

**Consumer Case No CC/312/2015**

**DISTRICT CONSUMER DISPUTES REDRESSAL**  
**COMMISSION, YAVATMAL**

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**Consumer Case No. CC/312/2015**

**Registered on. 01/02/2016**

**Decided on. 21/11/2022**

**Shri Abdul Matin Abdul Majjid**

Age - 39, Occupation – Nil.

R/o Baba Lay-out, Nagpur Road,

Yavatmal, Dist. Yavatmal

**Vs.**

**1. Dr. Avinash Ranade,**

Rande Hospital, Civil Line,

Yavatmal, Dist. Yavatmal

**2. United India Insurance Co.Ltd.**

Lakshmi Sadan, Mahajan Wadi Chowk,

Yavatmal

**Before**

**Hon'ble Shri Nandkumar M. Waghmare, President**

**Hon'ble Shri Hemraj L. Thakur, Member**

## **Appearances**

**Adv. Shubhangi Darne, For appellant**

**Adv. J. V.Wadhvani, For Respondent No.1**

**Adv. C. R. Gandhi, For Respondent No.2**

## **ORDER**

**(Delivered on 21/11/2022)**

**Hon'ble President Shri Nandkumar M. Waghmare**

**1.** This is a complaint under section 12 of The Consumer Protection Act, 1986 seeking compensation for medical negligence.

**2. The complainant's case in brief :-**

The complainant is resident of Yavatmal and he is mason. On 15/2/2012, he was slipped in the house and sustained some bone injuries. He approached to the opponent-doctor who is one of the Orthopaedic surgeon. At that time the opponent-doctor was doing job in Hirachand Munot Criti Care, Hospital. The complainant was admitted to Criti Care, Hospital since 15/2/2012 to 4/3/2012. The opponent no 1-doctor had operated on right side, Shafttibia right side with fracture I.T.femur right side. These two operations were conducted on complainant on

20/2/2012 & 24/2/2012. In spite of these two operations, the complainant's fracture injuries were having no relief. There were severe pain in these injuries. Some screws were fixed but they were fallen. The complainant was unable to sit or walk. His leg movements were reduced. The complainant has again met to the opponent no 1 in his own hospital. The complainant was advised to get another operation on 11/11/2012. Accordingly surgery for subtrochanteric fracture right side right femur was done. But despite of that there was no relief to the complainant. On 19/6/2013 and 9/10/2013 during pathological tests it was confirmed that the screw of said operation was broken. Thereafter the opponent no 2 has made another surgery on 11/3/2014 for Non union subtrochanteric Femur Right Side. Till then there was no improvement in the bone injuries of the complainant. The complainant got four surgeries and spent Rs. 5 lakh. The complainant was mason and earning Rs.400/- per day. But due to these surgeries he could not do any livelihood work. The complainant has sustained loss of Rs. 12,000/- to 15,000/- per month. The opponent-doctor was negligent in operating surgeries. Therefore he is responsible and the complainant urged to grant compensation of Rs.20/- lakh. As the opponent no 1 doctor has insured his business by the opponent no 2. Hence both the opponents are liable to pay the compensation for medical negligence.

3. The opponent-doctor has resisted the complaint by making submission that the allegations made in the complaint are false and imaginary. These allegations are required to be proved by giving strict proof. The opponent-doctor did his job carefully and there was no negligence on his part and these four operations were needy and required for health of the complainant. These operations were made carefully and by taking utmost care. The screw of the operation might have been broken but there are various reasons for that. In fact regeneration of bone is dependent on each & every person's health. It is the routine course, the screw may be broken or uprooted. It is dependent upon the health & immunity of each & every person. The patients may not observed advice given to him. The alcoholic patient do not get proper recovery within time. If the patient did not get rest then also the problem may create. There was no fault of opponent doctor. Hence he is not liable to pay any compensation. It is urged to dismiss the complaint.

