DISTRICT CONSUMER DISPUTES REDRESSAL FORUM
THIRUVALLUR
No.1-D, C.V.NAIDU SALAI, 1st CROSS STREET,
THIRUVALLUR-602 001

Complaint Case No. RBT/CC/38/2024

1. Regina Mary & 2 Ano
All re residing at: 246, Mosque St., Kunnathur (Post),
Uthakkarai Taluk, Krishnagiri .....Complainant(s)

Versus

1. M/S.Aarthi Scans & 1 Ano
766, Poonamallee High Road, Kilpauk, Chennai-600 010. .....Opp.Party(s)

BEFORE:
TMT.Dr.S.M.LATHA MAHESWARI, M.A.,M.L.,Ph.D(Law) PRESIDENT
THIRU.P.VINODH KUMAR, B.Sc., B.L., MEMBER
THIRU.P.MURUGAN, M.Com, ICWA (Inter), B.L., MEMBER

PRESENT: **M/s V.Balaji & 1 Ano - C, Advocate for the Complainant 1**
M/s Dr.B.Cheran & 1 Ano - OP1 Ananthakrishnan-OP2, Advocate for the Opp. Party 1
Dated : 08 Apr 2024

Final Order / Judgement

Date of Filing 22.06.2009

Date of Disposal:

08.04.2024

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION

THIRUVALLUR

BEFORE TMT. Dr.S.M. LATHA MAHESWARI, MA. ML, Ph.D (Law),
…….PRESIDENT

THIRU.P.VINODH KUMAR, B.Sc., BL,
……MEMBER-I

THIUR.P.MURUGAN, M.Com, ICWA (Inter), BL.,
……MEMBER-II

RBT/CC.No.38/2024

THIS MONDAY, THE 08th DAY OF APRIL 2024

1.Mrs.Regina Mary,

W/o.Late David,

2.Angel,

D/o.Late David,

3.Minor Sambal Christopher,

S/o.Late David,

(3rd Complainant is represented by his

Mother and natural guardian Regina Mary),

All are residing at 246, Mosque Street,

Kunnathur (PO),

Uthakkarai taluk, Krishnagiri. .....Complainants.

//Vs//

1.M/s.Aarthi Scans,

766, Poonamallee High Road,

Kilpauk, Chennai 600 010.

2.St.Isabel's Hospital,

No.49, Oilver Road,

Mylapore, Chennai 600 004. ……Opposite parties.

Counsel for the complainant : M/s.V.Balaji, Advocate.

Counsel for the 1st opposite party : M/s.S.Rajendran, Advocate.

Counsel for the 2nd opposite party : M/s.K.V.Ananthakrushnan, Advocate.

This complaint has been filed before DCDRC, Chennai (North) as CC.No.208/2018 and transferred to this commission by the administrative order in RC.No.J1/3145/2023 dated 09.11.2023 of the Hon'ble State Consumer Disputes Redressal Commission, Chennai and taken on file as RBT/CC.No.38/2024 and this complaint coming before us finally on 12.03.2024 in the presence of M/s.V.Balaji, counsel for the complainant and M/s.S.Rajendran, counsel for the 1st opposite party and M/s.K.V.Ananthakrushnan, counsel for the 2nd opposite party and upon perusing the documents and evidences of both sides this Commission delivered the following:

ORDER

PRONOUNCED BY Tmt. Dr.S.M. LATHA MAHESWARI, PRESIDENT

1. This complaint has been filed by the complainant u/s 35 of the Consumer Protection Act, 2019 alleging deficiency in service against the opposite parties with regard to the medical negligence committed by them resulting in the death of 1st complainant's husband and 2nd and 3rd complainant's father along with a prayer to direct the opposite parties to pay a sum of Rs.15,00,000/- towards compensation for the mental agony and to pay a sum of Rs.1,12,500/- towards medical expenses and to pay a sum of Rs.10,000/- towards cost of the proceedings to the complainants.

Summary of facts culminating into complaint:-

2. Aggrieved and dissatisfied by the act of negligence resulting in deficiency in service committed by the opposite parties resulting in the death of one Mr.David the present complaint was filed by the wife and children of the deceased.

