

Date of Filing: 28-10-2020

Date of Order: 30-09-2021

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION –II, HYDERABAD

SRI VAKKANTI NARASIMHA RAO ... PRESIDENT

SRI P.V.T.R JAWAHAR BABU MEMBER

SMT.R.S.RAJESHREE MEMBER

Thursday, the 30th day of September, 2021

Consumer Case No.381/2020

Between:

Mohammed Shafeuddin S/o. Mujeebuddin
Aged about: 38 Years, Occ: Private Business,
R/o. H.No. 4-7-25/2/9, Sangareddy,
Telangana

The Complainant being the Natural father
Of Mahavish Eclai D/o. Mohd Shafiuddin
Aged 2 year six months baby who
Is injured is the minor

So she is being represented by the father Complainant

AND

Fahim Care Hospital
Rep. by Dr.L.Fahmida Banu
(MD, DGO, DNBE, FR, COG, FLCOG)
Managing Director and Consultant Minima Invasive
Surgeon

Senior Obstetrician & Gyaecologist

Fahim Care Hospital

37, Tahir Villa,

Yousufguda, Hyderabad – 500 045

.... Opposite party

This complaint coming before us on this the 30th day of August,
2021 in the presence of the Mr. P. Arun Prashanth Counsel for
the Complainant; M/s. S R Mahajir, Counsel for the Opposite
party and having stood over for consideration till this day the
Commission passed the following:

O R D E R

(By Smt. R.S. Rajeshree Hon'ble Member on behalf of the bench)

The above complaint is filed on 28th day of October, 2020 on behalf of the complainant under Section 35 of C.P. Act of 2019 requesting this Forum to direct the opposite party to:

1. grant an amount of Rs.40,00,000/- (Rupees Forty Lakhs Only) towards compensation in favour of the Complainant;
2. Award cost of Rs.20,000/-(Rupees Twenty Thousand Only);
3. And to pass such other relief or reliefs as this Hon'ble Commission deems fit and proper in the circumstances of the case.

BRIEF FACTS OF THE CASE:

The case of the complainant is that his wife Mrs Syed Razia Sultana while she was pregnant has visited the hospital of the opposite party for the first time on 21.02.2019, she was advised to take a scan and on 28.02.2019 she was advised to get admitted in the hospital i.e. when her pregnancy was of 37 weeks and discharged on 02.03.2019 again on 07.03.2019 she visited the opposite party hospital with labour pains and on the same day she had delivered a healthy girl baby by way of caesarean section and both the mother and the child were in good condition, but on 08.03.2019 when the duty doctors and nurses took the baby for bath(shower) they have not handled the baby carefully due to which the right elbow of the child got dislocated, the complainant and his wife were shocked to see the same and when questioned the hospital staff admitted their negligence and promised to take the responsibility of treatment and to rectify the right elbow of the child, and subsequently summoned an Orthopedician from Apollo hospital who had advised to take an X-Ray and the X-Ray was taken for three days continuously i.e. on 8th, 9th, and 10th of March 2019 after comparative observation it was confirmed that there was a dislocation on the right elbow of the baby and a plaster of Paris bandage was fixed to the right elbow of the baby. But the opposite party suppressed this fact in the discharge summary issued on 13.03.2019, and advised the complainant to come after 3 months. On 29.03.2019 when the complainant took the minor child to opposite party hospital they refused to treat or examine the child unless the heavy bills are paid. The complainant paid the amount and took an x- ray and it was confirmed by the opposite party doctors that the dislocation is not adjusted and the same is not healed. Again on 21.10.2019 when the

complainant visited the orthopaedician he has also confirmed that the dislocation is not healed completely. Further though the opposite party had given a written assurance on 28.10. 2019 to treat the baby free of cost but failed to do so as such the complainant was compelled to approach the police station Jubilee hills and registered a complaint against the opposite party vide FIR No. 704/2019 prior to that in order to take an second opinion and to ascertain the condition of the baby he took her to GERMENTIN hospital and the doctor examined the child and took an x-ray and confirmed that the child's elbow has got a GUN STOCK DEFORMITY. That the negligence of the opposite party has led to the life time deformity of his child, that these acts of opposite party has not only caused severe pain and sufferance to the child but has also caused lot of mental agony to the parents and family members of the minor child, having no other alternative he is before this commission seeking compensation and costs.

