

D.O.F:16/8/2023

D.O.O:9/1/2026

IN THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION KANNUR

CC.NO.297/2023

Dated this the 9th day of January 2026

PRESENT:

SMT. RAVI SUSHA : PRESIDENT

SMT.MOLYKUTTY MATHEW : MEMBER

SRI.SAJEESH.K.P : MEMBER

Bijesh.M.K, S/o Krishnan,
Madathil House,Chorode East.Po,
Vadakara Thaluk,Kozhikode-673106. ,

: Complainant

1.Dr.Vinayak Ram K.P.S

C/o Baby Memorial Hospital,Indhiragandhi Road, : Opposite parties
Kasaba,Kalathikkonnu,Kozhikkode -673004. ,

2.Managing Director,Baby Memorial Hospital
NH-66,Chala Bypass,Edakkad,Nadal,Kannur-670007.

3. Genesis Institute of Medical Science Pvt Ltd,
Chala By pass-670007

(Adv.Syam Padman)

ORDER

SMT. RAVI SUSHA : PRESIDENT

Complainant filed this complaint for getting an order directing opposite parties to pay an amount of Rs.2,50,000/- towards the hospital expense incurred to the complainant due to the medical negligence on the part of opposite parties, Rs.2,30,000/- towards loss of income to the complainant due to the negligence of OPs, Rs.2,00,000/- towards compensation for the physical and mental agony and hardship caused to the complainant due to the negligence of the opposite parties.

Complainant's case is that because he has been working for long hours in a barbershop, his right leg has been affected by varicose vein. Since the problem became serious, complainant has contacted 1st OP Doctor at Baby Memorial

Hospital on 13/6/2023 and the complainant was examined by 1st OP doctor and advised to take scan from Shajis MRI Scan centre, and as such taken scan by spending about Rs.3300/-. He again went to 1st OP with scan report on the same day. Then 1st OP doctor advised laser treatment and informed, however, since the vein behind the right knee has narrowed, laser treatment cannot be done there and the issue can be resolved through open surgery. Doctor informed the expense for the surgery comes about Rs.60,000/- and advised the complainant to come morning of day and after surgery, he would be discharged evening itself and he could go to work the very next day. Trusting the words of the 1st OP doctor arranged cash of Rs.60,000/- on 15/6/2023 and approached 1s OP doctor in OP hospital. After pre surgery tests, 1st OP informed that there is no problem in undergoing the surgery and thus done laser treatment and open surgery on the right leg and put bandage and discharged in the same night with advise that the bandage can be removed after two days. It is submitted that as per that after two days when he removed the bandage, there was blisters appeared as if it was burnt, in the area where the laser was conducted. But there was no problem in the area where open surgery was done. Then he had taken video of the blister portion and sent to 1st OP. Then 1st OP prescribed Mega heal ointment. Be after the surgery pain killers were given, for one week, there was no pain at the surgical and laser area. But after one week due to severe pain in the area where the laser was done, it was not possible to place the foot on the ground and as a result, it was a condition in which going to work was not possible. On 2/6/2023 complainant again approached 1st OP in OP at 2nd OP hospital, then 1st OP informed that it was actually a case that required open surgery and the laser procedure was done by taking a high risk and since the vein was very close to the skin, it resulted in burns like this. 1st OP informed that it is only

a small injury and no problem for doing work. As such he went for the work after wearing the pad suggested by 1st OP and take the medicines prescribed by 1st OP. So on the very next day he went for doing work in Barber shop. But by afternoon, due to fever and pain, he had to close the shop and return home. Due to cause severe pain he had gone Co-Operative hospital Vadakara to consult the doctor. Since the fever did not subside, he was taken to Health centre Orkattery for consulting doctor on 1/7/2023. After doing a blood test, it was found that the count was 20400 and he was advised to consult 1st OP. It is submitted that when he contacted 1st OP through phone, 1st OP informed that the present complaint was happened not due to the fault of his surgery and instructed to consult other M.D. Medicine Doctor. So he had to go to Asha Hospital at Vadakara and consult Dr.Arun, MD General Medicine. After examination Dr.Arun informed that the infection was from the area of laser and prescribed tablets for two days. After consuming the tablets for two days when blood test was taken the count became less, then prescribed the said tablets for 5 days. But after 5 days when the tablets over, he also felt severe pain in the leg and again went to the said hospital and consulted Dr.Arun. After prescribing medicine, Doctor informed to consult a surgeon if the pain will subside. Due to severe pain he consulted Dr.Anush Nagotu General Surgeon at Asha Hospital. The doctor after examination, the pus from the laser burned area was renewed. The nerve of right leg was taken and sent for examination and the report has been submitted. The complainant still going to the hospital regularly and a lot of money is spending for the treatment. Complainant alleged that the said difficulties and discomfort and complication at the area where laser treatment was done by 1st OP etc, was caused due to the medical negligence on the part of 1st OP. Hence this complaint.

