

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
TEHSIL COMPLEX, NEW COURT ROAD
MANSA (PUNJAB)

CC No. 201 of 2018

Date of Institution: 15.11.2018
Date of Decision: 11.12.2020
Date of Remand: 19.04.2021
Date of Decision: 30.11.2021

Subhash Chand S/o Om Parkash, resident of Aggarwal Street, Water Works
Road, Mansa, Tehsil and District Mansa.

.....Complainant

Versus

1. Civil Surgeon, Civil Hospital, Mansa, Water Works Road, Mansa, Tehsil
and District Mansa.
2. Director, Health & Family Welfare, Punjab, Chandigarh.
3. Chief Secretary, Punjab Govt., Health & Family Welfare Department,
Chandigarh.

.....Opposite Parties

Complaint under section 12 of
The Consumer Protection Act 1986

Counsel:

For Complainant : Rishu Singla, Advocate
For OP : Balwant Bhatia, Advocate

Quorum:

Sh. R. L. Mittal : President
Smt. Sharda Attri : Member

Sh. Suraj Goyal : Member

R. L. MITTAL, PRESIDENT

ORDER

1. This is a complaint filed by Subhash Chand (hereinafter referred to as complainant) against Civil Surgeon, Civil Hospital, Mansa, Director Health & Family Welfare and Chief Secretary, Health & Family Welfare Department, Punjab (hereinafter referred to as OP No.1, OP No.2 & OP No.3, respectively).
2. The above titled case was disposed of by the DCC, Mansa on 11.12.2020 and while partly allowing the complaint, the OPs were directed to pay a compensation of Rs.2,00,000/- to the complainant for mental and physical harassment which he suffered due to the deficiency in service of the OPs.

But, OPs filed First Appeal No.12 of 2021 against the order passed by the DCC, Mansa on 11.12.2020 and pleaded that the Final Order of 11.12.2020 was passed by the DCC, Mansa without affording opportunity of hearing at the time of arguments. Agreeing with the plea of OPs, the present complaint was remanded back by The Hon'ble State Commission Punjab with a direction to give an opportunity to the OPs to argue the case and to submit written arguments alongwith medical literatures and also to the complainant to file any medical literature and to decide the case afresh on merits. The Para No. 13 of the First Appeal No.12 of 2021 decided by the Hon'ble State Commission Punjab on 19.04.2021 is reproduced as below:

13. In view of the above referred authorities and our discussion, it is clear that appellants/OPs has been deprived of their valuable right to argue the case. No prejudice will be caused to the complainant, if ex-parte proceedings against the appellants/OPs are set-aside and OPs are allowed to join the proceedings with liberty to argue the case and to submit written arguments alongwith medical literatures and the complainant can be compensated by way of costs. Accordingly, we are of the view that the appellants/OPs be given an opportunity to argue the case subject to payment of cost of Rs.20,000/- and out of this amount, the appellants/OPs will deposit Rs.10,000/- in the Consumer Legal Aid Account of this Commission and the remaining amount of Rs.10,000/- will be paid to the respondent/complainant. It will not prejudice to the rights of the parties. So, without going into the merits of the case, we set aside the impugned order of the District Commission and remand the case back to the District Commission with a direction to give an opportunity to the OPs to argue the case and to submit written arguments alongwith medical literatures and also to the complainant to file any medical literature and to decide the case afresh on merits preferably within one month from the date as fixed by this Commission i.e. 25.05.2021.

3. As directed by the Hon'ble State Commission, the present complaint was listed again at its previous number of *CC No. 201 of 2018* for deciding it afresh on merits after giving an opportunity to the OPs to argue the case and to submit written arguments and medical literature.

Counsel of the OPs appeared on 28.07.2021 and instead of submitting the Written Arguments & Medical Literature, he tried to bring on record

some documents (i.e. Annexure 1 to 9) as additional evidence which were refused to be accepted. Hon'ble State Commission vide its order dated 19.04.2021 had given the opportunity of submitting the Written Arguments & Medical Literature only but the OPs, in defiance of the directions of the Hon'ble State Commission, were trying to exploit this opportunity to place on record those documentary evidences which should have been submitted by them at the time of filing of their Para-wise Reply to the complaint.

Record of the case perused. Apparently, OPs availed 4 opportunities to place on record their documentary evidences but on none of them they led the evidence. Firstly, the case was listed for OPs evidence on dated 05.02.2019, then on 12.03.2019, then on 07.05.2019 and lastly on 21.05.2019 but none appeared on behalf the OPs. Therefore on 21.05.2019 the OPs were proceeded exparte and the case continued to be adjourned for submitting the written arguments by the parties for approximately 1½ year until the passing of final order on dated 11.12.2020.