WRITTEN VERSION OF THE OPPOSITE PARTY:--

The Opposite Party had filed an elaborate written version running into 19 pages and opposed the complaint on the following grounds:

- i. That the Complainants wife came to their hospital with 37 weeks pregnancy for the first time and was treated conservatively and sent back with an advise to come after completion of 38 weeks of pregnancy.
- ii. On 7/3/2019 she again visited the Opposite Party hospital with labor pains as such she was immediately attended by the gynecologist and was prepared on an emergency basis of a caesarean section and the same was done with all protocol and precautions and during surgery it was observed that the urinary bladder was found to be densely adherent to the uterus and it was skillfully dissected and separated and the uterus was successfully incised and the baby delivered.
- iii. A live, healthy girl baby was delivered at 18.31 hours on 07/03/2019 and both the mother and child were in good condition and a pediatrician had confirmed that the baby was healthy and well. Again on 8/3/2019 also the pediatrician visited the child and everything was normal.
- iv. On the evening of 8/3/2019 an attender of the hospital noticed swelling on the baby's right elbow and informed

the duty doctor who in turn immediately informed the pediatrician who advised to take an X-ray and seek advice of an Orthopedician and an Orthopedician from Apollo i.e. Dr. Mohan Krishna was consulted who visited and evaluated the condition of baby and with the help of anesthetist a gentle manipulation was done and corrected the joint and in order to stabilize the joint a plaster of Paris bandage was applied to the baby's elbow.

The Opposite Party had given the timely medical attention and needful treatment was treated.

- v. The Opposite Party further pleads that the injury caused to the baby is subluxation and not dislocation and that the same was caused due to the negligence and mishandling by the parents or relatives of the baby.

It is pertinent to mention here that the complainant's wife had a previous history of caesarean wherein she gave birth to triplets out of which only one child survived. As such at this time as the caesarean was successful and an healthy baby was born, there were too many relatives visiting the baby who failed to follow the norms and they might have mishandled the baby which has resulted in the injury.

- vi. Further that the baby was never given a bath but only sponging is done to the baby that too by the trained and skilled staff of the hospital, had the injury was caused at the time of sponging the swelling would be noticed immediately after the sponging was done, but in the instant case the swelling was noticed in the evening i.e. after too many visitors visited the baby and when the baby was in the care of the mother. As such there is no negligence on the part of the hospital staff.
- vii. The Opposite Party further pleads that on 10-03-2019 it was noticed that the baby's serum bilirubin was high as such the parents of the baby were counselled and the treatment for Jaundice was also done by this Opposite Party.
- viii. On 09-03-2019 the Complainant and two other persons came to hospital and wanted to discuss the condition of the baby wherein all his queries were answered and was advised that he was at liberty to take the new-born to any other doctor of their choice, but the complainant

expressed that he is satisfied with the treatment by the Opposite Party/hospital and would continue the treatment with the Opposite Party/hospital.

- ix. The Opposite Party pleads that the Complainant had not paid bills for the treatment done to the baby and only paid the bill for the treatment of mother and with an malafide intention to extract money, the complainant had on 22-10-2019 come with group of members and created nuisance at the hospital and demanded Rs.10,00,000/- due to which this Opposite Party was compelled to call Jubilee Hills police station and an FIR was registered against the complainant and as a counter blast the complainant had made false police complaint against the hospital on 30th October 2019 and that with the only intention to extract money and enrich himself this complaint has been filed by the complainant which lacks merits as such the same be dismissed with exemplary costs.

WRITTEN VERSION OF THE OPPOSITE PARTY IN SHORT:-

- i. Injury caused to the new born is subluxation and not dislocation.
- ii. That the same is caused due to the negligence of mother or relatives of the baby.
- iii. That the hospital has taken all care and safety of the mother and child.
- iv. That all the staff and doctors are skilled and trained and experts in their work.
- v. That the present complaint is filed only to extract money from Opposite Party.

