

Complaint is filed on 3-4-2013
Compliant disposed on 13-12-2021

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ::AT::
KARIMNAGAR, TELANGANA STATE.

PRESENT: SMT.K.SWAROOPA RANI, PRESIDENT
AND
SMT. S. SRILATHA, MEMBER

MONDAY, THE THIRTEENTH DAY OF DECEMBER,
TWO THOUSAND TWENTY ONE

CONSUMER COMPLAINT NO. 36 OF 2013

Between:

Bakarapu Sampath, S/o. Mallaiah, Age 30 years, Occ: Coolie, R/o. Ragineedu Village,
Peddapally Mandal, Karimnagar Dist.

Complainant

AND

Dr. T. Kalpana, Gopta Hospitals, Srinivasa Nursing & Maternity Home, Peddapally,
Karimnagar Dist.

... Opposite party

This complaint is coming up before us for final hearing on 15-11-2021, in the presence of Sri T.Venugopal, advocate for complainant and Sri B. Ramesh, advocate for opposite party, and on perusing the material papers on record and having stood over for consideration till this day, the Commission passed the following:

::ORDER::

(Oral Order. Smt.K.Swaroopa Rani, President)

1. This complaint is filed under Sec 12 of C.P.Act, 1986 praying this Commission to direct the opposite parties to pay Rs.10,00,000/- towards compensation and damages on all counts for mental agony to complainant along with interest @ 2% per month from date of surgery of his wife till the date of payment, and costs of the complaint and any other relief or reliefs to which the complainant is entitled to.

2. The brief averments of the complaint are that the complainant represents that he and his wife were blessed with two daughters. The complainant's wife underwent Tubectomy operation at opposite party doctor who also performed second delivery. The opposite party also issued sterilization certificate by receiving an amount of Rs.20,000/- towards delivery and Tubectomy operation from complainant on 27-11-2009. On 22-08-2011 the complainant took his wife to PHC Ragineedu for irregular periods where on suggestion of duty doctor underwent pregnancy confirmation test, which test was also confirmed that she became pregnant. Thus the operation conducted by the opposite party doctor complainant wife was failed due to negligence in conducting the Tubectomy operation. The complainant also submits that they are poor coolie labour and that his wife has to undergo one more surgery and the complainant being a natural guardian of the child is under moral liability to look after and maintain the child until attains adulthood. The complainant was already under considerable monetary burden and due

to unwanted new born child to the family of complainant has created additional burden. The complainant got issued legal notice on 06-09-2012 to the opposite party on receipt of notice the opposite party gave reply on 17-09-2012. The carelessness and negligence attitude of opposite party in conducting the Tubectomy operation to complainant's wife amounts to deficiency in service, hence the complainant has no other remedy except to approach this Forum.

3. The opposite party filed counter denying the averments made in the complaint and admitted that she has conducted Tubectomy operation after delivery of second child at the request of complainant. The opposite party further submitted that prior to conducting Tubectomy operation she has explained the complainant and his wife about the percentage of failures in family planning operation. The opposite party submitted that complainant also gave undertaking to the opposite party that they will not claim anything if the family planning operation is failed. The opposite party further submitted that after obtaining sterilization certificate from opposite party the complainant and his wife obtained benefits from Government. The opposite party submits that the family planning operation was conducted on 27-11-2009 by well trained doctor assisted by Trained Para Medical Staff, and several such operations were conducted earlier in the opposite party hospital since 1971 and there was no instance of any failure. The opposite party submits that the complainant and his wife went into second thought and they revoke the sterilization operation to conceive again to have male child. They also succeeded in their view and complainant's wife gave birth to a male child on 04-03-2013 and now the complainant is claiming this false claim to squeeze money from the opposite party. The opposite party submitted that none is foolproof and no prevalent method of sterilization guarantees 100% success, and authoritative test books on gynecology and empirical researches which have been carried out recognize the failure rate of 0.3% to 7% depending on the technique chosen out of the several recognized and accepted ones. As per Government and International standards the patients are supposed to approach before 8 weeks of pregnancy, if at all conceived to the same hospital, where the Sterilization operation was done. In this regard the complainant and his wife clearly exceeded the time limit to file this present complaint.