Now, the OPs could not be allowed to lead evidence by submitting fresh documents. There cannot be sweet will of a litigant to seek opportunity for leading evidence as and when he likes. Therefore, the documents (Annexure 1 to 6, 8 and 9) submitted by the OPs alongwith the written arguments of dated 28.07.2021 were denied to be placed on record and only the written arguments and Annexure-7 (i.e. the photocopy of Page No. 2019 of Haryson's Principles of Internal Medicine) were allowed & accepted to be the part of the record.

4. Brief Facts of the case : Facts of the case are that in November, 2015, complainant suffered from *Dengue* and he was got admitted in the Civil Hospital, Mansa on 2.12.2015 (A Govt. Hospital under the supervision &

control of OP No.1). He remained admitted there till 6.12.2015 with Admission No.14036 (Ex. C-1).

He paid Rs.120/- regarding admission fee vide Receipt No.1149 dated 2.12.2015 (Ex. C-2).

Complainant paid another amount of Rs.200/- vide receipt No.48 dated 2.12.2015 (Ex. C-3) and he paid Rs.90/- towards bed charges vide receipt No.1157 dated 6.12.2015.

It is submitted that the OP No.1 is working under the guidelines of OPs No.2&3.

5. It is pleaded that treatment of the complainant was done by Dr. Harmandeep Singh Chahal. During treatment, TLC/DTC of the complainant was reported 'decreased'. On the recommendation of Dr. Chahal, two blood units bearing No.4656 and 4666 from Blood Bank of Civil Hospital, Mansa were transplanted to the complainant on 2.12.2015. Complainant paid Rs.600/- towards blood units to OP No.1. Dr. Chahal discharged the complainant from the hospital on 6.12.2015.

6. It is further pleaded that after 3-4 months from the date of discharge from the hospital, complainant felt difficulties in his health. He again contacted Dr. Chahal and got admitted in the hospital for further treatment. Dr. Chahal recommended all the tests. During checking, Dr. Chahal found that complainant was suffering from *Hepatitis-C*. Hearing this, complainant and his family were shocked.

7. Complainant alleged that he tried to investigate the origin of the disease, and he found that during the earlier treatment on 02.12.2015, one blood unit which was transplanted to him by the hospital vide Unit No.4666 was Hepatitis-C positive. He submitted that staff of the hospital carelessly

and negligently transplanted the Hepatitis-C infected blood to him but upon noticing their mistake and with a fear of exposure, staff changed the unit No.4666 to Unit No.4661 in their internal documents. Complainant alleged that unit No.4661 was actually transplanted to one Radha Rani, a patient of Amrit Nursing Home on 16.12.2015. He submitted that one blood unit having the same unit number could not be transplanted to two different persons. Therefore, he alleged that OPs were playing with the health of the public.

8. Complainant further alleged that he is under regular treatment of Hepatitis-C which has no permanent cure. He submitted that he would have to take medicine till his last breath for recovering from this disease. This all happened due to the negligence of the OPs. He stated that till now, he has already spent more than Rs.10,00,000/- on his treatment, despite this, his condition is going down day by day.
9. Complainant further pleaded that he has moved several applications before the various officers for taking action against the OPs and for compensation, but no action has been taken against the OPs. He stated that Inquiries have been conducted and it is found that OPs were negligent in rendering services to the patients but nothing happened thereafter.
10. Complainant served a legal notice upon the OPs on dated 17.7.2018, but the OPs did not lend an ear towards the requests of the complainant. Aggrieved with his faulty treatment, Complainant filed the present complaint for a direction to the OPs to pay Rs. Rs.19,00,000/- as compensation for the expenses which he had to spend upon his treatment

for Hepatitis-C and for the harassment, physical & mental agony and sufferings which he suffered due to the negligence of the OPs.

11. Upon notice, OPs had appeared through their counsel and contested the complaint by filing written reply on 15.01.2019.

In joint reply, OPs raised legal objections that the complaint is not maintainable in the present form; that complainant is not a consumer of the OPs; that the complaint is barred by limitation; that the complaint is bad for non-joinder and Misjoinder of parties; that there is no deficiency in service of any kind on the part of the OPs and lastly that complainant has no locus standi or cause of action to file the present complaint. Hence complaint is liable to be dismissed with special costs of Rs.10,000/-.