3. Late David having restricted mobility of right shoulder joint since 1991 approached New Hope Medical Centre for further treatment where he was diagnosed as Cervical Spondylosis, Arnold Chiari Malformation type I, Syrinx C1 –T1. As the Doctor advised a minor surgical procedure the same was underwent by the deceased on 07.10.2008. The post operative period was uneventful and he got discharged on 17.10.2008 with instructions to repeat investigation in the form of MRI 3 months and 6 months later to assess the syrinx. On 19.02.2009 the complainant's husband approached the 1st opposite party and got an appointment on payment of Rs.2500/-. When the husband of the 1st complainant was brought for MRI scan the Doctors at the 1st opposite party Scan centre administered heavy dose of Anaesthesia which resulted in Cardio-Respiratory Arrest and Brain death. Thereafter the deceased was transferred to the 2nd opposite party's Hospital for further treatment. The 1st opposite party did not furnish any details about the treatment given at their Scan Centre and the drug administered for anaesthesia intentionally. The 1st complainant's husband/ deceased was admitted at the 2nd opposite party Hospital ICCU on 19.02.2009 and never regained consciousness for nearly 13 days and was kept under ventilation all the time. On request, discharge of the deceased was made by 2nd opposite

party on 04.03.2009. However he died on 05.03.2019. Thus stating alleging deficiency in service on the part of both opposite parties the present complaint was filed for the reliefs as mentioned above.

The crux of the defence put forth by the 1st opposite party:-

4. The 1st opposite party filed version disputing the complaint allegations contending inter alia that though the negligence was attributed to administration of excessive anaesthesia to the patient neither the anaesthetist was named nor impleaded as a party to the complaint and therefore this complaint is not maintainable for non-joinder of necessary parties. No legal notice was issued to them. Contributory negligence may also be attributed to New Hope Medical Centre where Mr.David underwent serious and major surgery related to his neuro-genetic deformities named as Arnoid Chiari Malformation Type 1 and Syrinx (Syringomyelia) wherein chances for adoption of imperfect surgical procedures and post operative complications could have been the reason for his sudden cardiac arrest. Anaesthesia for MRI scans comes in 5 mg pre-packed and sealed vials and diluted with distilled water before administration and accordingly there could be no administration of lethal dosage to scan patients. As a normal medical practice, medical consent has also been obtained from the family of Mr.David. In this case for sedation by Anaesthesia vide 1st opposite party letter/safety checklist dated 19.02.2009 consent was obtained. In cases of wrong administration of anaesthesia, the patient shall not remain alive even for a minute whereas the complainant's husband Mr.David lived for nearly 15 days after the administration of the sedative dosage of anaesthesia. The 1st opposite party has promptly attended on the 1st complainant's husband immediately by performing cardiac resuscitation and by quickly transferring him on ET Tube/Ambu ventilation Oxygen to the fully equipped St.Isabel Hospital for further management and suitable Medical intervention. All the medical journals and Books on Neuro surgery reiterate the fact that even after surgical intervention such genetic neuro deformities are not completely cured and neurological dysfunction remain more severe and surgical results were very poor since patients exhibited accentuated pre-operative symptoms such as upper-extremity muscle atropy, ambulatory dysfunction and spinal atropy which was discovered in post operative MR imaging along with post-operative complications, leading to neural deficits and increased duration of morbidity. The Syrinx never vanished and recurred and the Foramen Magnum on which surgery was done regenerated back and scoliosis was also present. The complication also included cerebro-spinal fluid leakage, pseudo meningocele and poseterior fossa syndrome. The cardio respiratory arrest that occurred was purely coincidental that has arisen out of incompletely cured Arnold chiari and Syrinx Deformity and due to post operative complications and it was unfortunate that the same happened in the 1st opposite party scan centre. The husband of the 1st complainant was taking consultation and treatment from local doctors since the year 1991 for his restricted mobility of Right shoulder joint and has been undergoing electrical shock treatment since the year 1991 onwards. That late Mr.David has been negligent with his health and has not taken proper steps for diagnosing the real reason for his serious illiness affecting shoulder joint mobility for nearly 18 years thereby allowing his illiness to advance and progress to reach a critical stage. It was not clear on what basis the first complainant states that her husband was brought for MRI Scan and was administered a heavy dose of Anesthesia which resulted in cardio-respiratory arrest. It was true that the transfer letter of the first opposite party dated 19-2-2009 filed by the complainant

