District Consumer Disputes Redressal Commission-I (North District)

[Govt. of NCT of Delhi]

Ground Floor, Court Annexe -2 Building, Tis Hazari Court Complex, Delhi- 110054

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Consumer Complaint No. 9/2016

Vandana Tiwari

W/o Sh. Neeraj Kumar Tiwari,

House No. L-85, Gali No.8,

Jai Prakash Nagar, Garhi Mendu,

Bhajan Pura, Delhi-110053 … Complainant

Vs.

Dr. S. Batra,

(Incharge of Gynaecology Department)

Lok Nayak Hospital,

Jawahar Lal Nehru Marg,

New Delhi-110002

Also at:

#1335, Sector 28

Faridabad, Haryana … Opposite Party No.1

Lok Nayak Hospital

(through its Medical Director)

Jawahar Lal Nehru Marg,

New Delhi-110002 … Opposite Party No.2

15.06.2023

ORDER

(Divya Jyoti Jaipuriar)

1. By way of this complaint, the Complainant has sought compensation from the OPs herein for the failed sterilisation allegedly performed by Dr. S. Batra (OP-1) at Lok Nayak Hospital (OP-2). It is the case of the Complainant that after having two live children she decided to have sterilisation surgery conducted to prevent further pregnancy. Accordingly under the supervision of OP-1, the sterilisation surgery was done on 24.01.2012. Subsequently in the year 2014, almost two and a half years of the sterilisation surgery, the Complainant got pregnant with the third child. It is the case of the Complainant that soon after the knowledge of pregnancy in the month of October 2014, she contacted OP-1 at OP-2 hospital complaining about the failure of the sterilisation and also for possibility of abortion of the said pregnancy. According to the Complainant, OP-1 delayed abortion in the name of conducting some more tests, and later abortion was not conducted in view of advanced stage of pregnancy. Thereafter the third live child was born on 29.07.2015. By way of this complaint, the Complainant has sought compensation on the ground of failed sterilisation surgery conducted by OP-1 at OP-2 hospital.

2. Upon notice to the parties, both the OPs have also filed their replies. Both the OPs in their respective replies have raised two major issues:

> I. The Complainant herein is not a consumer in view of the fact that hospital (OP-2) and the doctor (OP-1) were rendering free service to the Complainant and the Complainant was not charged either for the sterilisation surgery or for the delivery of the third child.
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> II. Even if there is a pregnancy after the sterilisation surgery, the failed sterilisation surgery cannot be said to be a deficiency of service.

3. The OP-1 has additionally stated that she has retired from the services of the OP-1 hospital in the year 2012 itself and the allegations of the Complainant in the complaint that she contacted the OP-1 doctor in the OP-2 hospital in the year 2014 is a false statement as OP-1 was not attending the OP-2 hospital after her retirement.

4. In support of arguments that the complaint is not maintainable qua both the OPs in view of the free treatment offered by OPs herein, placed their reliance on following judgments of Hon’ble Supreme:-

> a. Indian Medical Association Vs. V.P. Shantha & Ors. [(1995) 6 SCC 651]
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> b. Nivedita Singh Vs. Dr. Asha Bharti & Ors. in Civil Appeal No.103/2012 decided on 07.12.2021.

5. Hon’ble Supreme Court in the matter of Indian Medical Association v. V.P. Shantha [(1995) 6 SCC 651], the services rendered by government hospital is not covered under the definition of “service” as defined in the Consumer Protection Act. OPs have relied on the following conclusion of Hon’ble Supreme Court in IMA judgment (supra):

> “55. On the basis of the above discussion, we arrive at the following conclusions:
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> (1) Service rendered to a patient by a medical practitioner (except where the doctor renders service free of charge to every patient or under a contract of personal service), by way of consultation, diagnosis and treatment, both medicinal and surgical, would fall within the ambit of ‘service’ as defined in Section 2(1)(o) of the Act.
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> (2) The fact that medical practitioners belong to the medical profession and are subject to the disciplinary control of the Medical Council of India and/or State Medical Councils constituted under the provisions of the Indian Medical Council Act would not exclude the services rendered by them from the ambit of the Act.
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> (3) A “contract of personal service” has to be distinguished from a “contract for personal services”. In the absence of a relationship of master and servant between the patient and medical practitioner, the service rendered by a medical practitioner to the patient cannot be regarded as service rendered under a ‘contract of personal service’. Such service is service rendered under a “contract for personal services” and is not covered by exclusionary clause of the definition of ‘service’ contained in Section 2(1)(o) of the Act.

