

**BEFORE THE DISTRICT CONSUMER
DISPUTES REDRESSAL COMMISSION, DHARWAD.**

COMPLAINT No.55/2021

Date of Filing : 21.04.2021

Date of Disposal : 15.02.2024

P r e s e n t :

Shri. Eshappa K.Bhute, BA, LL.B (Spl) : President
Ms. Vishalaxi A. Bolashetti, B.A., LL.M : Member
Shri. P.C. Hiremath, B.Com, LL.B : Member

Complainant :

Vinay S/o Virupakshappa Hanji,
Age: 46 Years, Occ: Self Employed,
R/o: No. 41, J.P. Nagar,
Gokul Road, Hubli.

(R/by Shri. S.B. Katagi, Adv.)

V/s

Opposite Parties:

1. The Authorised Signatory,
City Clinic a Multi Speciality Hospital,
Near Janata Bazaar,
Madhavapur, Hubli.
2. Dr. Ajit S. Joshi,
Age: Major, Occ: Doctor
3. Dr. Prakash Madalgeri,
Age: Major, Occ: Doctor
4. Dr. Vidya A. Joshi,
Age: Major, Occ: Doctor

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5. Dr. Raghavendra H. Desai,
Age: Major, Occ: Doctor

(R/by Shri. B.S.Hosakeri, Sr. Adv for OP-1 to 5)

6. Dr. Ranjan Jeevannavar,
Age: Major, Occ: Doctor

7. Dr, Bahubali,
Age: Major, Occ: Doctor

8. Dr. R. Khasnis,
Age: Major, Occ: Doctor,

(R/by Shri. S.S.Khateeb, adv for op-6 to 8) to 5)

All are Doctors at City Clinic,
a Multi Speciality Hospital,
Near Janata Bazaar,
Madhavapur, Hubli.

9. The United India Insurance Co. Ltd.,
1st Floor, Radha Govind Complex,
Kaikini Road, Karwar-581 301,
North Kannada.

(R/by Shri.S.S.Karegoudar, Adv for Op-9)

JUDGMENT DELIVERED BY

HON'BLE SHRI. ESHAPPA K. BHUTE, PRESIDENT:

This complaint is filed by the complainant U/Sec.35 of Consumer Protection Act, 2019 seeking direction against opposite parties (herein after referred to as OPs) to pay Rs.58,949/- towards expenses incurred by the complainant and jointly and severally to pay Rs.20 lakhs as damages to the complainant with future interest at the rate of 18% p.a. from the

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date of this petition till realization and compensation for mental pain and agony and cost to the complainant.

Brief facts of the case is as under:

2. In his complaint the complainant has alleged that, on 10/12/2019 he has admitted his wife Smt. Rekha for delivery in op No.1 hospital and OP No.2&3 are the administrators of op No.1 hospital. OP No.4 is the wife of OP No.2 and working as gynecologist, OP No.5 is the consulting pediatricians in the said hospital. On the same day of 10/12/2019 wife of the complainant gave birth to a female child (hereinafter referred as **victim child**) under care of OP No.4&5 doctors. After delivery baby was hale and healthy. On 14/12/2019 wife of the complainant and baby were about to be discharged. Before the discharge the attendant/Aayya took the child for giving sponge bath and while doing so she dipped the victim child in hot water, immediately the child cried like anything and passed motion therefore baby suffered severe burn injuries on her lower part of the body. The attended Aayya started rubbing the child where the skin was burnt and Aayya was panic and without any thought she peeled the burnt skin of the child and due to such peeling flesh was visible over the buttock and other surrounding area where the hot water touched to the victim child.

3. Complainant has further stated that he and his wife have become very emotional and by looking in to the situation of the victim child they have mentally suffered lot. Complainant

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immediately called op No.4 doctor and she on seeing the child scolded the Aayya and tried to convince the complainant and his wife that nothing will happen to the child and she will take care of the victim child. On request of op No.4 complainant admitted the victim child for treatment. While treating the child op No.6 has stated that it could be EPIDERMOLYSIS BULLOSA (hereinafter referred as EB) and op No.7&8 have also confirmed the same as EB. According to the complainant op No.4 to 8 have colluded with each other and started to say that it could be EB and victim child was under treatment in Op No.1 hospital for about 3 to 4 days.

4. It is his case that on 19/12/2019 op No.6 advised the complainant for Genetic tests of a child in center for human Genetics at Bangaluru. They have not convinced with the say of ops as collodion baby and EB to the victim child therefore in order to take 2nd opinion they have got discharged the baby on 20/12/2019 and on the same day they have got admitted the victim child in SDM College of medical science and hospital at Sattur Dharwad.

5. According to complainant from 20/12/2019 till 27/12/2019 victim child was in SDM Hospital and he has spent more money for treatment and discharged the child on 27/12/2019. By the time of discharge burn wound on the victim child was healing and later the child was alright. After this incident both complainant and his wife are taking care of the victim child throughout day and night and they uses to

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provide proper treatment with the specialized skin doctors and they have noticed lot of improvement with a victim child. By this incident complainant, his wife and other family members have been put to great amount of physical and mental agony. According to them ops have not given proper treatment from 14/12/2019 to 20/12/2019. Aayya and op No.2 to 8 are responsible for their mental agony as they have given wrong opinion as EB to the victim child. The complainant has spent huge money for treatment of the Victim child and he requires to spend more money for future treatment of the Victim child. According to the complainants wrong advise of ops that child is a collodion baby and it is suffering from EB they have been put to more fear, stress, pain and mental agony. It is all the unethical medical practice of ops therefore all the ops have committed deficiency of service within the meaning of C.P.Act. Accordingly he has got issued legal notice and filed this complaint against ops with the aforesaid reliefs.