After receiving notices OPs 1&2 filed joint written version stated that the complainant was treated as per the universally accepted standard medical protocol, all care, caution and attention. It is submitted that the complainant came to the outpatient department of 2nd OP hospital on 13/6/23 and consulted the 1st OP with complaint of pain and pedal oedema on long standing and skin hyper pigmentation around ankle and he had dilated veins both lower limbs clinically diagnosed as varicose vein . As per reported clinical history he was having complains of varicose veins for more than 10 years and had tried all forms of treatment including Ayurveda and Homeopathy but without relief. After examination the 1st OP advised for a venous color Doppler of both lower limbs. The patient reported back with venous Doppler report which showed Bilateral dilated great saphenous vein(GSV) with Dilated right small saphenous vein(SSV) with multiple below knee perforators incompetence. Based on clinical examination findings and Doppler study the patient was informed about his advanced stage of varicose veins and also about the need for surgery. Since patient's disease condition was in its advanced stage he required removal of certain parts of the veins by doing an open surgery and the pros and cons of the proposed surgical treatment was discussed with him and he accepted his disease status and agreed for the surgical procedure. The medically accepted and known risk factors were also discussed with the patient and it was decided to do Right side Endovenous laser procedure ablation of varicose vein with SPJ ligation with sclerotherapy under spinal anesthesia. The risk and complications involved in the surgery especially in view of advanced disease condition were discussed with the patient and detailed written informed consent was obtained preoperatively. Under all care and aseptic sterile precautions the 1st OP conducted Endovenous laser procedure ablation of varicose vein with SPJ ligation with

sclerotherapy under spinal anesthesia and the surgery was uneventfully completed without any complication. The compression bandage was applied and given instruction to remove the same after two days and advised to start applying compression stocking for 2 months. But the complainant refused to buy the compression stocking on discharge and left the hospital with only discharge medication. He was advised to take plenty of oral fluids and review after one month in the OPD. After two days the complainant contacted the 1st OP over telephone in the OPD in BMH Calicut and informed about a blister seen in the inner thigh. The 1st OP told the complainant that it was one of the known complication of endovenous laser treatment as his veins were just underneath the skin it might have caused thermal injury. 1st OP, advised to apply Megaheal ointment and instructed to report the OPD if the symptom did not relieve. Later the complainant did not contact the 1st OP for 2 weeks and he came up for consultation only on 28/6/23 in the OPD in BMH Calicut, on examination of the patient the wound showing signs of healing and for the complaint of pain anti-inflammatory tablet were given for 5 days and asked to review after one week. He was given specific instruction to use compression stocking as it was part of treatment. But he refused to buy compression stocking again and he was warned about the chance of recurrence of the disease if he did not use compression stocking. The complainant's case that he resumed his job by using necessary pad is falsely stated since he did not buy compression stocking from the hospital as advised by the 1st OP. The complainant never turned up for follow up consultation or review with the 1st OP after 28/6/23. Formation of cellulites in laser ablation of varicose vein is a reported known complication involved in the treatment of varicose vein as his veins were just underneath the skin and the possible thermal injury despite taking due care and

caution cannot be ruled out. There is absolutely no carelessness or fault in treatment from the part of the 1st OP at any point of time in treatment. The complainant on his own volition continued treatment elsewhere and it is learnt that he is completely cured with treatment. The complainant also did not care to apply compression stocking and later formation of cellulites and infection are induced by factors beyond the control of the 1st OP. There is no medical negligence or deficiency in service on the part of OPs. Hence prayed for the dismissal of the complaint.