On merits, OPs submitted that the complainant was admitted in the Civil Hospital, Mansa in the year 2015. He was given the best required treatment by the concerned doctors. Complainant was discharged after recovery from the disease. OPs are government and statutory body and requisite fees was received from the complainant as prescribed by the government. The OPs are not working for profit. It is further clarified that there is no mistake on the part of any employee of the OPs. It cannot be established from where and when the complainant got the disease of Hepatitis-C. The complainant can be a patient of Hepatitis-C earlier before admission in the Civil Hospital or after discharge from the hospital. The complainant is not entitled to any relief.

12. Thereafter, none appeared on behalf of OPs, and as such, as described in Para No. 3 of this order, OPs were proceeded against exparte on 21.5.2019.

13. In exparte evidence, learned counsel for the complainant has tendered self declaration of the complainant (Ex.C-33) alongwith documents Ex.C-1 to C-32 and closed the evidence.

14. Written Arguments & Medical Literature submitted by the parties have also been taken on record as per the directions of the Hon'ble State Commission.

15. We have heard the Learned Counsels for the parties and gone through the oral and documentary evidence with their kind assistance. The observations of this Commission on the various issues involved in the present case are as below.

16. The first thing to be determined is whether the HCV (i.e. Hepatitis C Virus) infected blood was carelessly & negligently transfused to the complainant?

Perusal of the record shows that the complainant was suffering from "Dengue" and he was admitted in the Civil Hospital Mansa on dated 02.12.2015. Complainant remained admitted in the above said hospital till 06.12.2015 with Admission No. 14036 (Ex. C-1). As per the complainant, during treatment, his TLC/DTC had decreased and therefore, on the recommendation of his operating doctor, two blood units bearing No. 4656 and 4666 were got arranged from the Blood Bank of Civil Hospital, Mansa and transfused to him on 02.12.2015.

Complainant has stated that one of the two blood units which were transfused to him on 02.12.2015 vide unit No. 4666 was HCV positive and the concerned hospital staff had carelessly & negligently transfused that HCV+ blood unit to him because of which he is now suffering with the incurable disease of Hepatitis-C.

Per contra, the OPs stated that the complainant was not transfused any blood unit bearing No. 4666, rather he was given the blood units bearing label No. 4656 and 4661 and there was no infection of any kind in these issued blood units.

File perused, Complainant has produced on record the hospital's internal documents pertaining to his treatment, obtained by him from the OPs under the RTI Act.

Ex. C-9 of these documents is the "Ward Intake/Output Chart".

This document is showing the health condition & treatment given to the complainant on 02.12.2015. In this document, the label numbers of the blood units which were transfused to the complainant on 02.12.2015 by the staff of the hospital are specifically mentioned and from this document (Ex. C-9) it is completely clear that on dated 02.12.2015, blood vide label No. 4656 and 4666 was transfused to the complainant.

Hence, the statement of the OPs that the blood bearing label No. 4666 was not transfused to the complainant is a completely false statement.

17. Complainant has stated that he was discharged from the hospital on 06.12.2015 and after 3-4 months from discharge he again felt difficulties in his health and upon diagnosis he was found to be HCV positive (Ex. C-13).

Aggrieved with the negligent & careless treatment of the OPs, the complainant had written complaint letters to CM Punjab, Health Minister Punjab, Health Secretary Punjab, DC Mansa etc. and requested them to take strict action against the guilty staff/officials of the concerned hospital (Ex. C-18, C-17, C-19).

Newspaper agencies also reported this incident of Blood Scam and transfusing virus infected blood to the patients (Ex. C-16).

On the basis of above complaints & newspaper reports, The Deputy Commissioner, Mansa got an investigation done under the supervision of Asst. Commissioner (Public Grievances) Mansa against the alleged delinquent staff & officials of the concerned hospital and the Asst. Commissioner in his investigation report (Ex.C-24, Page-7) recorded that the complainant was transfused 2 blood units vide Label No. 4656 & 4666 and Blood Unit No. 4666 was HCV+ which caused the disease of Hepatitis-C (“Kala Pelia” in local dialect) to the complainant.

