

Before the District Consumer Dispute Redressal Commission [Central District] - VIII,
5th Floor Maharana Pratap ISBT Building, Kashmere Gate, Delhi
Complaint Case No. 25/18.02.2022

Smt. Poonam Matlani wife of Shri Vijay Matlani
R/o T-81, Second Floor, Baljeet Nagar,
New Delhi-110008

...Complainant

Versus

OP1- Indira IVF Hospital Pvt. Ltd. through its
Directors/Managing Director, Plot No. 9,
South Patel Nagar, Near Patel Nagar Metro Station,
Opposite Metro Pillar No. 203, New Delhi-110008

OP2- Dr. Arvind Kumar (Head of IVF)
Plot No. 9, South Patel Nagar, Near Patel Nagar
Metro Station, Opposite Metro Pillar No. 203,
New Delhi-110008

OP3- Dr. Monica, Gynecologist
Plot No. 9, South Patel Nagar, Near Patel Nagar
Metro Station, Opposite Metro Pillar No. 203,
New Delhi-110008

OP4, Dr. Jyoti, Gynecologist
Plot No. 9, South Patel Nagar, Near Patel Nagar
Metro Station, Opposite Metro Pillar No. 203,
New Delhi-110008

...Opposite Party

Coram:
Shri Inder Jeet Singh, President
Ms. Shahina, Member -Female

Date of filing: 18.02.2022

Date of Order: 18.03.2024

ORDER

Inder Jeet Singh, President

1.1. (Introduction to case of parties) – The complainant has grievances of deficiency of services, unfair trade practice, malpractice and of medical negligence

against the OP1/hospital and its doctors/OP2 to OP4 besides violation of government guidelines/norms to be followed, since she had taken the consultancy and treatment of infertility, for which a specified package inclusive of medicine charges etc. was agreed but not only the amount of package was taken but also in addition much more amount was charged, it was other than agreed amount taken from time to time besides the complainant was asked to buy medicine and surgery kit. Lastly, when the occasion for surgery came, she was admitted in OT but the doctors/OPs of OP1 raised their hand, the complainant was to be taken to another hospital in very critical condition. That is why the present complaint was filed for amount of Rs. 50 lakhs, which includes claim for severe pains, sufferings of great harassment, humiliation, mental torture, financial losses, mal-practice, pain and agony (it is split into various heads in detail in paragraph-1 of rejoinder under heading of additional submissions) besides cost of Rs. 50,000/- and other appropriate reliefs in favour of complainant and against the OPs.

1.2. The complaint is opposed vehemently by all the OPs on facts, features and circumstances of the allegations that neither there is any medical negligence, nor deficiency of services or unfair trade practice or mal-practice nor over charging under any head. The complainant was given complete consultancy, treatment and services with advance information that the complainant may arrange for delivery with government/private hospital having facility ICU, blood bank etc., within her financial reach, since there was no ICU, blood bank etc. facility in the hospital of OP1. Consequently the complaint is without cause of action and the complainant has also suppressed material information, which does not entitle her for any of claims nor OPs are liable on any count.

1.3. (Other factors) - The complaint is in detail with dates, nature of instructions, advices treatment, tests or investigation, fees prescribed and paid from time to time. Similarly, the OPs in their joint reply have also given details of advance information,

course and procedure to be followed with stages of treatment. The pleadings are in the form of detailed complaint coupled with documents, joint written statement of all the OPs with record. Thence complainant filed detailed replication with documents , to oppose the allegations of written statement. It was followed by evidence of parties.

At the stage of evidence of case, these facts and features have been reiterated by parties, which were further repeated at the time of final submissions. Therefore, it is being felt appropriate to put the case of each party at one place for brevity and clarity and to avoid repeating them, especially complete record is voluminous containing documentary records too. It will be narrated in forthcoming paragraphs 2 and 3 of this final order.

It will not be out of context to mention that this complaint was filed on 18.02.2022 when the Consumer Protection Act 2019 already notified and came into force but the complaint was titled under the Consumer Protection Act 1986, however, without going to the nomenclature of title, the present complaint is being considered under the Consumer Protection Act, 2019.

1.4 (Medical terminology with simple ordinary meanings) - The complainant was registered as patient with the OP1 and other OPs are its doctors related with the consultancy and treatment of complainant. The complainant was subjective to examination, tests, investigation, treatment etc. The complainant was subsequently admitted and treated at Maharaja Agrasen Hospital, Punjabi Bagh, Delhi after issue of referral note by OP3. Maharaja Agrasen Hospital had also issued discharge summary of complainant and neonatal discharge summary of baby children born. There is mentioning of many medical terminology in such record. The relevant terms are being mentioned with its simple meanings to apprehend the nature of complain, its diagnosis, tests and treatment and also to appreciate the rival plea and to unfold circumstances. The same are being introduced at this stage -

(i) Primi-gravida (PG) - It is defined as a woman, who carries for first time, in a high risk group.

(ii) LSCS -Lower (uterus) Segment Caesarean Section (LSCS) is most commonly used type of caesarean section. Most commonly to deliver the baby a transverse incision is made in the lower uterine segment above the attachment of urinary bladder to the uterus.

(iii) Caesarean section Kit - the hospital may have a standardized 'surgical pack' specific to caesarean delivery and this pack may contain the necessary drapes. It may contain surgical towel, a bulb suction, umbilical cord clamps, suction tubing, or other consumables specific to a caesarean.

(iv) PIH - Pregnancy induced hypertension is a hypertension that occurs after 20 weeks of gestation in women with previously normal blood pressure. They are also classified as gestational hypertension, pre-eclampsia and eclampsia. Pre-eclampsia - a potentially dangerous pregnancy complication characterized by high blood pressure.

(v) pre-eclampsia with cervical cerclage - A cervical cerclage is a treatment that involves temporarily sewing the cervix closed with stitches. This may help the cervix hold a pregnancy in the uterus. A cerclage is done in the second trimester of pregnancy to prevent preterm birth.

(vi) Amenorrhea - amenorrhea is defined as the absence of menstruation during the reproduction years of woman's life, it is generally seen during pregnancy.

(vii) Neonatal Discharge summary - Usually it summarizes medical information related to the baby's family maternal pregnancies, delivery and the stay in hospital until discharge. It is a communication tool between healthcare and professionals.

(viii) Leptospirosis- A bacterial disease that spreads through the urine of infected animal. Humans can get leptospirosis through direct contact with urine from infected animal or through water, soil or food contaminated with their urine.

(ix) cephalic cervix 80% effaced vertex 2cm - i.e. once a cervix reaches 80 % effacement, it is almost short enough to allow the baby through the uterus, assuming it is accompanied by dilation.

(x) NST (Non Stress Test) - NST is generally done when there is high risk pregnancy.

