

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION HOWRAH**  
**20, Round Tank Lane, P.O. and P.S. Howrah, Dist. Howrah-711 101.**  
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**Complaint Case No. CC/13/29**  
**( Date of Filing : 01 Feb 2013 )**

1. SRI NIRAPADA MAITI

W/o. Late Nirapada Maity, of 9/1, Paran Chandra Das Lane,  
 Howrah 711101.

2. Smt. Srila Maiti

D/o. Late Nirapada Maity, of 9/1, Paran Chandra Das Lane,  
 Howrah 711101.

.....Complainant(s)

Versus

1. Dr. Dinesh Patel

c/o. Ashoka Polyclinic and Nursing Home Pvt. Ltd., 30/1/1,  
 Moti Ghosh Lane, P.S. District Howrah, PIN 711101

2. Ashoka Polyclinic & Nursing Home Pvt. Ltd

20/1/1, Moti Ghosh Lane, P.S. Howrah, , PIN 711101, WB

.....Opp.Party(s)

**BEFORE:**

**HON'BLE MR. Debasish Bandyopadhyay PRESIDENT**

**HON'BLE MR. Dhiraj Kumar Dey MEMBER**

**HON'BLE MRS. Minakshi Chakraborty MEMBER**

**PRESENT:**

**Dated : 22 Apr 2024**

**Final Order / Judgement**

***Presented by: -***

***Shri Debasish Bandyopadhyay, President.***

**Complaint Case No. 29/2013**

*This instant case has been initiated by the complainant u/s 12 of the Consumer Protection Act, 1986 where complainant has prayed for medical reimbursement in respect of his claim of Rs. 8,00,000/- for the medical expenses borne by the complainant and also prayed for passing an order of compensation to the tune of Rs. 4,00,000/- for mental agony and pain and also for passing an award of Rs. 10,000/- in respect of litigation costs.*

**Fact of this case**

**Case of the complainant** – *The case of the complainant which is deciphered from the petition of complaint in bird's eye view is that on 11.02.2011 the complainant had fallen on the road from his cycle and he was feeling severe pain and so the complainant consulted to Doctors who suggested that his hip-bone was seriously damaged and needed immediate operation. As a result of which the complainant rushed to the Nursing Home of OP No. 2 on 14.02.2011 where the OP No. 1 Dr. Dinesh Patel conducted the operation on his right hip-bone on 16.02.2011 and cemented Thompson on the injured hip and thereafter the complainant was discharged*

from the Nursing Home but subsequently he started feeling severe pain at the operated portion and 'puss' was oozing out from the 'stitch' and he found one piece of 'gauge' remained inside the operated portion and that was the reason for his severe pain and infection. As per case of the complainant thereafter the 'gauge' was removed by the person who was conducting dressing work and the complainant again visited the OP No. 1 Doctor and X-ray was done and OP No. 1 Doctor advised the complainant to visit Nursing Home but the pain of the complainant did not subside in spite of taking medicine. It is submitted by the complainant side that thereafter the complainant consulted Dr. Nirmalya Thakur on 30.11.2011 and Dr. Indrajit Sardar on 04.11.2012 and they suggested for further operation in two stages. It is also the case of the complainant side that the complainant consulted Dr. Sujay Kundu on 24.11.2011 for 3<sup>rd</sup> opinion who supported the medical opinion passed by Dr. Indrajit Sardar. It is alleged that thereafter the complainant went to Christian Medical College, Vellore on 27.12.2011 where he was medically checked up by Dr. Anil Thomas who suggested for conducting operation in two stages and for such operation he was required to stay at Vellore for 6 (six) months but due to financial stringency the complainant was not prepared to stay there and so he came back to Kolkata. It has been pointed out by the complainant side that thereafter he consulted Dr. Arindam Ganguly who did his first operation on 18.01.2012 and discharged him on 24.01.2012 after removal of 'prosthesis and debriment' which was implanted by OP No. 1 Doctor at the time of first operation and thereafter Dr. Arindam Ganguly conducted the 2<sup>nd</sup> operation on 07.05.2012 and the complainant was discharged on 09.05.2012 and at present the complainant can walk with the help of elbow crutches. It is further alleged that for gross negligence on the part of the OP No. 1 Doctor the complainant had to move from place to place for medical treatment and in this process he has incurred huge expenses to the tune of Rs. 4,00,000/- and OP No. 1 Doctor had taken Rs. 76,000/- from conducting operation at OP No. 2 Nursing Home. For all these reasons the complainant has instituted this complaint case which has been described in the prayer of the complaint petition.

### **Defense case**

The OP No. 1 has contested this case by filing W/V and the case which is adopted by OP No. 1 in a nutshell is that the allegations raised by the complainant in the complaint petition are all false, frivolous and baseless and as per case of the OP No. 1 Doctor he never committed any medical negligence in conducting the operation of the complainant.

