

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
GURGAON-122001.**

Consumer Complaint No.585 of 2023

Date of Institution: 07.07.2023

Date of Decision: 18.12.2023

Rashmi Sisodia, Flat No.J-18, Sector-71, Andour Heights Society Gurgaon-122004.

.....Complainant

Versus

1. Dr. Vidur Jyoti, resident of B-Block Sushant Lok-1, opposite Huda City Centre, Metro Station, Gurgaon-122001.
2. Dr. Ayush Dhingra, resident of 414/4, Jacobpura, Gurgaon-122006.
3. Max Hospital Gurgaon, resident of opposite Huda City Centre Metro Station B- Block Sushant Lok-1, Gurgaon-122001.

..... Opposite parties

Complaint under Section 35 of Consumer Protection Act, 2019.

**BEFORE: SHRI SANJEEV JINDAL, PRESIDENT.
MS. JYOTI SIWACH, MEMBER.
MS. KHUSHWINDER KAUR, MEMBER.**

Present: Shri Prashant Khatana, Advocate for the complainant.
OPs No.1 to 3 proceeded against ex-parte VOD 31.08.2023.

ORDER KHUSHWINDER KAUR, MEMBER.

Heard on the complaint in question. The record placed on the present case file has been perused, carefully.

2. Shorn off unnecessary details, briefly stated, it is the case of the complainant that pursuant to the repetitive stomach pain suffered by her mother namely Saroj Kumari, age 72 years, on 05.07.2021, on the basis of ultrasound

test conducted by Dr. Bimal Gosain, a Homeopathy doctor in Sector 14, Gurugram on 06.07.2021, it was revealed that there were multiple stones in the gall bladder of the complainant's mother and that laparoscopy for removal of the gall bladder would have to be done. Thus, on the advice of Dr. Bimal Gosain, the complainant contacted Dr. Vidur Jyoti (the OP No.1), who was stated to be the good doctor in that field and shared the ultrasound report of her mother with her on WhatsApp. After seeing the said ultrasound report, on the advice of the OP No.1, the complainant got conducted some more tests on the person of her mother and got her mother admitted around noon in OP No.3-hospital i.e. MAX Hospital, Gurgaon on 09.07.2021 for the purpose of conducting the endoscopy and laparoscopic surgery of the liver on the assurance of OP No.1 that nothing bad would happen. The said operation had to be done by the OP No.1 but post operation, the complainant and her mother were shocked to know that instead of OP No.1, the subject surgery had been done by the OP No.2 namely Dr. Ayush Dhingra who was just a guest doctor in that hospital. When the complainant objected about it to the OP No.1, she was assured by the latter that there would be no complications regarding surgery as the OP No.2 was also a good doctor. Left with no other option, the complainant had to accept the fate. Thereafter, the hospital discharged the patient on 11.07.2021, with the advice of the OP No.1 to come again after a week (A true copy of the Discharge Summary report dated 11.07.2021 annexed as **Annexure C-4**).

Thus, after a week, the complainant and her mother consulted the OP No.1 on 16.07.2021 for follow up and after getting done some suggestive

tests, the OP No.1 told the complainant and her mother that everything was OK and that now they should come back for checkup after a month (A true copy of the report along- with prescription dated 16.07.2021 annexed as **Annexure-C-5**). On 26.08.2021, the complainant again contacted the OP No.1 after a month with the report dated 23.08.2021 and after comparing the tests report of the patient, the OP No.1 observed that the parameters were definitely better and stated that “no medicine was needed”.

During this period, the complainant and her mother were never told by the OP No.1 that something called as a Histopathology examination report dated 27.07.2021 was also to be collected which clearly showed that the patient was suffering from cancer. Thus, the OP No.1 and the OP No.2 as well as the OP No.3 hospital and its staff had grossly failed in performing their duties to administer a basic scientific standard of medical care. As a lay person, the complainant and her mother did not understand the medical technology and they only came to know about the relevance of Histopathology report dated 27.07.2021 when the patient got ultrasound report from outside diagnostic Centre doctor in Metro Diagnostic & Research Centre, Gurgaon due to her severe pain, as a result of which, the complainant’s mother had to be readmitted in AIIMS hospital on 30.03.2022, where the doctors enquired about the aforesaid Histopathology report of the patient. (a true copy of Histopathology report dated 27.07.2021 annexed as **Annexure C-6**). The diagnostic Centre doctor told the complainant that her mother was having a cancer, which left the complainant and her mother as shell-shocked. Thereafter, the complainant and her mother reached the OP No.3 hospital on 29.03.2022 but the OP No.1 did not entertain

them and communicated through her secretary that as the surgery had been done by the OP No.2, so, they should show the report to him only.