2.1. (Case of complainant) –The complainant is a consumer under the Consumer Law; she was under diagnosis and treatment of OPs. The OP1/ Indira IVF Hospital

Pvt. Ltd., is a well known hospital for providing facility IVF (i.e. In Vitro Fertilization) to the couples unable to give birth to child through natural process; the OP2 to OP4 are its doctors. It was stated by them that they have latest technology of equipment for facility of IVF with well experience doctors' team and there is all kind of facility such as ICU, OT, blood bank, surgery/surgeon, diagnostic, test laboratory, medical store, etc. in the hospital. Moreover, the complainant had informed OPs in advance that she is middle class family and she cannot afford huge expenses for treatment of infertility, however, she was advised that treatment is affordable and it is not more than Rs. 2 lakhs.

2.2. In the first week of April 2020, the complainant alongwith her husband met OP2/Dr. Arvind Kumar (Head of IVF) and shared their problem for not begetting child. There was thorough check-up of complainant and her husband; they were advised to go for IVF treatment. The complainant was registered vide patient Id: MSPOF1309819. The complainant was told that there are three steps to conceive pregnancy. In case complainant conceives in first step after all procedure, she has to pay Rs. 1,80,000/- inclusive of medicine expenses being a package but in case of miscarriage, then she has to bear more expenses of Rs. 1,75,000/- which includes all expenses. It was unfortunate that complainant miscarriages in July 2020 and thereafter a meeting took place in January 2021, the complainant was asked to deposit further amount as advised. The complainant had deposited further amounts under the instructions of OPs from time to time.

Moreover, the complainant also followed prescriptions/instructions and advised tests recommended by OPs to be done from its associates of SRL Diagnostic Delhi OPD SRL Limited, Infra IVF Hospital Pvt. Ltd., New Delhi; although the complainant disagreed to get diagnosis from SRL due to her financial crunch but under the compelling circumstances of OPs, she borne huge expenses of the said diagnosis. The OPs were assuring the complainant from time to time that

everything is normal and there is no need to worry, the complainant trusted them and followed their instructions and advises.

2.3. When the complainant's pregnancy was at advance stage of six months, she got swelling in her feet and she was told by OPs that the swelling would be normal after delivery. The complainant was also told that there are chances of pre-mature delivery and the complainant was advised to meet OP3/Dr. Monika Gynecologist, who will manage and look-after her being an expert in all kind of surgeon's vis-à-vis the expected date of delivery given was in or about September/2021.

Thence, the OP3 starting giving treatment and routine check-up of complainant and whenever there was check-up, OP3 always told that everything is normal and no need to worry. In the month of August 2021 the complainant was also asked to deposit Rs. 60,000/- on account of pre-mature delivery/surgeon charges and the complainant was further provided contact number 7703895964 of OP3 to contact her in case of any complication or pains. On 26.08.2021, the complainant deposited Rs. 60,000/- towards surgeon charges with OP1 as asked for. The complainant also bore other expenses of medicine and tests etc., which are more than Rs. 12 lakhs during the course of treatment, which were beyond her capacity. The complainant was told during the course of treatment that there are twins (one is male and another is female) in her womb, therefore, more precautions are needed. The complainant and her husband were very happy to know about that information.

2.4. The complainant was in constant touch with OP3 and the OP3 was also being apprised about complainant's condition from time to time. As per advises of OP3, the complainant followed them and got ultrasound, then NST was conducted by the OPs and its associates. The OP3 also advised that surgery would be done on or about 28/29.09.2021.

The complainant started severe pains, she contacted OP3 on telephone in the night and the OP3 asked the complainant to come to hospital on 24.09.2021 at 8:30 am empty and the complainant was also told that they have arranged all equipments within entire facility required for the surgery.

2.5. On 24.09.2021 at 8:30 am the complainant along-with her husband and sister came to Hospital/OP1, where OP3 along-with her team was already present. The OPs took signature of complainant's husband on blank papers without disclosing any eventuality. The complainant was taken into OT and her husband was asked to arrange kit for surgery, who purchased a kit from medical store of OPs for Rs. 15,000/-. The complainant was admitted in the hospital at 8:30 am, she was given treatment by OP3 and her team, however, after about some hours and it was about 12:30 pm, the team of doctors along-with OP3 came out from the OT and asked complainant's husband to arrange for some other hospital as the condition of complainant was critical. The complainant was in panic because of severe pain, complainant's husband had requested the OPs to do needful, otherwise complainant may die but OP3 and her team raised her hands by stating that she cannot do anything; he suggested to take the complainant to any other hospital immediately. Complainant's husband shocked and terrified, however, he asked OP3 to give in writing so that he can approach to any other hospital. The OP3 refused to do so but after great persuasions, OP3 agreed to give in writing and then issued letter by stating "Pt. is referred to higher centre for emergency in u/o non-availability blood bank ICU facility". The OPs did not provide ambulance life saver facility to the complainant to take complainant to other hospital despite requests by her husband, he was constraint to arrange his own private life saver ambulance from his own funds. He brought the complainant in poor medical condition in Lady Harding Hospital, where doctors of the team saw her condition and the complainant was not admitted as she was in a very critical condition. Then

complainant start contacting OP3 by telephone and the OP3 was apprised of all the situation with request to suggest name of hospital, where the complainant could be taken, the complainant's condition was also worsening because of severe pain. The OP3 refused firstly to divulge name of any hospital but after repeated requests and persuasions, then OP3 suggested name of Maharaja Agrasen Hospital, Punjabi Bagh, Delhi and also told that she has contact with the concerned doctor, it was advised to the husband of complainant to take complainant in that hospital and meet with the team of doctors there. The complainant's husband did not waste the time and immediately rushed to Maharaja Agrasen Hospital, Punjabi Bagh, Delhi and reached there. When bed sheet underneath complainant was removed by doctor in Maharaja Agrasen Hospital, Punjabi Bagh, Delhi, it was found that half body of incoming child was inside the uterus and half body of child was outside from the uterus (paragraph 11 of the complaint). The complainant's husband was asked to deposit Rs.5 lakhs immediately as surgeon, blood and other life saving medicine are required for the complainant. The complainant's husband was not having huge amount to deposit, thus he has requested to doctors to do needful and in the meantime he would be arranging the amount. The complainant's husband immediately requested OP1 for return of advance deposit of Rs. 60,000/- and to return the surgery kit but OP2 refused flatly with remarks that he may do, what he can. Thence, complainant's husband started requesting his relatives' friends to forward amount through RTGS into the account of Maharaja Agrasen Hospital, Punjabi Bagh, Delhi or in his account to deposit it with the hospital to save lives of complainant and about to deliver children. He could arrange amount from near and dears, then he deposited Rs. 3,78,520/-, Rs. 45,206/- and Rs. 46,124/-; apart therefrom the complainant's husband also borne expenses of medicine, blood tests, transportation, extra diet of complainant.

