

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION

EAST DELHI

CONSUMER COMPLAINT NO. DC/78/CC/336/2019

ANAMIKA SINGH

PRESENT ADDRESS - .EAST,DELHI.

.....Complainant(s)

Versus

MAX HOSPITAL

PRESENT ADDRESS - .EAST,DELHI.

.....Opposite Party(s)

BEFORE:

**SUKHVIR SINGH MALHOTRA , PRESIDENT
RAVI KUMAR , MEMBER**

FOR THE COMPLAINANT:

MOHD. ZAHID ALI ADVOCATE FORCOMPLAINANT

FOR THE OPPOSITE PARTY:

SH. RAVI PROXY FOR SH. PUNIT BHATNAGAR ADVOCATE FOR OP

DATED: 11/06/2025

ORDER

Present :- Mohd. Zahid Ali Advocate forComplainant
 Sh. Ravi Proxy for Sh. Punit Bhatnagar Advocate for OP

Vide separate order the Complaint of the Complainant is dismissed.

Copy of the order be supplied / sent to both the parties free of cost as per rules.

Announced on 11.06.2025.

File be consigned to Record Room.

(Ravi Kumar)

Member

(S.S. Malhotra)

President

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION (EAST)

GOVT. OF NCT OF DELHI

CONVENIENT SHOPPING CENTRE, FIRST FLOOR,

SAINI ENCLAVE, DELHI – 110 092

C.C. No. 336/2019

Ms. Anamika Singh

W/o Sh. Laxmi Narayan

R/o. QTR No.14 Block 3 Type 3 Ordinance Factory
Nalanda Raigir

....Complainant

Versus

1. Dr. Archana BachanOP1
2. Max Hospital Patparganj,
108A Indraprastha Extension
Patparganj New Delhi-110092.OP2

Date of Institution: 31.10.2019

Judgment Reserved on: 31.05.2025

Judgment Passed on: 11.06.2025

QUORUM:

Sh. S.S. Malhotra (President)

Sh. Ravi Kumar (Member)

Judgment By: Shri S.S. Malhotra (President)

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JUDGMENT

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By this judgment the Commission would dispose off the complaint of the complainant alleging medical negligence in performing certain surgical procedures.

1. Brief facts as stated by the complainant in the complaint are that complainant approached the OP on 7/5/2018 for medical treatment of a mass of flesh that had developed in her body with the expectation that the respondents would provide proper medical treatment to the best of their knowledge, command and skill but OP, without conducting any tests **recommended** a Laparotomy procedure which is a surgical procedure and is generally used for people with severe abdominal pain to find the cause of the problem and to treat it and oophorectomy which is a surgical procedure to remove one or both of a woman's ovaries. These recommendations of OP were not based on any scientific investigations as OP never conducted any scientific investigations with the sole intention to raise a huge bill from the petitioner as there was no mass in the ovaries

instead it was found to exist in the uterus and could have been removed during the same surgical procedure. The OP in breach of its duty of care towards the patient and in contravention of the hypocritic oath decided to close the operation without doing the needful so that they could charge her for a second surgery which amounts to non-performing the duties by the respondents, and which they did not fulfill particularly by not performing necessary diagnosis before the start of procedure. It is further submitted that OP has failed to protect the interest of petitioner by not showing degree of care, precaution and diligence, which the circumstances demanded. It is further stated that invasive treatment required explicit consent and OP failed to ensure that the petitioner gave an informed consent. If the petitioner could knew that the actions of the respondents would inflict misery and pain upon her, she would not have agreed to undergo the treatment from the OP but complainant was not made aware of material risk of the line of treatment being adopted & the respondents deviated from the accepted line of practice and caused injuries to the complainant and even did not provide care of a reasonable and competent doctor. The respondents proceeded to operate upon the petitioner without performing the test required which amounts to negligence in discharging their duty and this has caused the petitioner to suffer immense pain and suffering and had to make several trips to various doctors which has caused mental and physical agony to her and even she could not fulfill her household responsibilities and other duties towards her family members due to such negligent attitude of the OPs and accordingly she has filed the present complaint claiming an amount of Rs.19,81,901/- from the OPs i.e. 1. Operation cost- 118500/-, 2. OPD consultation-1200/-, 3. Medicine-1200/-, 4. After operation OPD consultation-600/-, 5. Cost incurred on transportation from Rajgir to Delhi (To & Fro) 50000/- , 6. Cost incurred in hotel for 18 days- 45000/-, 7. Fooding charges-