6. In response to the notice given by commission OP No.1 to 5 have appeared through Shri. B.S.Hosakeri learned senior counsel and OP No.6 to 8 have appeared through Shri. S.S.Khateeb learned counsel and op No.9 has appeared through Shri. S.S.Karegoudar learned counsel. Op No.1 to 5 have filed their written version and op No.6 to 8 have filed their separate written version and op No.9 filed his objections i.e. written version wherein all the ops have denied the allegations made in

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the complaint as false, created one and stated that this complaint is not maintainable.

7. OP No.1 to 5 have stated that filing of this complaint is with ulterior motive to suit his design and the same is the abuse of process of law. This complainant has not approached this commission with clean hands and it is bad for misjoinder and also non-joinder of the parties. This is not a consumer dispute therefore this commission lacks jurisdiction to decide this case.

8. In para-6 and 7 of the version op No.1 to 5 have admitted that on 10/12/2019 wife of the complainant Smt. Renuka was admitted to the hospital of the op No.1 for delivery and on the same day she gave birth to a female baby. But they have denied that child was hale and healthy. According to them wife of the complainant had BAD OBSTETRIC HISTORY (Four Abortions) child was born in late pre term delivery and the same was of low birth weight i.e. 0.2 kg. Smt. Renuka was discharged on 14/12/2019. They have denied the allegations that op No.1 to 4 were taking care of a child. They have stated that child was admitted to their hospital on 14/12/2019 and on the same day op No.6 has examined the child and being Dermatologists gave opinion that child could be suffering from EB.

9. In para-9 of the version Op No.1 to 5 have denied that just before discharge the Aayya employed by op No.1 took the child for sponge bath and while providing sponge bath the child

was put in a bucket which was having little water sufficient to dip the child up to ankle and immediately after dipping the child started crying like anything. All such allegations are false and created one to suit the claim of the complainant.

10. In para-15 of the version by way of true/material facts relating to the issue op No.1 to 5 have stated that on 10/12/2019 Smt. Rekha was admitted for delivery to the hospital of op No.1 and on the same day she gave birth to a female baby through ceasarian section with low birth weight of a baby at 2 kg and op No. 1 hospital has taken due care of the said delivery. On 14/12/2019 patient was discharged and at that juncture Victim child passed motion and the staff was asked to wash the baby. Accordingly staff (Aayya) brought luke warm water and washed the baby and during the process babies skin got discolored and started peeling. The staff got scared and immediately brought the same to the notice of op No.4 who called op No.5 and 6 and they have examined the child and op No.6 Dermatologists opined that peeling of skin could be due to EB. For confirmation of the same op No.6 has advised for baby's skin biopsy. Baby continued to be under treatment upto 20/12/2019 and on that day complainant got discharged the baby against medical advice (Hereinafter referred as DAMA) without making payment of treatment charge of Rs.25,200/-.

11. In the same para of the version op No.1 to 5 have stated that later they came to know that child was admitted to SDM Hospital Sattur, Dharwad for further treatment with the

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false say that baby was immersed in hot water/developed burns. According to op No.1 to 5 they have tried their best to treat the child for its own problem but complainant has made imaginary and unfounded allegations against them.

12. In para-16 of the version op No.1 to 5 have stated that op No.1 is a proprietary entity established in 1934 and it is one of the reputed medical institution in North Karnataka having all the facilities with modern equipment's coupled qualified and experienced medical professionals. In this case child was given treatment as per the established medical practice and absolutely there are no lapses/negligence/deficiency of service in the treatment. On these among other grounds op No 1 to 5 have prayed to pass an order for dismissal of the complaint with cost.

13. In their separate version Op No.6 to 8 have denied the allegations made in the complaint as false and created one. They have taken similar defense as that of op No.1 to 5. They have stated that claim of compensation at Rs.20 lakhs is unworthy and not tenable in the eye of law. According to them op No.6 to 8 are not the penal doctors of op No.1 hospital and they are independent consultants rendering their service independently. This complaint is filed with ulterior motive to harass, humiliate and extract money illegally. Thus they have prayed to pass an order for dismissal of the complaint with cost.

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14. Op No.9 insurance company has filed separate version wherein they have taken similar defense as that on op No.1 to 8 and denied all the allegations made in the complaint as false, illegal and not maintainable. Complainant has not arrayed all necessary parties to this case i.e. SDM Hospital Sattur, Genetic testing center Bangaluru.

15. Defense of Op No.9 is of two folded one. 1) There is no expert opinion and sufficient evidence to prove the criminal negligence 2) If this commission comes to the conclusion that it is a case of medical negligence then for the reason of delayed intimation to them op No.1 has violated the terms of policy conditions, therefore they are not liable to pay compensation. Thus op No.9 has prayed to pass an order for dismissal of the complaint with cost.

16. During the time of enquiry to prove his case complainant Vinay Hanji has filed his affidavit evidence as CW-1, he has got marked in all 10 documents as per Ex.C-1 to C-10. On the other hand Dr. Prakash Madalgeri has filed his affidavit evidence as RW-1 for Op No.1 and 3, Op No.4 Dr. Vidya Joshi has filed her affidavit evidence as RW-2, op No.2 Dr. Ajit Joshi has filed his affidavit evidence as RW-3. Op No.5 Dr. R.H.Desai has filed his affidavit evidence as RW-4. Op No.6 Dr. Ranjan has filed his affidavit evidence as RW-5. Op No.7 Dr. Bahubali Ingale has filed his affidavit evidence as RW-6, op No.8 Dr. R.G.Kasnis has filed his affidavit evidence as RW-7 and one Mr. Rajeev Lavu (who was absent) has filed his affidavit evidence

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through his counsel as RW-9 for Op No.9. Apart from their affidavit evidence ops got marked Ex.R-1 to R-13.

