

Details	DD	MM	YY
Date of Judgment	28	10	2021
Date of filling	02	07	2014
Duration	26	03	07

**IN THE CONSUMER DISPUTES REDRESSAL  
COMMISSION, GUJARAT STATE AT AHMEDABAD.  
Court-2**

**APPEAL NO. 1022 of 2014**

Dr. Bhargav D.Patel  
Shirmati S.U. Sheth, Dr.M.Sarvajanik Hosp.  
Gozaria. Ta & Dist: Mehsana. ...Appellant  
(Ori.Opponent no.4)

Vs.

1. Baldevbhai Bababhai Raval  
Titodan, Ta.Vijapur,  
Dist:Mehsana. (ori. Complainant)
2. Dr. Gautambhai N. Suthar  
DhanvantariMed. Hospital,  
Nr. Bus Stand,  
Kukarwada.382870 (ori. Opp. No.1)
3. Dr. Shirsh N. Panchal  
Hariom Sonography Clinic,  
Nr, Bus Stand,  
Inside Dharamshala,  
Kukarwada.  
Ta. Vijapur, Dist:Mehsana (ori.Opp. No.2)
4. Ambica Pathology Lab.  
Nr. Bus stand,  
Kukarwada. Ta. Vijapur,  
Dist. Mehsana (Ori. Opp.No. 3)
5. Manager & Trustees,  
Shrimati S.U.Sheth,  
Dr. M. Sarvajanik Hosp.  
Gozaria. Ta & Dist:Mehsana. (Ori. Opp. No.5)
6. Dr. Sanket Patel.(Anesthetist),  
C/o Shrimati S.U.Sheth,  
Dr.M. Sarvajanik Hosp.  
Gozaria. Ta & Dist: Mehsana. (Ori. Opp. No.6)

...Respondents

Appearance: Ld. Advocate Mr. M.K.Joshi  
For the appellant  
Ld. Advocate Mr.A.O. Chudgar  
For the respondent Nos.2 & 3  
Ld. Advocate Mr. D.M.Soni  
For the respondent no. 4  
No one remains present for the  
respondent Nos. 1,5 and 6

Coram : Shri M.J.Mehta Judicial Member

**Order by Shri M.J.Mehta, Judicial Member**

1. Being aggrieved and dissatisfied with the judgment and order dated 29.04.2014 passed by the Consumer Disputes Redressal Forum, Mehsana in Complaint Case No.109 of 2012.
2. The appellant has preferred instant appeal on the grounds that the impugned order is arbitrary, perverse and is bad in law.
3. The brief facts of the case are as under:  
Complainant was suffering from the abdominal pain since long 6 to 7 months according to complainant case the Sonography, Laboratory report was obtained as per the prescription of Dr. Gautambhai on 24.03.2012 it was observed from the reports of the lab-technician, X-ray Technician and Doctor about the appendix, and operation is required to be performed immediately thereby complainant went to the Shrimati C.U.N Sheth public hospital and anesthetic Dr. Sanket Patel has performed anesthesia and Dr. Bhargav Patel has operated the stomach of complainant and found out

appendix for the cause of pain of the complainant.

4. Ultimately on the demand for the appendix relative of the complainant the Doctor intimated that there is no appendix to the complainant, so wrongfully surgery was performed there was no any appendix and thereby complainant was discharged from the hospital and Rs. 20,000/- cost for the expenses.
5. Ultimately Hon'ble trial forum come to conclusion that Dr. Bhargav D. Patel has to pay Rs. 4465/- to the complainant with 9% interest further 1,00,000/- compensation is awarded to the complainant by the Ld. Trial Forum.
6. Being aggrieved with the order of the Ld. Trial forum Present appeal is preferred, respondents are duly served upon, respondent No. 1,5 and 6 did not remain present before the commission.
7. Ld. Advocate Mr.M.K.Joshi has referred Ld. Trial Forum judgement where in at page No. 21 of the wherein Ld. Trial forum has observed that doctor has to study the report of the appendix and operation shall have to be performed and minor study is required however when the X-ray report was normal and abdominal pain is there to the complainant thereby immediately operation was performed but there was no mala-fide intention of the doctor and only the operation was performed premature is presume by the Ld. Trial

Forum. that's why there is no any negligency on the part of the Doctor.