In a state of urgency, shock and grief, the complainant contacted the secretary of OP No.2 for meeting with the doctor in person, pursuant to which, the OP No.2 suggested some more PET CT scan and other tests on 29.03.2022 from House of Diagnostics Centre, Gurgaon. The prescribed tests were done and the reports and prescriptions of 28.03.2022 and 29.03.2022, initially showed Liver Metastasis and Carcinoma gallbladder metastases in PET CT scan (the true copies of the ultrasound reports dated 28.03.2022 and PET CT scan dated 29.03.2022 annexed as **Annexure C-8. Annexure C- 9(Colly)**). The complainant sent the aforesaid report to the OP No.1 and asked specifically whether her mother had cancer, and in response, the reply was 'YES'. The complainant again called the OP No.1 on 29.03.2022 and asked when they can meet in person in Max Hospital, but the OP No.1 completely abandoned them and told the complainant that "there was no point in treating your mother anymore as she was bound to die" coupled with the observations that "treating the mother of the complainant would be a waste of money".

Being helpless, the complainant again rushed to AIIMS, Badsa, Haryana and got her late mother admitted there on 30.03.2022, pursuant to which, the suggestive tests were got done there by the complainant. There, the complainant was asked by the AIIMS doctors that during the ERCP surgery, a Histopathology examination also would have been done and where were the results of that report. When the complainant showed ignorance about it, the

AIIMS doctor told the complainant to collect the said report from Max Hospital, Gurugram which the complainant was only able to get after a long-heated exchange of words. Even the tissue blocks/Gall Bladder as were demanded by AIIMS hospital for re-testing had been handed over to the complainant by the MAX Hospital when she threatened that if it was not done, she would call the police. Accordingly, the complainant shared the Histopathology report and the tissue blocks/Gall Bladder to AIIMS doctor who explained the said report to her and sent some parts of the tissue blocks for re-testing in AIIMS, Delhi (The Histopathology Report dated 07.04.2022 and 11.04.2022 annexed as **Annexure C-10(Colly)**).

To cut the long story short, the complainant was shocked to know that her mother had cancer way back on 27th July, 2021 itself but the OP No. 1 to OP No. 3 who ought to have examined the report and informed the complainant and her mother about the same, had failed to administer the basic scientific standard of medical care, resulting in reckless breach of their professional duty and gross negligent as an act of severe deficiency in service towards the patient, which ultimately, resulted in the death of the patient on 9th June 2022. There was every possibility that if the patient had been diagnosed in time about the cancer, she would have been alive, as proper treatment in that regard would have been given to the deceased patient on time. The complainant, thereafter, rushed to many hospitals in April seeking different opinions and all the said opinions specifically noted that there was a default on the part of the earlier doctors for more than 8 months i.e. to say the OPs No.1 to 3 (a true copy of the opinions/prescription annexed as **Annexure C-12)**. Subsequently, the

complainant also sent her complaint along-with all the documents to the Haryana Medical Council by speed post on 12.05.2023. A police complaint/FIR was also sought to be got registered by the complainant by sending her complaint along-with all the documents to the Commissioner of Police, Gurgaon on 24.05.2023 as well as the Chief Medical Officer, Gurgaon but to no avail (a true copy of speed post of all the complaints sent along-with tracking reports annexed as **Annexure C-14**). Hence, this complaint.

In the end, the complainant made the following prayers: -

- i. Hold the opposite parties guilty of deficiency of service and medical malpractice;
- ii. Recommend to the Medical Council that the license to practice medicine be cancelled forthwith;
- iii. Award a sum of Rs. 2,00,000/- to the complainant for the treatment of the deceased/complainant's mother to be paid by the OPs;
- iv. Award an amount of Rs. 20,00,000/- towards pain and suffering of the deceased to be paid by the OPs;
- v) Award a sum of Rs. 8,00,000/- towards the mental agony and suffering of the Complainant to be borne throughout her life to be paid by the Opposite Parties;
- vi. Award a sum of Rs. 20,00,000/- towards punitive and exemplary damages to be paid by the Opposite Parties.
- vii) Any other order or direction as deemed fit in the best interest of the complainant may also kindly be passed.

