehensive evaluation, necessary pathological tests, and obtaining proper written consent, LAVH (Laparoscopically Assisted Vaginal Hysterectomy) was performed by OP-3, assisted by OP-2 and OP-4.

14. During the surgery, adhesions resulting from previous surgeries were carefully separated, and the bowel adhesions were released. The uterus was released from the surrounding adhesions, and the uterus was safeguarded and removed. The surgery was successful, the complainant regained consciousness, and she was shifted to postoperative care. The allegation that the complainant regained consciousness during the surgery due to inadequate anaesthesia and suffered pain is entirely false, as the surgery was a major one. The complainant was treated diligently, following standard protocols with proper medication.

15. No leakage was found during the physical examination, and the complainant was advised to use a diaper. The opposite parties argued that the leakage was caused by dense adhesions from prior medical procedures, not from the LAVH. The adhesions were carefully separated, and due to the separation of the ureteral adhesions, the ureter wall became weak, which was unavoidable. This was explained to the complainant and her attendants.

16. The medical team followed standard protocols, ensuring continuous monitoring and administering appropriate medications. Once the patient was comfortable, she was discharged from the hospital. Post-surgery, the complainant was found to have a ureteral leak, which was attributed to her previous surgical history. After receiving confirmation and consent from the complainant, a stent was fixed by OP-5 on 05.12.2019, and it was informed that the stent should be removed after six weeks and that the leak would settle by then.

17. The discharge summary from the Government Medical College Hospital, Coimbatore, did not mention any adverse comments against the opposite parties. Following

the complainant's petition to the Chief Minister's Special Cell alleging medical negligence against the opposite parties, the Joint Director of Medical and Health Services conducted an inquiry on 29.12.2020 and issued a report stating that proper treatment had been provided by the opposite parties. The opposite parties contend that they provided the best available treatment, following standard protocols at every stage of treatment, and that the urine leakage occurred due to the complainant's past surgeries. They cited various judgments from the Apex Court to support their argument that medical negligence cannot be attributed to a doctor as long as they perform their duties with reasonable skill and competence. The opposite parties seek the dismissal of the complaint.

Submissions of OP-4:

18. OP-4 submits that the complaint is vexatious and legally untenable. As an anaesthetist involved in the surgical team, OP-4 emphasizes that the complainant received appropriate general anaesthesia, ensuring that she remained unconscious and free from pain during the procedure. OP-4 refutes the allegation that the complainant regained consciousness, arguing that if this had occurred, the surgery (LAVH) could not have continued, and the complainant would have informed her attendants. The anaesthetic regimen, including Fentanyl, Dexmedetomidine infusion, and Halothane, was administered in precise dosages and duly recorded in the case notes.

19. Postoperative monitoring showed stable vital signs, including an oxygen saturation of 99% and a pulse rate of 88 bpm, indicating effective anaesthesia management. If any complications had occurred due to the care provided by the opposite parties, they would have been noted in the discharge summary from the Government Hospital. Furthermore, the legal notice to OP-4 was not properly communicated, and responses to inquiries from the Joint Director of Medical and Rural Health Services were satisfactorily addressed and are self-explanatory. The allegations are defamatory and damaging to the reputations of the medical professionals involved, who acted with integrity and expertise. OP-4 requests the dismissal of the complaint with exemplary costs.

Submissions of OP-5:

20. OP-5 submitted that the complainant received general anaesthesia during the stent surgery, and the surgery was performed successfully. The complainant was advised to return for a follow-up after six weeks, at which point the stent would be removed. However, the complainant did not approach the treating doctor but instead sought treatment from other hospitals. Neither the discharge summary from the Government Hospital nor the one from Kongunad Hospital mentioned any issues with the surgeries or treatments provided by the opposite parties. Moreover, the complainant failed to include the hospital where she received final treatment as a necessary party to the proceedings.

21. The report from the Joint Director of Medical and Rural Health Services supports the position of the opposite parties. OP-5 claims that the allegations are defamatory and have harmed the reputation of the opposite parties. OP-5 submits that there was no negligence or deficiency in the care provided to the complainant and requests the dismissal of the complaint with exemplary costs.

Analysis, Reasoning, and Conclusion:

22. The materials on record, along with the oral arguments advanced by both parties, have been thoroughly examined. The complainant alleged that the LAVH (Laparoscopic-Assisted Vaginal Hysterectomy) was performed without proper preoperative tests and without obtaining informed consent. She claims that, due to the negligence of the opposite parties during the hysterectomy, she sustained substantial damage to her bladder, requiring multiple major surgeries within two months, and faces the prospect of additional surgeries in the future.