states that the late Mr. David "came for MRI under sedation". In this regard the Opposite Party stated that prior to coming to the scan centre on 19.2.2009, Mr. David had taken consultation from one Dr. Senthilnathan, of New Hope Medical Centre who had advised Mr. David to go for an "MRI CV Junction" under Anesthesia and it is only based on the Medical Advice of the said Doctor written in his Referral Letter that the 1st Opposite party used mild Anesthesia on Mr. David to enable him to undergo the MRI Scan. It was submitted that Anesthesia was not normally administered to Patients coming for MRI scans who are able to lie down supine in a still manner peacefully and co-operate to take the scan since MRI-spine related scans can be taken only in a "Lying-on-the-back" position. Further Anesthesia was administered in titrated small dosage (1mg) intravenously only to cause reduction in anxiety and cause mild sedation and the same shall not even cause loss of consciousness. Therefore it was submitted that cardiac arrests, fatality, death/brain death etc., shall not be caused due to intravenous administration of anesthesia given to cause mild sedation. Anesthesia used in Scan centers were used as 1mg dosages in syringes which was extremely a low dosage and was 1/10th of the dose necessary to cause death and such a huge dose was not even given in case of surgeries within operation theatres. Thus it was a non-invasive procedure unlike epidural administration of Anesthesia given during major invasive surgeries. It was submitted that the Complainants were put to strict proof of their wild, baseless and mischievous allegation of using heavy dose of Anesthesia by the 1st opposite party on Late Mr. David which caused Cardio- Respiratory Arrest especially when Mr. David had survived for half an hour after the administration of anesthesia which is impossible in case of wrong administration of anesthesia where the Patient dies instantly. It was submitted that dosage of anesthesia given for MRI scan tests was never a factor in causing cardiac arrest since the same was non-invasive and only an anxiety reducer. The very fact that Mr. David was instructed by his Doctor to be under sedation for taking an MRI Scan clearly goes to prove that Mr. David's condition was not normal and was exhibiting Ataxia excessive discomfort, headache, pain and tremendous anxiety combined with his obese body totally making him unfit for taking an MRI scan without sedation. Mr. David had almost completed the MRI-Cervical scan test, he developed mild cardio-respiratory arrest after 20-25 minutes of lying down on the scan machine and immediately cardio-resuscitation was carried out and the heart beat was revived. Thereafter he was immediately rushed to Billroth-Kaliappa Hospital for urgent ventilation support but unfortunately the said facility being unavailable and the branch of the Hospital at Aminjikarai, Chennai where adequate infrastructure was available being too far away for the existing urgent need, he was quickly transferred on ET Tube/Ambu ventilation Oxygen to St. Isabel Hospital for further Management and suitable Medical intervention as was evident from the Discharge summary given by St. Isabels dated 04.03.2009. It was totally wrong to state that the late Mr.David had no ailment when he went in for MRI Scan with the 1st opposite party. The 1st opposite party submits, clarifies and explains the medical Condition:-

a. "Arnold Chiari Malformation Type 1: It is a birth anomaly/deformity where the Patient exhibits herniation in the hind brain, and the resultant caudal descent of the cerebellar tonsils(in the mid-brain) with associated occipital (base of the skull where the neck starts) headache, combined with sensory disturbances, weakness, absence of lateral co-ordination in the limbs, spasticity, bulbar signs, syringomyelia (Syrinx) or scoliosis (a change of shape /bend in the spinal cord) as explained in the "Fundamentals of Operative Techniques in Neurosurgery authored by E.Sander Connolly, Guy M McKhann II, Judy Huang and Tanvir F.Choudhrn.

b. Syrinx: It is also called as Syringomyelia and is an associated disorder of Arnold Chiari malformation Type 1. It indicates the presence of longitudinally disposed tubular cavities within the spinal cord, usually of greater than two or three segments in length and the cavity contains Cerebrospinal fluid(CSF) or indistinguishable from CSF. Accordingly Mr. David has been diagnosed of these deformities in New Hope Medical centre as was evident from the Discharge Summary and it was for correcting these deformities that he had undergone Major, Daring and breath-taking surgical procedures.