On the basis of the contentions in the version of OPs 1&2, complainant has taken steps to implead 3rd OP as additional OP, which was allowed and impleaded 3rd OP as per the order in IA NO.29/2024.

3rd OP also filed version. The contentions of 3rd OP are that the complainant was treated as per the universally accepted standard medical protocol bestowing all care, caution and attention. The same would be evident from the case sheet and treatment records maintained with the hospital. The 3rd OP is a parent company of 2nd OP hospital and administrative activities of the 2nd Op hospital are controlled by 3rd OP. and 3rd OP hereby adopts the written version filed by the OPs1&2 and prayed to dismiss the complaint.

Both parties led their evidence.

Complainant filed his chief affidavit and documents. He was examined as PW1 and the documents were marked as Exts.A1 to A14. Cross examined by OPs and marked Exts.B1, B1(a). On the side of OPs, 2nd OP filed chief affidavit and was examined as DW1. One more witness Dr. Renji Mathew Vaidyan, MBBS,MS(General Surgery) consultant- Dept. of General and Minimal Access Surgery, KIMS Health Trivandrum was examined as an expert witness on the side of

OPs. DWs 1&2 were cross-examined by the complainant. After that complainant argued the case. Complainant conducted the case in person .

We perused the pleadings of both parties, material evidence submitted before us, and also oral evidence of both parties (PW1, DW1) and of expert witness(DW2).

Complainant's case is that he has been working for long hours in a barbershop, his right leg has been affected by varicose vein. Since the problem became serious, complainant has contacted 1st OP Doctor at Baby Memorial Hospital on 13/6/2023 and the complainant was examined by 1st OP doctor and advised to take scan from Shajis MRI Scan centre, and as such taken scan by spending about Rs.3300/- He again went to 1st OP with scan report on the same day. Then 1st OP doctor advised laser treatment and informed, however, since the vein behind the right knee has narrowed, laser treatment cannot be done there and the issue can be resolved through open surgery. Doctor informed the expense for the surgery comes about Rs.60,000/- and advised the complainant to come morning of day and after surgery, he would be discharged evening itself and he could go to work the very next day. Trusting the words of the 1st OP doctor , complainant arranged cash of Rs.60,000/- on 15/6/2023 and approached 1s OP doctor in OP hospital. After pre surgery tests, 1st OP informed that there is no problem in undergoing the surgery and thus done laser treatment and open surgery on the right leg and put bandage and discharged in the same night with advise that the bandage can be removed after two days. It is submitted that as per that after two days when he removed the bandage, there was blisters appeared as if it was burnt, in the area where the laser was conducted. But there was no problem in the area where open surgery was done. Then he had taken video of the blister portion and sent to 1st OP. Then 1st OP prescribed Mega

heal ointment. Be after the surgery pain killers were given, for one week, there was no pain at the surgical and laser area. But after one week due to severe pain in the area where the laser was done, it was not possible to place the foot on the ground and as a result, it was a condition in which going to work was not possible. On 2/6/2023 complainant again approached 1st OP in OP at 2nd OP hospital, then 1st OP informed that it was actually a case that required open surgery and the laser procedure was done by taking a high risk and since the vein was very close to the skin, it resulted in burns like this. 1st OP informed that it is only a small injury and no problem for doing work. As such he went for the work after wearing the pad suggested by 1st OP and take the medicines prescribed by 1st OP. So on the very next day he went for doing work in Barber shop. But by afternoon, due to fever and pain, he had to close the shop and return home. Due to cause severe pain he had gone Co-Operative hospital Vadakara to consult the doctor. Since the fever did not subside, he was taken to Health centre Orkattery for consulting doctor on 1/7/2023. After doing a blood test, it was found that the count was 20400 and he was advised to consult 1st OP. It is submitted that when he contacted 1st OP through phone, 1st OP informed that the present complaint was happened not due to the fault of his surgery and instructed to consult other M.D. Medicine Doctor. So he had to go to Asha Hospital at Vadakara and consult Dr.Arun MD General Medicine. After examination Dr.Arun informed that the infection was from the area of laser and prescribed tablets for two days. After consuming the tablets for two days when blood test was taken the count became less, then prescribed the said tablets for 5 days. But after 5 days when the tablets over, he also felt severe pain in the leg and again went to the said hospital and consulted Dr.Arun. After prescribing medicine, Doctor informed to consult a surgeon if the pain will subside. Due to