17. We have heard arguments of both sides and perused the materials on records including written arguments, we have also gone through the decisions relied on by both the sides.

18. The points that arise for our consideration are as under;

1. Whether the complainants prove that in respect of treating the Victim child born on 10/12/2019 including Aayya ops have committed deficiency of service ?
2. Whether the complainants are entitled for the reliefs as sought ?
3. What Order ?

19. **Our Answer to the above points are:-**

Point No.1 - Partly in the Affirmative as against op No. 1 to 4 & 9.

Point No.2 - Partly in the Affirmative as against op No. 1 to 4 & 9.

Point No.3 - As per the final order.

REASONS

20. **POINT No.1 & 2** : To avoid repetition of discussion and for convenient sake we have decided to dispose of these two points under common discussion.

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21. Shri. B.S.Hosakeri learned Sr. counsel appearing for op No.1 to 5, Shri. S.S.Katheeb learned counsel appearing for op No.6 to 8 and Shri. S.S.Karegoudar learned counsel appearing for op No.9/insurance company have vehemently argued by referring to the evidence on record that to prove the medical negligence expert opinion or expert report is necessary and in the case on hand inspite of recommendation of op No.1 to 6 the complainant has not opted to subject the victim child for Genetic test in Genetic testing center Bangaluru and such of the stay back attitude of complainant would be a lacuna to his case. According to them if the victim child under went Genetic test definitely report will be available before the commission and the same would further facilitate to come to a right conclusion. In the case on hand such of the expert evidence is lacking and the same is a fatal to the case of the complainant. In support of their argument Shri. **S.S.Kateeb learned advocate has relied on the following decisions.**

- I. 1 Dr. Harish Kumar Khurana V/s Joginder Singh & Ors. SC (2021)date of decision: 07 September 2021 citation 2021 LawSuits(SC) 482
- II. Jacob Mathew Appellant V State of Punjab and another SC (2005) AIR 3180.

Shri. S.S.Karegoudar learned counsel appearing for op No.9 has relied on the following decisions;

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- I. Kusum Sharma and Ors. V/s Batra Hospital & Medical Research Centre and Ors. SC Civil Appeal No. 1385/2001.
- II. Ranjit Sarkar V/s ILS Hospitals and 6 ORs. NCDRC CCNo.874/2015.
- III. G.Vijay Shankar and Anr. V/s Madras Medical Mission and ORs. NCDRC CCNo.3/2005
- IV. Dr. Sameer Jain V/s Medanta-the Medicity and 3 ORs. NCDRC CCNo.131/2013.
- V. Dr. Chanda Rani Akholri & ORS. V/s Dr. M.A. Methusethupathi & ORs. SC Civil Appeal No.6507/2009.
- VI. Martin F. D'Souza V/s Mohd. Ishfaq SC Civil Appeal No.3541/2002
- VII. Pushpa Verma and others V/s Bhardwaj Nursing and Maternity Home Private Limited and 9 Ors. 2023 SCC 208.
- VIII. Dr. Shyamala Bai and Ors. V/s State of Karnataka High Court Cr.Pet. 2264/2017.

22. Per contra Shri.S.B.Katagi learned counsel appearing for complainant has seriously disputed the submission made on behalf of the op No. 1 to 9. According to him as per Ex.C-3 & Ex.R-3 it is an admitted fact by ops that at the time of discharge on 14/12/2019 the victim Baby passed motion and Aayya of OP NO.1 Hospital in order to clean the same has brought hot water in a tub and dipped the Baby in hot water and immediately

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Baby cried followed by a bullae on the dipped portion of the body and Aayya in a panic mood tried to dry the skin by rubbing and in that process skin got peeled like a glove and after providing proper treatment in SDM hospital to the burn injuries of the victim Baby the same was alright. According to him from 10/12/2019 till the time of dipping the Baby in hot water on 14/12/2019 there was no skin problem to the victim baby and even after treatment in SDM hospital the same has been cured and it has never re-occurred till today. By referring to the literature of E.B. marked as Ex.C-10 & R-9 the learned counsel appearing for complainant has submitted that if any person is affected by E.B. then the same become his or her companion and the EB disease cannot be cured at all. In this case no such life time symptoms are found or noticed with the victim child. According to him such of the undisputed materials on record are enough for the commission to hold that this is a classic example of medical negligence and all the ops by giving it a colour of E.B. are trying to hush up the matter. Shri. Katagi learned counsel has further argued that if there is any complexity of issues which cannot be decided by the commission then in such a situation expert opinion may be required. In support of his argument the learned counsel appearing for complainant has relied on the following decisions.

- I. V. Krishnarao V/s Nikhil Super specialty hospital and Anr. SCC Civil Appeal No.2641/2010.

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II. Dr. Harishkumar Khurana V/s Jogindarsing and Ors.
SC (2021) 482.

III. Jacob Mathew Appellant V. State of Punjab and
another SC (2005) AIR 3180.

23. Keeping in mind the submission made on behalf of both the side we have gone through the aforesaid decisions relied on by both the sides and we respectfully agree with all the observation made in the aforesaid decisions. With such observation we wanted to appreciate the evidence of both sides on record in the following way.