The 1st opposite party submits, clarifies and explains the operative procedures undergone by Mr.David in New Hope Medical Centre for the understanding of this commission for further evaluation as evident from the operative notes detailed in the Discharge Summary issued by the said Medical Centre as below.-

a. Foramen Magnum Decompression: To remove the posterior fossa compression caused by the descended cerebellar tonsils/tongue, the occiput (base of the skull) was removed up to about 3cm above the foramen magnum (portion where the skull ends and the vertebra starts in the neck) by opening the dura to decompress the herniated cerebellar tongue.

b. Laminectomy done: Part/portion of the spinal bone in C-1 level is removed to relieve compression.

c. Posterior Band released: Some fibrous structures in the area which is also responsible for the compression is also removed.

The post operative complications arising from the surgery as explained in the relevant Medical journals and books on Neurosurgical topics:-

a) That even after surgical intervention in patients suffering from genetic neuro deformities such as Arnold Chiari Malformation Type 1 and Syrinx, the same are not completely cured and neurological dysfunction remains more severe, and surgical results were very poor since patients exhibited accentuated pre-operative symptoms such as upper-extremity muscle atropy, ambulatory dysfunction and spinal atropy which was descovered in post operative MR imaging along with post-operative complications leading to neural deficits and increased duration of morbidity. The Syrinx never vanished and recurred and the Foramen Magnum on which surgery was done regenerated back and scoliosis (change in the curvature of the spinal cord) was also present. The complications also included cerebro-spinal fluid leakage, pseudo meningocele and poseterior fossa syndrome,

b. Another corrective surgery which is Cervical Laminectormy poses threats of Injury to the spinal cord, nerve roots or the vertebral arteries and also in later stages cause epidural haematomas. (blood clots within the spinal cord cavity).

c. Delayed complications included cerebellar sag, trochlear nerve palsy, kyphoscoliosis, progressive neurologic deterioration, failure of improvement, and persistence of cranio-spinal dissociation.

Thus the cardio-respiratory arrest that occurred in Mr. David was purely coincidental that has arisen out of incompletely cured Genetic deformities i.e. Arnold Chiari and Syrinx Deformity and inevitable re-lapse of associated neuro- musculo/skeletal disorders and due to post operative complications. Therefore there can be no question of suffering alleged brain death or cardiac arrest in the absence of any of the post-operative complications.Cardiac arrest which occurred to Mr.David and was purely co-incidental and just because the same happened in the 1st opposite party's scan centre they could not be held liable for the death of Mr.David, especially when they have promptly taken all adequate care necessary for saving his life and has not been negligent in any way in discharge of their duties as a prudent Testing Centre. Thus they sought for the dismissal of the complaint.

The crux of the defence put forth by the 2nd opposite party:-

5. The 2nd opposite party filed version disputing the complaint allegations contending inter alia that the 2nd opposite party has nothing to do with the anesthesia administrated to late David at M/s.Aarthi Scan. The statement of the complainant that David suffered brain death was wrong and incorrect. Brain death has to be certified by a Neuro Surgeon and a Neuro Physician. David was treated by the specialists of this Hospital from 19.02.2009 to 04.03.2009 and they never made a diagnosis of brain death. St.Isabel's Hospital does not have any tie up arrangement with Aarthi scan centre. On 19.02.2009 while MRI scan was being taken under sedation at Aarthi scan centre, during the 15th minute of the procedure, the patient had suffered cardio-respiratory arrest. He was resuscitated by the doctors in the scan centre, intubated (endotracheal tube was introduced) and referred to St.Isabels' Hospital by Ambulance. This fact was stated in the letter issued by Dr.Subramanian of Aarthi scan centre on 19.02.2009 and confirmed by the family members of the patient at the time of admission. At the time of admission as the condition of the patient was critical, a family member has also signed the DIL form on 19.02.2009. When patient was brought directly to the intensive cardiac care unit of St.Isabel's Hospital by Ambulance from M/s.Aarthi scan centre, he was unconscious, poorly responding to painful stimuli. Right pupil was dilated. Both pupils reacted. His blood pressure was only 70/50 mm of hg. He was connected to mechanical ventilation. To improve his general condition and blood pressure, he was given IV fluids and injection Dopamine Infusion. He was also administered Injection Fosolin IV to prevent any convulsions. The physician and the Intensivist saw the patient soon after admission. Soon after admission on 19.02.2009 in the intensive care unit, he was seen by Dr.Kamalanathan, an experienced intensivist, a qualified cardiologist, who was the Duty Doctor in the intensive care unit. The physician, cardiologist, Neurophysician and Neurosurgeon were summoned and their expert opinion were obtained. Patient was provided with discharge summary at the time of discharge with all investigation reports. The 1st complainant did not at any time approach or request for a copy of the case sheet or Nursing notes or the temperature, pulse, respiratory rate chart. Dr.Shamsuddeen, Consultant cardiologist, saw the patient even after admission. According to his advice Dr.Thilothammal M.D.D.M a senior consultant in Neurology with many years of experience in Government General Hospital and institute of Child Health examined and started treatment on the same day. Late David was also seen by the Hospital consultant in Respiratory diseases and the consultant Neuro surgeon, Dr.V.G.Ramesh on the same day. The expert opinion given by all these consultants are available in the case sheet. Averment that standard medical procedure was not followed for treating encephalogathy and cardiac problem was incorrect. Complainant requested the 2nd opposite party to discharge the patient was mischievous and wrong. The patient has to be put on mechanical ventilator and