It was also apprised in the Maharaja Agrasen Hospital, Punjabi Bagh, Delhi that swelling on the feet of complainant was due to infection in her kidney and liver, which was concealed by the OPs, it is mal-practice on the part of OPs. It was also misguided by the OPs that the twin children are of one male and another female. Moreover, after great persuasions the OPs returned deposited amount of Rs. 60,000/- and Rs. 12,000/- in respect of surgery kit [by deducting amount of Rs. 3,000/- since the kit was opened and used by the doctors of OPs].

2.6. The case is covered of negligence committed by the OPs since a patient approaches doctor expecting medical treatment with all knowledge and skills a doctor possesses to bring relief to the medical issue. A doctor owes certain duties to his patient and breach of any of such duties gives cause of action for negligence against the doctors. Moreover, it is also duty of a doctor to inform before taking consent from the patient for diagnostic test and therapeutic management. The complainant being patient of OP1 is covered under the Consumer Law to seek redressal of her grievances.

The complainant's husband's signatures were obtained on blank papers without disclosing about the contents of such letters/applications, it is gross negligence, besides the complainant was left in critical condition. Moreover, the conduct of OPs is also showing while referring the complainant to higher centre that they are incompetent in their profession, it seems their profession is only to grab hard earn money from the innocent person. They were expected to remain available with basic requirements of hospital/nursing home, arrangement life save equipments and blood before starting surgery of the patient. The referral slip is indigestible as no prudent and competent doctor would make blunder or mistake for want of such arrangement before starting the surgery. The OPs failed to discharge their duties. The complainant is victim of negligence, mal-practice, deficiency of services and unfair trade practice on the part of OPs. The

complainant also served legal notice dated 26.10.2021 to the OPs to compensate for Rs. 50 lakhs, however, it was not complied with but a false reply was given. That is why the present complaint, since the complainant suffered all kind of harassment, severe pain - mental and physical, financial losses, expenses etc.

2.7. The complaint is also accompanied with an application asking OPs to provide entire record of treatment including the amounts deposited by the complainant with the OP1. It is also accompanied with email dated 30.12.2021, statement of bank, application form for loan, patient receipt vouchers, sale return sheet, referral note dated 24.09.2021/11:20 am, bills issued by Maharaja Agrasen Hospital, legal notice dated 26.10.2021 with postal receipt and track report, its reply dated 24.11.2021.

3.1 (Case of OP1 to OP4) -The OPs filed their joint reply and they opposed the complaint on legal grounds as well as on facts. Briefly, the complainant is guilty of suppressing material facts that she was got admitted in Maharaja Agrasen Hospital, Punjabi Bagh, Delhi with the efforts of OP3 and other medical staff of OP1, where she delivered two baby girls. This complaint involves disputed question of facts and the same can be decided by civil court. The medical services rendered by OPs do not come within the definition of section 2 (42) of the Act 2019 and complainant is not a consumer within the definition of section 2 (7) of the Act. There is no deficiency of services on the part of OPs, therefore, the complaint is not maintainable as per section 2(6) of the Act 2019. The OP1 is engaged in services of providing treatment through IVF technique and procedure to childless couples but desiring a child of their own; no guarantee was given by the OPs as alleged in the complaint.

3.2. The OP1 has its clinic/centre across the country including one in Patel Nagar, Delhi. They are providing all kinds of Assisted Reproductive Techniques (ART)

including IVF to its patients and OP1 is one of the most reputed and pioneer of ART/IVF in the country, it enjoys very high reputation. OP2, OP3 & OP4 are all qualified and experience doctors, they are associated with OP1 as consultants. It is matter of record that complainant along-with her husband Sh. Vijay Matlani had visited the OP1 first time on 08.05.2020 regarding her infertility treatment; since she was a new patient and visited first time, the registration formalities were completed and her registration number was FDLW10. During consultation and investigation, the complainant and her husband were explained in detail about the procedure and technique of IVF, duration of treatment, chances of success and an estimate of charges payable to OP1 for treatment exclusive of medicine and tests etc. But the complainant has wrongly stated that OP1 has ICU and blood bank facilities in its centre at Patel Nagar and it was never represented by any of the OPs that OP1 has ICU and blood bank facility.

3.3. The complainant and her husband were also explained that treatment protocol for IVF is stage based over a period of time and it depends on results/success of each stage, the patient has to visit the centre on number of occasion. In the eventuality of failure of first cycle but if they wish to undergo for second cycle, then the charges for second cycle will be charged separately. After understanding well, on their first visit, they agreed and provided their consent for treatment and IVF treatment protocol was started accordingly.

The payments by the complainant on various occasion was dependent on the stage of treatment/test required being part of estimated charges intimated. There was no excess money taken from the complainant but all payments were as per schedule of payments. There was no settlement of payment as alleged by the complainant, since the first cycle of IVF was successful but pregnancy was not complete due to miscarriage and the complainant and her husband were apprised of need of second cycle and expenses/charges for the same.

There was no compulsion by the OP1 for getting diagnostic tests from SRL, but the facility was made available by the OP1 for the patient getting the test done under the same roof for their convenience. The patient or the complainant is free to get the test done at her choice. The complainant has wrongly stated about the swelling in her feet but as a matter of fact it was explained to the complainant that it is normal symptom in twin pregnancy because the pressure of growing womb of the patient affects the blood flow in the legs and that causes swelling in feet. The complainant had always choice to consult a physician of her choice for other medical issues.

3.4. While denying the allegations of complaint, the OPs state that there remains chance of premature delivery in all cases of twin pregnancy, since complainant had twin pregnancies, she was advised to make arrangement for neo-natal ICU facility in any government/private hospital as per her financial conditions. OP3 is a well qualified and experienced doctors, she can handle normal cases of twin pregnancy also but at no point of time the complainant was assured that Dr. Monica can manage and looked after all kind of surgeries as alleged. Dr. Monica had been giving treatment and doing routine check-up of the complainant as and when so required, being part of her professional duty and she had given her best possible services to the complainant.

The complainant was never asked to deposit Rs. 60,000/- towards premature delivery/surgeon charges but such deposit of Rs. 60,000/- was made voluntarily by the complainant. Since complainant had twin pregnancy at the age of complainant, the patient are advised to take precaution and being more careful [the written statement does not mention age of complainant but in the record, she is 40 years of age]. But the complainant was never disclosed sex of fetus nor to others being adhering to all laws, rules and regulations; the complainant was also not disclosed as alleged that there is one male and one female child in her twin pregnancies.