20000/-, 8. Cost incurred on hiring local transport-5000/-, 9. Earned leave by petitioner's husband who had to apply EL for 18 days at work place @2314/day = 41652/-, 10. Outside food my petitioner's husband who had to eat for 03 months during her recovery of 24000/-.

Total expenditure: Rs 307152

b. Expenditure incurred in CMC, Vellore

1. Operation cost-54000/-, 2. OPD consultation-2110/-

3. Test costs-18975/-, 4. Medicine-9291/-, 5. Hotel stay-15000/-, 6. Flight tickets-50000/-, 7. Meal charges-25000/-, 8. Cost incurred in hired vehicle-10000/-, 9. Earned leave my petitioner's husband had to apply for 23 days at work place @2451/day-56373/-, 10. Misc. expenditure-10000/-,

Total expenditure: Rs 250749

c. Food

Petitioner's husband had to eat for 03 months during recovery of wife – 24000, d. Expected Cost of litigation including coming to Delhi at least 3 times, food, hotel, transport-Rs 200000, e. Compensation sought for pain caused to the petitioner due to unnecessary mental agony of petitioner -1200000 operation, and her husband

Total cost (a+b+c+d)= Rs 307152+ 250749+24000+200000+1200000 = Rs 1981901/-

Both the OPs were served and filed joint written statement inter alia taking preliminary objections that Max Super Speciality Hospital (OP No.2) is a unit of Balaji Medical and Diagnostic Research Centre which is a Society registered under the Societies Registration Act and therefore the said Balaji Medical and Diagnostic Research Centre is a necessary and proper party failing which the complaint be dismissed. It is further submitted that the treating doctor of OP2 are highly qualified and they have consecrated their lives to the service of humanity, and the health of their patients is their first consideration which they did as per the best of their ability and judgment. The OPs Counseled and performed their duties bona-fide and then brief facts were discussed with the complainant who is 26 year of age & was seen in Gynae OPD on 07.05.2018 and she presented with abdominal lump with following reports:

- USG whole abdomen with doppler study (07-04-2018) as advised by Dr. Anita Singh. Report suggestive of large complex pelvic mass with solid and cystic components and evidence of neovascularization in solid areas, high risk Ovarian Mass. Uterus normal.
- CT whole abdomen (17-04-2018) done in Rajiv Gandhi Cancer Institute-Delhi Report suggestive of large complex cystic lesion indenting right lateral wall of uterus and displacing it to left side. Right ovary not seen separately. Doctors prescription from RGCS Delhi not attached.

It is further stated that after going through these USG and CT report from premier institute of cancer hospital, patient's counseling was done. Patient was posted for Exploratory Laparotomy with frozen section biopsy & proceeded on 10-05-2018 after consulting Gynae Onco surgeon Dr. Kanika Gupta.

Patient was taken up for surgery along with Dr. Kanika Gupta (Onco surgeon) as a team. Per operative findings suggested-

- 1) B/L tubes and ovaries were normal
- Huge mass seen arising from the posterior surface of uterus about 20 weeks size, fibroid uterus.
- Patient's husband was called and informed about the finding and further plan of medical management followed by myomectomy discussed.

2. However, seeing the reports and examination of the complainant, surgery was not done in same sitting due to the following reasons:-

- a) All investigation reports suggested of ovarian mass likely malignant but instead it was found to be huge myoma arising from uterus. Patient counselling and consent were required for the same As the patient was under general anaesthesia it was not possible.*
- b) Patient was planned for medical management first, to shrink the uterine mass so that less surgical complications and best treatment could be given to the patient. As she was recently married with no children, medical management prior to removing the uterine mass helps in saving the uterus and reducing excessive bleeding. But the patient never turned up for follow up and further treatment was offered.*

3. The complainant was asked to provide the documents received from CMC Vellore with respect to her treatment in August, 2019 but the same were not provided.