continued on life support for thirteen days. The expert opinion of the Neurosurgeon on 02.03.2009 shows that the patient was recovering from Hypoxic Encephalopathy. This was confirmed by Neurophysician on 02.03.2009 and 03.03.2009. Even on 04.03.2009 the nurse's report shows that his condition was stable at the time of discharge against medical advice. Complainant got her husband discharged against medical advice at 4.pm on 04.03.2009. At no time the complainant or the family members asked for discharge of the patient before 04.03.2009. Declaration was given by the 1st complainant Mrs. Regina before getting her husband, David discharged from the Hospital on 04.03.2009. It was for the complainant to prove and establish medical negligence on the part of the 2nd opposite party. This was an abuse of process of law. 2nd opposite party in accordance with the medical practice and parlance gave proper and correct treatment to late David and there was no negligence at any point of time in treating him. Thus he sought for the dismissal of the complaint.

6. On the side of the complainant proof affidavit was filed along with documents marked as Ex.A1 to Ex 5. On the side of 1st opposite party proof affidavit was filed along with documents marked as Ex.B1 to Ex.B12. On the side of 2nd opposite party proof affidavit was filed along with documents marked as Ex.B13 to Ex.B25.

Points for consideration:-

1. Whether the alleged act of medical negligence resulting in deficiency in service in the matter of administering Anesthesia to the deceased patient resulting in Cardio-respiratory arrest and brain death has been successfully proved by the complainant by admissible evidence?
2. If proved on whom the liability has to be fixed, either on 1st opposite party or 2nd opposite party?
3. To what relief the complainant is entitled?

Point No.1&2:-

7. Heard the oral arguments adduced by both parties and perused the pleadings and material evidences produced by them.

8. The case of the complainants as argued by the learned counsel appearing for them is that after the surgery for Cervical Spondylosis, Arnold Chiari Malformation Type 1, Syrinx C1-T1 by the deceased in New Hope Medical Centre, when approached the 1st opposite party for MRI scan, excessive Anesthesia was administrated to him on 19.02.2009 which resulted in brain death and Cardio-respiratory arrest. Though treatment was taken in the 2nd opposite party's Hospital the patient died on 05.03.2009. The learned counsel vehemently submitted that the opposite parties failed to state what is the drug administered for Anesthesia and in what quantity. Further it is submitted that the 1st opposite party did not file any affidavit of Anesthetist to discharge their burden of proof. Thus arguing that when the complainants have discharged the initial burden of proof it is the duty of the opposite parties to discharge the same on whom the onus shits.

