

Date of Filing : 30.06.2021

Date of Order : 03.02.2023

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-III,
HYDERABAD.**

Present

SRI M. RAM GOPAL REDDY, PRESIDENT
SMT. D.SREEDEVI, MEMBER
SMT. J.SHYAMALA, MEMBER

Friday, the 03rd Day of February' 2023

C.C.No. 346 of 2021

Between:

Mohd. Furrug Jahangir, S/o. M. Jahangir,
Age: 61 years, Occ; Academician,
R/o. H.No. 2-2-43, Rahat Nagar,
Amberpet, Hyderabad – 500 013.

Address for Correspondence

Huda High School,
15-89, Wadi-e-Huda,
Pahadi Sharif Main Road,
Hyderabad – 500005.

.....Complainant

And:

Represented by the Public Relations Officer,
Kamineni Hospitals Pvt. Ltd.,
Inner Ring Road, Suryodaya Colony,
Bahadurguda, L.B.Nagar,
Hyderabad – 500 068.

.....Opposite Party

Counsel for the Complainant : Party-in-Person.

Counsel for the Opposite Party : Sri Srinivasa Rao Pachwa, Advocate.

ORDER:

(PER SMT. D.SREEDEVI, MEMBER, ON BEHALF OF THE BENCH)

1. The Complainant filed this complaint under section 35 of the Consumer Protection Act, 2019, seeking a direction to the opposite party for a sum of Rs. 1,000/- towards, refund Rs. 15,000/- towards cost of the case and Rs. 2 lakhs towards causing negligence and adding mental agony to it. And to pass such other order as this Hon'ble District Consumer Commission may deem fit.

2. The case of the complainant that, his Cardiologist advised he to take a 48 hours Holter Monitor Test so he duly approached Kamineni Hospital (the opposite party) at above address and paid through bank Rs. 4,000/- towards the cost of the aforesaid Test. The opposite party issued him a receipt for the same vide reference 202106211328P dated 21.06.2021. The monitor was fixed on the same date by a trainee and not by a professional thereby jeopardizing his health Due to the deficiency in service two electrodes came off during sleep so he was compelled to visit. The opposite party on 22/6/2021 itself. Again this time the same trainee was assigned to his who pulled out his plaster inhumanity causing peeling off of his skin at 3 places. The opposite party did not even have basic pair of scissors to properly remove the plaster.

The opposite party re-fixed the Holter Monitor on his and reset it for 48 hours. This time to avoid repeat of peeling off of his skin, he purchased gauze bandage from my pocket and secured the Holter attachments viz. the electrodes with it. Subsequently towards the end of the 48 hours he went to the opposite party for removal of his Holter and for Test Report. The opposite party issued to his the Report dated 24.06.2021 however this Report, in addition to the deficiency of service, has several other deficiencies in it, for example (i) it does not specify the Test name (ii) it does not give the designation of the person signing the report (iii) it is only for 37 hours against payment of 48 hours etc. The opposite party through WhatsApp and asked for partial refund of merely Rs. 1,000/- towards short service. The opposite party replied but did not comply with his most reasonable request of partial refund of Rs. 1,000/- only.

3. The opposite party his filed written version, that the complainant was advised by the outside Cardiologist for diagnostic test of "Holter Monitor Test" for which the complainant approached the opposite party of the hospital and he paid Rs. 4,000/- towards the charges of the test. A Holter Monitor is a small, wearable device that keeps track of your heart rhythm. The patient may need to wear the device for one to two days. During the time, the device records the heartbeats of the patient. The doctor uses information captured on the Holter Monitor to figure out if patient have a heart rhythm problem. The complainant was counselled about the care to be taken while wearing the instrument in his day to day activities and while sleeping. The complainant acted negligently and failed to take proper precaution and care in his day to day activities and while sleeping also. Due to his rash and negligent handling of the device by the complainant while sleeping, the electrodes came off the body. There is no negligence on the part of the opposite party and they are not liable for any

compensation as prayed for. The complainant was treated with standard procedures and protocols. The complainant is making false allegations with a mala fide intention to disrepute the opposite parties and in order to extract the amounts from the opposite parties and same is evident from exorbitant amounts claimed by the complaints without any basis. The complainant is not entitled to any amounts as compensation. The complaint is frivolous and false and are invented for the purpose of the case. The complainant cannot unjustly enrich at the expense of the opposite party by claiming unjust and exorbitant compensation. The complainant has approached opposite party for Holter Monitor Test basing on the prescription given by outside cardiologist. The complainant was treated with standard procedures and protocols. The complainant is making false allegations with a mala fide intention to disrepute the opposite parties and in order to extract the amount from the opposite parties and same is evident from exorbitant amounts claimed by the complaints without any basis. The complainant cannot unjustly enrich at the expenses of the opposite parties by claiming unjust and exorbitant compensation.