As far as merits are concerned it is denied the OP recommended to surgical operation without conducted any tests as alleged. It is also denied that recommendations were not

based on any scientific investigations or by their desire to raise a huge bill from the petitioner to pay, or the surgery was not completed with intention to fetch more money from the complainant as alleged. The reason for not doing the surgery in same treatment has been explained in para-5 of preliminary objection as follows:-

All investigation reports suggested of ovarian mass likely malignant but instead it was found to be huge myoma arising from uterus. Patient counselling and consent were required for the same As the patient was under general anaesthesia it was not possible.

Patient was planned for medical management first, to shrink the uterine mass so that less surgical complications and best treatment could be given to the patient. As she was recently married with no children, medical management prior to removing the uterine mass helps in saving the uterus and reducing excessive bleeding. But the patient never turned up for follow up and further treatment was offered.

It is further stated that there was no negligence on the part of OPs. It is specifically denied the OPs have failed to protect the interest of the complainant or OPs have failed to ensure that petitioner gave an informed consent. The contents of the preliminary objections are reiterated and it is prayed that complaint of the complainant be dismissed.

4. The complainant has filed rejoinder thereby repeating the same facts and also has filed her own evidence by way of affidavit, whereas OP has filed evidence of Dr. Archana Bachan the OP1 for herself as well as for OP2. Both the parties have filed written arguments and Commission has heard the arguments and perused the records.
5. The case of the complainant in nut shell is towards medical negligence on the part of OPs and basically her contention is that she was recommended surgery and procedure

without conducting diagnostic tests and the second leg of the negligence as alleged by the complainant is that the mass flesh which was to be removed in the same surgical procedure, which was performed by the doctors was intentionally not done in the same procedure with the intention to fetch more money from the complainant for the second surgical operation which compelled the complainant to visit various doctors and which has resulted in financial loss to the complainant.

6. The contention of the OP on the other hand is that the procedure was done as per the prescribed modes and the flesh was not removed in the same procedure for the reason that it would have caused much loss of blood and even would have caused danger to life if it would have done is same procedure. Admittedly there is no opinion of the expert on record & neither the complainant nor OP filed any application for taking opinion of the expert w.r.t. the treatment given by the OP1's doctor, who is posted in the hospital i.e. OP2. The concept of medical negligence can basically be explained in just two sentences i.e. patient/complainant has to prove that what the doctor was required to do and he has not done and conversely what the doctor was not required to do and has done that procedure. Merely based on the conjectures that if the doctor would have done this procedure instead of other procedure or if other procedure should have been done it would have been lesser or more effective on the body of the patient/complainant or it would have been cost effective etc in the considered opinion of this Commission, is not sufficient to hold that doctor or hospital were negligent in discharging their duties. It is also settled principle of law that not getting the desired relief by itself is not a ground to come to conclusion that the treating doctor was negligent in performing its duty.

7. In the backdrop of these broad guidelines now coming to the facts of the present case

which are that the complainant in her complaint has mentioned that **OP recommended** a laparotomy and oophorectomy which is a surgical procedure i.e. used for people with severe abdominal pain while oophorectomy is a surgical procedure to remove one or both of the women's ovaries. The contention of the complainant that these recommendations were not based on the scientific investigation is not correct as per record as various tests have been conducted by the OP itself, copy of which is attached by the complainant herself on the court file and even otherwise it is not disputed that complainant had already taken opinion & has undergone the USG and other tests from Rajiv Gandhi Cancer Hospital Institute and Research Centre. Based on such reports i.e.. USG and CT report from Rajiv Gandhi Hospital, the patient was posted for exploratory laparotomy with frozen section biopsy & preceded on 10.05.2018 after consulting the gynae- Onco Surgeon Dr. Kanika Gupta. Therefore it cannot be said that no diagnostics were done before suggesting or recommending the procedure to the complainant. Further the contention of the complainant is that since there was no mass in the ovaries instead it was found to coexist in uterus, the OP could have removed the same during the same surgical procedure but instead with intention to mint more money, OP1 closed the procedure without doing the needful, so that they could charge her for the second surgery. What is the basis of this opinion formed by the complainant has not been specified as the OPs in para-5 of its written statement, as mentioned herein above, have clearly mentioned that the same could not have been done for the reason mentioned in the para-5 i.e.