He also cited the decision in support of his arguments rendered by the Supreme Court of India in Smt. Savita Garg vs The Director, National Heart Institute on 12 October, 2004

> *"Even otherwise also the Institute had to produce the concerned treating physician and has to produce evidence that all care and caution was taken by them or their staff to justify that there was no negligence involved in the matter. Therefore, nothing turns in not impleading the treating doctor as a party. Once an allegation is made that the patient was admitted in a particular hospital and evidence is produced to satisfy that he died because of lack of proper care and negligence, then the burden lies on the hospital to justify that there was no negligence on the part of the treating doctor/ or hospital. Therefore, in any case, the hospital which is in better position to disclose that what care was taken or what medicine was administered to the patient. It is the duty of the hospital to satisfy that there was no lack of care or diligence. "*

9. On the other hand, the 1st and 2nd opposite parties learned counsels argued that the 1st complainant's husband was not a hale and healthy person but had taken treatment already in New Hope Medical Centre. It is their arguments that if it is a case of over dosage of Anesthesia, the patient would not have survived for nearly 15 days. Non-joinder of New Hope Medical Centre as a party to the proceedings was argued as fatal to the merits of the case. Further it was argued that the cause of death was not proved by the complainants and they had no tie up with the 1st opposite party's Hospital.

10. On appreciation of the entire pleadings and material evidences produced before this commission by both parties we drive the following reasonings;

a. The specific allegation made by the complainants was against the Anesthetist and not against the treatment provided by the 2nd opposite party after the deceased patient suffered cardiac arrest;
b. It is the case of the 1st opposite party that normally Anesthesia was not administrated to the patient coming for MRI scan but administrated to the patient who have Neuro – spinal disorders exhibiting restlessness and that Anesthesia is administrated only in small dosage intravenously to reduce anxiety and was a mild treatment which shall not even cause loss of consciousness. However in the present case even as per the case sheet of 2nd opposite party under the caption of Presenting Complaints and History as *"45 years old Male admitted with H/o Post Cardio respiratory arrest, resuscitation status which occurred at Aarthi scans. Patient transferred on ET tube/Ambu ventilation O2. Known patient of Arnold Chiari malformation operated."* Thus even as per the said case history the patient suffered cardio respiratory arrest at the 1st opposite party's Hospital;
c. When it is the specific allegation by the complainants against the opposite parties that the dosage of Anesthesia administrated to the patient was high which caused Cardio respiratory arrest and Brain death the 1st opposite party ought to have given the particulars as to what drug has been used as Anesthesia and in what quantity which they blatantly failed to produce as this particulars are within knowledge of the 1st opposite party. As per Medical literature it is found as ;

> *"Hypoxic-Ischemic Encephalopathy (HIE)* is a type of brain injury that is caused by oxygen deprivation. Although this term is most commonly used in connection

with brain damage occurring to children at birth, hypoxic-ischemic encephalopathy can also occur in older children and adults, particularly as a result of failure to monitor a patient's breathing after surgery in the post-anesthesia care unit (PACU)."

Therefore, particulars about the drug used for the complainant assumes significance and in the absence, leads to negative presumption.

d. The defence by the opposite parties that the complaint has to fail for non impleading the Anesthetist as a party to the proceeding could not be appreciated as a valid defence for the reason that the Anesthetist belongs to the 1st opposite party and especially when the particulars about who acted as Anesthetist on that particular day who administrated the drug to the patient was within the knowledge of the 1st opposite party, hence it is the foremost duty of the 1st opposite party to have taken steps to get the Anesthetist impleaded or to have submitted an affidavit of the Anesthetist revealing the particulars in proof of their defence that only a mild dosage of anesthesia was administered to the deceased;
e. The documents submitted by the 1st opposite party Ex.B2 dated 19.02.2019 reveals that the patient did not possess any cardiac pacemakers, artificial heart valves, aneurysm clip etc., which would clearly establish that the patient before undergoing the MRI scan was hale and healthy though had undergone a surgery 4 months before at New Hope Medical Centre;
f. Except producing the referral letter and consent letter, no other evidentiary proof was submitted by the 1st opposite party to disprove the allegations as to improper or over dosage of administration of Anesthetist drug to the patient resulting in cardiac respiratory arrest and brain death expect medical literatures about Nero Surgery Syringomyelia etc. However, even by the Medical literatures they failed to establish that patient without any pre-history of cardiac respiratory arrest would suffer cardiac arrest and Brain death when Anesthesia was given during MRI Scan, except producing a literature that *"surgical results are poor had exhibited accentuated pre-operative symptoms such as upper-extremity muscle atrophy and ambulatory dysfunction, and spinal atrophy was found on postoperative MR imaging."* Thus the surgery undergone by the patient could not be considered as the reason for the unfortunate event happened during MRI scan;
g. In the DIL form (Ex.B16) signed by the family members of the patient/deceased it has been specifically mentioned that the diagnosis was Hypoxic Encephalopathy which clearly established that the patient who went normally for taking MRI scan with the 1st opposite party was made to suffer Hypoxic Encephalopathy due to the act of the 1st opposite party;
h. The expert opinion obtained from the Cardiologist of the 2nd opposite party (Ex.B19) dated 19.02.2009 clearly provides that *"45 years old male a case of Arnold chiari malformation Sx, developed? cCardio respiratory arrest during MRI Scan, resuscitated and put on ventilator."* Further it is also found *"No past H/o HT/DM/IHD."* Thus it is well established that the patient did not possess any cardiac problem or brain damage before taking MRI scan except the surgery done for Cervical Spondylosis;
i. The 1st opposite party failed to establish that the surgery done for Cervical Spondylosis, Arnold Chiari Malformation type –L, Syrinx C1-T1 at New Hope Medical Centre was the roof cause for the cardiac arrest and brain death suffered by the deceased at the time of MRI Scan;