severe pain he consulted Dr. Anush Nagotu General Surgeon at Asha Hospital. The doctor after examination, the pus from the laser burned area was renewed. The nerve of right leg was taken and sent for examination and the report has been submitted. The complainant still going to the hospital regularly and a lot of money is spending for the treatment. Complainant alleged that the said difficulties and discomfort and complication at the area where laser treatment was done by 1st OP.

On the other hand OPs submitted that the complainant came to the outpatient department of 2nd OP hospital on 13/6/23 and consulted the 1st OP with complaint of pain and pedal oedema on long standing and skin hyper pigmentation around ankle and he had dilated veins both lower limbs clinically diagnosed as varicose vein. As per reported clinical history he was having complains of varicose veins for more than 10 years and had tried all forms of treatment including Ayurveda and Homeopathy but without relief. After examination the 1st OP advised for a venous color Doppler of both lower limbs. The patient reported back with venous Doppler report which showed Bilateral dilated great saphenous vein(GSV) with Dilated right small saphenous vein(SSV) with multiple below knee perforators incompetence. Based on clinical examination findings and Doppler study the patient was informed about his advanced stage of varicose veins and also about the need for surgery. Since patient's disease condition was in its advanced stage he required removal of certain parts of the veins by doing an open surgery and the pros and cons of the proposed surgical treatment was discussed with him and he accepted his disease status and agreed for the surgical procedure. The medically accepted and known risk factors were also discussed with the patient and it was decided to do Right side Endovenous laser procedure ablation of varicose vein with SPJ ligation with sclerotherapy under spinal anesthesia. The risk and complications involved in the

surgery especially in view of advanced disease condition were discussed with the patient and detailed written informed consent was obtained preoperatively. Under all care and aseptic sterile precautions the 1st OP conducted Endovenous laser procedure ablation of varicose vein with SPJ ligation with sclerotherapy under spinal anesthesia and the surgery was uneventfully completed without any complication. The compression bandage was applied and given instruction to remove the same after two days and advised to start applying compression stocking for 2 months. But the complainant refused to buy the compression stocking on discharge and left the hospital with only discharge medication. He was advised to take plenty of oral fluids and review after one month in the OPD. After two days the complainant contacted the 1st OP over telephone in the OPD in BMH Calicut and informed about a blister seen in the inner thigh. The 1st OP told the complainant that it was one of the known complication of endovenous laser treatment as his veins were just underneath the skin it might have caused thermal injury. 1st OP, advised to apply Megaheal ointment and instructed to report the OPD if the symptom did not relieve. Later the complainant did not contact the 1st OP for 2 weeks and he came up for consultation only on 28/6/23 in the OPD in BMH Calicut, on examination of the patient the wound showing signs of healing and for the complaint of pain anti-inflammatory tablet were given for 5 days and asked to review after one week. He was given specific instruction to use compression stocking as it was part of treatment. But he refused to buy compression stocking again and he was warned about the chance of recurrence of the disease if he did not use compression stocking. The complainant's case that he resumed his job by using necessary pad is falsely stated since he did not buy compression stocking from the hospital as advised by the 1st OP. The complainant never turned up for follow up consultation or review with

the 1st OP after 28/6/23. Formation of cellulites in laser ablation of varicose vein is a reported known complication involved in the treatment of varicose vein as his veins were just underneath the skin and the possible thermal injury despite taking due care and caution cannot be ruled out. There is absolutely no carelessness or fault in treatment from the part of the 1st OP at any point of time in treatment. The complainant on his own volition continued treatment elsewhere and it is learnt that he is completely cured with treatment. The complainant also did not care to apply compression stocking and later formation of cellulites and infection are induced by factors beyond the control of the 1st OP.

The questions which arise in the complaint are as follows:-

- 1) Whether it is proved that the 1st OP committed negligence while treating the complainant?
- 2) Whether in the facts and circumstances of the present case, compensation can be awarded against OPs 1 to 3? If so, to what extent compensation can be allowed?