Evidence Affidavit of the complainant is filed as PW-1. Ex. A1 to Ex. A10 and MO1 are marked for the Complainant. Evidence affidavit of Opposite Party filed through Dr.L.Fahmida Banu as DW1. Ex. B1 to Ex.B24 are marked for the opposite party. Written arguments filed by both the parties. Heard oral arguments of both the parties.

POINTS FOR CONSIDERATION:-

1. Whether the Opposite Party had been negligent in his service?

2. Whether the Complainant is entitled to relief sought in the Complaint?
3. To what extent?

POINT NO. 1 & 2:-

The Case of the Complainant is that due to the Carelessness and negligent acts of the Opposite Party Hospital, the right elbow of the Complainant's new born baby was dislocated which has led to a lifetime deformity as such the Complainant is seeking compensation along with costs for the negligent acts of the Opposite Party. In-support of his case the Complainant has filed EX A1 to EX A10.

Ex. A1. First visit to the opposite party hospital dated 21.2.2019

Ex. A2. Discharge Summary with medical bills, dated 2.3.2019

Ex. A3. Discharge Summary, dated 13.3.2019

Ex. A4. Three X-rays, dated 8.3.2019

Ex. A5. X-ray of the baby right elbow of Dr. A. Mohan Krishna, dated 29.3.2019

Ex. A6 X-ray along with the report, dated 21.10.2019

Ex. A7 Assurance Letter, dated 28.10.2019

Ex. A8 Copy of the written complaint, dated 30.10.2019

Ex. A9 Copy of FIR No. 704/2019, dated 30.10.2019

Ex. A10 X-ray of the baby at Germantown Hospitals, dated 6.10.2020

MO1 : CD

The Opposite Party opposed the above contentions of the Complainant on the following points:-

- i. Firstly, that the injury caused to the new born was Subluxation and not dislocation.
- ii. Secondly, that the injury was caused not due to the negligence of the Hospital but due to the mishandling by the parents of the baby or due to the relatives who visited the baby on 08-03-2019 and,
- iii. Thirdly, some other technical ground such as it is an afterthought of the Complainant to extract money, that the Complainant is not the right person to file a Complaint, that the Complainant is making inconsistent statements.

Now the points that arise for the consideration are:

1. whether the injury caused to the baby was Subluxation or Dislocation,
2. Second whether the same was caused due to the negligence of Opposite Party Staff or Parents and relatives of the baby.

A perusal of documents filed by the Opposite Party i.e. EX.B3 & EX.B5 and more particularly at Page No. 3 of EX.B5 i.e. Progress Sheet it has been stated as follows:

Final Diagnosis: New born right elbow dislocation corrected. (B3)
X-Ray – Dislocated elbow with humeroulnar alignment altered. (B5)

Advise: Needs gentle manipulation and S/E slab under anesthesia.

In view of the above notes made by the duty doctor / nurse it is clear that the injury caused to the new born baby is dislocation and not subluxation. The Documents speaks for itself.

Now that it has been concluded that the Injury caused is dislocation and not Subluxation. The Point that remains for consideration is, due to whose negligence the dislocation was caused to the baby. This is an issue that has to be investigated. Since, it is not a case where the baby had cried out in pain and then it was noticed. But the injury has come to light only when the swelling in the right elbow was noticed and since the incident took place on 08-03-2019 now any level of investigation will be of any help nor this commission has any power to investigate on this issue. But however it is an admitted fact that the dislocation had occurred while the mother and child were in the care and custody of the opposite party hospital. The Opposite Party contented that the dislocation might have caused due to mishandling of the relatives of the baby who visited her. But the Opposite Party failed to prove the same. The Opposite Party themselves stated that too-many relatives visited the new born baby on 08-03-2019, It is general practice, that the hospitals do not allow too-many visitors to the hospital. But in the instant case, the Opposite Party is arguing that the dislocation was caused around the time when the relatives and the visitors of the new born baby visited the hospital on 08-03-2019 permitting too-many visitor is itself negligence by the Opposite Party Hospital administration. The Opposite Party was duty bound to restrict the number of visitors but the opposite party failed to do so.