(4) The expression “contract of personal service” in Section 2(1)(o) of the Act cannot be confined to contracts for employment of domestic servants only and the said expression would include the employment of a medical officer for the purpose of rendering medical service to the employer. The service rendered by a medical officer to his employer under the contract of employment would be outside the purview of ‘service’ as defined in Section 2(1)(o) of the Act.

(5) Service rendered free of charge by a medical practitioner attached to a hospital/nursing home or a medical officer employed in a hospital/nursing home where such services are rendered free of charge to everybody, would not be ‘service’ as defined in Section 2(1)(o) of the Act. The payment of a token amount for registration purpose only at the hospital/nursing home would not alter the position.

(6) Service rendered at a non-government hospital/ nursing home where no charge whatsoever is made from any person availing of the service and all patients (rich and poor) are given free service — is outside the purview of the expression ‘service’ as defined in Section 2(1)(o) of the Act. The payment of a token amount for registration purpose only at the hospital/nursing home would not alter the position.

(7) Service rendered at a non-government hospital/nursing home where charges are required to be paid by the persons availing of such services falls within the purview of the expression ‘service’ as defined in Section 2(1)(o) of the Act.

(8) Service rendered at a non-government hospital/nursing home where charges are required to be paid by persons who are in a position to pay and persons who cannot afford to pay are rendered service free of charge would fall within the ambit of the expression ‘service’ as defined in Section 2(1)(o) of the Act irrespective of the fact that the service is rendered free of charge to persons who are not in a position to pay for such services. Free service, would also be ‘service’ and the recipient a ‘consumer’ under the Act.

(9) Service rendered at a government hospital/ health centre/ dispensary where no charge whatsoever is made from any person availing of the services and all patients (rich and poor) are given free service — is outside the purview of the expression ‘service’ as defined in Section 2(1)(o) of the Act. The payment of a token amount for registration purpose only at the hospital/nursing home would not alter the position.

(10) Service rendered at a government hospital/health centre/dispensary where services are rendered on payment of charges and also rendered free of charge to other persons availing of such services would fall within the ambit of the expression ‘service’ as defined in Section 2(1)(o) of the Act, irrespective of the fact that the service is rendered free of charge to persons who do not pay for such service. Free service would also be ‘service’ and the recipient a ‘consumer’ under the Act.

(11) Service rendered by a medical practitioner or hospital/nursing home cannot be regarded as service rendered free of charge, if the person availing of the service has taken an insurance policy for medical care whereunder the charges for consultation, diagnosis and medical treatment are borne by the insurance company and such service would fall within the ambit of ‘service’ as defined in Section 2(1)(o) of the Act.

(12) Similarly, where, as a part of the conditions of service, the employer bears the expenses of medical treatment of an employee and his family members dependent on him, the service rendered to such an employee and his family members by a medical practitioner or a hospital/nursing home would not be free of charge and would constitute ‘service’ under Section 2(1)(o) of the Act.”

6. Ld. Advocate for the OPs also argued that as the OP-2 hospital, being a government hospital, is not charging any charges whatsoever from the patients for the services so rendered by it and in the case in hand the Complainant has also not made any payment to the hospital for the services so rendered to her by the OP-1 Hospital, in view of the IMA judgment (supra), the complaint is liable to be dismissed.

