

**IN THE CONSUMER DISPUTES REDRESSAL FORUM
KANNUR**

**Complaint Case No. CC/284/2020
(Date of Filing : 25 Nov 2020)**

1. Radhakrishnan.C
S/o Janardhanan Nair, Ammu,
Mundarathpoyil, Thiruvangad.P.O, Thalassery, Kannur-670103.Complainant(s)

Versus

1. Dr.Rajeev Raghavan
LAURELS, Keezhanthimukku, Thiruvangadu.P.O, Thalassery, Kannur-670103.

2. Dr.E.V.Azeez
Retd.Civil Surgeon, Thalassery Mission
Hospital, Vadikkakom, Thalassery, Kannur-670101.

3. Thalassery Mission Hospital Pvt.Ltd.,
Rep.by its Managing Director Vadikkakom Thalassery, Kannur-670101.Opp.Party(s)

BEFORE:

**HON'BLE MRS. RAVI SUSHA PRESIDENT
HON'BLE MRS. Moly Kutty Mathew MEMBER
HON'BLE MR. Sajeesh. K.P MEMBER**

PRESENT:

Dated : 12 Feb 2024

Final Order / Judgement

SMT. RAVI SUSHA : PRESIDENT

Complainant filed this complaint for getting compensation of Rs.4708415/- alleging medical negligent on the part of opposite parties.

Briefly stated, the facts of the case are that on 5/1/2020 the complainant had fall in the bathroom for consultation he had gone to 1st OP's residence, 1st OP advised X-ray examination, which showed the complainant had sustained fracture to the left humerus bone and advised him to be admitted in 3rd OP hospital and recommended that an operation is required to be done to rectify the damage occurred to the left humerus bone. The 1st OP further advised that through a key hole surgery the interlocking of the left humerus bone at the fracture shall be performed and convinced the complainant to undergo the key hole surgery immediately at 3rd OP hospital. Weighing all the pros and cons as explained by the 1st OP, the complainant got admitted 3rd OP hospital and the key hole surgery was performed by OPs 1&2. The complainant submits that he was discharged from the 3rd OP hospital on 9/1/2020 after paying a sum of Rs.56,760/- towards the cost of operation and consultation charges. Further the 1st OP advised him to come for check up after one week. At the time of review, the complainant had mentioned to the 1st OP that he was feeling weakness in his left hand fingers and wrist after the key hole procedure, but the 1st OP gave a deaf ear to the concerns of the complainant and

completely ignore the patient's complaint and only suggested for a physiotherapy to be continued. As per the suggestion of Physiatrist, the complainant underwent nerve conduction study on 15/1/2020 at Indira Gandhi Co-op Hospital Thalassery suggested that plaintiff left hand had a Radial Axonal Neuropathy and Bilateral carpal tunnel syndrome, and informed to 1st OP, he only advised to continue the physiotherapy and ignored the test result shown. After that as there was no improvement, complainant consulted with Dr.A.J.Guild, at MBR Medical Trust, Hospital, Kochi and diagnosed that complainant has Radial Nerve Palsy to correct which requires a Radial nerve Exploration surgery which itself is a major surgery. Complainant further want of a second opinion to approached Neurosurgeon at First Neuro Brain and Spine Super specialty hospital at Mangalore on 28/1/2020. They have also given the same opinion, after studying the Ultra sound scanning taken at Kasturba Medical college, Mangalore as given by Dr.A.J Guild that it requires an operation at the earliest. With all the suffering and pain the complainant further visited the Dept. of Plastic surgery at MBR Hospital, Cochin, after a detailed diagnosis the doctors confirmed immediate surgery. For the second operation the complainant had to incur an additional Rs.1,87,514. The doctors at the MBR Hospital further informed the complainant that his damage is permanent and the radial nerve cannot be fully corrected and hence the damage will be there permanently and the disability sustained will be for life long. Complainant submits that the 1st OP did not even bother to look at the 2nd opinion taken from various other medical experts nor was looking at the physical condition or the complaints of the complainant and just arrogantly advised for continuing physiotherapy only. The complainant issued lawyer notice to all ops. They received notice and denied the allegations of the complaint. For the deficiency in service and medical negligence on the part of OPs the complainant caused permanent disability. Hence complainant filed this complaint for getting compensation from 1st OP for the mental agony and financial loss due to resign from his job etc.

1st OP contested the complaint, saying that on 5/1/2020 the complainant got admitted to the 3rd OP hospital under the 2nd OP. After getting written informed consent, the 1st OP had conducted closed interlocking nailing of left humerus bone under C-arm guidance with all care and caution as requested by the complainant. The 2nd OP had assisted the procedure. On the 2nd post operative day the patient was noted to have difficulty in extending fingers partially and involvement of radial nerve was identified which is a reported problem associated with fractures of mid shaft of humerus. He was given a cock up splint and referred for physiotherapy consultation and explained regarding exercise pattern to improve finger movements. He was discharged on 9/1/2020 with an advice to continue physiotherapy exercises at home and to wear cock up splint and for review on 15/1/2020 for suture removal and for physiotherapy evaluation. It becomes obvious that the first and second OPs exercised reasonable care and caution in the treatment of the complainant and followed a practice acceptable to medical profession. On review consultation suture removal was done and on clinical examination radial nerve was assessed and the condition was diagnosed as due to neuropraxia and as per accepted treatment protocol he was advised physiotherapy as part of conservative management as neuropraxia usually improves on its own by three to six weeks conservative management. In the case of complainant radial nerve neuropathy diagnosed on nerve conduction study was not caused due to any act or omission on the part of OPs 1&2 and there was no failure on their part in the management of the said condition. The fracture of mid shaft of humerus bone itself can cause nerve involvement likely to be manifested after surgery for which gentle home exercise