Permitting too-many relatives itself is negligence of the hospital. When the mother and new born baby are in the care and custody of the Opposite Party Hospital, it's their duty to take all precautions for their safety and wellbeing. The Opposite Party

Hospital has failed to take the standard of care that they are bound to take-care-of.

In view of the above discussions, it can be held that though it cannot be ascertained as due to whose negligent acts the incident of dislocation of the right elbow of new born baby was caused. But certainly it is an admitted fact that the same was caused when the mother and child wherein the care and custody of the opposite party hospital. The mother having undergone caesarean on 07-03-2019, will-not-be in a position to take care of herself, as such it is a duty of the opposite party hospital to take care of the child. But the Opposite Party Hospital failed to do so. The Opposite Party Hospital is bound to take care of their patients. But they have failed in doing such duty, which has caused the dislocation of the right elbow of new born baby. Any harm caused due to the negligent acts on the part of the Opposite Party Hospital staff contracts liability. The patients expects only diligent and proper care. If any of the acts or omission of the hospital staffs are negligent within the hospital will be vicariously liable.

This is not a case of medical negligence but rather a case of defective service by the Hospital administration.

Further the opposite party had pleaded that the complainant had been taking inconsistent pleas by accusing doctors and nurses and staff, but the fact remains that the present complaint is filed against the hospital and not against an individual doctor, nurse or staff as such for any of the negligence by the hospital staff the hospital is held liable.

The opposite party had relied on the following Judgements in support of their case.

1.Smt. Sushila Devi and others Vs.Ibrahim and Another.

Wherein the Doctrine of “res ipsa loquitur” is explained as under

“The res ipsa loquitur is not a rule of law. As observed in Charlesworth on Negligence 3rd Edn., p.42-

‘It is no more than a rule of evidence affecting ous, it is based on common sense and tis purpose is to enable justice to be done when, the facts bearing on a causation and on the care exercised by the defendant are at outset unknown to the plaintiff and are or ought to be within the knowledge of the defendant’.

If the facts are sufficiently known, the question ceases to be whether the facts speak for themselves, and the only question is whether on the facts as established, negligence is to be inferred or not. The doctrine of *res ipsa loquitur* does not, therefore, apply when the cause of the accident is known.”

In the instant case also the cause of injury to the baby is not known.

2. State of Gujarat Vs. Purninaben, W/o. Vinodbhai.

The rule that it is for the plaintiff to prove negligence and not the defendant to disprove it, in some cases, is one of the considerable hardship to the plaintiff because, it may be that the true cause of the accident lies solely within the knowledge of the defendant who caused it. The plaintiff can prove the accident, but he cannot prove how it happened so as to show its genesis or origin in the negligence of the defendant. This hardship is avoided to a considerable extent by the principle of '*res ipsa loquitur*'. To sum up, the effect of the doctrine of '*res ipsa loquitur*' depends on the cogency of the inference to be drawn, and will vary from case to case.

Whereas in the instant case the injury is admitted.

Halsbury's Law of England, Volume 34, (4th Edition), para 57 (page 48)-inference of defendant's negligence under the doctrine '*res ipsa loquitur*' a plaintiff establishes a *prima facie* case of negligence where (1) it is not possible for him to prove precisely what was the relevant act or omission which set in train the events leading to the accident and (2) on the evidence as it stands at the relevant time it is more likely that not that the effective cause of the accident was some act or omission of the defendant or of someone for whom the defendant is responsible, which act or omission constitutes a failure to take proper care for the plaintiff's safety. There must be reasonable evidence of failure to take proper care for the plaintiff's safety. There must be reasonable evidence of negligence.