4. During the course of proceedings the complainant has added to the opponent number 2 United India insurance company limited who had indiminsed the profession of opponent number 1. In reply of notice, the opponent no.2 insurance company has filed its written statement on exhibit number 22. It is denied each and every facts and asked to the complainant to prove every allegations with best proof. It has admitted the insurance policy and valid period of insurance with

the opponent no.1. It is contention of the opponent no. 2 that to get recure person may have different features and it depends upon person to person. The regeneration of bones are dependent upon persons physics and habits of food culture. The complainant was chronic alcoholic and having Hepatitis B+. Therefore the regeneration of bones of the complainant got impact and there was no responsibility of the opponent no.1. This complaint is moved only to extract money. Hence it is liable to be dismissed.

**5.** The complainant has filed xerox copies of 1 to 38 documents on ex.2. i.e. Discharge card, Medical Report, laboratory reports, FIR and notice to the opponent.

**6.** Considering the arguments placed on the record as well as on perusal of the documents alongwith these pros and cons following points arise for our determination. We have recorded findings thereon with the reasons stated hereinafter.

<b>S.No.</b>	<b>Issues</b>	<b>Findings</b>
1.	Whether the opponent has provided deficiency in service ?	Yes.
2.	Whether the complainant is entitled for any relief as claimed ?	Yes.
3.	What order ?	As per final order complaint is allowed.

## **Reasons**

### **As to Issue no 1 to 3**

7. In the instance case before adverting the matter, it is better to see some of the admitted or not disputed facts which runs as under -

The opponent no.1 is orthopaedic surgeon and having Rande Hospital at civil line, Yavatmal. The complainant is resident of Yavatmal. On 15/2/2012 he met to an accident and received fracture injury on his right leg. He approached to Hirachand Munot Criticare Hospital where the opponent no.1 was the doctor. The complainant was admitted to that hospital from 15/2/2012 to 4/3/2012. The complainant underwent surgery on 20/2/2012 and 24/2/2012 for compound fracture shift tibia right side with fracture left side. There after the complainant underwent another surgery on 11/11/2012. The complainant could not get relief. Hence the opponent no.1 again operated him on 11/3/2013 for non unionsubtrochantrick femur right side. The complainant can not get relief and pains were increased. Hence he issued notice dated 9/4/2015 to the opponent no.1 and it was replied by him on 17/4/2015. Lastly this complaint is filed for compensation for medical negligence. It is admitted fact that opponent-insurance company has

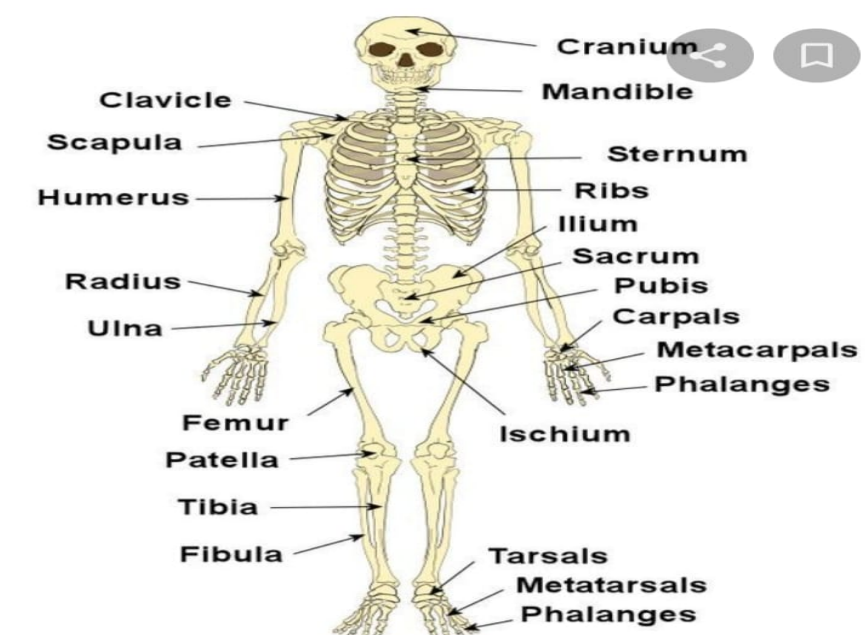
indemenified profession of opponent no.1 for a period 19/3/2011 to 18/3/2012.

