

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 696 OF 2015

(Against the Order dated 17/10/2014 in Appeal No. 483/2012 of the State Commission Tamil Nadu)

1. S. MANIKANNAN

S/O SEENIVASAGAM, RENGANATHAPURM,
KAMARAJAPURAM, BODINAYAKANUR TALUK,

THENI 625582

TAMIL NADU

.....Petitioner(s)

Versus

1. DR. T. PANDIARAJ & ANR.

SONOLOGIST & RADIOLOGIST, VAIGAI COLOR
SCAN, NO. 576, PERIAKULAM ROAD,

THENI- 625531

TAMIL NADU

2. DR. G. RAJKUMAR, RADIOLOGIST,

VIKRAM SCEN & DIGNOSTICS CENTRE, NO.409,
PERIAKULAM ROAD, OPPOSITE TO CONVENT
HOSPITAL

THENI - 625531

TAMIL NADU

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT

HON'BLE DR. S.M. KANTIKAR, MEMBER

For the Petitioner :

For the Respondent :

Dated : 27 Jan 2021

ORDER

Appeared at the time of arguments through Video Conferencing

For Petitioner

: Mr. P. V. Yogeswaran, Advocate

For Respondent No. 1 : NEMO

For Respondent No. 2 : Mr. Vikas Mehta, Advocate
Mr. Adith Nair, Advocate

Pronounced on: 27th January 2021

ORDER

PER DR. S. M. KANTIKAR, MEMBER

1. The present Revision Petition has been filed under Section 19 of the Consumer Protection Act, 1986 against the Order dated 17.10.2014 passed by the Tamil Nadu State Consumer Disputes Redressal Commission (hereinafter referred to as the “State Commission”) in F.A. No. 483/2012 wherein the State Commission dismissed the Appeal filed by the Complainant and upheld the Order passed by the District Consumer Disputes Redressal Forum, Theni in C.C. No. 82 of 2010 (hereinafter referred to as the “District Forum”) wherein the Complaint was dismissed.

2. Briefly stated, the facts of the case are that the Complainant S. Manikannan (hereinafter referred to as the ‘patient’) consulted a physician – Dr. Muthuramalingam on 05.06.2007 for stomach pain for which he was advised to take abdomen scan. The abdominal ultrasound (USG) was performed by Dr. T. Pandiaraj, Radiologist (hereinafter referred to as the “Opposite Party No. 1”), who reported it as retro-cecal appendicitis. However, the Physician was not satisfied with the said report, and again advised to repeat the USG with the Opposite Party No. 1. On 07.06.2007, USG scan was repeated and reported as being suggestive of ‘appendicitis’. The Physician, being not satisfied with the USG findings, referred the patient to Dr. Sakthivel, the Surgeon for further treatment. On 07.06.2007, after examination, Dr. Sakthivel advised another USG from Dr. G. Rajkumar at Vikram Scan & Diagnostic Centre (hereinafter referred to as the “Opposite Party No. 2”) and the report suggested possibility of “sub-hepatic appendicitis”. Based on the reports, the patient was operated by Dr. Sakthivel on 08.06.2007 and suspected tuberculosis in the abdomen and biopsy of Omentum was taken for Histopathological examination (HPE). The HPE revealed “no evidence of tuberculosis or malignancy and it was fibrosis with chronic non-specific infection”. The Surgeon Dr. Sakthivel told that it was the infection in the large intestine causing the pain and the same was removed by surgery. The Complainant, however, alleged that it was a failure on the part of the Opposite Parties Nos. 1 and 2, who negligently gave wrong report of appendicitis and because that he had to undergo unnecessary operation. The operation could have been avoided and the pain could have been cured by medicines only. Due to unnecessary

operation Complainant suffered physically, financially and he could not carry out his work efficiently. Being aggrieved, Complainant filed a Complaint before the District Forum, Theni and claimed compensation to the tune of Rs. 10 lakh.

3. The District Forum dismissed the Complaint by holding that the scan reports of the Opposite Parties Nos. 1 and 2 were only suggestive in nature and not confirmatory. Aggrieved by the said Order, the Complainant filed an Appeal before the State Commission, Madurai which was dismissed on the ground that the Complainant failed to prove by expert opinion or medical literature any negligence. Being aggrieved, the Complainant filed the instant Revision Petition.

4. We have heard the arguments from the learned Counsel for the parties. Perused the entire material on record including USG reports dated 05.06.2007 and 07.06.2007 done by different Radiologists.