23. On the other hand, the opposite parties (OPs) argue that the complainant was treated diligently, following standard protocols and with proper medication. They claim that the leakage of urine was caused by dense adhesions from prior medical procedures, not from the LAVH. Furthermore, they argue that post-surgery, the complainant was found to have a ureteral leak, which they attributed to her previous surgical history. After receiving

confirmation and consent from the complainant, a stent was placed by OP-5 on 05.12.2019, and they deny any negligence as alleged.

24. OP-4 emphasized that the complainant received appropriate general anaesthesia, ensuring she remained unconscious and pain-free during the procedure. Postoperative monitoring showed stable vital signs, including an oxygen saturation of 99% and a pulse rate of 88 bpm, indicating effective anaesthesia management. OP-5 submitted that the complainant was advised to return for a follow-up after six weeks, at which point the stent would be removed. However, the complainant did not return to the treating doctor, instead sought treatment from other hospitals. The opposite parties assert that there was neither negligence nor deficiency in their care.

25. Therefore, the key issues to be determined are whether the OPs conducted preoperative tests? , whether informed consent was obtained ?, and whether there was any negligence in performing the hysterectomy?.

26. Pre-operative Tests:

a) Upon reviewing Exhibit B1, which contains the patient records, it was noted that OP-2 relied on a scan dated 29.04.2019, taken approximately seven months before the surgery, to recommend an elective LAVH (Laparoscopic Assisted Vaginal Hysterectomy) on the same day. OP-2 admitted to relying solely on this older scan, which was provided by the complainant, without conducting any updated diagnostic imaging before the surgery. The OPs were aware of the complainant's medical history, including MTP (Medical Termination of Pregnancy), LSCS (Lower Segment Caesarean Section), and sterilization, indicating they were cognizant of potential complexities involved in performing a hysterectomy. Despite this, they failed to conduct necessary diagnostic imaging before determining the appropriate course of action. The OPs did not explain the reasons for not taking updated diagnostic imaging prior to assess the patient's fitness for undergoing such a major surgery.

b) A more recent scan would have provided a clearer understanding of the complainant's current anatomical condition, reducing the risk of complications. Notably, the

complainant approached OP-1 hospital on November 26, 2019, and the hysterectomy was performed on the same day based on a scan report dated April 29, 2019.

c) It is pertinent to refer the decision of the Hon'ble NCDRC in Pushpa Bhatnagar vs. Varun Hospital, which cites an excerpt from Wylie and Churchill-Davidson's "A Practice of Anaesthesia" under Chapter 29, "Preoperative Assessment and Premedication for Adults." The extract highlights:

"The goals of preoperative medical assessments are to improve patient outcomes, reduce patient anxiety by acquainting them with their doctors and explaining procedures, and to obtain informed consent. Medical assessments enable physicians to reduce morbidity by optimizing health status and planning preoperative management. As preoperative morbidity and mortality increase with the severity of pre-existing conditions, careful evaluation and treatment can reduce their occurrence. Thus, patients benefit from reliable preoperative assessments that help in selecting appropriate laboratory tests."

d) The OP-2 herself admitted that she relied on the test reports produced by the complainant that were done on 29.04.2019. On perusal, it was noted that the lab investigations were done on 29.04.2019, but there was need to do basic investigation pre-operatively. Thus the OP-2 failed in her duty of care. It was deficiency of service.

e) In light of the above, it is evident that, the omission of the opposite parties to conduct the necessary updated diagnostic imaging before the surgery, constitutes negligence and deficiency in service.

27. Informed Consent:

a) The complainant alleged that the OPs did not obtain her consent to perform the LAVH surgery, nor for the stent placement procedure on 05.12.2019. The OPs contend that the necessary consent was obtained.

b) Upon perusal of Ex-B1, the consent form produced by OP-2 for performing the LAVH surgery, it is observed that the form does not bear the complainant's signature. There is no explanation, much less an acceptable one, for the absence of the complainant's signature on the consent form. Furthermore, regarding the stent placement surgery, OP-2

produced the Patient Record as Ex-B2, and there is no evidence to show that the complainant signed a consent form. The column for the person giving consent is left blank, making it evident that OP-2 did not obtain the complainant's consent before the surgery.