3.5 The complainant was in contact of OP3 for regular check-up, tests, etc. yet OP3/Dr. Monica never informed the complainant that surgery would be on or about 28/29.09.2021. In fact, it was complainant who always had been calling OP3 and on 23.09.2021 at night, the complainant also called OP3 and requested OP3/Dr. Monica to perform her delivery on next date, then on the request of complainant, the OP3 asked the complainant to come for check-up at 9 am on next day/24.09.2021.

Earlier, the complainant came at the centre of OP1 on 13.09.2021 for her regular ultrasound test and she was also advised ACT Partial Thrombo Plastin Time (APTT) plasma test and she had given sample for the same, the complainant was having cough and fever, the OP3 advised the complainant to consult some physician of her choice to treat cough and fever. It is in the information of OPs that the complainant got herself admitted for 4-5 days in some hospital/clinic for getting the treatment of cough and fever.

3.6. On 24.09.2021 the complainant reached center of OP1 at about 9 am, she was attended by OP3. She was also examined clinically in detail and the complainant was found to be in early labour with chest infection and altered coagulation profile. Her condition was discussed with attending anesthetist at the Centre, complainant's husband was explained about the urgent need for medical ICU and was advised to take his wife to Maharaja Agrasen Hospital Punjabi Bagh, New Delhi. But the husband of the complainant took more than one hour time to decide and ultimately he refused to take her to Maharaja Agrasen Hospital, Punjabi Bagh, Delhi but decided to take his wife to some government hospital. Thereafter OP3 prepared a referral note immediately for admission to some higher medical centre in view of non-availability of ICU and blood bank facility at its centre and a medical team in such circumstances arranged an ambulance also and the husband of complainant

used the same for taking the complainant to the hospital; the OP1 did not even charge any amount.

The complainant's husband took her to some government hospital, who refused admission for the reason not known to OPs. Thereafter, with the efforts and cooperation of OP3 and other medical staff of OP1, the complainant got admitted in Maharaja Agrasen Hospital, Punjabi Bagh, Delhi where complainant safely delivered two baby girls, however, these facts have been suppressed by the complainant. The OPs emphasized that the complainant was informed and advised from the beginning that they should make arrangement in some government/private hospital having ICU and blood bank facilities, which they ignored.

The complainant's husband was explained about the urgent need for medical ICU and he was advised to take his wife to Maharaja Agrasen Hospital, Punjabi Bagh, Delhi, however, he took time and wasted the precious time in deciding where to take his wife and then referral note was prepared besides making other appropriate arrangement of transport and team without charging any amount to him. It is not a deficiency of services but rendering of services. Moreover, an amount of Rs. 60,000/- and Rs. 12,906/- towards kit were refunded promptly, it cannot be construed negligence or mal-practice; the complainant was given all services from time to time, it cannot be construed medical negligence, especially the complainant and her husband were visiting the hospital regularly and the complainant was given all the services from time to time, there is no breach of any medical duties. Moreover, the complainant and her husband were very well explained in the beginning about the procedure and technique, the stages and chances of treatment, how it could be alleged to be a case of deficiency of services on the part of OPs. Since there are chances of premature delivery in all the case of twin pregnancies and the complainant had twin pregnancies, she was advised to

make arrangement for ICU facilities, vis-à-vis OP3 is well qualified and experienced doctors and on 24.09.2021 appropriate check-up was done and services were rendered, the same cannot be alleged to be a deficiency of services or negligence or mal-practice. The complaint is without merits and it is liable to be dismissed. The OPs are not liable on any count.

3.7. The written statement is supported by affidavits of OP2 to OP4 but no reply to the application seeking record and of amount deposited. However, the written statement is accompanied with documentary record (page 24 to 118) consisting of clinical reports, consent forms, identity proof of complainant, ultrasound slip, billing card, investigation/tests report and so on.

4.1 (Replication of complainant) – The complainant files detailed rejoinder to the joint written statement of OPs having two components- firstly, it reaffirms the complaint as correct and secondly, it responds and explains the allegations of written statement.

The complainant is a consumer and it is covered under the Consumer Law by virtue of various judicial pronouncement/precedents. The dispute involved can be decided by the present District Consumer Forum and there is nothing that it can be decided by the civil court, especially there are many admissions by the OPs in respect of facts of treatment and receipt of amount by them from the complainant.

4.2. Briefly, the complainant had deposited delivery charges of Rs. 60,000/- on 26.08.2021 on the instructions of OPs and it was not voluntarily deposits. The complainant had sent email to the OPs with request to provide entire documents of treatment of complainant including discharge summary but neither the email was replied nor record was provided, an adverse inference is to be drawn. The surgery kit of Rs. 15,000/- was purchased on the instructions of OPs, however, an amount of Rs. 12,000/- was refunded since the kit was opened and partly used for surgery purposes. On 24.09.2021 the complainant was asked to come to hospital and she

was admitted at 8:30 am for treatment, which was given by OP3 and her team, however, after few hours at about 12:30 pm after coming out of the operation theatre, complainant's husband was asked to make arrangement of some other hospital because of critical condition of complainant, no discharge summary was provided but referral letter under the garb of want of ICU facility and blood but no blood was needed during treatment at Maharaja Agrasen Hospital. The replication (under additional submission on page-3) gives detail of amount of Rs. 3,86,900/- for treatment and tests from April till 24.09.2021, medicines of Rs. 1,63,310/- (besides delivery charges of Rs. 60,000/- deposited on 26.08.2021 but refunded in September 2021 & delivery kit of Rs. 15,405/-, which was partly returned Rs. 12,000/- approximately). It also gives detail of expenses at Maharaja Agrasen Hospital of Rs. 3,78,520/- besides nursery expenses of Rs. 45,206+Rs. 46,124/-, ambulance charges of Rs. 5,000/- charged by OP1 from hospital to Lady Harding Hospital and Rs.10,000/- from Lady Harding Hospital to Maharaja Agrasen Hospital. The complainant also claims compensation, cost etc. by mentioning amount head-wise for each individual claim but some of receipt were not available.

4.3 The complainant was given guarantee for success of the treatment and that is why the complainant had opted for the treatment. The complainant had also paid settled package amount of Rs. 1,80,000/- and Rs. 1,75,000/- inclusive of tests etc, however, despite it, not only the complainant was asked to buy medicine and other articles from the market, which result into additional expenditure vis-à-vis the complainant was constraint to get the test done from the laboratory on the ground that their reports are reliable, but their charges were much higher than other laboratory in market. The complainant was never advised to consult some other physician for the treatment of cough and fever and the complainant never requested for her delivery on the next day as alleged in the written statement. The OPs have manipulated the facts and circumstances as OPs never gave in writing to

the complainant to arrange the ICU and blood bank facility in any government/private hospital. The OP3 and its doctors raised their hands by letting the complainant in a complicated condition in middle of delivery process, because of their negligence. The OP1 has entire facility including surgeon/surgery, blood bank, etc., which is being established from the discharge card issued by OP1 hospital in the name of Ms. Vinita vide registration no. FDLISCS72 dated 25.02.2021 for whom surgery was done by OP2 Dr. Arvind (OP2 herein) and this discharge card was issued by OP1 under the signatures of OP2 and else. The complainant could lay hand on this discharge card and it is establishing that OP1 hospital is having entire facility in their hospital including surgery. The OPs have filed false affidavits, they have committed forgery. The written statement contains false allegations. However, the complainant is self-explanatory and it is correct. The OPs have indulged into negligence, deficiency of services, mal-practice and in unfair trade practice.

