

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.321/14****In the matter of:**

Sh. Vimal Aggarwal,
S/o Sh. J.P Aggarwal,
4/363 First Floor
Khichari Pur,
Delhi 110091

Complainant***Versus***

1. Indira Gandhi ESI Hospital
Jhilmil, Delhi 110095

2. Dr. Alok Garg
HOD & Specialist,
Dept. of Orthopedics
Indira Gandhi E.S.I Hospital,
Jhilmil, Delhi 110095

3. Dr. Ved Pal Yadav,
Specialist
Deptt. of Orthopedics
Indira Gandhi E.S.I. Hospital
Jhilmil, Delhi 110095

4. Dr. Dinesh Kumar Sharma,
ESI Dispensary
Mayur Vihar Delhi 110091

Opposite Parties

DATE OF INSTITUTION: 22.08.2014

JUDGMENT RESERVED ON: 20.07.2023

DATE OF ORDER : 06.10.2023

CORAM:

Surinder Kumar Sharma, President

Anil Kumar Bamba, Member

Adarsh Nain, Member

ORDER

Surinder Kumar Sharma, President

The Complainant has filed the present complaint under Section 12 of the Consumer Protection Act, 1986.

Case of the Complainant

1. The case of the Complainant as revealed from the record is that the Complainant is insured under the Employee State Insurance Corporation (ESIC) vide insurance no. 2013342329. It is his case that on 25.11.2012, he met with an accident in Noida and he went to the Lal Bahadur Shastri Hospital, Delhi. It is his case that after proper diagnosis, it was found that the right knee of the Complainant had fractured and broken. Complainant was discharged from Lal Bahadur Shastri Hospital on 26.11.2012 but he was not satisfied with the treatment of the hospital. It is his case that after his discharged from the Lal Bahadur Shastri Hospital, on 30.11.2012, Complainant got himself admitted in the hospital of Opposite Party No. 1 and met there with Opposite Party No. 2 and sought advice from them regarding the treatment he was to undergo. After that Opposite Party No. 1 to Opposite Party No. 4 suggested the Complainant to get the injured knee plastered instead of undergoing bone surgery. As advised by the Opposite Party No. 2 to Opposite Party No. 4, Complainant got plastered on his injured knee on 30.11.2012. Thereafter, Opposite Party No. 2 to Opposite Party No. 4 advised the Complainant to take complete bed rest for three months. It is his case that in the month of March, 2013, Complainant got fitness certificate from the hospital of Opposite Party No. 1 and Complainant resumed his work from 18.03.2013. It is his case that after the lapse of few days, Complainant felt excruciating pain in the injured knee at the exact point where he had suffered fracture/bone knee. After that on 27.05.2013, the Complainant went to the Shanti Mukand Hospital, Karkardooma, Delhi for emergency check up and an X-ray was done by Shanti Mukand Hospital. It is his case that doctors of Shanti Mukand Hospital observed that injured/fractured knee had not been joined and advised the Complainant to undergo bone grafting surgery for his injured/fractured knee which was done on 27.05.2013. Complainant incurred expenses for the said surgery. Hence, this shows the deficiency of service on the part of Opposite

Parties. Complainant has prayed to direct the Opposite Parties to pay in terms of quantum loss (loss of current and future earnings, reduced quality of life and mental anguish), Rs. 16,00,000/- on account of mental harassment and Rs. 51,000/- on account of litigation expenses.

Case of the Opposite Party No. 1, Opposite Party No. 2 and Opposite Party No. 3

2. The Opposite Party No. 1, Opposite Party N. 2 and Opposite Party No. 3 contested the case and filed their common written statement. It is stated that the Complainant was admitted in hospital on 25.11.2012 and he was diagnosed as medial condyle fracture tibia Right side. The required X-rays and Complainant scan of the nee was done. On the basis of investigations, Complainant was diagnosed as Medial tibial condyle fracture Right side (tibial pleateu) with minimum displacement. It is stated that there was option of operative management versus conservative as the depression is fracture was less than 5mm. It is stated that as operative management has its inherent complications like infection and wound gaping at the site as the plate was fixed just under the skin. So, it was decided to go for conservative management. Complainant was given fitness on 12.03.2013. A final X-ray was done to ascertain any displacement of fracture and the Complainant did not complaint any pain etc. or deformity at the time of giving fitness on 12.03.2013. The allegations of the Complainant have been denied. It is stated that there is no deficiency of service on the part of Opposite Parties. It is prayed that the complaint be dismissed.