c) The absence of a signed consent form indicates that the complainant was not adequately informed about the risks and nature of the procedures, which is a fundamental requirement for any surgical intervention. Since no informed consent exists, the hospital's actions are not in accordance with the judgment of the Hon'ble Supreme Court in *Samira Kohli v. Dr. Prabha Manchanda*. In this judgment, it was held that consent in the context of a doctor-patient relationship means the grant of permission by the patient for an act to be carried out by the doctor, such as a diagnostic, surgical, or therapeutic procedure. What is relevant and important is the inviolable nature of the patient's right regarding their body and the right to decide whether they should undergo a particular treatment or surgery. The nature of the information required to be furnished by a doctor to secure valid or informed consent is crucial. In the present case, there was no consent, let alone informed consent, before conducting the surgeries on the complainant. This omission by the OPs amounts to a deficiency in service and negligence.

28. Allegation of negligence:

a) The complainant alleged that due to the negligence of the opposite parties during hysterectomy, she suffered substantial damage to her bladder, requiring multiple major surgeries within two months and facing the prospect of additional future surgeries. On the other hand OPs argued that the medical team followed standard protocols, ensuring continuous monitoring and administering appropriate medications. Once the patient was comfortable, she was discharged from the hospital. Further, the opposite parties 1 to 3 argued that the leakage was caused by dense adhesions from prior medical procedures, and the adhesions were carefully separated, and due to the separation of the ureteral adhesions, the ureter wall became weak, which was unavoidable and this was explained to the complainant and her attendants.

b) It is a settled position of law that the burden of proof is on the complainant to establish that the OPs did not follow the standard medical procedures. The complainant failed to prove that the OPs did not exercise due care while performing surgeries which resulted in urine leakage with acceptable medical evidence. A mere statement by the complainant, which is denied by the opposite party, cannot be considered as evidence sufficient to prove the complainant's case. In the absence of any material much less acceptable evidence to suggest negligence by the opposite parties, no negligence can be attributed to them.

29. Further, the argument of OPs that Kongunad Hospital has not been added as party and the complaint is liable to be dismissed for non-joinder of a necessary party. As the allegations are against the OPs and the medical records of Kongunad hospital has been filed, the above contention of OPs is untenable.

30. The complainant alleged that insufficient anaesthesia was given. But the complainant did not prove the allegation. Op-4 submitted that he administered correct dosage.

31. It is relevant to refer the judgement of the Hon'ble NCDRC dated 27.03.2023 in case of Valsamma Chacko -Vs- Leelamma Joseph & 3 Others. The facts and circumstances are squarely applicable to the case on hand.

32. In view of the above discussion, the Commission concludes that the allegation of negligence and deficiency in service against the opposite parties have been established. Given the facts and circumstances of the case, liability cannot be apportioned among the opposite and hence OP-1 to OP-5 are jointly and severally liable. Point No.1 is answered accordingly.

Point No 2:

33. The Commission has found negligence and deficiency in service on the part of OP-1 to OP-5, as detailed in Point No.1. The next question to be determined is the

quantum of compensation. The complainant, aged 43 years, is self-employed in tailoring and is responsible for supporting her family.

34. In this regard, it is relevant to refer to the decision of the Hon'ble NCDRC in the case of Sq. Ldr. N.K. Arora (Retd) vs. Army Hospital (R&R) & Ors., dated July 2022, which outlines the principles to be followed when determining compensation. Furthermore, in the case of Samad Hospital vs. Muhammed Basheer, decided on 25.05.2022, the Hon'ble NCDRC mentioned the factors to be considered while quantifying compensation.

35. Guided by the above judgments in similar circumstances, and considering the inconvenience experienced by the complainant in wearing diaper unnecessarily for a longer period, the Commission is of the view that it is just and reasonable to direct opposite parties 1 to 5, who are jointly and severally liable, to pay Rs.15,00,000 (Rupees Fifteen Lakhs only) as compensation to the complainant, which includes the medical expenses incurred by the complainant for the mental suffering and emotional anguish caused by their negligence and deficiency in service. Additionally, opposite parties 1 to 5, who are jointly and severally liable, are directed to pay Rs 5,000 towards the cost of the proceedings. Point No. 2 is answered accordingly.

36. In the result, this complaint is partly allowed directing the opposite parties 1 to 5 who are jointly and severally liable i) to pay the complainant Rs.15,00,000/- (Rupees Fifteen Lakhs only) as compensation towards mental sufferings and emotional anguish etc. caused by their negligence and deficiency in service (which includes the medical expenses incurred by the complainant) and ii) to pay a sum of Rs.5000/- (Rupees Five thousand only) towards the cost of proceedings. The above amounts to be paid within a period of one month from the date of this order failing which the opposite parties shall be liable to pay interest at the rate of 9% p.a. towards the above said total amount till it is realized.