4.4. The complainant also filed documents with the application, namely receipt vouchers of Rs. 3,86,900/- against treatment, medicine purchased for Rs. 1,63,310/-, delivery kit of Rs. 15,405/-, and discharge card of another patient namely Ms. Vinita issued by OP1 hospital besides bills of Rs. 3,78,520/- and nursery charges issued by Maharaja Agrasen Hospital, discharge summary issued by Maharaja Agrasen Hospital.

5.1. (Evidence of complainant and her witnesses)- In order to establish the case, the complainant (as CW1) led her evidence by filing her own detailed affidavit coupled with the documentary record filed with the complaint. The complainant also led evidence of four more persons (by filing their affidavits) namely CW2 Sh. Vijay Matlani (husband of the complainant) and his narration is on the lines of complaint; CW3 Sonia Sharma (sister of the complainant) to narrate the incident happened on 24.09.2021 when she

accompanied with the complainant and CW2 Vijay Matlani to the hospital; CW4 Ms. Indu Shailaney (cousin of complainant and to establish that on 24.09.2021 on receipt of urgent telephone message and request for money, she transferred Rs. 50,000/- in the account of Ms. Sonia Sharma for depositing in the account of hospital) and CW5 Sh. Ajay Sharma (brother-in-law of complainant and to establish that he deposited Rs. 1,05,000/- by three transactions of Rs. 45,000/-, Rs. 15,000/- and Rs. 45,000/- into the account of Maharaja Agrasen Hospital for the treatment of complainant).

5.2.(Evidence of OPs) - The OP1 and OP2 led evidence by filing affidavit of OP2/Dr. Arvind Kumar with the support of documents filed with written statement. OP3 Dr Monica, Gynecologist and Mr. Jyoti, Gynecologist also filed their respective affidavits, the same are on the lines of written statement. They also narrates that they are qualified experienced doctors in the field, they have been associated with the treatment of the complainant; there was no medical negligence or deficiency of services or else.

5.3. The complainant had filed an application, with complaint, seeking medical record and payment receipts; however, there was no formal reply to this application by the OPs. However, in the proceedings dated 12.05.2022 r/w proceedings dated 25.03.2022, it was made clear by the OPs that they had filed the available record with the written statement. Further, the complainant/patient was not admitted as indoor patient in the hospital of OP1, there was no question of preparing of her discharge summary. Accordingly, this aspect will also be considered while appreciating the evidence.

6.1 (Final hearing)- At this stage of case, the complainant filed detailed written arguments being blend of pleading and evidence with its analysis. It was followed by oral submission by Shri A K Dhupar, Advocate for the complainant.

6.2. Similarly, OPs also filed their detailed joint written arguments, which are also blend of their reply and evidence, followed by oral submissions by Shri Pramod Jalal, Advocate for the OPs, while opposing the complaint and claims of complainant. The OPs also refer an extract from precedent of Kusum Sharma & others Vs Batra Hospital & Medical Research Centre & ors 2010 3 SCC 480 in the written argument (this precedent will also

be referred appropriately along-with another relevant precedents for determining facts in issue].

6.3 The rival submissions are not being repeated for the sake of brevity, since case of parties have already been detailed with relevant facts and features vis a vis the rival stand will be appreciated while returning the findings.

7.1 (Findings)- The rival contentions of both the sides are considered, keeping in view the material on record, majority of which comprises documentary record besides statutory provisions of law & precedents. Since, some issues on point of jurisdiction or complaint raised very briefly by OPs, the same are being dealt under this paragraph no.7 and remaining issues will be taken in then subsequent paragraphs (paragraphs no. 8 onwards).

7.2. The OPs have reservation that there are complicated question of facts involved which cannot be decided in summary procedure by the Consumer Fora, but by the civil court, which is opposed on behalf the complainant that the consumer dispute can be determined by the present Consumer Fora, there is nothing which requires adjudication by the civil court.

As per record as well as during the final hearing, the OPs could not show as to which are question of fact and/or law to be determined by the Civil Court exclusively or as to how the present dispute cannot be determined by the present DCDRC Central District. In addition, there is voluminous and contemporary documentary record showing the facts and features in very simple way on its face to be read as it is, it does not show that matter needs to be decided by civil court. Therefore, this objection is decided against the OPs that on the basis of sufficient material on record in respect of dispute involved, it can be determined by the present DCDRC, Delhi. This contention is disposed off.

7.3 The OPs have another reservations while referring section 2(47) r/w section 2(7) of the Act, 2019 that the complaint pertaining medical treatment services are not covered under the Consumer Protection Act 2019, whereas, the complainant has juxtaposition

plea that medical services are within the compass of services defined under the Act 2019 and the consumer dispute and the complaint is covered under the Act.

The answer of this issue can be traced in precedent Indian Medical Association Vs V P Shanta 1995 (6) SCC 651, wherein it was held that medical practitioners belonging to medical profession cannot be subscribed outside the purview of the Act nor services rendered by medical profession are not covered by the definition of service. Further (in para 12) "that applicability of C P Act 1986 cannot be questioned on the ground that medical practitioners are subject to disciplinary control under Medical Council Act 1956". Moreover, in Lucknow Development Authority Vs M K Gupta 1994 1 SCC 243, term 'service' was discussed (para 10) that " the term has variety of meanings. It may mean any benefit or any act resulting in promoting interest or happiness. It may be contractual, professional, public, domestic, legal, statutory etc. The concept of service is thus very wide". Thus it is abundantly clear that services being rendered by OP1 and its doctors/OP2 to OP4 are medical profession services. The definition of 'service' under the Act, 1986 is identical to the definition of 'service' under the Consumer Protection Act 2019, therefore, the it applies to the OPs, the complainant is a consumer of those services and she is competent to write complaint; it is valid complaint. Accordingly, this issue is disposed off.

8.1. Now the other issues are being taken. There is no dispute that the complainant was registered as a patient of OP1 and the other OPs are doctors of the OP1, they are associated with the infertility treatment of the complainant. The OP2 had also interacted with the complainant and her husband when first visit was made by them and registration was done. However, the dispute had arisen subsequently.