24. Ongoing through the, pleadings oral and documentary evidence of both the sides following are appears to be an undisputed facts between both the parties.

- I.** Admission of wife of the complainant Smt. Rekha for delivery to the hospital of op No.1 on 10/12/2019.
- II.** Delivery of Victim child by Smt. Rekha on the same day on 10/12/2019.
- III.** Preparations for discharge of Smt. Rekha with baby on 14/12/2019 by Op No.1 hospital.
- IV.** On the same day of 14/12/2019 this incident was occurred to Victim child in the Hospital of op No.1 just before the discharge.
- V.** Victim Child was admitted to the same hospital of op No.1 for treatment on 14/12/2019 and the same was under treatment in op No.1 hospital upto 20/12/2019.

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- VI.** Op No.2 Dr. Ajit Joshi is the husband of op No.4 Dr. Vidya A. Joshi and they are the owners of op No.1 Hospital.
- VII.** Op No.3 Dr. Prakash is the Administrator of op No.1 Hospital.
- VIII.** During the Admission of victim Baby from 14/12/2019 to 20/12/2019 op No.5 to 8 being consultants of op No.1 Hospital have given treatment to the victim child.
- IX.** After discharge of victim Baby from op No.1 hospital on 20/12/2019 the same was admitted to SDM Hospital Sattur Dharwad for further treatment and victim child was under treatment upto 27/12/2019.
- X.** Ex.R-8 is the insurance policy issued by op No.1 on the entire establishment of op No.1 hospital and the same was valid from 17/07/2019 to 16/07/2020.
- XI.** The said policy was valid as on the date of alleged incident of a victim child on 14/12/2019.
- XII.** This complaint is filed on 21/04/2021. After filing this complaint on behalf of op No.1 Hospital mail was sent by Op No.3 as per Ex.R-9 (A) on 11/06/2021 to op No.9 insurance company requesting them to register claim and intimate regarding required documents for settlement of claim.
- XIII.** Ex.R-8 insurance policy covers the ERRORS and OMISSIONS in the hospital of the Op No.1 upto 1 crore.

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XIV. Under the said policy Op No.1 hospital paid premium of Rs.24,000+46,000=70,000/-.

XV. As per Ex.R-10 op No.9 has registered the claim.

25. Ex.C-10 and Ex.R-9 are the **Text book on Dermatology** 4th addition by S.Sachidananda containing 8 pages. Said portion of the literature deals with the subject of E.B. and in its 2nd page KEY MESSAGE it has been said that:

The diagnosis of EB is mainly clinical, but skin biopsy must be sent for ultra-structural examination to confirm the sub type of EB. In other pages EBs clinical features, laboratory approach to diagnosis with photos of the affected part of the body has been given. In last but 1 page its conclusion is narrated. Conclusion reads as under:

*E.B. is probably one of the most devastating genodermatosis, **At present, there is no cure for EB.** A multidisciplinary approach is needed for the effective management of EB. With better understanding of the molecular basis of EB, the focus is on prenatal and preimplantation diagnosis, Novel treatment strategies such as cultured keratinocyte grafts, fibroblast, and stem cell therapies are being studied future success for patients with EB lies in*

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collaboration not merely in scientific competition.

26. On reading the entire text on EB it is seen that EB is an incurable disease but the same can be managed by proper treatment. With such materials of medical science if we turn for a moment to the facts of this case it is relevant to note here that victim child was born on 10/12/2019 at 11:50AM with birth weight of 2kg and upto the time of discharge on 14/12/2019 the victim child was alright. As per Ex.C-3 & R-3 this problem with victim child started on 14/12/2019 just before the time of discharge when said baby had passed motion and Aaaya dipped the leg of baby upto buttock in hot water for cleaning the motion. From the time of birth of victim child on 10/12/2019 till the time of dipping the lower portion of the baby's body into hot water by Aayya on 14/12/2019 there was no such problem to the victim child. Till then the victim child has no any kind of skin problems.

27. Ex.C-8 is the discharge summary, Ex.C-8(A) is the Hospital bill of SDM Hospital Sattur Dharwad. Ex.C-8(B) & (C) are the copies of discharge summaries of op No.1 Hospital. In Ex.C-8 in the column of **admission complaints and examination** in 2nd para it is stated as under;

present complaints --Baby was immersed in hot water on day for of life when baby was planned for discharged following. which the skin peeled of and fell, baby developed burns upto middle

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of both lower limbs, baby was treated with IV antibiotics following which baby was said to have developed abdominal distension since 2 days, According to parents abdominal was soft child said to have passing stools.

Again in 2nd page of Ex.C-8 in the column **course in NICU:** it is noted as under;

BABY WAS SHIFTED TO NICU ON DAY 10TH OF LIFE I/V/O SCALDED BURNS ON EXAMINATION VITALS STABLE B/L LOWER LIMBS SCALDING + SEPTIC WORKUP DONE SUGGESTIVE OF LEUCOCYTOSIS WITH RAISED CRP I/V/O WHICH IV ANTIBIOTICS WERE STARTED BABY WAS KEPT NPO AND STARTED ON IV FLUIDS.

Dermatology opinion was taken I/V/O the same and advised nil intervention.

Plastic surgery opinion was taken advised to continue mupirocin ointment and liquid paraffin for L/A.

Erect X-ray abdomen done I/V/O H/O Abdominal distension was WNL

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On day 11th of life- baby was initiated on **pallada** feeds IV fluids and antibiotics continued.

Day 13-14th of life -trial of DBF given supplements initiated IV Antibiotics continued.