From the complaint, it is stated that the complainant at first approached 1st OP on 13/6/2023 with the complaint of varicose vein on his right leg. Then the complainant was advised to take scan. It appears from the prescription dtd.13/6/2023(Ext.A1). After seeing the scan report diagnosis was "c.o dilated veins both lower limbs, c.o pain and pedal edema on long standing, c.o skin hyper pigmentation around ankle, Venous Doppler: dilated Bilateral GSV with Dilated Right SSV with bilateral below knee perforators incompetence".

Complainant was advised to do Right EVLT with SPJ ligation with Sclerotherapy under SA. On 15/6/2023 surgery and Laser proceedings were done. Ext.A2 series is the discharge bill amounts to Rs.60,000/-. Ext.A14 is the procedure brief

done by 1st OP on 15/6/2023 which shows after the procedure compressing dressing applied and plan for discharge at 7.P.M in the same day. In the discharge summary dtd.15/6/2023, the medicines were prescribed for 7 days and advised class II compression stocking AG for 2 months. Review after 1 month in OPD.

Complainant's allegation is that on removing the bandage put by 1st OP after procedure, for two days, there was blisters like burnt injury, seen in the area where laser procedure was done. On informing 1st OP, prescribed Megaheal ointment. Complainant further alleged that at the discharge time medicines including pain killers were given for 7 days . But after 7 days when pain killers were over, he felt severe pain at the laser area and also felt fever. On consulting with 1st OP, prescribed medicine. Complainant alleged that on 28/6/2023, 1st OP informed that it was actually a case that required open surgery and the laser procedure was done by taking a high risk. Complainant submitted that he had not felt any discomfort at the area where open surgery was conducted. It is alleged that though he had taken medicines prescribed by 1st OP on 28/6/2023 he did not get any relief from pain and fever. So on the next day itself he had to go "The Badagara Sahakarana Auspathri" Hospital Vadakara. Ext.A4 is the OP record issued from the said hospital dtd.29/6/2024. Further submitted that since the fever and pain did not subside he went to Asha Hospital. Ext.A5 is the OP card issued from Asha Hospital dtd.1/7/2023. On perusal of Ext.A5, it is seen recorded that "post laser". Fever, mild LVTS Blood flow on the vein in sluggish- cellulites? TC 20400/- which shows active bacterial infection or severe inflammation . Complainant alleged that the treated Doctor Dr.Arun K.P at Asha Hospital informed the complainant to consult 1st OP surgeon. Complainant further alleged that though he contacted 1st OP through phone , and informed his condition, 1st OP , said that the infection did not occur due to any

fault in the laser procedure, it happened due to other reasons, and he advised consultation with other MD doctor. On 7/7/2023 also he consulted with Dr. Arun K.P, his prescription shows presence of cellulites (right) posterior thigh and prescribed medicines for infection and suggested surgery. Ext.A13 is the OP card issued by Dr. Anugh Nagotu (General Surgery) at Asha Hospital dtd. 19/7/2023. In Ext.A13, we can reveal that the doctor put a query "the patient has undergone EURFA and has a burn injury, possibility as a complication. Further it is noted that Necrotic patch of skin means a small area of skin where the tissue has died. The doctor suggested needs debridement, UA means the wound cannot heal on its own. Ulcer the dead tissue is removed. So the complainant was advised to take soft tissue scan to rule out DVT and underlying Residual collection. In Ext.A13, it is seen, complainant revisited on 20/7/2023, 21/7/2023, 22/7/2023, 23/7/23, 24/7/23, 25/7/23, 26/7/23, 27/7/23 and 28/7/2023. Ext.A6 is the Right Lower Limb Venous Doppler report dtd. 28/7/2023 which reveals that "all deep veins are normal in course and caliber, Mild subcutaneous edema, No evidence of deep vein thrombosis, GSV is narrowed in caliber, SSV- is dilated in the popliteal region and incompressible hypoechoic contents noted in the superior aspect, Few dilated superficial vein noted in the below knee and lower leg region. Impression: Superficial vein thrombosis of SSV, Varicosities of superficial veins with incompetent perforators as described". After obtaining report the dead vein was removed under Anesthesia.