**8.** Learned Advocate Dharne appearing on behalf of the complainant has vehemently submitted that the complainant faced an accident and he was admitted to Criticare hospital in between 15/12/2012 to 4/3/2012. The opponent no.1 is renowned orthopaedic surgeon and he has operated on the fracture leg injury of the complainant on 20/2/2012 to 24/2/2012. At that time screw which were used for operation were broken. Hence the complainant again met to the opponent no.1. The doctor has again made surgery on the complainant on 11/3/2013 but since then the complainant could not relieve from the pain. The complainant has paid near about Rs.5/- lakh for medical treatment and surgery. He was a mason but due to said operations he is unable to do his livelihood work. The complainant sustained huge loss and his future is in dark.

**9.** Learned Advocate Wadhvani appearing on behalf of the opponent no.1-doctor and Learned Advocate Gandhi appearing on behalf of opponent no.2-insurance company have submitted their canvass . The sum and substance of the argument of both the advocates is that the opponent no.1 did the operations with care and caution and guidelines of Anatomy. Regeneration of bones depends upon each and every man. Here in this case,

the complainant himself was facing anaemia and he was chronic alcoholic person. The complainant might have not followed day to day advice of the doctor. The complainant might have done unadvice work in the house or he may have slipped in the house. In all, the doctor is not responsible for pain of the complainant. However the matter was referred to medical board, Nagpur who has clearly opened that the fracture injury of the complainant is cured and there was no negligence on the part of the opponent no.1. Therefore both the defence counsels urged to dismiss the complaint.

**10.** At the outset, we would like to clarify that the complainant got fracture injury of right shift tibia and right femur bone in order to clarify the position of tibia bone and femur bone. We would imprint the photograph which is generated by the Google.





**11.** In this case, the medical board has examined to the complainant and filed its opinion on 30/3/2018. The medical board, Nagpur has clearly opined that the hip fracture of the complainant was completely recured and there was no negligence of the opponent-doctor. We have gone through the opinion of this medical board. We find that the medical board has not explained that, which medical test or examination were occurred with the complainant. i.e it is not shown any x-ray or MRI test were taken. No such pathological report is appended herewith. Apart from that even if it is assumed that after getting all the requisite tests of the complainant, the report was filed but till then we find that the medical board has opined that the compolainant's hip fracture is cured completely. In fact, it is pertinent to note that the complainant has never alleged or even it is not the case of doctor that the complainant was having hip fracture. When the complainant has not claimed hip fracture nor there was any surgery on the hip, then it is very difficult to digest how the medical opinion of hip fracture can be accepted. The medical board has not clarified the fracture injury of tibia bone and femur bone. It appears that the medical board has without getting physical examination of the complainant or verifying the papers got that opinion. The medical board has completed empty formalities to provide the said opinion. We completely disagree with the opinion. It is very sad and ridiculous to observe that the medical board has referred said

opinion on Surmise and conjecture. We reject this opinion of medical board.

**12.** At the next turn, the complainant has filed several documents on record. It suggest that after accident the complainant was admitted to Criticare hospital and got two surgeries on 20/2/2012 and 24/2/2012. The complainant got two surgeries on fracture of tibia and femer. It further reveals that after this two surgeries, some screws were affixed to the bones. But the screw was broken. Hence the complainant's pain was enhanced. Again the complainant approached to the opponent-doctor and one another surgery was operated on those facture injuries on 11/11/2012. This was the 3rd surgery and it was operated by the opponent-doctor only. It further reveals that the complainant was not relieved from the pain. Hence again met to opponent no.1 and he put to some medicines. But complainant was reliefless. Lastly on 10/3/2013, the complainant approached to the the opponent-doctor. After getting of the clinical examination the opponent-doctor has made 4<sup>th</sup> surgery on the complainant on 11/3/2013. Despite of all the 4 surgeries, the complainant could not get any relief. He was unable to walk or sit and his pains were enhanced.

**13.** It is one of the criticism of the oppoent that regeneration of bones depends upon person to person. The complainant was

chronic alcoholic and anemic patient. We do not accept this defence. Because even if the alcoholic person or anaemic person may get obstacle in regeneration of the bones but it is the doctor who has to take care of all these things. The opponent doctor has got 4 operations on the complainant one after another and till then when the fracture injury were not cured, then how he can resile from his responsibility.