8.2 Since the plea of complainant is of medical negligence, deficiency of services, unfair trade practice etc. against Hospital/OP1 and its doctors - OP2, OP3 & OP4 but the OPs' case is juxtaposition of such allegations; that is why there is dispute between the parties.

Thus, in order to determine "whether or not there is medical negligence etc?", it is appropriate at this stage to first refer a precedent on the point of medical negligence, test,

guidelines and scale to be applied to determine it, ethics involved and so on. It is laid down in precedent 'Vinod Jain Vs Santokba Durlabhji Memorial Hospital AIR 2019 SC 1143 [paras, 8, 9 and 12; in which the previous precedent Kusum Sharma & others Vs Batra Hospital & Medical Research Centre & ors AIR 2010 SC 1050 is also referred with its relevant paragraphs are Para 22 & 89] -

[Para 8] "22 Negligence - Duties owed to patient. A person who holds himself out as ready to give medical advice or treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person, whether he is a registered medical practitioner or not, who is consulted by a patient, owes him certain duties, namely, a duty of care in deciding whether to undertake the case; a duty of care in deciding what treatment to give; and a duty of care in his administration of that treatment. A breach of any of these duties will support an action for negligence by the patient"

[para 9]. A fundamental aspect, which has to be kept in mind is that a doctor cannot be said to be negligent if he is acting in accordance with a practice accepted as proper by a reasonable body of medical men skilled in that particular art, merely because there is a body of such opinion that takes a contrary view (Bolam v. Friem Hospital Management Committee -1957 1WLR 582). In the same opinion, it was emphasised that the test of negligence cannot be the test of the man on the top of a Clapham omnibus. In cases of medical negligence, where a special skill or competence is attributed to a doctor, a doctor need not possess the highest expert skill, at the risk of being found negligent, and it would suffice if he exercises the ordinary skill of an ordinary competent man exercising that particular art.

A situation, thus, cannot be countenanced, which would be a dis-service to the community at large, by making doctors think more of their own safety than of the good of their patients.

[12]. In para 89 of the judgment in Kusum Sharma & Ors. the test had been laid down as under:

"89. On scrutiny of the leading cases of medical negligence both in our country and other countries specially the United Kingdom, some basic principles emerge in dealing with the cases of medical negligence. While deciding whether the medical professional is guilty of medical negligence following well known principles must be kept in view:

I. Negligence is the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

II. Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

III. The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.

IV. A medical practitioner would be liable only where his conduct fell below that of the standard so far reasonably competent practitioner in his field.

V. In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of other professional doctor.

VI. The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence.

VII. Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.

VIII. It would not be conducive to the efficiency of the medical profession if no doctor could administer medicine without a halter round his neck.

IX. It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessarily harassed or humiliated so that they can perform their professional duties without fear and apprehension.

X. The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurizing the medical professionals/ hospitals particularly private hospitals or clinics for extracting uncalled for compensation. The malicious proceedings deserve to be discarded against the medical practitioners.

XI. The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professional.

It is relevant to mention that since certain tests, guidelines and rules have been laid down in precedent *Vinod Jain Vs Santokba Durlabhji Memorial Hospital* AIR 2019 SC 1143 [paras, 8 9 and 12] & *Kusum Sharma & others Vs Batra Hospital & Medical Research Centre & ors* AIR 2010 SC 1050, therefore, from that point of view, many duties are prescribed for the medical profession, they are (i) a duty of care "in deciding whether to undertake the case"; (ii) a duty of care in deciding "what treatment is to be given" and (iii) a duty of care "in administration of that treatment". On failure to observe them or any of them, it will be case of medical negligence. Therefore, it would be appropriate to take the feature of this case one by one from that point of view of such duties and it will conclude the controversy on the point of medical negligence.

9.1. The first issue is "whether the OPs had taken proper care to undertake the case of complainant". On plain reading of pleadings and evidence of the parties, there is no dispute that the complainant had visited for treatment of infertility and the documentary record also reflects that on 08.05.2020, the complainant was diagnosed of infertility. The complainant was registered vide Id no. FDLW-10 dated 08.05.2020 (page no. 96 & 97 of the paper book of complainant) and the complainant was counseled by OP2 Dr. Arvind Kumar. Moreover, the complainant was also issued billing card dated 08.05.2020 for treatment charges (page no. 98 of the paper book of complainant). Although, the complainant narrates that the first visit to OP1 hospital was in the month April 2020 and OP2 was also met there but according to OPs, the complainant had visited first time on 08.05.2020.

However, by taking the substance of relevant documentary record, it stands established that the case of complainant was diagnosed of infertility. The OP1 renders medical services for infertility treatment, all kinds of ART including procedure and technique of IVF through its qualified and competent doctors. Therefore, the OP1 and its

doctors have taken care in taking the case of complainant for diagnosis and treatment of infertility. To that extent, there is no medical negligence on the part of OPs.

9.2. The second point 'of duty of care in deciding what treatment is to be given to the patient/ complainant'? and the third component of 'duty of care in administration of that treatment' to the patient, are interconnected with each other and they are taken together. After taking into account entire plea and documentary record of the parties, the following conclusions are drawn:-

(i) The treatment involves that after appropriate tests and investigations, the complainant was to be put to pregnancy under IVF procedure being the first step, in case of miscarriage then procedure for second pregnancy. The complainant had miscarriage on the first one and that is why second step of another pregnancy was invoked.

(ii) There has been regular follow up by the complainant as per instructions and advises of doctors of OP1 and the stage reached till August 2021, when complainant was cautioned that there is twin pregnancies and appropriate care is to be taken.

(iii) The expected date of delivery was 27.10.2021, [which is appearing from the record of ultrasound etc.]. However, the complainant had early labour in the night of 23.09.2021 and the complainant was called in the morning of 24.09.2021 at the hospital of OP1 and as per advises of OP3 the complainant reached at the hospital. To say, the things were fine till the night of 23.09.2021, except the complainant had swelling in the feet.

(iv) The case of OPs is that after examining the complainant and considering her condition, the complainant's husband was advised to take the complainant to other higher hospital having facility of ICU and blood bank, besides the complainant was already advised in advance to make arrangement with government/private hospital having services of ICU and blood bank. The complainant and her husband have not done so and on 24.09.2021, the complainant's husband also delayed the matter in deciding where to take the complainant for treatment. The complainant has juxtaposition plea on all such counts that she was left in lurch and abandoned all of sudden. She was taken to Maharaja Agrasen Hospital, Delhi in emergency condition. Therefore, the following conclusions are culled out from the evidentiary record by referring from latest record of discharge summary issued by Maharaja Agrasen Hospital besides other documents:-

(a) There are two discharge summary- one is in respect of complainant Poonam Matlani and other two neo-natal discharge summary are in respect of Baby-I and Baby-II born there.