All investigation reports suggested of ovarin mass likely malignant but instead it was found to be huge myoma arising from uterus. Patient counselling and consent were required for the same As the patient was under general anaesthesia it was not possible.

Patient was planned for medical management first, to shrink the uterine mass so that less surgical complications and best treatment could be given to the patient. As she was recently married with no children, medical management prior to removing the uterine mass helps in saving the uterus and reducing excessive bleeding. But the patient never turned up for follow up and further treatment was offered.

8. It is further explained by the OP that since huge mass was seen arising from the posterior surface of uterus about 20 weeks size, fibroid uterus, the patient's was called and informed about the findings and further plan of medical management followed by the mynomectomy was discussed.
9. The Commission is of the opinion that in absence of an expert opinion on this aspect it cannot be ascertained as to whose suggestion is at better footing but it can be said with certainty that opinion of the complainant is at lower footing than that of the opinion/findings of the expert/doctors who were performing the procedure at that very relevant time. There is no scope for alleged deficiency by alleging that the procedure should have been done in particular manner and it has been done in some other manner. This by itself does not constitute any negligence on the part of treating doctors. Further admitted case of the complainant is that she never approached the hospital thereafter, rather the OP have submitted that the patient was planned for medical management first so as to shrink the uterus mass so that less surgical complications be adhered to and best treatment could be given to the patient as she was recently married with no children and removal of the ovaries or any incidental injury to the ovaries would have been affecting the future life of the complainant and therefore what they thought was discussed with the

husband & procedure was done. It is also matter of record that the patient never turned up to follow-up & further treatment was not done by the OP and even the complainant who had received treatment from CMC Vellore, had not shared the documents of that hospital with the OP to make any opinion on that treatment. Therefore there is no record before the Commission from where it can be ascertained that OP/Doctor has done something which they were not supposed to do. The complainant otherwise had also claimed a huge amount under various heads but then there is no evidence in support of such contention. Admittedly the complainant had consulted the OP on 07.05.2018 and her procedure was done on 10.05.2018 and she was discharged on 12.05.2018 with diagnose of other intra abdominal and pelvic swelling, mass and lump. In the history, mentioned, in discharge summary nothing significant was mentioned, procedure was performed which is mentioned as exploratory laparotomy which had already been discussed with the complainant and even admitted by her.

10. As far as operative part is concerned the uterus was seen with the huge mass arising of post surface of uterus about 20 weeks size which is a symptom of fibroid uterus and both ovaries appeared to be normal and no mass seen arising from either of the ovaries and certain medication was given.
11. All this facts as discussed hereinabove do not show any malafide on the part of doctors rather it suggests that the doctors have handled the situation with quite care and sympathy and even the petitioner's husband was also taken into confidence. It is admitted fact that further treatment has not been taken by the complainant from the OP. This also suggests that the contention of the complainant that the mass was not removed from the uterus or in the same procedure with the intention of charging more money for second operation is

without any basis. As far as pain and suffering is concerned it is admitted fact that even a small surgery undertaken by any patient causes some pain and suffering, as healing does take time for every surgical procedure howsoever minute it may be. Therefore this contention of the complainant is also not having any legal support. Admittedly the complainant has not visited the hospital after 12.05.2018 and therefore the Commission does not have any documents to appreciate as to which procedure the other hospital had done.

12. Therefore this Commission does not find any ground to appreciate the contention of the complainant particularly in absence of opinion of the expert & accordingly, the complaint case of the complainant is dismissed.

Copy of the Order be supplied/sent to the Parties free of cost as per rules.

Announced on 11.06.2025.

File be consigned to Record Room.

(Ravi Kumar)

Member

(S.S. Malhotra)

President

.....J
SUKHVIR SINGH MALHOTRA
PRESIDENT

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