**14.** In this regard one prescription of the opponent doctor dated 9/10/2013 i.e. right before the 4<sup>th</sup> surgery. It is mentioned as under-

Sub-Diagnosis-operated for subtrochanteric fracture right femur on 11/11/12 check Xray s/o cortical screw break at the proximal femur-DHS, no union. There is lysis around the DHS's crew s/o loosening with breakage of the distal cortical screws.

It appears that there was problem of breaking screw after the said operation. At any cost we hold that the opponent-doctor ought to have taken some extra care while affixing the said screw. It is pertinent to note that the complainant was running at the age of 35 years when he was operated. Therefore his healing process of fracture injuries was more high than other persons. The medical report of the complainant are much more certain to show that, at the time of said operation his health was ok and he was having no ailment. Even the

pathological report of Doctor Sabu shows that all the organs of the complainant were normal. Some haemothorax was there but it is the collection of blood in between chest wall and lung. Therefore there was no occasion to cause any trauma on the fracture injury. The medicines prescribed by the opponent doctor also suggest that they were given only pain relieving and to reduce inflammation tablets. No doubt some antibiotic medicines were also given.

**15.** On scanning the available evidence, we find that the complainant got 2 fractures on his tibia & femur bones. The hip is located where the top of femur bone or Thigh bone fits into pelvis. The femur bone is longest bone in the body extending from knee to hip. The tibia bone is located on the shin. In all the, opponent did 4 surgeries on the complainant even if it is assumed that the opponent-doctor has performed his duty with reasonable/resorable care and caution but till then question remains that the complainant was not cured and he remained ideal. On either account, we hold that it was blunder mistake of opponent-doctor by leaving the patient in pain. When the screw of the operations was broken then nobody other than the opponent seems responsible. We don't find any impediment on the part of complainant in healing that the fracture injury. In these circumstances we hold that because of negligence of the opponent-doctor, the complainant suffered mental agony and

pain for life. It has deprived to the complainant to do his day to day business and livelihood. Ultimately we hold compensation is required to be fastened on the opponent no 1. However the opponent no 2 insurance company has indemnified profession of the opponent no 1. Hence it would be the joint responsibility of the both the opponents to pay the compensation.

**16.** Now to derive the quantum of compensation. It is required to be seen that the complainant is young aged person and he was doing either mason work or labour work but since the date of last operation he is unalbel to do any work and kept in the continous pain. The complainant has to get medication for his life time and to pay extra premium for that. The complainant had paid Rs. 5/- lakh towards the medical expenses. Resultantly we hold that in consideration of all the facts and circumstances, the complainant is entitled for the compensation for the Rs.10/-lakh and the medical expenses of Rs. 5/- lakh.

**17.** After considering all the facts, circustmances and available evidence on record, we hold that the complainant has established the fact that the opponent doctor was negligent in performing his duties. Therefore the compensation of Rs.10/-lakh towards compensation and Rs.5/- lakh towards medical expenses can be fastened on both the opponensts. In view complaint deserves to be allowed. In view of all this facts we

answer all the points accordingly and proceed to pass the following order.

## **ORDER**

1. The complaint is partly allowed.
2. The opponent no 1 & 2 jointly & severly pay Rs.10,00,000/- (Rs.Ten Lakh only) towards compensation Rs. 5,00,000/- (Rs.Five Lakh only) for medical expenses. i.e. 15,00,000/- (Rs. Fifteen Lakh only) and interest theron @7% per annum from the filing of the complaint, i.e. 01/02/2016 to till the realisation of said amount.
3. The opponent no 1 & 2 jointly & severly pay Rs.5,000/- (Rs.Five thousand only) towards pain and sufferings.
4. The opponent no 1 & 2 jointly & severly pay Rs.3,000/- (Rs.Three thousand only) towards the costs of the complaint.
5. Copies be provided free of costs to the parties.

**(Hemraj Thakur)**

**Member**

**(Nandkumar N. Waghmare)**

**President**

Dt. 21 November 2022  
CGM