3. The OPs preferred to be proceeded against ex-parte on 31.08.2023 by not bothering/opting to appear in this Court till 2.20 P.M despite having been served, which was clear from the delivery confirmation report/tracking details.

4. On 06.10.2023, the complainant adduced her ex-parte evidence by way of tendering her own affidavit i.e. **Ex.CW1/A** along-with supporting documents **Ex.CW1/1 to Ex.CW1/14 (colly)**.

5. We have gone through the record on the file of this complaint carefully and have heard the ex-parte arguments.

6. As stated above, the complainant in her evidence has tendered her affidavit **Ex.CW1/A** and certain other documents i.e. **Ex.CW1/1 to Ex.CW1/14 (colly)**. In the aforesaid affidavit, the complainant has reiterated the averments made by her in her pleadings as narrated above, almost, on the similar lines, in the same fashion, and, hence, the contents of the affidavit in question are not being reproduced here-in-after in order to avoid the repetition. The documents i.e. **Ex.C-1 to Ex. C-6** submitted by the complainant, further confirm the aforesaid version of the complainant as the bare perusal of the aforesaid documents i.e. **Ex.CW1/1 to Ex.CW1/14 (colly)** which are the test reports, prescriptions, laboratory investigation reports, Histopathology Report and ultrasound reports placed on the record of this file by the complainant, clearly proves the case of the complainant without shadow of any doubt.

7. Since, the opposite parties in this case have been proceeded against ex-parte and there is no evidence on their behalf on the record of this file, so the evidence produced on the record of this file by the complainant go un rebutted, and, as such, this Commission does not find any reasons to disbelieve the same. Accordingly, the complaint of the complainant is accepted with costs.

8. Accordingly, the OPs are directed, jointly and severally, to pay the amount of Rs.2,00,000/- to the complainant for the treatment of her deceased mother which she had to incur/undergo for the treatment of her deceased mother before the OPs and various other hospitals/ Diagnostic Centers etc. including the AIIMS & others.

In the light of the peculiar facts and circumstances of the present case which are duly supported by the accurate, brief and concise evidence led by the complainant, this Commission also places it on the record of this file that the OPs in the present case just cannot escape their liability & guilt in respect of providing severe deficient services coupled with medical negligence to the subject patient, which, ultimately, resulted in the death of the subject deceased-patient namely Saroj Kumari i.e. mother of the complainant, on account of which, the complainant had to suffer a severe mental pain, suffering and agony etc. besides loss of love and affection.

While agreeing with the submissions made by the complainant that though the value of life of the person, being priceless and divine, cannot be measured in terms of money, but still, on account of the suffering of mental pain and agony as well as loss of natural love and affection to the complainant, which she had to undergo on account of the untimely death of her mother, the complainant is hereby held entitled to the compensation of Rs.10 lakh, which in the peculiar circumstances of the present case, cannot be held anything else except a meagre amount in view of the fact that the complainant had to undergo the trauma of loss of natural love and affection of her mother, which as stated above, cannot be compensated or measured in terms of money judging from any

angle by any stretch of imagination. The complainant is also hereby held entitled to the amount of Rs.55,000/- as litigation expenses. The remaining reliefs as have been claimed by the complainant are hereby declined being unnecessary, unwarranted and uncalled for. The opposite parties, jointly and severally, shall make the compliance of this order within 45 days from the date of receipt of the copy of this order failing which the additional penal interest @ 12% per annum shall also be paid by the OP to the complainant on the above awarded amount from the date of this order till realization.

9. If the order of this Commission is not complied with, then the complainants shall also be entitled to file the execution petition under Section 71(1) of the Consumer Protection Act, 2019 and in that eventuality, the OP may also be held liable for prosecution under Section 72 of the said act which envisages punishment with imprisonment for a term which shall not be less than one month, but which may extend to three years, or with fine, which shall not be less than Rs.25,000/-, but which may extend to Rs.1,00,000/-, or with both. The copy of the order be supplied to the parties free of cost as per the rules. The order be promptly uploaded on the website of this Commission. File be consigned to the record room, after due compliance.

Announced.
18.12.2023

(Jyoti Siwach)
Member

(Khushwinder Kaur)
Member

(Sanjeev Jindal)
President,
District Consumer Disputes
Redressal Commission,

Gurgaon