5. We note, admittedly, the Complainant consulted one Dr. Muthuramalingam, the Physician for his severe abdominal pain. After examination the Physician advised few investigations including USG scan. The USG scans were performed by two Radiologist on consecutive days and reported it as "Appendicitis". We have carefully perused the USG scan reports. The initial 1st USG done by the Opposite Party No. 1, reported as "retrocecal appendicitis". The USG scan was repeated by the Opposite Party No. 1 again on 07.06.2007 and it revealed 'Appendicitis'. The report is reproduced as below:

7.6.07: *Repeat Scan Shows*

In the right iliac fossa, a short narrow segment of bowel shows thick edematous wall with aperistalsis. Could be Inflamed appendix. Tenderness present over that region.

Other abdominal organs are Sonographically normal.

Findings are suggestive of Appendicitis.

The Physician was not satisfied with both the reports, and he referred the patient to the Surgeon, Dr. Sakthivel, who after examination sought another USG from other Radiologist Dr. Rajkumar at Vikram Scan & Diagnostic Centre. The USG scan is reported as below:

IMPRESSION:

There is evidence of localized non peristaltic thickened bowel loop [wall thickening measures 7.2 mm] with peri lesional fluid collection around 5 ml [1.9 x 4.2 x 1.1 cm] seen in the Right lumbar region, close to the anterior abdominal wall.

Suggest the possibility of Sub hepatic appendicitis.

6. Dr. Sakthivel on the basis of the patient's clinical symptoms & signs and both the USG reports; made the provisional diagnosis of Acute appendicitis, Ureteric colic and Acute cholecystitis. He operated the patient on 8.6.2007 and found intraoperatively the infected bowel loops and Omentum. He removed the infected material and took Omental biopsy, sent for HPE study. According to the Surgeon, it was a case of Omental infection causing the pain to the patient.

7. As per the standard text books on Surgery any abdominal pain several reasons to be considered. If the clinical signs and investigations (Lab & Radiology) are not leading to definite diagnosis, in that case, opening of the abdomen (laparotomy – exploration) is necessary to find out the cause of pain. The HPE report and the prescription issued by the Surgeon, Dr. Sakthivel confirms that the continuous abdominal pain to the patient was due to Omental and Intestinal infection. The prescription is reproduced as below:

DR K.R. SAKTHIVEL M.S.

PHONE 254045

(GENERAL SURGEON)

Date:- 07.05.2008

Mani Kannan 32 Years, Male

DOA: 05.06.2007

DOO: 08.06.2007

DOD: 20.06.2007

Terminal ileum Caecum ascending color inflamed & friable appendix normal. Greater omentum caseous material gangrenous, right side cake like patch attached to anterior abdominal wall and terminal ileum .no ascites, nodes, nodules. Greater omentum exceed & sent for HPE.

ATT given for months.

Post-OP-uneventful.

KULASEKAR CLINIC

588, MADURAI ROAD,

THENI- 625 531.

8. On consideration of the treatment and the sequence of events and from careful perusal of the prescription above, it is pertinent to note that the appendix was friable, the loops of intestine were inflamed, Caseous and gangrenous Omental tissue; thus, emergency operation was needed. In our considered view the operation was necessary to save the life of patient. Thus, the allegation of the Complainant that the operation was unnecessarily performed is not sustainable. Abdomen is a 'Pandora's box'. Many times the appendicular pain gives symptoms of referred pain. Though both the Radiologists (Opposite Party No.1 and 2) reported it as Appendicitis; it was to be correlated clinically. Thus the treating surgeon's clinical assessment with relevant laboratory investigations should be given more credence. The Doctor will choose line of treatment and in the instant case the Surgeon performed exploratory laparotomy (operation) and found inflamed organs as a cause for pain and treated thereafter. In our view, the act of Surgeon was as per standard of practice. The Radiologists - Opposite Parties Nos. 1 and 2 have given their opinion of USG study been indicative and not confirmatory; it should not be construed as a wrong report. We have to consider the operation was imminent the instant case, it was diagnosed operatively and patient got cure.

9. Based on the discussion above, we find the Order of the State Commission to be well-appraised and well-reasoned. The State Commission concurred with the findings of the District Forum. Within the meaning and scope of section 21(b), we find no grave error in appreciating the evidence by the two fora below. And, on the face of it, we find no jurisdictional error, or a legal principle ignored, or miscarriage of justice.

The Revision Petition, being without any merit, is dismissed. There shall be no Order as to costs.

.....J
R.K. AGRAWAL
PRESIDENT

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DR. S.M. KANTIKAR
MEMBER