Pronounced by us in Open Commission on this the 28th day of August, 2024.

(Sd/-)
(G.SUGUNA)
Member

(Sd/-)
(P.MARIMUTHU)
Member

(Sd/-)
(R.THANGAVEL)
President

List of Exhibits marked by the complainant:

- | | | |
|-----|---------------------|--|
| 1. | Ex. A1/ 29.04.2019 | Copy of the Health check-up report in SSS Shanthy Hospital |
| 2. | Ex. A2/ 26.11.2019 | Copy of the Medicine list |
| 3. | Ex. A3/ 27.11.2019 | Copy of the Medical Bills |
| 4. | Ex. A4/ 28.11.2019 | Copy of the Estimate slip |
| 5. | Ex. A5/ 26.11.2019 | Copy of the Discharge Summary |
| 6. | Ex. A6/ 28.11.2019 | Copy of the Dr. Right's Lab Bill |
| 7. | Ex. A7/ 04.12.2019 | Copy of the ARAN Diagnostic bill |
| 8. | Ex. A8/ 13.12.2019 | Copy of the Inpatient slip in Govt Hospital |
| 9. | Ex. A9/ - | Copy of the Govt Hospital Discharge summary |
| 10. | Ex. A10/ - | Copy of the Kongunadu Hospital Bills |
| 11. | Ex. A11/ 06.02.2020 | Copy of the Kongunadu Hospital IPD receipts |
| 12. | Ex. A12/ 14.02.2020 | Copy of the Kongunadu Hospital Discharge summary |
| 13. | Ex. A13/ - | Copy of the CM cell petition report |
| 14. | Ex. A14/ 25.01.2023 | Copy of the Legal Notice to 1 st op |
| 15. | Ex. A15/ 28.01.2023 | Return post cover |
| 16. | Ex. A16/ 25.01.2023 | Copy of the Legal notice to 2 nd op |
| 17. | Ex. A17/ 28.01.2023 | Return post cover |
| 18. | Ex. A18/ 02.02.2023 | Copy of the Legal notice to 3 rd op |
| 19. | Ex. A19/ 03.02.2023 | Return post cover |
| 20. | Ex. A20/ 03.03.2023 | Copy of the Legal notice to 4 th op |
| 21. | Ex. A21/ 08.03.2023 | Return post cover |
| 22. | Ex. A22/ 03.02.2023 | Acknowledgement card |
| 23. | Ex. A23/ - | Copy of the tax invoice from Aushadhi Kendra |
| 24. | Ex. A24/ - | Copy of the aadhar card |

List of witnesses examined on the side of complainant:

- | | | |
|----|-----------------|-----------------------------------|
| 1. | PW1/ 16.10.2023 | Lakshmi,W/o.Selvaraj, Complainant |
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List of Exhibits marked on the side of 2nd opposite party:-

- | | | |
|----|--------------------|---|
| 1. | Ex. B1/ - | Copy of the entire patient records (LAVH) |
| 2. | Ex. B2/ - | Copy of the entire patient records (Stent) |
| 3. | Ex. B3/ 06.10.2020 | Copy of the reply letter to inspector of police |
| 4. | Ex. B4/ 23.12.2020 | Copy of the summon of joint director |
| 5. | Ex. B5/ 09.03.2021 | Copy of the summon of CMC hospital |
| 6. | Ex. B6/ - | Copy of the reference |

List of witnesses examined on the side of 2nd opposite party:

- | | | |
|----|-----------------|--|
| 1. | RW1/ 20.12.2023 | Nandhini, Doctor, 2 nd Opposite Party |
|----|-----------------|--|

List of witnesses examined on the side of 4th opposite party:

- | | | |
|----|-----------------|---|
| 1. | RW2/ 20.12.2023 | Sathish Kumar, Doctor, 4 th Opposite Party |
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List of witnesses examined on the side of 5th opposite party:

- | | | |
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| 1. | RW3/ 20.12.2023 | Dinakarababu, Doctor, 5 th Opposite Party |
|----|-----------------|--|

(Sd/-)
(G.SUGUNA)
Member

(Sd/-)
(P.MARIMUTHU)
Member

(Sd/-)
(R.THANGAVEL)
President