Day 15th -17th baby taking feeds well mother confident about feeding baby gaining weight adequately antibiotics given for total of 8 days, Blood C/S suggestive of no growth. Hence antibiotics were stopped and baby is being discharged with following advised.

Again in the same page in advice column following medicine has been prescribed.

Liquid paraffin + moisturizer for L/A

Mupirocin ointment for L/A

DBF + FF pallada 24 ml Q2 H

SYP calcimax P 2.5ml TID

A to Z drops 1ml OD

JUSDEE drops 1ml OD.

28. Along with the medical records of op No.1 Hospital i.e. city clinic marked as Ex.C-2, C-3, C-8(B) and C-8(C), Ex.R-1 to R-8 if we go through the medical records of SDM hospital marked as Ex.C-4, C-8, C-8(A) and the photos of the victim child as on the date of incident marked as Ex.C-9, C-9(A) & R-7 (4 photos) and the literature on EB

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marked as Ex.C-10 & R-9 it is seen that E.B. is a life time disease which cannot be cured by treatment but it can be managed by proper medical intervention.

29. It is significant to note here that victim child was born in op No.1 Hospital on 10/12/2019 and upto 14/12/2019 the said child was alright and it has no skin problems. Alleged E.B. problem started only after this incident of Aayya dipping the legs of Baby upto buttock in hot water for cleaning the motion just before the discharge of mother on 14/12/2019. From 10/12/2019 upto 14/12/2019 of dipping the Baby by Aayya for sponge bath victim child was absolutely alright. Admittedly victim child was under treatment of op No.1 hospital from 14/12/2019 to 20/12/2019. Issue of EB to the victim child was raised during the period of 14/12/2019 to 20/12/2019 by the Doctors of op No.1 Hospital.

30. Ex.C-8 is the discharge summery of SDM Hospital wherein the victim child was provided with further treatment from 20/12/2019 to 27/12/2019. In the entire medical records of SDM hospital the issue of E.B. was not raised by the treated Doctors. In the NICU of SDM hospital Dermatologists and other treated Doctor have treated the victim child for scalded burns below the lower limb and buttock portion of the child. Liquid paraffin plus moisturizer and mupirocin ointment were prescribed in SDM hospital. Those treatments were for burn injuries. All such treatments given in SDM hospital to the victim child was for its burn injuries and the victim child has responded for such treatment. During the SDM treatment from 20/12/2019 to 27/12/2019 there was lot of improvement in the

problem of the victim child and at the time of discharge the Doctors of SDM Hospital have advised the same treatment of burn injuries to the victim child. Discharge summery marked as Ex.C-8 and other records would goes to show that after such treatment for burn injuries the victim child was alright and the parents have no grievance of re-occurrence of such problem to the child till now.

31. Victim child was born on 10/12/2019 and as of now it is aged above 4 + years. It is relevant to note here that on majority dates of hearing this case complainant uses to present before the commission along with his wife and victim child. Same is noted in the order sheet of this case. On 07/09/2023 and on 08/11/2023 victim child was present before the commission along with her parents. On request of Shri. S.B.Katagi learned advocate appearing for complainant we have noted down movements and scars noticeable on the victim child. Relevant portion is noted in page-21 of the order sheet in 2nd para. Same reads as under;

ಸುಣವಣೆ ಸಮಯದಲ್ಲಿ ದೂರುದಾರರು ಮತ್ತು ಶ್ರೀ ಎಸ್.ಬಿ.ಕಟಗಿ ವಕೀಲರ ಕೋರಿಕೆಯಂತೆ ಮಗು ಕು. ವನ್ಯಾಳನ್ನು ಈ ಆಯೋಗದ ಒಳಗಡೆ ಕರೆಯಿಸಿ ತುಂಬಾ ಹತ್ತಿರದಿಂದ ಅವಳ ಚಲನ-ವಲನ ಗಮನಿಸಲಾಗಿದೆ. ಆ ಮಗು ತನ್ನ ವಯಸ್ಸಿಗೆ ತಕ್ಕಂತೆ ಸಹಜ ಆರೋಗ್ಯವಂತ ಹಾಗೂ ಚಟುವಟಿಕೆಯುಳ್ಳ ಮಗು ಇರುವುದು ಕಂಡುಬರುತ್ತದೆ.

ಎದುರುದಾರರ ಪರ ವಕೀಲರ ಸಮಕ್ಷಮ ಆ ಮಗುವನ್ನು ಪರಿಶೀಲಿಸಿದ್ದೇವೆ. ಆ ಮಗುವಿನ 2 ಕಾಲುಗಳ ಹಿಮ್ಮಡಿಯ ಮೇಲೆ ಮಾತ್ರ ಕ್ರಮೇಣ ಮಾಯುತ್ತಿರುವ ಬಿಳಿ ಕಲೆ ಕಾಣುತ್ತಿವೆ. ಆ ಮಗುವಿನ ಪಾದಗಳ ಬಾಗದಲ್ಲಿ ಅಥವಾ ಕಾಲುಗಳ ಮೇಲೆ ಅಥವಾ ಕುಂಡಿಯ ಮೇಲೆ ಅಂತಹ

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ಯಾವುದೇ ಗಾಯದ ಕುರುಹುಗಳು ಕಾಣುತ್ತಿಲ್ಲ. 2 ಕಾಲುಗಳ ಮೇಲೆ ಬೆಳೆದ
ಚರ್ಮ ಸಹಜವಾಗಿದ್ದು ಆರೋಗ್ಯಕರವಾಗಿದೆ.