Thus from Ext.A6 it is clearly evident that the infection was due to the fault in conducting laser procedure done by 1st OP. Ext.A9 series are the photos of the infected leg of the complainant. Ext.A13 series further shows that OP card dtd. 2/8/2023 Reviewed clear, the patient can resume work.

Thus from Exts.A4 to Ext.A13 series show that there was error committed by 1st OP while doing laser procedure on the posterior thigh on the complainant.

Here 1st OP contended that at the time of 1st examination, the complaint of the patient was pain and pedal oedema on long standing and skin hyper pigmentation around ankle and he had dilated veins both lower limbs clinically diagnosed as varicose vein . As per reported clinical history he was having complains of varicose veins for more than 10 years and had tried all forms of treatment including Ayurveda and Homeopathy but without relief. After examination the 1st OP advised for a venous color Doppler of both lower limbs. The patient reported back with venous Doppler report which showed Bilateral dilated great saphenous vein(GSV) with Dilated right small saphenous vein(SSV) with multiple below knee perforators incompetence. Based on clinical examination findings and Doppler study the patient was informed about his advanced stage of varicose veins and also about the need for surgery. Since patient's disease condition was in its advanced stage he required removal of certain parts of the veins by doing an open surgery and the pros and cons of the proposed surgical treatment was discussed with him and he accepted his disease status and agreed for the surgical procedure. The medically accepted and known risk factors were also discussed with the patient and it was decided to do Right side Endovenous laser procedure ablation of varicose vein with SPJ ligation with sclerotherapy under spinal anesthesia".

Further 1st OP contended that there was formation of blister at the laser procedure area was one of the known complication of endovenous laser treatment. Further submitted that on examination of the patient on 28/6/2023, the wound showing signs of healing and for the complaint of pain anti-inflammatory tablet were given for 5 days and asked to review after one week.

But the prescription of 1st OP dtd.28/6/2023 does not show the instruction to come for review after one week.

1st OP also submitted that the complainant was given specific instruction to use compression stalking as it was part of treatment. But he refused to buy that compression stalking again and he was warned about the chance of recurrence of the disease if he did not use compression stalking. Further stated that the complainant's case that he resumed his job by using necessary pad is falsely stated since he did not buy compression stalking from the hospital as advised by the 1st OP.

The said contention was denied by the complainant. During cross-examination by the learned counsel of OP, we can understand in page 4 and in page 5 that "എതുകക്ഷിയുടെ ചികിത്സയിൽ നിർബന്ധമായും ചെയ്യണമെന്നു പറഞ്ഞത് compression socks ഇടണമെന്നതാണ്? അതെ. ശരിയായ രീതിയിൽ ചികിത്സ ഫലിക്കണമെങ്കിൽ അത് നിർബന്ധമാണെന്ന് പറഞ്ഞു മനസ്സിലാക്കി തന്നിരുന്നു? അതെ. അങ്ങനെ ചെയ്യാൻ നിങ്ങൾ വിഴ്ച വരുത്തി എന്നും അത് മൂലം കാലിന് പ്രശ്നങ്ങൾ ഉണ്ടായി എന്നു പറഞ്ഞാൽ? ശരിയല്ല. എതുകക്ഷികൾ അങ്ങനെ വാദിക്കുന്ന കാര്യം മനസ്സിലാക്കിയോ? മനസ്സിലാക്കി. എതുകക്ഷികൾ നിർദ്ദേശിച്ച പ്രകാരമുള്ള compression socks വാങ്ങിയതായോ , ഉപയോഗിച്ചതായോ,കാണിക്കുന്ന ഒരു രേഖയും നിങ്ങൾ ഹാജരാക്കിയിട്ടില്ല? അത് free ആയി surgery കഴിഞ്ഞപ്പോൾ ആസ്പത്രിയിൽ നിന്ന് തന്നിരുന്നു.

Further when the learned counsel asked to PW1 in page 6 that the complainant went back to work after wearing compression pack is a lie, the complainant (PW1) categorically replied that it is a wrong statement. So from the above said evidence

as adduced by the complainant, it can be presumed that the averment of the complainant that he wore compression pack after the procedure and during work is a correct statement.