The opposite party further submitted that though a third child may be a burden to the family, civilization does not permit one to call such a child "Unwanted Child". No child or for that matter to creature is unwanted. The opposite party further submitted that it was the responsible of the complainant and his wife to consult the doctor who had conducted the operation and no false assurance had been given to the complainant and his wife that the operation would be 100% successful. The opposite parties submitted that they have conducted the operation as per procedures and medical rules without any negligency and deficiency in service, as such there is no deficiency on the part of the opposite party towards complainant and his wife, hence prayed to dismiss the complaint.

4. The complainant filed Proof Affidavit reiterating the averments made in the complaint and the documents filed by him are marked as Ex.A1 to A12. Ex.A1 is the letter from Opposite Party Gupta Hospital dt 01-10-2012, Ex.A2 is the letter from Opposite party dt 17-10-2012, Ex.A3 is the letter to Opposite party from complainant, Ex.A4 is the original Prescription of PHC Ragineedu dt 22-08-2012, Ex.A5 is the original Report of PHC Ragineedu dt 22-08-2012, Ex.A6 is receipt issued by Revenue authority for the complaint given by complainant dt 10-9-2012, Ex.A7 is the Lab Report of PHC Ragineedu dt 22-08-2012, Ex.A8 is the Birth Certificate issued by opposite party dt 23-05-2007, Ex.A9 is the Birth Certificate issued by opposite party dt 27-11-2009, Ex.A10 is the Sterilisation Certificate issued by opposite party dt 27-11-2009, Ex.A11 is the Birth Certificate issued by Sri Srinivasa Maternity Nursing Home dt 04-03-2013, Ex.A12 is the Sterilisation Certificate issued by Sri Srinivasa Maternity Nursing Home dt 04-03-2013.

The opposite party filed Proof Affidavit reiterating the averments made in the counter and documents filed by him are marked as Ex.B1 to B6, Ex.B1 is the letter of complainant addressed to opposite party 06-09-2012, Ex.B2 is Reg Letter from opposite party to complainant dt 17-09-2012, Ex.B3 is the Notice issued by Karimnagar Consumer Counsel to opposite party 17-09-2012, Ex.B4 is the letter from opposite party addressed to complainant dt 01-10-2012. Ex.B5 is Postal receipt dt 17-09-2012, Ex.B6 is the Acknowledgement.

5. The point for consideration is whether there is any deficiency in service on the part of opposite parties, if so, to what relief the complainant is entitled?

6. The case of the complainant is that the complainant's wife underwent Tubectomy operation at opposite party doctor who also performed second delivery. Due to irregular periods on 22-08-2011 the complainant took his wife to PHC Ragineedu where on investigation pregnancy was confirmed. Thus the operation conducted by the opposite party doctor complainant wife was failed due to negligence in conducting the Tubectomy operation. The complainant got issued legal notice on 06-09-2012 to the opposite party on receipt of notice the opposite party gave reply on 17-09-2012. The carelessness and negligence attitude of opposite party in conducting the Tubectomy operation to complainant's wife amounts to deficiency in service, hence the complainant has no other remedy except to approach this Forum.

7. The opposite party resisted the claim of the complainant stating that the opposite party submitted that it was the responsible of the complainant and his wife to consult the doctor who had conducted the operation and no false assurance had been given to the complainant and his wife that the operation would be 100% successful. The opposite parties submitted that they have conducted the operation as per procedures and medical rules without any negligency and deficiency in service, as such there is no deficiency on the part of the opposite party towards complainant and his wife, hence prayed to dismiss the complaint.

