

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION: NORTH-EAST****GOVT. OF NCT OF DELHI****D.C. OFFICE COMPLEX, BUNKAR VIHAR, NAND NAGRI, DELHI-93****Complaint Case No. 133/21****In the matter of:**

Mrs. Birwati

W/o Sh. Manoj Kumar

R/o H.No. 90, Aryanagar,

PreetVihar, Loni,

Ghaziabad, U.P.

**Complainant*****Versus***

Chief Medical Officer/Superintendent

Unit Incharge (Department of Gynecology)  
Swami Dayanand Hospital, Shahdara, Delhi-  
110095**Opposite Party****DATE OF INSTITUTION: 24.09.21****JUDGMENT RESERVED ON: 25.09.23****DATE OF ORDER: 12.12.23****CORAM:**

Surinder Kumar Sharma, President

Anil Kumar Bamba, Member

Adarsh Nain, Member

**ORDER**

**Ms. Adarsh Nain, Member**

The Complainant has filed the present complaint under Section 35 of the Consumer protection Act, 2019 against Opposite Party which is Chief Medical Officer, Swami Dayanand Hospital, Shahadra.

**Case of the Complainant**

1. The case of the Complainant as revealed from the record is that the Complainant got admitted in Opposite Party hospital on 03.07.14 and got discharged on 06.07.14 for purpose of delivery which was done through caesarean delivery. It is further stated that since she already had two children born through caesarean delivery, at the time of third delivery, the concerned doctor of Opposite Party suggested immediate tubectomy on the ground that another caesarean delivery may be dangerous for the Complainant and her new born baby. Accordingly, the Complainant had undergone tubectomy and it is alleged that during the caesarean operation, doctors of Opposite Party assured Complainant that Complainant will never conceive pregnancy in future and got discharged from hospital on 06.07.14. The Complainant stated that in month of May, Complainant felt abdomen pain and visited Opposite Party hospital on 03.06.19 and found that UPT positive and doctors told that she already conceived on 09.04.19. The Complainant stated that as per the suggestion given by doctors of Opposite Party in 2014, Complainant underwent tubectomy to save herself. The Complainant stated that it will not be safe for her and her new born child if caesarean delivery happens in future. The Complainant stated that she has number of documents which reflect carelessness, negligence during tubectomy. The Complainant has made several complaints to Opposite Party but Opposite Party did not give satisfactory response to Complainant. It is submitted that the Complainant is merely a house wife and cannot afford one more child and allegedly due to negligence of Opposite Party, an extra burden of maintenance has been put upon her. The Complainant had served legal notice to Opposite Party dated 12.07.19 through speed post dated 18.07.19 on address of Opposite Party. Thereafter Opposite Party sent false and frivolous reply dated 24.07.19 to Complainant. It is also alleged that on 17.01.20, Opposite Party refused to admit her for delivery, then Complainant went to other hospital where Complainant delivery was successful on 21.01.20. Hence, this shows deficiency in service on behalf of Opposite Party. Complainant has prayed for compensation of Rs. 19,50,000/- and Rs. 50,000/- towards litigation expenses. Further prayed to grant the above said amount with penal interest @ 18 % p.a. till its realization.
2. None has appeared on behalf of Opposite Party to contest the case despite service of notice. Therefore, Opposite Party was proceeded against Ex-parte vide order dated 12.04.22.

**Ex-parte Evidence of the Complainant**

3. The Complainant in support of her complaint filed her affidavit wherein she has supported the averments made in the complaint.

**Arguments & Conclusion**

4. We have heard the Complainant. We have also perused the file and the written arguments filed by the Complainant.
5. The case of the Complainant is that Complainant had two children through caesarean delivery and got admitted in the Opposite Party hospital for third delivery. At the time of third delivery which was also to be a caesarean delivery, the concerned doctor of Opposite Party allegedly suggested immediate tubectomy on the ground that further pregnancy and caesarean delivery may be dangerous for the Complainant. Accordingly, the Complainant had undergone tubectomy and it is alleged that during the caesarean operation, doctors of Opposite Party assured Complainant that Complainant will never conceive pregnancy in future. The Complainant became pregnant again and the contention of the Complainant is the due to negligence of the Opposite Party, her tubectomy surgery failed and an extra burden of maintenance of fourth child has been put upon her. Hence, the Opposite Party must be held liable to pay life time maintenance and compensation.
6. It is a case of failed tubectomy surgery performed by Opposite Party hospital. However, the Complainant has not produced any document in support of her allegation that the tubectomy surgery was performed negligently.
7. The perusal of the record reveals that in their reply to the legal notice of the Complainant, the Opposite Party hospital has submitted that it is the hospital run by MCD and provides services for free. It is also

submitted that the said operation was performed by trained and empanelled doctor and proper consent was taken from the husband of the Complainant after explaining the risks and failure of the same. It is also submitted by the Opposite Party that the surgery was conducted without any negligence on 03.07.2014 and the patient recovered easily as she was discharged on 06.07.2014. It is also asserted by the Opposite Party that the Complainant was advised Medical termination of pregnancy when the pregnancy was confirmed, however, the Complainant knowingly did not go for that and continued her pregnancy. This fact is corroborated by the prescription dated 03.06.2019 filed by the Complainant herself. This conduct of the Complainant shows that she had taken risk of another pregnancy by not listening to the advice of the Opposite Party and making an informed choice of continuing the pregnancy.

8. In their reply to the legal notice, the Opposite Party hospital also submits as below:

“This appears to be a true failure due to recanalization of tubes for which the patient (Complainant) can avail FPIS for compensation through CDMO office.”

9. We place reliance on the order dated 06.09.2022 passed by Hon’ble Supreme Court in Civil Appeal No. 6208/ 2022 titled as Civil Hospital & Ors. Versus Manjit Singh & Anr. Whereby NCDRC order directing a hospital to pay compensation to a woman who delivered a child despite undergoing tubectomy, was set aside. The Apex Court held as under:-

**“28. The methods of sterilization 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 sterilized 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.....”**

**30. The cause of action for claiming compensation in cases of failed sterilization operation arises on account of negligence of the surgeon and not on account of child birth. 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 sterilization 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.”**

10. It is clear from above ruling that the Complainant is not entitled to compensation on account of unwanted pregnancy or unwanted child in cases of failed sterilization operation and claim in such type of cases can be sustained only if there was negligence on the part of surgeon in performing the surgery and not on account of child birth. Since, in the present matter, there is nothing on record to show the negligence on the part of Opposite Party hospital in performing the surgery and the Complainant herself turned down the advice for Medical termination of pregnancy and rather opted to continue with the pregnancy, compensation for maintenance and upbringing of such a child cannot be claimed.
11. In view of above discussion and legal position, we are of the considered view that the Complainant is not entitled to compensation on account of unwanted pregnancy or unwanted child.
12. Thus, the present complaint is dismissed without any order as to costs. However, the Complainant may avail the remedy before the appropriate Forum in accordance with law.
13. Order announced on 12.12.23.

Copy of this order be given to the parties free of cost.

File be consigned to Record Room.

(Anil Kumar Bamba)

(Adarsh Nain)

(Surinder Kumar Sharma)

Member

Member

President