32. From these materials it is clear to the commission that alleged E.B. problem was not with the victim child since from the time of its birth on 10/12/2019 to 14/12/2019 and skin peeling problem started only when the child was immersed by Aayya in hot water on 14/12/2019. It is further significant to note here that after completion of treatment to the victim child in SDM Hospital and after follow up treatment the child was again alright and now it is aged about 4 years and we have personally saw the victim child as a healthy Baby without any symptoms of either peeling of skin or other skin related problem like EB. Where as in case of EB the affected person has to undergo trauma throughout the life. But it is not the situation in the case of victim child.

33. Ex.C-8 discharge summery says that during the treatment in SDM Hospital Dermatology opinion was taken and the same advised nil intervention. The dermatologists and other specialist in SDM Hospital have never suspected or diagnosed the symptoms of E.B. to the victim child and they have never advised for Genetic test to find out whether the child is suffering from EB or not. That is why the dermatologist of SDM Hospital has advised nil intervention. Now the victim child is very healthy and we have noticed that it is playing with her sister in the varanda of this commission whenever she appears with her parents.

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34. Ex.C-10 & R-9 shows that if a person is suffering from E.B. then the skin of the affected part of the body will be disfigured and the disfiguration will be permanent on the affected part of the body. But in the case on hand after treatment in SDM Hospital victim child is ok and the same has no any sort of skin problems. Its non appearance after treatment in SDM hospital and as on today makes it very clear that victim child is not suffering from E.B. disease as urged by ops of this case. On the basis of such discussion we are of the opinion that defense raised by ops and their affidavit evidence in the form of RW-1 to RW-8 appears to be for defense sake and to defeat the claim of complainant. In our opinion such of the defense materials on record in all probability negatives their say in the matter and the same does not reposes confidence in the mind of this commission for acceptance. Therefore we finds some force in the argument of Shri. S.B.Katagi advocate for complainant that op No.2 to 8 have in collusion with each other have tried to hush up the mistake committed by Aayya by coloring it as E.B.

35. As on 14/12/2019 the child was aged about 4 days and at that time its skin and other part of the body will be very sensitive. Aayyas in the hospital are unskilled labours and they are not medical graduates or experts. They do the cleaning of Baby whenever it passes the motion by way of sponge bath or by dipping the Baby in the tub containing luke warm water. Ex.C-3, R-3 and other medical records of op No.1 hospital

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depicts that on 14/12/2019 just before the discharge the victim baby had passed motion and Aayya of the Hospital brought hot water in a tub and dipped the lower portion of the body of the child for cleaning the motion following which there was bullae and Aayya tried to dry the baby the skin got completely peeled of like a glove. Same is noted in the letters marked as Ex.C-3 & R-3 drafted and signed by op No.5 Dr. R.H.Desai. Contents of Ex.C-3 & R-3 itself goes to show that when Aayya dipped the victim child in hot water for cleaning motion suddenly there were bullies on the dipped portion of the body and when Aayya in her panic mood tried to dry the baby skin got completely peeled like a glove. Such of the materials of ops makes it very clear that this incident was occurred due to the glaring mistake and negligence of Aayya and to find out the same experts opinion is not necessary.

36. In that view of the matter contention urged for Ops that there is no expert opinion to find out the fault of either Aayya or any of the ops and the same is necessary cannot be agreed with or accepted. On the other hand Ops have taken that defense of necessity of experts opinion but none of the ops have moved an application for subjecting the victim child for Genetic test or any other experts opinion. When the ops have taken such defense in our opinion they ought to have taken steps for expert opinion. For the reasons best known to them they did not do so, therefore to our mind absence of expert

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opinion does not come in our way to find out the truth of the matter in dispute.

37. On the basis of the discussion made supra we are of the opinion that it is a classic example of medical negligence of Aayya. In spite of such glaring negligence and mistake committed by Aayya OP No.1 to 4 being in charge of treatment and administration of op No.1 city clinic ought to have consoled the complainant, his wife who are the parents of the victim child by giving proper treatment to the burn injuries. Instead of doing so they have tried to colour it as E.B. which is a stigma to the victim child and made the parents of the child to suffer mentally, physically and financially.

38. OP No.1 is the Hospital, op No.2 and 4 being husband and wife are the proprietors of op No.1 Hospital and op No.3 Dr. Prakash is in charge of administration of op No.1. In view of such of their relationship to our mind op No.1 to 4 would become masters of Aayya who is serving under them as a servant. Thus there exists the relationship of master and servant between Aayya and op No.1 to 4.

39. In the aforesaid decisions of V.Krishnarao V/s Nikhil Super Specialty Hospital the Hon'ble Supreme Court in a similar case of alleged medical negligence has observed that, before forming an opinion that expert evidence is necessary, the forum must come to a conclusion that the case is complicated one and it requires the opinion of expert. Or else the facts of the case are such that it cannot be resolved by the members of the forum

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without the assistance of expert opinion. The Hon'ble Supreme Court has further observed that in such matters no mechanical approach can be followed by the consumer forums and each case has to be judged on its own facts.

40. Thus it is seen from the said decisions that if the facts of the case are very complicated one and allegations of medical negligence cannot be decided without the assistance of expert opinion then in such a situation commission can seek the assistance of expert.

41. It is the view of the said decisions that in a matters relating to medical negligence consumer commissions are required to be careful and attentive so as to avoid any kind of inconvenience and hardship to the Doctors. It has been further observed in the said decisions that complaint of medical negligence cannot be easily entertained without their being a prima facie materials against erring Doctors. In this way the Hon'ble Supreme Court has cautioned the consumer forums to proceed with the matters of medical negligence keeping in mind the larger interest of the medical practitioners.