(b) The discharge summary depicts diagnosis that the complainant was diagnosed of prime with IVF conception with 35 weeks 2 days, dichorionic diamniotic twin with preeclampsia with cervical cerclage with BTM covered with spasmodic bronchitis; post LSCS; leptospirosis (IgM positive); sepsis with thrombocytopenia; dyselectrolytemia. The complainant was operated in emergency LSCS done under spinal anesthesia on 24.09.2021; indication- severe PIH, twin in labour. Further, the discharge summary also gives history “ the patient was admitted with 9 months amenorrhea, bleeding per vagina, leaking per vagina since morning” and on examination it was found uterus over-distended, fetal heart sounds present, per vagina OS7-8 cephalic cervix 80% effaced vertex 2 cm.

(c) Prior to bringing the complainant at Maharaja Agrasen Hospital, the OP3 Dr. Monica of OP1 had issued referral note dated 24.09.2021 at 11:20 am, by making remark at its bottom “patient is referred to higher centre for emergency LSCS in V/O non- availability of blood bank and ICU facility.

(d) The OPs are defending that they advised the complainant in advance to make arrangement with government/private hospital having ICU and blood bank facility, however, there is no such record proved on behalf of any of the OPs if such advices were given to the complainant in advance nor such advices are mentioned in the prescriptions.

(e) The complainant has proved record of discharge card (at page 133 of the rejoinder) in respect of OP1's another patient Ms. Vinita, who was admitted on 23.02.2021 and discharged on 25.02.2021 since surgery was done as LSCS under spinal anesthesia and surgeon name was Dr. Arvind Vaid. This shows that OP1 and its doctors perform surgeries in the hospital of OP1. But it was not done so in the case of complainant.

(f) The discharge summary issued by Maharaja Agrasen Hospital in respect of complainant (at page 122-126 of replication) does not depict that the complainant was administered blood by the said hospital, which corroborates complainant's plea that she was not given blood during treatment at Maharaja Agrasen Hospital.

(g) The complainant has proved receipt dated 26.08.2021 (at page 33 of paper book of complainant) of Rs. 60,000/- on account of delivery charges, but the expected date of delivery mentioned was of October 2021. The plea and defence of OPs that complainant had deposited the amount voluntarily is neither usual nor acceptable but in fact it proves that the OPs had asked for deposit of amount in advance in August 2021 so that the complainant may not move to other institution/hospital as well as she remained booked with the OPs. It is undisputed fact that subsequently this amount of Rs. 60,000/- was refunded to the complainant since delivery was not performed in the hospital of OP1 as she was relieved immediately prior to delivery.

(h) On 24.09.2021 the complainant reported to OP1, where OP3 alongwith other team/OPs were present. The referral note bears time of 11:20 am of 24.09.2021 while advising husband of the complainant to take her to some other higher institution. The OPs are projecting that as if it was immediately on examination of the complainant and then appropriate advises were issued, however, the circumstances are speaking contrary to it. Firstly, the complainant's husband was asked to purchase surgery kit and the voucher of surgery kit enumerates items which are required for delivery purposes; complainant's husband had purchased it and the same was handed over to the doctors at operation theatre. Subsequently, a part amount of Rs. 12,000/- was refunded to the complainant since some of the articles of kit were used after opening the same by OPs.

It proves that the complainant was taken into operation theatre in the morning of 24.09.2021, the surgery kit was also arranged [and delivery charges were already got deposited on 26.08.2021] but lateron around noon hours the OP3, the OP2, OP4 of doctors team after coming out of OT asked the husband of complainant to take complainant to some other hospital for want of ICU facility and blood bank in OP1 Hospital. It also proves that in the phase of delivery process, it was abandoned and complainant's husband was asked to take the complainant to some other hospital. Had the complainant not been in the OT/Labour Room, there was no occasion for opening of the surgery kit and use of some of its articles. The OP3, the OP2, OP1 and other had started the procedure of delivery but it was not performed. In addition, the facts in paragraph 11 of the complaint [already referred] have not been denied specifically by the OPs in their written statement vis a vis the complainant (CW1) and her husband (CW2) have reaffirmed these facts in their affidavit of evidence, which are taking support from medical record.

(i) It is well known that when a patient is taken to the OT/labour room, it could be after admitting the patient as indoor patient and after delivery or subsequently the patient is discharged. Whereas, in this case the same procedure would have been affected that the complainant was taken to labour room/OT and then she was relieved without preparing the discharge summary instead referral note (page 42 of the paper book of complainant) was prepared. The circumstances on record are crystal clear. OT/Labour room is not an OPD.

(j) The discharge summary issued by Maharaja Agrasen Hospital is showing that complainant was admitted on 24.09.2021 at 2:30 pm and she was discharged on 06.10.2021, under stable condition with medical advises/prescriptions. However, there is nothing in the discharge summary that she was administered/given blood during treatment.

(v) The analyses and conclusion drawn in sub-clauses (i) to (iv) above clearly demonstrate and prove that the complainant was being examined from time to time and appropriate investigations, tests, ultrasound and consultancy was rendered, however, after

admitting of the complainant in the hospital on 24.09.2021 by call of OP3, then the OPs could not handle the case of complainant because of its omissions and commissions, then at very crucial moments when complainant was about to deliver children, there was an impasse by the OPs and the complainant was referred to other hospital by stating want of ICU and blood bank facility.

(vi). Would it be acceptable that a patient/complainant would request the OPs in the night to perform delivery on next date and OPs acceded to such request of the complainant without accessing medical requirement? The answer it in 'negative'. Moreover, there is nothing so mentioned in the record that delivery was not medically advised on that day or the complainant had insisted or procedure was started against medical advices. Otherwise, why complainant requested so, it is not mentioned by OPs.

(vii) There is partly breach of second duty 'of duty of care in deciding what treatment is to be given to the patient complainant' and also breach of third duty 'of 'duty of care in administration of that treatment', at the final and crucial stage of delivery, for which the OPs were required to be prepared in advance but they failed. Hence it is held that OPs are jointly and severally negligent on their part in this regard.

In view of detailed discussion, analysis and conclusions in paragraph 9.2, it is held that the complainant has proved the facts and circumstances of medical negligence against all the OPs.

10. The other issues are in respect of deficiency of services and unfair trade practice, however, there are rival plea as on the one side the complainant's case against OPs is of deficiency of services, mal-practice and unfair trade practice but on the other side, there are reservations by OPs that there is nothing so. By considering the case and record of both sides, for the following reasons and conclusions drawn, they prove that there is deficiency of services and of unfair trade practice on the part of OPs:-

(i) It is voluminous but speaking documentary record, there are standard printed forms used for information, consent form, evaluation etc. However, the additional information are also written manually upon some of standard forms. But there is no instruction or additional information written manually to suggest the complainant that she has to arrange facility of government/private hospital having ICU and blood bank for the purposes of delivery. This also corroborates the plea of complainant that she was told about availability of all facilities with OPs in hospital/OP1.