The monitor was not fixed by professional thereby jeopardizing health. The instrument was properly fixed by the trained. It is also incorrect to state that, due to deficiency in service to electrodes came up during sleep. But, ignoring the precautions and instructions the complainant appears to be behaved negligently to his day to day life and in sleep also, resulting the electrodes were detached from the body. This is happened purely with gross negligence and non-following of the instructions by the complainant. It is also incorrect to state that the trainee pulled out the plaster causing peeling of his skin at three places and it also incorrect to state that the opposite party did not have pair of scissors to remove the plaster. The complainant throwing the blame on to the opposite party for his negligence in handling the instrument. The complainant purchased gauze bandage from his pocket. It is also incorrect to state that the report dated 24.06.2021 has several deficiencies. The complainant got 36 hours report which is reasonable to detect any issues in Heart Rhythm. The complainant is claiming exorbitant amounts under the guise of alleged negligence without giving any basis and the opposite party has conducted the test by following standard protocols, the question of payment of compensation does not arise, as such, the opposite party is not liable to pay any amounts as prayed for. It appears that the complainant invented false and frivolous allegations with mala fide intention for monetary gains. The complainant is acting under wrong advice and ill-informed about the medical aspects. The complainant is making serious allegations baselessly without an iota of truth. The complaint is misconceived and not maintainable. There is neither negligence nor deficiency of service on the part of the opposite party in treating the patient; as such the opposite parties are not liable to pay any amounts. The complaint is false and vexation, therefore liable to be dismissed.

4. The points for consideration are:-

- (i) Whether there is any deficiency of service and unfair trade practice on the part of the opposite party?
- (ii) Whether the complainant is entitled for the relief sought for?
- (iii) To what relief?

5. During the course of trial, the complainant got himself examined as PW1 and got marked Ex.A1 to Ex.A7. Sri. Dr. K. Anjaiahn, Medical Superintendent and Authorized Signatory, of opposite party is examined as DW1 and not marked Exhibits. Complainant filed his Written Arguments. Opposite party has not filed their Written Arguments. Heard.

6. Point No.1 & 2:-

There is no dispute that the complainant was advised by his Cardiologist for diagnostic test of "Hotler Monitor Test" for which the complainant approached the opposite party Hospital and he paid Rs.4,000/- (Rupees four thousand only) towards the charges of the test. Ex.A1 i.e. Receipt, clearly shows the payment details dated 21.06.2021 ad vide bill No.202106211328P. The contention of the complainant is that the Holter Monitor was fixed on the same date, but not by professional, due to the deficiency in service, two electrodes came off during sleep, so he was compelled to visit the hospital of opposite party next day, not completing the testing time i.e. 48 hours and again that same person was pulled out his plaster inhumanly and the opposite party re-fixed the Holter Monitor, the complainant has purchased guaze bandage to avoid repeat peeling off his skin and secured the Holter attachments, the opposite party has given only for 37 hours report against payment of 48 hours for that test and the complainant requested the opposite party for partial refund of Rs.1,000/- (Rupees one thousand only) towards short service. The opposite party has not chosen to refund the amount to the complainant. The opposite party stated that the complainant was counselled about the care to be taken, while wearing the instrument in his day to day activities and while sleeping. The complainant acted negligently and failed to take proper precaution and care in his day to day activities. Due to his rash and negligent handling of the device by the complainant while sleeping the electrodes came off. According to Ex.A2 i.e. photocopy of the complainant's chest place, it clearly shows that the Holter Monitor was not fixed properly and not taking the precaution measure and not followed the due procedure. In that photocopy, it is very clear that the opposite party has not removed hair on the chest of the complainant before fixing the Holter Monitor, cleaned and smooth places only that Holter Electrodes does not came off unless and until it will be removed after completion of the 48 years. The Opposite party has stated in its evidence affidavit in para No.11

that “It is true the instrument was again fixed to the complainant” and also stated in that same para “it is pertinent to submit here that the complainant got 36 hours report which is reasonable to detect any issue in Heart Rhythm”. But the opposite party did not chose to file any document to prove its bonafide. The Holter Monitor was fixed for recording the heart rythm for 48 hours, whereas, the opposite party has stated that 36 hours is enough for detecting any issue in Heart Rhythm.

Basing on the above discussion, we are of the considered opinion that there is negligence and deficiency in services on the part of the opposite party. Hence, we allow the complaint in part and directing the opposite party to pay to the complainant an amount of Rs.10,000/- (Rupees ten thousand only) towards compensation and costs of the complaint.

7. Point No.3:-

In the result, the complaint is allowed in part, directing the opposite party :-

(i) To pay Rs.10,000/- (Rupees ten thousand only) towards compensation for causing mental agony and trauma.

(ii) To pay Rs.1,000/- (Rupees one thousand only) towards costs of the complaint.

Time for compliance is 45 days from the date of the receipt of this order.

Dictated to Steno transcribed and typed by her pronounced by us on this the 03rd Day of February' 2023.

MEMBER

MEMBER

PRESIDENT

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Complainant:-

PW1 : Sri. Mohd. Furrug Jahangir

For Opposite Party:-

DW1 : Sri. Dr.K. Anjaiahn

Documents Marked:-

For Complainant:

Ex.A1 – is the Xerox copy of Receipt, dated: 21.06.2021.

Ex.A2 – is the Xerox copy of Photo Evidence.

Ex.A3 – is the Xerox copy of Correspondence.

Ex.A4 – is the Xerox copy of Note by OP.

Ex.A5 – is the Xerox copy of Radiology Department, dated: 27.05.2021.

Ex.A6 – is the Xerox copy of Emergency Visit, dated: 27.05.2021.

Ex.A7 – is the Xerox copy of Online appointment, dated: 28.05.2021.

For Opposite Party:

Nil

MEMBER

NV

MEMBER

PRESIDENT

//CERTIFIED FREE TRUE COPY//