42. In the case on hand it is evident from Ex.C-3 & R-3 and other materials on record that it is a clear case of negligence of Aayya which has resulted in medical negligence. Before dipping the victim child in a non-suitable hot water if she had taken some precaution by putting her fingers in to the water she could have noticed that it is not suitable to 4 days aged baby and thereby Aayya would have avoided the incident.

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But without taking such precautions Aayya brought hot water and dipped the victim child in to it. It would be her negligence and carelessness that has resulted in the present incident. Aayya was a paid servant in op No.1 hospital, op No.1 to 4 are its masters. In view of such situation and relationship of master and servant between Aayya and op No.1 to 4 to our mind they are being masters equally liable under vicarious liability. Our view in this regard the supported by an authority of the Hon'ble NCDRC New Delhi in 1st appeal No.1722/2016 between M/s. Global Hospital V/s P. Manjula and Ors. Op No.5 to 8 are the visiting Doctors to op No.1 hospital and they are not in any way connected to the administration of op No.1 hospital. Therefore op No.5 to 8 cannot be made as liable in any way to answer the claim of complainant. Accordingly complaint as against op No.5 to 8 is liable to be dismissed.

43. Consumer Protection Act, is a social legislation brought by the legislatures with an object of protecting the right and interest of the consumers and to give timely and immediate relief to them by way of effective administration. Keeping in mind such of the object and intent of this beneficial legislation if we turn for a moment to the facts of the case on hand it is seen that due to the glaring mistake and negligence of Aayya victim child and her parents have to suffer lot till this date. The same has been demonstrated by the complainant before this commission. He has been fighting with this cause from the year-2019 and for the reasons stated above his conviction and

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courage in fighting this litigation for the last 3 to 4 years is really appreciable one.

44. Now the victim child has crossed the age of 4 years. When that baby was at the age of 4 days this incident was occurred in the hospital of op No.1. Ex.C-9, C-9(A) to (C) and Ex.R-7, R-7(1) to (4) are the photos of the victim child. Same reveals that victim child has suffered lot due to the mistake and negligence of Aayya. Op No.2 to 4 being Doctors and incharge of the affairs of op No.1 hospital ought to be fair and justifiable towards the victim baby. When their Aayya has committed mistake and fault and the same has resulted in an injury to the victim child op No.1 to 4 should have realized their mistake and shown some sympathy to the complainant. Defense of op No.1 to 4 would goes to show that they have not realized their mistake and they have not shown any sympathy either to the victim child or to the complainant. Instead of that they have tried to give a stigma to the victim child by coloring it as EB. Such of the attitude of these ops would certainly result in great amount of inconvenience, worry and mental agony to the parents.

45. We have noticed some scar on the affected part of the victim child. As it is a female baby parents have to take utmost care about the welfare and well-being of her in future. In the complaint complainant has prayed to award Rs.58,949/- towards medical expenses and Rs.20 lakhs as damages to the child. From 20/12/2019 till 27/12/2019 victim child has been

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provided with treatment in SDM hospital. 4 days victim child was kept in NICU unit. Keeping in mind these aspects claim of Rs.58,949/- towards medical expenses appears to be reasonable one.

46. Claim of complainant at Rs.20 lakhs by way of damages appears to be on higher side and excessive one. However by looking in to the sufferings undergone by the victim child at her age of 4 days and her parents and other family members in our opinion if op No.1 to 4 are directed to pay Rs.10 lakhs as total compensation by way of damages, for the inconvenience and mental agony caused to them and their medical expenses with litigation cost the same would appear to be just and proper one.

47. Ex.R-8 is the insurance policy on op No.1 hospital which was valid from 17/07/2019 to 16/07/2020 and it was an errors and omissions policy. It was valid on the date of incident i.e. on 14/12/2019. The term **errors and omissions** in the policy covers the risk of victim child which had happened on 14/12/2019 in the hospital of op No.1. In Ex.R-8 policy errors and omissions risk covers upto Rs.1 crore. In the usual course op No.9 insurance company is liable to indemnify the loss sustained by op No.1 hospital due to errors and omissions.

48. Op No.9 being insurance company has contended that though this incident was occurred on 14/12/2019 but by way of mail marked as Ex.R-9(A) op No.3 has registered the claim by giving intimation on 11/06/2021 therefore there is a

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delay of one and half years in giving intimation to their company and by way of such delay op No.1 has violated the terms of the policy condition.

49. One of the condition in the insurance policy marked as Ex.R-8 is that in respect of any claim intimation is to be given at the earliest point of time. The object of stipulation of such condition in the policy is that in case any claim is put forth before the op at the earliest point of the time of the incident then it will facilitate the op-9/insurance company to investigate the matter in issue through their departmental investigators about the genuineness or other wise of such claims. In the case on hand admittedly incident was occurred on 14/12/2019 and as per Ex.R-9(A) op No.3 Dr. Prakash Madalgeri has sent their claim on 11/06/2021 in respect this incident on behalf of op No.1 hospital. It would goes to show that there is a delay of more than one year in giving intimation about this incident to op No.9/insurance company. On behalf of op No.1 to 4 absolutely there is no explanation about such delay in giving intimation. Ex.C-6 is the copy of legal notice dt:13/01/2020 and Ex.C-5 is another copy of legal notice dt:18/03/2020 sent to all the ops. The said notices are duly served on respective ops. It would goes to show that complainant being aggrieved by the incident dt:14/12/2019 has shown his inclination as on the date of those notices about he taking legal steps for the injury caused to his victim child. In spite of such notices op No.2 to 4 being incharge of administration of op No.1 hospital have not

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given any early intimation to op No.9/insurance company. Such of the act and attitude of op No.1 to 4 would amounts to violation of policy condition.