j. The defence of the 2nd opposite party that non-joinder of New Hope Medical Centre is fatal to the case could not be appreciated for the reason that no allegations was raised in the complaint against the said Medical Centre in the matter of treatment or surgery provided to the patient. Also no nexus was proved by the opposite parties between the treatment given at the New Hope Medical Centre and the cardiac arrest and brain death suffered by the deceased patient. Therefore non-joinder of New Hope Medical Centre is not fatal to the case.

11. Based on the above reasonings this commission is of the view that the complainants had successfully discharged their burden of proof of negligence against the 1st opposite party for administrating over dosage of Anesthesia during MRI Scan resulting in cardiac arrest and brain death. However, the 1st opposite party failed to discharge their onus. There is no specific allegation against the 2nd opposite party. Further the 2nd opposite party has also produced the case sheet for the treatment provided for the deceased along with DIL form, expert opinion of Respiratory Physician, cardiologist, Neuro Surgeon which clearly shows that they have followed the standard line of treatment and hence no negligence could be attributable against them. Thus, we hold that the 1st opposite party was to be held liable for the cardiac arrest and brain death sustained by the patient which resulted in his death as the complaint allegations as to medical negligence in administrating improper or over dosage of Anesthesia by the 1st opposite party has been successfully proved by the complainants against the 1st opposite party. The Principle of res ipsa loqiutor could be very well applied to the facts of the case as the deceased, who went for MRI Scan with the 1st opposite party in a good state, came out with cardiac arrest which resulted in his death. No negligence is proved against the 2nd opposite party. Thus we answer these points accordingly in favour of the complainants and as against the 1st opposite party.

Point No.3:-

12. As we have held above that the 1st opposite party had acted in a negligent manner in administering Anesthesia to the patient while taking MRI scan resulting in the death of the patient, we are of the view that the liability should be fixed upon the 1st opposite party to compensate the complainants for the death of the husband of the 1st complainant and father of the 2nd and 3rd complainant. The deceased was aged 45 years at the time of his death and was a Homoepathic Doctor by profession. Taking into consideration of the above aspects we award a compensation of Rs.15,00,000/- to be paid by the 1st opposite party to the complainants along with a cost of Rs.10,000/- towards litigation expenses. As we dismiss the complaint against the 2nd opposite party we do not order the medical expenses to be reimbursed to the complainants as prayed by the complainants.

In the result, the complaint is dismissed against the 2nd opposite party and partly allowed against the 1st opposite party directing them

a) To pay a sum of Rs.15,00,000/- (Rupees fifteen lakhs only) towards compensation to the complainants within six weeks from the date of receipt of copy of this order for the mental agony and hardship caused to them;

b) To pay a sum of Rs.10,000/- (Rupees ten thousand only) towards litigation expenses to the complainants;

c) Amount in clause (a) if not paid within six weeks from the date of receipt of copy of this order, interest at the rate of 12% will be levied on the said amount from the date of complaint till realization.

Dictated by the President to the steno-typist, transcribed and computerized by him, corrected by the President and pronounced by us in the open Commission on this 08th day of April 2024.