It is pointed out that the complainant consulted him on 12.02.2011 for injury sustained on his right hip-bone on 10.02.2011 and the OP No. 1 Doctor advised surgery for the same and the OP No.1 Doctor performed the said surgery at the OP No. 2 Nursing Home on 16.02.2011 and thereafter the complainant was discharged from the said Nursing Home on 21.02.2011 in a stable condition with advice to follow up after 4 (four) weeks or 'SOS' and dressing regularly. It is submitted that the complainant was re-examined by the OP No. 1 on 16.03.2011 and it is also stated that the complainant had cellulites in the operated area for which the complainant was advised dressing and for taking antibiotics. It is alleged that the complainant was never under his treatment till 02.10.2011 and there was no evidence that 'gauge' was left inside the operated area. It has further been alleged that the claim of Rs. 8,00,000/- as compensation by the complainant is absurd and baseless. For all these reasons the OP No. 1 has prayed before this District Commission for dismissing this case with heavy cost.

*The OP No. 2 after receiving notice appeared in this case and has also contested this case by filing W/V where the OP No. 2 has practically denied all the material allegations leveled against the OPs by the complainant in his complaint petition. As per W/V of OP No. 2 (Nursing Home Authority) has supported the W/V of OP No. 1 stating that there was no laches and negligence or deficiency of service on the part of the OP No. 2 Nursing Home Authority and on the part of the OP No. 1 Doctor. For all these reasons the OP No. 2 has also prayed before this District Commission for dismissing this case with heavy cost.*

### **Points of consideration**

*On the basis of the pleadings of parties highlighted by the complainant and OPs, this District Commission for the interest of arriving at just and proper decision and also for proper and complete adjudication of this case, is going to frame the following points of consideration :-*

- i. Is this case maintainable in its present form and in the eye of law?*
- ii. Has the District Forum / Commission any jurisdiction (territorial and pecuniary) to try this case or not?*
- iii. Is the complainant a consumer under the OPs or not?*
- iv. Whether the complainant has cause of action in the matter of institution of this complaint case against the OPs or not?*
- v. Whether the OP Nos. 1 & 2 are guilty of medical negligence, deficiency of service and for adopting unfair trade or not?*
- vi. Whether the complainant is entitled to get any other relief as prayed for ?*

### **Evidence on record**

*In order to prove this case the complainant has filed his evidence on affidavit and the against the said evidence on affidavit the OPs have submitted interrogatories and the complainant side has also given reply against the said interrogatories. On the other hand in order to disprove the case of the complainant side the OPs have also produced their evidence on affidavit and against such evidence on affidavit the complainant has filed interrogatories and thereafter the OPs have given reply of such interrogatories.*

*In addition to that both sides have filed their documents (Xerox copies) for perusal and examination by this District Commission.*

### **Argument highlighted by Ld. Advocates of both sides**

*At this stage of argument the complainant side and OPs have filed their Brief Notes of Argument and in addition to that Ld. Advocates of both sides also have highlighted their verbal argument.*

### **Decision with reason**

*The first 4 points of consideration are related with the questions of maintainability of this complaint case, jurisdiction issue and the question whether the complainant is a consumer in the eye of law or not and whether the complainant has any cause of action for filing this case or not? These 4 (four) points of consideration are clubbed together and taken up for discussion jointly as because the issues involved in these points of consideration are connected with one another.*

*For the purpose of arriving at just and proper decision in connection with above 4 (four) points of consideration, this District Commission after going through the material of this case record finds that the complainant is a resident of this District and the OPs have also been running their business within this District and so it is crystal clear that this District Commission has territorial jurisdiction to try this complaint case. At the same time it is also important to note that the claim of the complainant is far below than that of Rs. 20,00,000/- and this matter is clearly indicating that this District Commission has also pecuniary jurisdiction to try this case. In connection with the point of maintainability this District Commission after going through the evidence on record finds that the complainant was medically treated by the OP No. 1 Doctor due to injury on right hip-bone and the OP No. 1 also conducted the operation of complainant at the OP No. 2 Nursing Home by taking Rs. 76,000/- from the complainant. This matter is clearly reflecting that the complainant is a consumer under the OPs and this case is also maintainable. Over the issue of cause of action this District Commission after making scrutiny of the material of this case record finds that the complainant had to suffer severe pain at the affected area of right hip-bone even after conducting operation by the OP No.1 Doctor at the OP No. 2 Nursing Home and thereafter the complainant had to take medical advice of Dr. Nirmalya Thakur, Dr. Indrajit Sardar, Dr. Sujoy Kundu as the pain of the complainant at his affected area of right hip-bone did not subside. It is revealed from the case record that the complainant was finally operated by Dr. Arindam Ganguly on 18.01.2012 and thereafter on 07.05.2012 and finally the complainant was discharged from the hospital on 09.05.2012 and this case has been filed on 01.02.2013. This matter is clearly reflecting that the complainant has filed this complaint petition within time and there is no delay on the part of the complainant in the matter of institution of this complaint case. All these factors are clearly reflecting that the complainant has cause of action for filing this case.*

*A cumulated consideration of the above noted discussion goes to show that the case of the complainant is maintainable in the eye of law, this District Commission / Forum has territorial and pecuniary jurisdiction to try this case and the complainant is a consumer under the OPs and the complainant has just and proper cause of action for institution of this complaint case. So, all the above noted 4 (four) points of consideration are decided in favour of the complainant.*