7. We have perused the records and have also gone through the pleadings of the parties. It is indeed a fact that the Complainant herein has taken treatment from OP-2 hospital, which is a government hospital. It is also a fact that the OP-2 hospital does not charge whatsoever for the treatment/ services rendered by it to any of the patients.

8. At this stage, we would also like to refer to the judgment of Hon'ble Supreme Court in the matter of Union of India vs N K Srivasta [2020 (9) SCALE 208], Hon'ble Supreme Court has relied on the IMA judgment (supra) and has held that services rendered by a hospital to all its patients free of cost across the board, are out of the purview of the application of the Consumer Protection Act. In the case in hand, the OP-2 hospital, being a Government run hospital, renders services across the board to all patients, free of cost, hence, the provisions of the Consumer Protection Act would not apply.

9. Ld. Advocate for OP-1 has also argued that even doctors employed in government hospitals are not liable under the provisions of the CPA in view of a subsequent judgment of Hon'ble Supreme Court in the matter of Nivedita Singh vs Dr Asha Bharti [CA No. 103/2012 decided on 07/12/2021]. Hon'ble Supreme Court, in Nivedita Singh (supra) judgment has held as under:

> "6. A reading of the above para shows that a medical officer who is employed in a hospital renders service on behalf of the hospital administration and if the service as rendered by the Hospital does not fall within the ambit of 2(1)(o) of the Act being free of charge, the same service cannot be treated as service under Section 2(1)(0) for the reasons that it has been rendered by medical officer in the hospital who receives salary for the employment in the hospital. It was thus concluded that the services rendered by employee-medical officer to such a person would therefore continue to be service rendered free of charge and would be outside the purview of Section 2(1)(o) of the Act."

10. In view of the judgment of Hon'ble Supreme Court in Nivedita Singh (supra) case, it is argued by Ld. Advocate for the OP-1 that the complaint is not maintainable qua Op-1 doctor also as the OP-2 hospital, being a government hospital, does not charge any fee from any of the patients and the services so rendered by employee doctors are also out of purview of application of the Consumer Protection Act.

11. As a result, in view of the judgments referred above, we are of the opinion that the consumer complaint qua OP-1 Doctor as well as OP-2 Hospital would not lie and this compliant is liable to be dismissed on this ground alone.

11. However, even on merits, the consumer complaint in cases of failed sterilisation surgery is not maintainable in view of the judgment of Hon'ble Supreme Court in the matter of State of Punjab v. Shiv Ram [(2005) 7 SCC 1], in which Hon'ble Supreme Court has held that even in cases of sterilisation, the women can get pregnant because of natural reasons. In such cases when menstrual cycle is missed, it is expected from the couple to visit the doctor for taking appropriate medical advice including option of termination of pregnancy. In Shiv Ram case (supra), Hon'ble Supreme Court held as under:

> 28. The methods of sterilisation so far known to medical science which are most popular and prevalent are not 100% safe and secure. In spite of the operation having been successfully performed and without any negligence on the part of the surgeon, the sterilised woman can become pregnant due to natural causes. Once the woman misses the menstrual cycle, it is expected of the couple to visit the doctor and seek medical advice. A reference to the provisions of the Medical Termination of Pregnancy Act, 1971 is apposite. Section 3 thereof permits termination of pregnancy by a registered medical practitioner, notwithstanding anything contained in the Penal Code, 1860 in certain circumstances and within a period of 20 weeks of the length of pregnancy. Explanation II appended to sub-section (2) of Section 3 provides:
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> > "Explanation II.—Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman."

> 29. And that provides, under the law, a valid and legal ground for termination of pregnancy. If the woman has suffered an unwanted pregnancy, it can be terminated and this is legal and permissible under the Medical Termination of Pregnancy Act, 1971.
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> 30. The cause of action for claiming compensation in cases of failed sterilisation operation arises on account of negligence of the surgeon and not on account of childbirth. Failure due to natural causes would not provide any ground for claim. It is for the woman who has conceived the child to go or not to go for medical termination of pregnancy. Having gathered the knowledge of conception in spite of having undergone the sterilisation operation, if the couple opts for bearing the child, it ceases to be an unwanted child. Compensation for maintenance and upbringing of such a child cannot be claimed."