Other contentions of 1st OP are that formation of blisters in the laser procedure area is one of the known complication of endovenous laser treatment as his veins were just underneath the skin it might have caused thermal injury. 1st OP also argued that since the disease condition of the patient was in its advanced stage he required removal of certain parts of the veins by doing an open surgery and the complainant agreed for the surgical procedure. OP further argued that in GSV cases, open surgery is not possible and laser procedure is feasible. In order to prove mainly these points, OPs cited Dr. Renji Mathew, MS in General surgery, having 8 years experience in Laparoscopic surgery and varicose vein surgery, consultant Department of General and Minimal Access surgery KIMS Health, Trivandrum, as an Expert Doctor. The said doctor was examined as DW2. On analyzing the evidence of expert witness (DW2), it is revealed that “Doctor നു്റെ അഭിപ്രായത്തിൽ advanced varicose vein disease ഉള്ള ഒരു patient ന് കൊടുക്കുന്ന standard accepted treatment protocol എന്താണ്? ആ patient ന്ൻറെ condition നും scan report ഉം അനുസരിച്ചായിരിക്കും. Ext.B1 shown to the witness and asked- ഈ കേസിൽ Endo venous laser ablation treatment കൊടുത്തത് standard protocol പ്രകാരമാണോ? അതെ. ഇത്തരം case കളിൽ ഈ treatment most accepted treatment ആണ്. Varicose vein treatment ന്ൻറെ ഭാഗമായി open surgery option ഉണ്ടോ? ഉണ്ട്. DW2 further deposed that “ open surgery യും Endovenous laser option നും ഉള്ളപ്പോൾ എതു treatment option എന്ന് എങ്ങനെ തീരുമാനിക്കും? patient ന്ൻറെ scan report അനുസരിച്ചാണ് തീരുമാനിക്കുക . EVLA procedure ൽ എന്തെല്ലാം

side effect ഉണ്ടാകും? Ablate ചെയ്യുന്ന vein ന് ചെറിയ വേദന ഉണ്ടാവാം ഒരു വശത്ത് സ്പർശന ശക്തി നഷ്ടപ്പെടാം skin burns ഉണ്ടാവാം, deep vein thrombosis ഉണ്ടാവാം, തൊലിയുടെ കളർ changes temporary ഉണ്ടാവാം. GSV യ്ക്ക് open surgery നടത്താൻ പറ്റുമോ? പറ്റും. Further says that Blisters ഉം thermal injury ഉം medically accepted complications ആണ്.

Hence , evidence of DW2 is taken as a whole we could understand that, the mode of procedure has to be opted by a surgeon after examining the clinical condition of the patient as well as scan report. Ext.A3 is the scan report of the patient taken on the 1st day of examination of the complainant. Here it is to be noted that DW2 the Expert doctor opined after examining Ext.A3 that as per GSV measures in Ext.A3, though the laser procedure opted by 1st OP is a correct method, open surgery , on the posterior thigh also possible. It is to be noted that the complainant did not experience any discomfort from the open surgery procedure.

Then as an experienced doctor, 1st OP could have avoid laser procedure and opted open surgery on the complainant as he has knowledge about the happening of complication after laser procedure. Here it is also to be noted that DW2 also opined that “ Ablate ചെയ്യുന്ന vein ന് ചെറിയ വേദന ഉണ്ടാവാം, ഒരു വശത്ത് സ്പർശന ശക്തി നഷ്ടപ്പെടാം skin burns ഉണ്ടാവാം, deep vein thrombosis ഉണ്ടാവാം, തൊലിയുടെ കളർ change temporary ഉണ്ടാവാം.”

Here 1st P admitted that after two days complainant contacted 1st OP through phone and informed about blisters seen in the laser procedure area. Then advised to apply Mega heal ointment and after two weeks ie on 28/6/2023 complainant came up in OPD in BMH Calicut and the complaint about pain. 1st OP submitted then on

examination wound was showing signs of healing and prescribed anti inflammatory tablet for 5 days and asked for review after one week and instructed to use compression stalking. But in the prescription of 1st OP dated 28/6/23, only chymoral Tab (anti inflammatory) was given. We can see either in the said prescription or in the discharge summary Ext.B1 1st OP has not mentioned about using bandage. But from the statement of complainant, he was given instruction to wear bandage, and he had also used compression stalking.