*The point of consideration No. 5 is related with the question whether the OP Nos. 1 & 2 are guilty of medical negligence or not and the point of consideration No. 6 is related with the question whether the complainant is entitled to get any relief as prayed for in this complaint case or not?*

*For the purpose of deciding these 2 (two) points of consideration this District Commission is of the view that there is necessity of scanning of the evidence on record and also for making of documents filed by both sides. After going through the material of this case record it appears that subsequent bewilderment of the complainant in rushing to the chambers of 4 to 5 Doctors. After 02.10.2011 is clearly depicting that the operation done by OP No. 1 at the OP No. 2 Nursing Home was not successful and OP No. 1 Dr. was definitely negligent in conducting the operation. In this regard, it is very important to note that the complainant went to the OP No. 2 on 14.02.2011 and OP No. 1 Doctor conducted operation on 16.02.2011 and after operation the OP No. 1 Doctor re-examined the complainant and x-ray was done but the pain of the complainant did not subside in spite of taking medicine as per advise of OP No. 1 Doctor. As a result of which the complainant consulted with Dr. Nirmalya Thakur on 30.11.2011 and*

*with Dr. Indrajit Sardar on 04.11.2012 and with Dr. Sujoy Kundu on 24.11.2011, all suggested the complainant to undergo further operation in 2 (two) stages.*

*It is also revealed from the evidence on record that complainant thereafter went to Christian Medical College, Vellore and complainant was medically checked up by Dr. Anil Thomas who suggested operation in 2(two) stages. It is also reflected from the evidence on record that thereafter the complainant was under the treatment of Dr. Arindam Ganguly of West Bank Hospital and he conducted operation of the complainant on 24.01.2012 at the first stage and thereafter the complainant was again operated on 07.05.2012. All these factors are clearly reflecting that if the complainant was cured under the treatment of OP No. 1 Doctor, there is no necessity of complainant to take the help of other Doctors and to undergo further operation under Dr. Arindam Ganguly of West Bank Hospital. If this District Commission brush aside the complaint for removing of the gauge from the affected area, the negligent activity on the part of the OP No. 1 cannot be ignored. In this regard, the OPs time and again highlighted the argument in this case. The complainant has not prayed for expert opinion and there is no expert opinion in this case. But in this regard it is very important to note that the complainant as a patient remained under the treatment of OP No. 1 for several months but he did not receive any healing of pain at his operated area although he took medicine as per advice of OP No. 1 Doctor systematically and the complainant did not achieve any relief under the treatment of OP No. 1. In this regard, this District Commission should not be out of mind that if it was on 2 (two) stage operations, why the OP No. 1 failed to suggest the complainant of such double operation and here lies the ingredient of medical negligence as the OP No. 1 who poses to be an expert to the stream of orthopedics.*

*Thus it is crystal clear that the complainant failure to bring expert evidence in this case is not at all fatal in the matter of proving his case.*

*But fact remains that the evidence on record goes to show that there is no negligence or deficiency of service on the part of the OP No. 2 Nursing Home Authority. Moreover, the complainant has also not highlighted serious allegation or claim against the OP No. 2 Nursing Home Authority.*

*Therefore, this District Commission is of the view that it is fit case where the prayer of the complainant is to be allowed as the medical negligence on the part of OP No. 1 has been established from the evidence on record.*

*In the result, it is accordingly,*

### **ORDERED**

*That this Complaint Case being No. 29/2013 be and the same is allowed on contest with costs against OP No. 1 but in part and it is dismissed against OP No. 2.*

*It is held that OP No. 1 Dr. Dinesh Patel is to be directed to pay a sum of Rs. 4,76,000/- to the complainant for committing medical negligence and for reimbursement of the total medical expenses incurred by complainant since 16.02.2011. The OP No. 1 is also directed to pay the sum of Rs. 40,000/- as cost of journey of the complainant from Kolkata to Vellore and for medical consultation at the Christian Medical College, Vellore. The OP No. 1 is also directed to pay compensation of Rs. 2,50,000/- for causing mental pain, agony and prolonged*

*harassment to the complainant who is a senior citizen. It is also held that the OP No. 1 shall further pay a sum of Rs. 10,000/- to the complainant as litigation cost.*

*So, OP No. 1 is directed to pay the total amount of Rs. 7,76,000/- alongwith interest @ 9% per annum from the date of filing of this case till realization of the said amount.*

*In the event of failure of the OP No.1 to carry out the above noted direction of this District Commission, complainant is given liberty to execute this award as per law.*

*The parties of this case are entitled to get a free copy of this judgment as early as possible.*

*Let this final order be uploaded in the official website of this District Commission.*

*Dictated & corrected by me*

*President*

**[HON'BLE MR. Debasish Bandyopadhyay]  
PRESIDENT**

**[HON'BLE MR. Dhiraj Kumar Dey]  
MEMBER**

**[HON'BLE MRS. Minakshi Chakraborty]  
MEMBER**