Coming to the entitlement of the compensation though the complainant had sought for exemplary compensation of Rs. 40,00,000/- (Rupees Forty Lakhs only) but however failed to put-forth any bills showing the expenditure incurred by him for which treatment of the new born baby right elbow and the efforts put by

the Opposite Party Hospital in getting the baby treat by an Orthopedician Dr. Mohan Krishna can also not been over looked but has to be appreciated. But a perusal of EX.B5 treatment done to the baby and MO1 marked by the Complainant speaks for themselves, as to how-much pain and suffering the new born baby has undergone and EX.A10 is the proof that the complainant may incur expenditure in future for the treatment of the deformity. Though the opposite party denied EX.A10 but had failed to disprove the same. The Opposite Party failed to summon the doctor who issued EX.A10 to disprove his contention, in such circumstances EX.A10 stands valid and can be considered keeping in view the principles of equity and natural justice and the welfare of the minor child we are of the view that a suitable compensation be awarded for the future treatment of the minor's elbow and any correction of deformity. As such the points are answered in the favour of the complainant.

POINT NO.3:

In the result, the Complaint is allowed in part, directing the Opposite Party

1. To pay a Compensation of Rs.5,00,000/- (Rupees Five Lakhs Only) for the negligent acts, thereby causing inconvenience and hardship to the Minor Child;
2. To pay Rs.10,000/- (Rupees Ten Thousand Only) towards costs of litigation;
3. Time for compliance is 45 days from the date of receipt of this Order.

Dictated to Stenographer, transcribed and typed by her, corrected and pronounced by us on this the 30th September, 2021.

LADY MEMBER

MALE MEMBER

PRESIDENT

APPENDIX OF EVIDENCE

Witnesses examined for complainant

Sri Mohammad Shafeeuddin (PW1)

Witnesses examined for Opposite Party

Dr. Fahmida Banu (DW-1)

Exhibits marked on behalf of the Complainant:

- Ex. A1. First visit to the opposite party hospital dated 21.2.2019
- Ex. A2. Discharge Summary with medical bills, dated 2.3.2019
- Ex. A3. Discharge Summary, dated 13.3.2019
- Ex. A4. Three X-rays, dated 8.3.2019
- Ex. A5. X-ray of the baby right elbow of Dr. A. Mohan Krishna, dated 29.3.2019
- Ex. A6 X-ray along with the report, dated 21.10.2019
- Ex. A7 Assurance Letter, dated 28.10.2019
- Ex. A8 Copy of the written complaint, dated 30.10.2019
- Ex. A9 Copy of FIR No. 704/2019, dated 30.10.2019
- Ex. A10 X-ray of the baby at Germantien Hospitals, dated 6.10.2020

MO1 : CD

Exhibits marked for opposite parties:

- Ex. B1. Copy of FIR, dated 25.10.2019
- Ex. B2. Brief History, dated 7.3.2019
- Ex. B3. Admission Form, dated 7.3.2019
- Ex. B4. Copy of progress sheet, dated 7.3.2019
- Ex. B5. Progress sheets 4 pages, dated 8.3.2019
- Ex. B6. Progress sheets, dated 9.3.2019
- Ex. B7. Progress sheets, dated 10.3.2019
- Ex. B8. Progress sheets, dated 11.3.2019
- Ex. B9. Progress sheets, dated 12.3.2019
- Ex. B10. Progress sheets, dated 13.3.2019
- Ex. B11. Informed consent cum undertaking for surgery
- Ex. B12. Consent for anaesthesia
- Ex. B13. Pre procedure/operative check list
- Ex. B14. Surgical Safety Check List
- Ex. B15. Pre-Anaesthetic Assessment

- Ex. B16. Anaesthesia Record
- Ex. B17. Operation Record
- Ex. B18. Medication Sheet
- Ex. B19. Vitals and Fluid Balance Charts
- Ex. B20. Test Report (Serum Bilirubin), dated 11.3.2019
- Ex. B21. Test Report (Serum Bilirubin), dated 13.3.2019
- Ex. B22. Medical opinion from Apollo Consultant dated 21.11.2020
- Ex. B23. Medical opinion from Apollo Consultant dated 24.11.2020
- Ex. B24. Medical opinion from Apollo Consultant dated 23.11.2020

LADY MEMBER

MALE MEMBER

PRESIDENT