8. The diagnoses are the matter of chance one cannot 100% gave findings about whether the operation was required immediately or after some time. In the case of the complainant abdominal pain occurred to the complainant that's why immediate step is required to be taken by the doctor as best decision of the Doctor it is mainly observed by the Ld. Trial Forum that it was not mala fide and thereby the action of the doctor about the operation of the complainant is just to give best treatment to the complainant to came out of pain.
9. Further Ld. Advocate Mr. Joshi has drawn my attention with the Bailey & love's Short Practice of Surgery 25<sup>th</sup> addition it is literature produced before me referring at page no. 6 wherein it is submitted that The appendix cannot be found, the caecum should be mobilized, and the taeniocoli should be traced to their confluence on the caecum before the diagnosis of "absent appendix" is made.
10. Therefore, observation by the Doctor of report it shows the appendix situation but the said situation can be changed anyhow and thereby such type of situation occurred during the course of performing the operation and it is the normal acceptable situation according to medical literature submitted by Mr. Joshi in this case there is no negligency established by the Doctor no compensation is to be awarded.

11. Here Ld. Advocate Mr. A.O.Chudgar appeared for the respondent No.2 and 3 and Ld. Advocate Mr. D.M.Soni appeared for the respondent no.4, respondent no. 1,5 and 6 are duly served upon but did not remain present before the commission.
12. Thereby Ld. Advocate Mr. Chudgar for the respondent no.2 and 3 has submitted that they are not necessary party as there is no any order against respondents by the Trial Forum so there is no liability can be casted upon to respondent no.2 and 3.
13. Looking to the facts circumstances respondent no.1/ original complainant does not remain present and thereby going through documentary evidence on record and observation made by the Ld. Trial Forum that it suggests that there is no negligency on the part of the appellant Doctor. so no such order can be awarded by the Trial Forum as per the submission of the Ld. Advocate Mr. Joshi for the appellant.
14. Looking to the facts of the case and observation by the Ld. Trial Forum at page no. 19 where in report of sonography suggest that it was a normal report however it was observed that appendix sign was there and there was an abdominal gastric pain in the intestine thereby it is suggest like this condition so the operation was performed I came to conclusion and confirm the observation by the Ld. Trial forum that there was no immediately need to perform surgery as we have discussed here in above Doctor is best

judge to decide whether to performed the surgery on the spot or not thereby in the benefit of the patient the action taken by the Doctor to remove the appendix.

15. Thereby I am of the opinion that appeal is required to be allowed partly and I partly allow this appeal.

FINAL ORDER

- i) Appeal No. 1022 of 2014 is partly allowed.
- ii) The judgment and order dated judgment and order dated 29.04.2014 passed by the Consumer Disputes Redressal Forum, Mehsana in Complaint Case No.109 of 2012 is modified as under.
- iii) Hereby as the complainant has gone through the operation thereby only on the ground of humanity Rs. 25,000/- with 7% interest from the date of the filing the complaint is to be awarded to the Respondent no.1 by the Appellant.
- iv) The office is hereby ordered to pay deposited amount with accrued interest on proper verification to the appellant by Account payee cheque and the cheque be handed over to the learned advocate for the appellant after obtaining receipt.
- v) Registry is directed to send copy of this judgment to the parties. Registry is directed to send a copy this judgment to the Consumer Disputes Redressal Forum, Mehsana through E-mail in PDF format for taking necessary action.

Pronounced in the open court on 28<sup>th</sup> October, 2021.

(M.J.Mehta)  
Judicial Member