The finding recorded by the Asst. Commissioner under Para No.2 of his investigation report is reproduced as below:

The allegation of causing the disease of “Kala Pelia” to Sh. Subhash Chand S/o Om Prakash R/o Mansa due to the Blood Bag No. 4666 [which was HCV(+)] stands proved against the concerned employees of the Blood Bank. Upon checking the record, it is found that it was written in the Indoor File Record of Sh. Subhash Chand that PRP No. 4656, 4666 were issued to him. In the Blood Issue Register, 4666 was changed to 4661 by cutting & overwriting which shows wrong intention on the part of the concerned staff. It was submitted by the employees of Blood Bank that Blood Unit No. 4666 was discarded on 03.12.2015 because it was HCV(+) and Sh. Subhash Chand was given the blood bags bearing No. 4656 & 4661.

It is important to mention here that three components (i.e. Red Blood Cells, Plasma & Platelets) are prepared from one blood sample. On 02.12.2015, Platelets from Blood Unit No. 4666 were given to Sh. Subhash Chand after performing the Rapid Test. But, on dated 03.12.2015, when the remaining components of Blood Unit No. 4666 were tested by performing

Elisa Test then they were found HCV(+) and the same were discarded from the hospital and entry was made in the register. Upon checking the Indoor File of the patient, it is found that it bears Labels 4656 & 4661. These labels are put on the blood bags at the time of issuing of blood to the patients and after transfusing the blood to the patients, these labels are pasted in the file of the patient for the purpose of record.

Other Indoor Files were also checked during the investigation and it was found that these labels were mostly torn but the label of 4661 seemed to be completely new which showed that the label 4661 was pasted after removing the label of 4666. Therefore, the allegations against Sh. Vijay Kumar (MLT) Blood Bank, Civil Hospital Mansa (who was on duty at that time) stands proved and Pathologist Smt. Kanwalpreet Kaur Brar, being incharge of Blood Bank Mansa was also equally negligent. Further, it is also a serious matter to temper the record to cover up the error. It could not be ascertained by whom the records were tempered....

Hence, from the above observation, it stands proved that the blood transfused on 02.12.2015 to the complainant was HCV(+). Further, the investigation report of Asst. Commissioner shows that the blood was not tested properly before transfusing to the complainant as the necessary Elisa Test which is performed to check the Hepatitis-C Virus infections in the blood was performed on 03.12.201 i.e. after the date of transfusion to the complainant. As such, it can be safely held that OPs have rendered deficient professional services. It was negligence *per se*, a complete failure of duty of care & caution which caused an incurable disease to the complainant.

18.OPs have argued that complainant is not a consumer under the CPA. This argument is devoid of any merit. Complainant had purchased the 2 blood bags from the Blood Bank of Civil Hospital Mansa on payment of Rs. 600/- . Since, OPs received the consideration amount, the complainant is a consumer under the ibid Act.

19.OPs have argued that the complainant might already be a patient of Hepatitis before admission in the Civil Hospital or might have got infected with it from some other source after the discharge from the hospital.

As far as the previous history of the complainant is concerned, the staff of the hospital while examining the complainant on 02.12.2015 (Ex. C-5) had not reported/diagnosed any earlier history of hepatitis with respect to the complainant or his family members. And as far as the question of getting infected from some other source after discharge from the hospital is concerned, then it was upon the OPs to substantiate it by placing on record some cogent evidence, which they haven't. Hence, this objection is also unacceptable.

20.OPs have argued that when infected blood is transfused, infection occurs within 1 or 2 days to a normal person, but the complainant himself has pleaded that after 3-4 months from the date of discharge, he suffered health problems. OPs submitted that from the statement of the complainant, it is clear that he was infected from some other source.

In order to know that within how many days the symptoms of Hepatitis-C may develop after getting infected with Hepatitis-C Virus, a study of some medical journals was required to be made. Opinion of some leading institutions in this regard is as below:

World Health Organization

<https://www.who.int/news-room/fact-sheets/detail/hepatitis-c>

There is currently no effective vaccine against hepatitis C.

The incubation period for hepatitis C ranges from 2 weeks to 6 months. Following initial infection, approximately 80% of people do not exhibit any symptoms. Those who are acutely symptomatic may exhibit fever, fatigue, decreased appetite, nausea, vomiting, abdominal pain, dark urine, pale faeces, joint pain and jaundice (yellowing of skin and the whites of the eyes).