From the medical records Ext.A4 shows that on the very next day ie, on 29/6/23 after consulting 1st OP he went to Badagara Sahakarana Asupathre Vadakara with a complaint of fever 102.2°F with body pain and from the other Medical records also, we can realize that 1st OP had not given proper care and caution in conducting laser procedure on the patient instead of conducting open surgery and also managing post operation treatment. From Exts.A4 to A13, the principle *res ipsa loquitur* is squarely attracted in the facts and circumstances of the present case. In this situation the observations in *Jacob Mathew Vs State of Punjab & Anr.*(2005)CPJ (SC) can be taken into account. The Apex court held that " medical negligence resulting in to damage may be held as proved when the complainant establishes (1)The existence of the duty take care, which is owed by the defendant to the complainant (2) The failure to attain that standard of the care prescribed by the law there by committing a breach of such duty; and (3) Damage which is both casually connected with such breach and recognized by the law, has been suffered by the complainant. In our opinion, all the three ingredients are duly proved by the appellant (complainant) in the present case."

Further 1st OP submitted that the risk and complications involved in the surgery

were discussed with the patient and detailed written informed consent was obtained pre-operatively. Which submission of 1st OP was denied by complainant. On the side of OPs, Ext.B1(a) is marked as the informed consent obtained from the complainant. In Ext.B1(a), it is to be noted that what are the complications happened in connection with the surgery was not mentioned in it. The said portion is left as blank. During cross examination complainant pleaded that 1st OP had not mentioned about the chance of complications, which will happen after laser procedure. Hence from Ext.B1(a) itself we can presume that the details of complications, had not explained to the patient before the procedure, which also reveals that there was medical negligence which leads to deficiency in service on the part of 1st OP.

From available evidence this complaint is liable to be allowed. The reason being that the negligence made by 1st OP is quite apparent and no expert report is required to examine whether negligence was made or not.

All these facts of the case lead us to believe that this is a case of gross medical negligence in the treatment of the complainant and hence the complainant is entitled to get relief. OPs 2&3 are having vicarious liability .

In the result complaint is allowed in part. Opposite parties 1 to 3 are directed to pay Rs.1,00,000/- to the complainant towards hospital expense incurred to the complainant.(Exts A3 series and A7 series are pertaining to the medical expenses incurred to the complainant). Opposite parties 1 to 3 are further directed to pay Rs.2,00,000/- towards compensation for the medical negligence on the part of opposite parties. Complainant failed to submit any documents related to his job and income. So we are not inclined to allow any amount on that head. Opposite parties 1 to 3 are further directed to pay Rs.25,000/- towards litigation expense. Opposite

parties 1 to 3 are directed to comply the order within one month from the date of receipt of the certified copy of this order, failing which Rs.2,00,000/- + Rs.1,00,000/- will carry interest @9% per annum from the date of order till realization and the complainant can execute the order as per the provisions in Consumer Protection Act 2019.

Exts:

A1(series)- Prescriptions (3 inNos) dtd.13/6/23,15/6/23,28/6/23

A2(series)- Medical bills (3 in Nos)

A3-Scanning report dtd.13/6/23

A4- OP ticket BSA Ltd. dtd.29/6/23

A5-OP ticket Asha Hospital dtd.1/7/23

A6-Right lower limb venous Doppler dtd.28/7/23

A7(series)- Medical bills (20 in Nos)

A8- E-mail complaint to Kannur City police commissioner

A9(series)-Photos of (R) leg

A10(series) Medical Bills

A11- Scan report

A12- Medical bills

A13(series) OP card

A14- Laser treatment report issued by 1st OP

B1-Discharge summary

B1(a)-informed consent

PW1-Bijesh-M.K- complainant

DW1-Dr.K.P.S Vinayakhram-1st OP

DW2-Dr.Renji Mathew- witness of OP

Sd/

PRESIDENT

Ravi Susha

eva

Sd/

MEMBER

Molykutty Mathew

Sd/

MEMBER

Sajeesh K.P

/Forwarded by Order/

ASSISTANT REGISTRAR