(ii) The OP has proved patient record (page 96-97) and billing detail (page 98) both of 08.05.2020 and it is showing that package amount is Rs.1,85,500/-, which includes

medicines charges of Rs. 80,000/- investigation charges of Rs. 5,000/- donor charges of Rs. 40,000/- besides other charges mentioned. It corroborates the plea of complainant that it was a complete package of Rs. 1,85,000/- on first step of procedure, otherwise in case there is miscarriage, the complainant was to deposit another amount of Rs. 1,75,000/-. There was miscarriage and complainant had also deposited further amount asked for. The receipts of Rs.3,86,900/- has been proved by the complainant and her witnesses (which is available at page no. 37 to 40 of paper book of replication). The OPs stand that the said package was just an estimate is not proved so, since the billing card does not mention that it estimate but billing card depicts billing details of total charges payable as well as payment of that charges on different dates by the complainant.

When there is a package and it includes medicine and other investigation charges, the OPs were not required to ask the complainant for buying medicine and other articles separately. The complainant had purchased medicines etc. of Rs.1,63,310/-, for which the bills have also been proved by the complainant.

(iii) Further, in reference to su- clause (i) above, the OPs got deposited charges of Rs. 60,000/- from complainant on 26.08.2021 much prior to expected date of delivery [either October or September 2021]; if the complainant was advised to have arrangement in government/private hospital having ICU and blood bank facility, there was no occasion for OPs to ask the complainant for getting depositing such amount in advance. Simultaneously, in case the OP1 is not having such facility, then the amount would not have been got deposited vis-à-vis on the other side, the OP1 and its doctors had dealt the another case of Ms. Vinita for LSCS under Spinal Anesthesia. This shows the paradoxical and contradictory stand of OPs, just to shield itself but circumstances are not supporting OPs.

11.1. The complainant has proved the bills and amount deposited with the OP1 for diagnosis and treatment of infertility, the pregnancy was successful in second step, however, baby children could be delivered at Maharaja Agrasen Hospital, since OP1 and its doctors/OPs failed to make it successful delivery in the hospital/OP1. The complainant has spent an amount of Rs. 3,86,900/- for treatment and an amount of Rs. 1,63,310/- for medicine in the OP1 hospital (besides delivery charges of Rs. 60,000/- and kit charges, however, the former was refunded but later was partly refunded because of use of some of the articles). The complainant has also spent an amount of Rs. 15,000/- [i.e. Rs. 5,000/- +Rs. 10,000/- for availing the life save ambulance from Patel Nagar to Lady Harding Hospital and further from Lady Harding Hospital to Maharaja Agrasen Hospital]. Thus, the total amount paid/spent was Rs. 5,65,210/- [i.e. Rs. 3,86,900/-+ Rs.

1,63,310/-+Rs.15.000/-]. Had it been an uneventful delivery in the hospital of OP1, the complainant was to pay and bear total expenses of Rs. 3,60,500/- [i.e. Rs. 1,85,500/- + Rs. 1,75,000/-] being case of second step and the complainant was not required to pay any other amount either on medicine, transportation charges or subsequent medical expenses at Maharaj Agrasen Hospital. Thus, the complaint had spent extra amount of Rs.2,04,710/- [i.e. Rs. 5,65,210/-less Rs. 3,60,500/-] on such heads in Hospital/OP1.

11.2. Further, the complainant also spent extra medical expenses of Rs. 3,78,520/- for her treatment of delivery in Maharaja Agrasen Hospital besides nursery charges and complainant was constraint to pay/bear this expenses because of situation created by OPs. Simultaneously, since both the babies were pre-mature and they were required to be kept in nursery, for which an amount of Rs. 45,206/- + Rs. 46,124= Rs. 91,330/- was to be spent in such circumstances (even in case had it been delivery in the hospital of OP1). To say, the complainant had to spend extra amount of Rs.3,8,520/-.

Therefore, the complainant is held entitled for return of amount of Rs.5,83,230/- [i.e. Rs.2,04,710+Rs.3,78,520/-] from the OPs jointly and severally.

11.3. The complainant has also made total consolidated amount compensation of Rs.50,00,000/- against OPs, [which includes all medical charges expense, damages for harassment and agony]. By considering totality of proved circumstances against OPs as concluded in aforementioned paragraphs, including medical expenses incurred, medical negligence etc., the critical medical condition of complainant, due to which she was constrained to be brought at eleven hour in severe pain and stress to other hospital, a compensation of Rs 1,00,000/- [in lieu of severe pain to complainant, trauma, stress, inconvenience] is appearing to consonance to the situation involved and the same is allowed in favour of complainant and against OPs to pay it jointly and/or severally besides damages of Rs.50,000/- for other harassment, mental agony, panic and trauma to complainant, her husband and others in favour of complainant and against OPs. The cost of litigation is also determined as Rs.15,000/-in favour of complainant and against the

OPs, since complaint was filed after all efforts and persuasion including steps of legal demand notice to OPs.

11.4. The complainant has claimed interest at the rate of 18% pa, however, considering the nature of dispute, the interest at the rate of 4%pa is allowed in favour of complainant and against the OPs.

12. Accordingly, the complaint is allowed in favour of complainant and against the OPs to pay jointly and/or severally amount of Rs.5,83,230/- [i.e. Rs.2,04,710+Rs.3,78,520/-] alongwith interest at the rate of 4%pa from the date of complaint till realization of amount besides specific personal compensation of Rs.1,00,000/-[towards physical pains and trauma suffered by the complainant during crucial phase she was referred to other hospital and till she delivered babies], damages of Rs.50,000/- for harassment, inconvenience and mental agony suffered by the complainant and others with her, besides costs of Rs.15,000/- to complainant. OPs are also directed to pay the amount within 45 days from the date of this order.

In case amount is not paid within 45 days from date of this order, then amount of Rs.5,83,230/-will be payable with interest to be at the rate of 6% pa from the date of complaint till realisation of amount. The OPs may deposit the amount in the form of pay order/demand draft in the name of complainant in the Registry of this Commission; in that eventuality the complainant may be informed of such deposit.

13. Announced on this 18th day of March 2024 [फाल्गुन 28, साका 1945]. Copy of this Order be sent/provided forthwith to the parties free of cost as per rules for compliances, besides to upload on the website of this Commission.

[Inder Jeet Singh]
President

[Shahina]
Member (Female)

[ijs42]