12. The ration in Shiv Ram case (supra) has also been reiterated by Hon'ble Supreme Court in the matter of Civil Hospital vs Manjit Singh (CA No. 6208/2022, decided on 06.09.2022).

13. In the case in hand, although the Complainant alleges that on knowing about the pregnancy in October 2014, she visited OP-1 doctor at OP-2 hospital, there is no record to suggest that the Complainant visited OP-2 hospital until 16.03.2015. The Complainant has filed the prescriptions of her visit to the OP-2 hospital. The first visit after the pregnancy, as indicated by the medical records filed by the Complainant indicates that she visited OP-2 hospital on 16.03.2015. As the medical records suggest that the last menstrual cycle (LMP) was on 19.10.2014, the twenty week window for medical termination of pregnancy under the provisions of the Medical Termination of Pregnancy Act, 1971 was already over on the 08.03.2015, hence even on the visit of the Complainant at OP-2 hospital on 16.03.2015, the termination of pregnancy was not possible. As the Complainant visited the hospital only after lapse of 20 weeks, the unborn child ceased to be unwanted child and in view of the judgment of Hon'ble Supreme Court in the matter of Shiv Ram (supra), Complainant is not liable for any compensation.

14. Hence, even on merits, the Complainant has failed to prove her case and the complaint is also liable to be dismissed even on merits.

15. Accordingly, the complaint is dismissed on both grounds namely- (1) non-maintainability of the complaint with respect to government hospital and its employee doctors who provide free treatment to all patients across the board, and (2) lack of merit.

16. At this stage, we would also like to point out the Complainant has stated in her complaint that she visited the OP-1 Doctor in OP-2 Hospital in October 2014 and on subsequent dates after having third pregnancy, but allegedly, OP-1 delayed the abortion. The Complainant has not filed any document/ medical record to suggest that she visited OP-1 hospital at OP-2 hospital in October 2014. The records suggest that the Complainant visited OP-2 hospital only on 16.03.2015 for the first time during her third pregnancy. Further, the records suggest that OP-1 doctor retired from the services of the OP-2 hospital on 30.04.2012, the Complainant could not have met her at OP-2 hospital in 2014-15. The Complainant has not only made statement that she visited hospital in October 2014 onwards, but also claimed that she met OP-1 in the OP-2 hospital during her third pregnancy. On scrutiny of documents, we find that the Complainant has given a false statement regarding her visit in the OP-2 hospital in the month of October 2021 as none of the medical records which have been filed by the parties before this Commission, suggest her visit and medical treatment prior to 16.03.2015 during her third pregnancy. Further on account of retirement of OP-1 doctor from the services of OP-2 hospital, it is also not possible that the Complainant visited OP-1 Doctor at OP-2 hospital. Hence, this statement of the Complainant that she visited OP-1 Doctor who allegedly delayed the medical termination of pregnancy is also not correct.

17. Therefore, we are of the opinion, that the Complainant has made false allegations and unsubstantiated claims against both the OPs. Hence while holding that these false allegations and unsubstantiated claims amount to frivolous and vexatious litigation, we impose a cost of Rs. 10,000/- on the Complainant, which shall be paid equally to both the OPs. Accordingly, Complainant is directed to make the payment of the cost of Rs. 10,000/- to OP-2 hospital within a period of three weeks from the date of receipt of this order. Upon receiving the said cost, from the said amount, OP-2 hospital shall pay a sum of Rs. 5,000/- to OP-1 Doctor and report compliance to this Commission.

18. Ordered accordingly. Office is directed to supply the copy of this order to the Complainant as per rules. Office is also directed to return all original documents filed by the Complainant, if any, after keeping copies of the same in the record. Thereafter, file be consigned to the record room.

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Divya Jyoti Jaipuriar, President

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Ashwani Kumar Mehta, Member