Director General of Health Services, Ministry of Health & Family Welfare, Govt. of India

https://ncdc.gov.in/linkimages/guideline_hep20158117187417.pdf

Page -15, Acute hepatitis C virus infection

By convention, acute hepatitis C virus (HCV) infection refers to the presence of clinical signs or symptoms of hepatitis within six months of presumed HCV exposure. Acute hepatitis typically develops 2 to 24 weeks after exposure to hepatitis C virus, with a mean onset of 7 to 8 weeks. More than two-thirds of patients with acute HCV are asymptomatic during the acute episode. In patients who experience symptoms, the acute illness usually lasts for 2 to 12 weeks. Symptoms may include jaundice, nausea, dark urine, and right upper quadrant pain.....

Above reports of WHO and DG, Health Services, India clearly show that Hepatitis-C is a kind of asymptomatic disease, the symptoms of which may occur from 2 weeks to 6 months. Hence, the objection of the OPs

that when infected blood is transfused, infection usually occurs within 1 or 2 days is also an out of place objection.

21.OPs have submitted that the present complaint is time barred. Perusal of record reveals that the complainant was discharged from the hospital on 06.12.2015. After 3-4 months from the date of discharge, complainant started suffering with the symptoms of Hepatitis-C. On 08.08.2016 (Ex. C-18, 17), complainant wrote complaint letters to the concerned departmental officials of the OPs viz. Health Minister Punjab, Secy./Director Health Deptt. Punjab, DC Mansa etc. and requested them to probe the incident and take appropriate action against the OPs. On the basis of those complaint letters, DC Mansa ordered an inquiry under the supervision of Asst. Commissioner Mansa to investigate the role of the hospital staff in the alleged incident.

The Investigating officer-cum-Asst. Commissioner Mansa summoned the complainant and recorded his statements on 06.09.2016.

On 22.09.2016, Asst. Commissioner concluded the investigation and submitted his final report directly to the DC Mansa and on 02.12.2016 DC Mansa forwarded this report to the Secretary, Health Department, Punjab for further action.

On 17.07.2017, complainant wrote letter to the Health Department, Punjab and inquired about the outcomes of the investigation and on 07.11.2017, the Superintendent (Sh. Manohar Lal), Health & Family Welfare Deptt. Punjab informed to the complainant that on the basis of investigation report of 02.12.2016, charge sheets have been issued to Smt. Kanwalpreet Kaur and Vijay Kumar.

This was the last official communication made to the complainant.

Thereafter, aggrieved with the inaction of the concerned higher officials of the OPs to redress his grievance, complainant on 15.11.2018 filed the

present complaint before this Commission. Complainant was reported about the result of the investigation on 07.11.2017 and from this date the limitation of 2 years was upto 07.11.2019 but the complaint was filed on 15.11.2018. So, it is well within limitation.

Argument that the complainant, instead of complaining to the concerned higher officials of the OPs, should have directly approached this Commission does not sound well. Complaint would have been premature if the complainant would have directly knocked the doors of this forum without firstly giving an opportunity to the OPs to redress his grievance. Complainant adopted right course of action. Hence, the present complaint cannot be stamped as time barred.

22. Other arguments/objections raised by the OPs also do not have any substantive force so as to tilt the preponderance of probabilities in their favour. Nothing of any substantive evidentiary value has been produced on record in support of them, therefore those objections are rejected.

23. In view of the observations made above, it stands proved that the complainant was transfused HCV positive blood which caused Hepatitis-C disease to him. As per the Medical Science, there is no effective vaccine for this disease. Only constant and quality treatment can reduce the viral load to undetectable levels which is considered as cured. For the wrong doings of the staff of OPs, now the complainant would have to suffer with this lifelong disease which may require heavy medication and expensive treatment. Therefore, the complainant is surely entitled for an adequate compensation.

24. On 11.12.2020, the present complaint was partly allowed and the OPs were directed to pay compensation of Rs.2,00,000/- to the complainant.

Considering the negligence of the OPs which caused irreparable loss to the complainant, this compensation seems to be inadequate. Therefore, the order passed by this forum on 11.12.2020 is modified and the OPs are directed to pay compensation of Rs.5,00,000/- to the complainant. Compliance of the order be made by the OPs jointly & severally within 45 days from the date of receipt of certified copy of this order.

25.Applications pending, if any, stand disposed of in terms of the aforesaid judgement.

26.The complaint could not be decided within the directed period of 1 month due to the unavailability of quorum and heavy pendency of other cases.

27.Copy of the order be sent to the parties concerned free of cost and files be consigned to the record room.

**R.L.MITTAL
PRESIDENT**

**SHARDA ATTRI
MEMBER**

**SURAJ GOYAL
MEMBER**

**PRONOUNCED :
30TH DAY OF NOVEMBER, 2021**