Case of the Opposite Party No. 4

3. The Opposite Party No. 4 contested the case and filed written statement. It is stated that Opposite Party No. 4 is MBBS doctor and working as Medical Officer in the dispensary. It is stated that no treatment was given to the Complainant in his dispensary. It is stated that the Complainant has no cause of action against him. It is prayed that the complaint be dismissed.

Rejoinder to the written statement of Opposite Party No. 1, Opposite Party No. 2 and Opposite Party No. 3

4. The Complainant filed rejoinder to the written statement of Opposite Party No. 1, Opposite Party No. 2 and Opposite Party No. 3, wherein the Complainant has denied the pleas raised by the Opposite Party No. 1, Opposite Party No. 2 and Opposite Party No. 3 and has reiterated the assertion made in the complaint.

Evidence of the Complainant

5. The Complainant in support of his complaint filed his affidavit wherein he has supported the averments made in the complaint.

Evidence of the Opposite Party No. 1 Opposite Party No. 2 and Opposite Party No. 3

6. To support their case Opposite Party No. 1, Opposite Party No. 2 and Opposite Party No. 3 have filed affidavit of Dr. Hira Lal, Medical Superintendent, wherein, he has supported the case of the Opposite Party No. 1, Opposite Party No. 2 and Opposite Party No. 3 as mentioned in the written statement.

Evidence of the Opposite Party No. 4

7. To support his case Opposite Party No. 4 has filed his affidavit, wherein, he has supported his case as mentioned in the written statement.

Arguments & Conclusion

8. We have heard the Ld. Counsels for the Parties. We have also perused the file and written arguments filed by the Complainant. The case of the Complainant is that doctors of Opposite Party No. 1 hospital did not give him proper treatment. It is his case that there was deficiency of service on the part of

Opposite Party No. 1, Opposite Party No. 2 and Opposite Party No. 3. The perusal of the file shows that the Complainant had suffered a knee injury in an accident and he was treated in Opposite Party No. 1 hospital by its doctors i.e. Opposite Party No. 2 and Opposite Party No. 3. The case of the Opposite Party No. 1 hospital is that two options were available regarding the course of treatment for the knee injury of the Complainant. One was of operative management and the other was conservative. In the circumstances of the Complainant's case, the doctors of Opposite Party No. 1 opted for conservative management.

9. Now, the question is that whether the treatment i.e. conservative management given by the doctors of Opposite Party No. 1 was proper or not. In this regard, medical expert opinion was called from GTB Hospital. The said opinion was given by Board of Doctors i.e. Dr. V.K Goyal and Professor, Dr. Manish Chadha vide their report dated 25.11.2019. The relevant part of the said opinion is reproduced as under:

“Opinion

Patent had minimally displaced medial condyle fracture (Rt) tibia, which can be treated conservatively in plaster cast or operated, and both the treatment modalities are accepted methods of treatment

If the patient is treated conservatively in plaster cast, and later on if it is found that fracture gets displaced/malunited and patient becomes symptomatic, then a corrective surgery is require.”

10. From the perusal of the above referred opinion given by the Board of Doctors of GTB Hospital, Delhi. It is revealed that there is nothing on record to suggest that the doctors of Opposite Party No. 1 hospital were negligent or that there was deficiency of service on their part. On the other hand, the Complainant did not lead any evidence to show that the doctors of Opposite Party No. 1 were negligent or that there was deficiency of service on their part.

11. In view of the above discussion, we do not find any merit in the case. The complaint is dismissed.
12. Order announced on 06.10.2023.

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

File be consigned to Record Room.

(Anil Kumar Bamba)
(Member)

(Adarsh Nain)
(Member)

(Surinder Kumar Sharma)
(President)