Sd/- **Sd/-** **Sd/-**

MEMBER-II **MEMBER-I** **PRESIDENT**

List of document filed by the complainant:-

Ex.A1	17.10.2008	Discharge Summary issued by New Hope Medical Centre.	Xerox
Ex.A2	19.02.2009	Cash bill issued by the 1st opposite party.	Xerox
Ex.A3	19.02.2009	Transfer letter.	Xerox
Ex.A4	04.03.2009	Discharge Summary issued by the 2nd opposite party.	Xerox
Ex.A5	04.03.2009	Medical bill issued by the 2nd opposite party.	Xerox

List of documents filed by the 1st opposite party:-

Ex.B1	……	Referral letter of Dr.Senthil Nathan.	Xerox
Ex.B2	19.02.2009	Consent letter by the patient's relatives.	Xerox
Ex.B3	……	Atles of Neurosurgical techniques spine and peripheral nerves by Richard glenn fessler lallgam sekhar.	Xerox
Ex.B4	……..	Pediatric Neurosurgery surgery of the Developing Nurvous System 4th Edition by American society of Pediatric Neurosurgeons Section of Pediatric Neurosurgery of the A.A.N.S.	Xerox

Ex.B5	……	Fundamentals of Operative Techniques in Neurosurgery by E.Sander Connolly Guy M.Mckhann II Judy Huang Tanvir F.Choudhri.	Xerox
Ex.B6	……	Syringomyelia and the Chiari Malformation AANS Publication Committee John A.Anson, MD, Edward C.Benzel MD, and Issam A, Awad MD, Editors.	Xerox
Ex.B7	……..	Journal of Neurosurgery: Spine & Pediatrics July 1990 volume 73, Number 1.	Xerox
Ex.B8	……	Drugs in Anaesthesia and intensive care 3rd editionby Martin Sasada Consultant Anaesthetist Royal United Hospital bath and Susan Smlth Consultant Anaetheist Cheltenham General Hospital Cheltenham.	Xerox
Ex.B9	……	Anesthesia 5th edition volume 2 edited by Ronald D.Miller, MD, Professor and Chairmal of Anesthesia and Perioperative cRe professor of Cellular and Molecular Pharmacology Department of Anaesthesia University of Callfornia, San Francisco School of Medicine San Francisco, California.	Xerox
Ex.B10	……..	Essence of anesthesia Practice second edition by Micheal F.Roizen MD Lee A.Fleisher MD.	Xerox
Ex.B11	……	Journal of Neurosurgery: Spine & Pediatrics February 1983 Volume 58, Number 2.	Xerox
Ex.B12	13.08.2004	Certificate of incorporation.	Xerox

List of documents filed by the 2nd opposite party:-

Ex.B13	……	Full case sheet.	Xerox
Ex.B14	19.02.2009	Admission sheet.	Xerox
Ex.B15	19.02.2009	Referral letter from Mr.Subraminiam office of Aarthi scan.	Xerox
Ex.B16	19.02.2009	DIL form signed by family members.	Xerox
Ex.B17	04.03.2009	Declaration given by complainant for discharge against medical advice. Patient discharged against medical advice. Signed by intensivist	Xerox
Ex.B18	19.02.2009	Expert opinion given by Respiratory Physician.	Xerox
Ex.B19	19.02.2009	Cardiologist opinion.	Xerox
Ex.B20	19.02.2009	Neuro surgeon with typed copy.	Xerox
Ex.B21	19.02.2009	Neuro physician with typed.	Xerox
Ex.B22	03.03.2009	Nurses notes at the time of discharge.	Xerox
Ex.B23	04.03.2009	Discharge summary.	Xerox
Ex.B24	04.03.2009	Letter of waiver given by administrator to billing section.	Xerox
Ex.B25	03.03.2009	Final bill No.15414, dated 30.30.2009.	Xerox

Sd/-	Sd/-	Sd/-
MEMBER-II	**MEMBER-I**	**PRESIDENT**

[TMT.Dr.S.M.LATHA MAHESWARI, M.A.,M.L.,Ph.D(Law)]
PRESIDENT

[THIRU.P.VINODH KUMAR, B.Sc., B.L.,]
MEMBER

[THIRU.P.MURUGAN, M.Com, ICWA (Inter), B.L.,]
MEMBER