50. As on the date of incident on 14/12/2019 insurance policy Ex.R-8 was inforce. Merely for the reason that there is violation of policy condition itself is not sufficient to exonerate op No.9/insurance company from holding its responsibility. In the decision of Ashok Kumar V/s New India Assurance Company Ltd, Civil Appeal No.4578/2023 judgment dt:31/07/2023 in similar situation the Hon'ble Supreme Court has held that even if the insured is careless to some extent entire claim cannot be rejected but on non-standard basis @75% of the responsibility is to be fixed on insurance company. Ex.R-8 policy says that total Rs.70,000/- has been paid by op No.1 hospital towards premium amount. Out of it for indemnity cover of Rs.1 crore premium of Rs.24,000/- and **for errors and omissions** up to Rs.1 crore premium of Rs.46,000/- has been paid by OP No.1 hospital. Such insurance policies are made with an object of saving the skin of the insured in such situations. Keeping in mind these aspects we deem it proper to fix @75% of liability on non-standard basis out of Rs.10 lakhs i.e. at Rs.7,50,000/- on op No.9/insurance company and remaining 25% of the liability i.e. at Rs.2,50,000/- is to be fixed on op No.1 Hospital. Thus we answer point No.1 and 2 partly in the affirmative only against op No.1 to 4 and 9.

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51. POINT No. 3:- In view of our answer on Point No. 1 & 2 and for the reasons stated above, we proceed to pass the following;

ORDER

1. The complaint filed U/sec. 35 of C.P. Act 2019 is hereby allowed in the following terms.
2. OP No.1 to 4 are jointly and severally held liable to answer the claim of complainant and they have been directed to pay Rs.10,00,000/- (Ten lakh only) as damages by way of compensation to the victim child of the complainant within one month from the date of this judgment.
3. Out of it by way of indemnification OP No.9 insurance company shall pay Rs.7,50,000/- (Seven lakh fifty thousand only) towards their @75% of the liability and they have to deposit the same within one month from the date of this judgment. Remaining @25% i.e. at Rs.2,50,000/- (Two lakh fifty thousand only) shall be paid by the OP No.1 to 4 within one month from the date of this judgment.
4. In case of failure of respective OPs to pay the compensation within one month from the date of this judgment in the aforesaid manner then the entire sum of Rs.10,00,000/- shall carry interest @8% p.a. from the date of this judgment till realization.

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5. After deposit of the compensation by OP No.1 to 4 and 9 or on its recovery from them, the entire compensation shall be deposited in the name of Victim child in any of the nationalized bank of the choice of complainant for a period upto the attainment of majority. The complainant is entitled to use the interest accrued on the FD for the education or other benefits of the victim child. After completion of the FD period the entire amount shall be used for the benefit of the victim child.
6. Complaint as against op No.5 to 8 is order to be dismissed.
7. Send free copy of this judgment to both the parties.

(Dictated to the stenographer and got it transcribed and corrected and pronounced in the open Commission on 15th day of Feb-2024)

h.v. 15/2/24
President
(Sri.E.K.Bhute)
RSA

VP 15/2/24
Member
(Smt.V.A.Bolashetti)

P.H. 15/2/24
Member
(Sri.P.C.Hiremath)

\\ANNEXURE//

Witnesses examined on behalf of the complainant :

CW-1 — Vinay V. Hanji,

Documents marked on behalf of the complainant :

Ex.C-1	Aadhar card
Ex.C-2	Indoor Estimate Bill

h.v.

Ex.C-3	Letter to medical specialist by OP No.5
Ex.C-4 & 8(A)	Hospital Bills
Ex.C-5 to 7	Legal notices
Ex.C-8 & 8(B), 8(C)	Discharge Summary
Ex.C-9 & 9(A) to 9(C)	Photos
Ex.C-10	Details of Epidermolysis Bullosa

Witnesses examined on behalf of the OPs:

- RW-1 — Dr. Prakash Madalgeri, for OP No.3
- RW-2 — Dr. Vidya A. Joshi, for OP No.4
- RW-3 — Dr. Ajith S. Hoshi, for OP No.1 & 2
- RW-4 — Dr. Raghavendra H. Desai, for OP No.5
- RW-5 — Dr. Ranjan Jeevannavar, for OP No.6
- RW-6 — Dr. Bahubal S. Ingale, for OP No.7
- RW-7 — Dr. Ravindra G. Khasnis, for Op No.8
- RW-8 — Sri. Rajeev R. Lavu, for Op No.9

Documents marked on behalf of the OPs:

Ex.R-1	Letter for CCTV footage
Ex.R-2	Letter of Consent for treatment
Ex.R-2(A)	Patient case sheet
Ex.R-3	Letter to medical specialist by op No.5
Ex.R-4	Discharge against medical advice

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Ex.R-5	Hospital bill
Ex.R-6	Patient information slip
Ex.R-7	Photo
Ex.R-8	Insurance policy
Ex.R-9	Details of Epidermolysis Bullosa
Ex.R-9(A) & R-10	Mail copies
Ex.R-11	Epidermolysis Bullosa overview
Ex.R-12	The Karnataka Private Medical Establishment Act 2007
Ex.R-13	Proposal form for medical establishment errors and omissions insurance

5/2/15/2/24
President
(Sri.E.K.Bhute)
RSA

15/2/24
Member
(Smt.V.A.Bolashetti)

15/2/24
Member
(Sri.P.C.Hiremath)