8. On careful perusal of the complaint, counter and the documents filed by the complainant and opposite parties it is observed that the wife of complainant who was regular patient of opposite party in first and second delivery since conceiving pregnancy, had undergone the sterilization of operation to avoid further children due to her economic condition, on 27-11-2009 after giving birth to second child on the same day. The opposite party doctor also issued sterilization certificate, whereas she became pregnant despite the said operation and gave birth to unwanted 3rd child, (Male) on 4-3-2013 at about 5-39 pm at Vijaya Hospital at Peddapalli

9. The opposite party in their counter and Affidavit stated that prior to conducting Tubectomy operation she has explained the complainant and his wife about the percentage of failures in family planning operation, but failed to confirm the same with any documentary evidence. Even in Cross examination of PW1, the complainant denied that the opposite party had informed that before conducting operation the opposite party informed the complainant and his wife that 0.4% to 7% failure and there is no guarantee of 100% success in Sterilization operation. The opposite party also submitted in the counter and Affidavit that complainant also gave undertaking to the opposite party that they will not claim anything if the family planning operation is failed, but the opposite party failed to confirm the same through document. The opposite party also stated that as per Government and International standards the complainant's wife is supposed to approach before 8 weeks of pregnancy, if at all conceived to the same hospital, where the Sterilization operation was done. There is no denial of opposite party for failure of Sterilization operation conducted over complainant's wife, and birth of third child. The opposite party along with her reply submitted Medical Literature referring to Obstetrics and Gynecology for Post Graduates – by Sarala Gopalan page 597 to 601.

10. The evidence produced by the complainant is sufficient to make it a case of negligence against the opposite party. When it comes to award of compensation, the complainant claimed Rs.10,00,000/- @ 2% per month from the date of surgery on all counts but when comes to notice issued to opposite party the complainant mentioned an amount of Rs.5,70,000/- in total towards compensation and damages on all counts. But the complainant failed to file the bills to that extent showing the expenditure incurred by him, as such this Commission feels to award Rs.2,00,000/- is reasonable.

11. In view of our aforesaid discussion, we feel that the opposite party was negligent while conducting sterilization operation on complainant's wife the citation filed by the opposite party is not proper to consider, and therefore is liable to compensate the complainant for the deficiency committed by her.

12. **In the result**, the complaint is allowed in part directing the opposite parties to pay the complainant jointly and severally an amount of Rs.2,00,000/- towards compensation, Rs.25,000/- towards mental agony and Rs.5,000/- towards costs of the legal proceedings

within one month from the date of receipt of this order, failing which it carries interest @ 9% p.a. from date of filing the complaint till realization.

Typed to my dictation by Stenographer and after correction the orders pronounced by us in the open court this the 13th day of December, 2021.

Sd/-
MEMBER

Sd/-
PRESIDENT

ORAL EVIDENCE ADDUCED ON BEHALF COMPLAINANTS AS P.W.1

EXHIBITS MARKED ON BEHALF OF COMPLAINANT:

Ex.A1 is the letter from Opposite Party Gupta Hospital dt 01-10-2012,

Ex.A2 is the letter from Opposite party dt 17-10-2012,

Ex.A3 is the letter to Opposite party from complainant,

Ex.A4 is the original Prescription of PHC Ragineedu dt 22-08-2012,

Ex.A5 is the original Report of PHC Ragineedu dt 22-08-2012,

Ex.A6 is receipt issued by Revenue authority for the complaint given by complainant dt 10-9-2012,

Ex.A7 is the Lab Report of PHC Ragineedu dt 22-08-2012,

Ex.A8 is the Birth Certificate issued by opposite party dt 23-05-2007,

Ex.A9 is the Birth Certificate issued by opposite party dt 27-11-2009,

Ex.A10 is the Sterilisation Certificate issued by opposite party dt 27-11-2009,

Ex.A11 is the Birth Certificate issued by Sri Srinivasa Maternity Nursing Home dt 04-03-2013,

Ex.A12 is the Sterilisation Certificate issued by Sri Srinivasa Maternity Nursing Home dt 04-03-2013.

EXHIBITS MARKED ON BEHALF OF OPPOSITE PARTY:

Ex.B1 is the letter of complainant addressed to opposite party 06-09-2012,

Ex.B2 is Reg Letter from opposite party to complainant dt 17-09-2012,

Ex.B3 is the Notice issued by Karimnagar Consumer Counsel to opposite party 17-09-2012,

Ex.B4 is the letter from opposite party addressed to complainant dt 01-10-2012.

Ex.B5 is Postal receipt dt 17-09-2012, Ex.B6 is the Acknowledgement.

Sd/-
MEMBER

Sd/-
PRESIDENT