programme/ physiotherapy is the initial accepted line of management and surgical intervention is necessary only if there is no improvement with conservative management. The complainant underwent radial nerve exploration and reconstruction for radial nerve contusion and it cannot be termed as due to any fault in interlocking nailing done by the 1st OP. 1st OP further submits that the damage of radial nerve will be there permanently and disability will be lifelong is not sustainable. There was no negligence or breach of duty on the part of OPs and no damage has been caused to the complainant by the treatment of the OPs. The 1st OP is having qualification of MBBS, D'Ortho with experience of 17 years as a consultant orthopedic surgeon, and the 2nd OP is having qualification of MBBS, with experience of 47 years as a General physician. Hence the OPs prayed for the dismissal of this complaint.

At the evidence stage, complainant has filed his proof affidavit and documents. Examined as PW1 and marked Exts.A1 to A68. On the side of OPs two witnesses including 1st OP were examined, marked Ext.B1. The 2nd witness on the side of OP was Dr.Mahesh.R.P, Ortho Surgeon, District Hospital Kannur. All witness were subjected to cross-examination for the other side.

After that the learned counsels of complainant and 1st OP made oral arguments. The learned counsel of OP filed written argument note judgments of Appellate commission and also Medical Literature.

At the time of argument, the learned counsel of complainant stated that as the condition of the left hand of complainant was not improved after the key hole surgery done by 1st OP at 3rd OP hospital he underwent a nerve conduction study and found that his left hand had a Radial Axonal Neuropathy and Bilateral carpal Tunnel syndrome. So he again went to 1st OP and the OP advised to continue physiotherapy. After that as there was no improvement, he consulted Dr.A.J.Guild, at MBR Medical Trust, Hospital, Kochi and diagnosed Radial Nerve Palsy and conducted 2nd surgery nerve graft surgery. Complainant alleged that the 2nd surgery ie, Nerve graft surgery was done due to the damage caused to the Radial nerve due to the screw that was fixed on the humerus bone during key hole surgery by 1st OP. Hence complainant filed this complaint for getting compensation from 1st OP for the mental agony and financial loss due to resign from his job etc.

The learned counsel for the OP, however, stated that there had been no negligence on the part of 1st OP in performing surgery upon the complainant. According to 1st Op, 12% of humerus fracture there chance for radial nerve palsy. Further submit that radial nerve palsy is a common complication of humerus fracture.

Here the question to be decided is (1) whether Radial nerve injury was happened on account of defective surgery done by 1st OP and 1st OP was negligent in treating him?

(2) Whether due to radial nerve injury, he became permanent disabled and due to that he constrained to resign from his job?

The learned counsel of OP argued that the burden of proof lie on the complainant to prove the above said allegations.

We have examined the material on record and considered the argument made by the learned counsels of the parties.

The complainant's allegation is Radial nerve injury happened to his left hand due to the screw that was fixed where the radial nerve close to left humerus bone of the complainant by an interlocking of the left humerus bone during the key hole surgery by the 1st OP at 3rd OP hospital. Complainant alleged that though the impression in the nerve conduction study on 15/1/2020 at Indira Gandhi Co-op Hospital Thalassery suggested that plaintiff left hand had a Radial Axonal Neuropathy and Bilateral carpal tunnel syndrome, and informed to 1st OP, he only advised to continue the physiotherapy and ignored the test result shown. Through Ext.A10 ENMG Report dtd.15/1/2020 complainant proved the said fact. Ext.A22 is the prescription issued by 2nd OP on 14/1/2020, which means the complainant had approached to 3rd OP hospital for review and consulted 2nd OP. It also reveals that he had gone for review due to the discomfort and serious complaint to the operation and might have informed to 2nd OP about the complaint and discomfort at the operation site. In Ext.A22, we can see that no prove diagnosis was advised to the patient to find out the reason for the present complaint of pain etc. Not even suggested to take X-ray. Simply given Neugaba Medicines for pain, and some other medicines. Ext.A10 reveals that the complainant has gone to the Indira Gandhi Co-op Hospital on the very next day ie on 15/1/2020 and conducted nerve conduction study, for going to the said hospital to find out the reason, we cannot, blame the patient. Ext.A28(b) shows that he again return back to 1st OP, with the result for getting better treatment from 1st OP, without availing treatment from any other orthopedic doctors. On perusal of Ext.A28(b), we can see that 1st OP did not mention about the report of Ext.A10 in Ext.A28(b) prescription. Only suggested physiotherapy and given some medicines. OP's explanation is that during the review, suture removal was performed and clinical examination revealed radial nerve neuro praxia and advised the accepted treatment physiotherapy as part of conservative management. Further submitted that further evaluation with nerve conduction study would be considered if conservative management fails.

In this case the nerve conduction study was done on the same day and found Radial axonal neuropathy which shows that on the review day itself the complainant had such a complaint. Moreover the physiotherapy and cock up splint was started on 6/1/2020 itself. OPs submitted that if there was no improvement in applying cock up splint and doing physiotherapy, nerve conduction study has to be done. In such a situation, even after complaining about the complaint of feeling weakness in the left hand fingers and wrist of the complainant on the review day, and after seeing Ext.A10 report, no other treatment was advised by the OPs 1&2. Further from the facts and also from the medical records, it is evident that on continuing physiotherapy till 18/1/2020, the complainant contacted Dr.A.J.Guild at MBR Medical Trust Hospital at Kochi on 18/1/2020, then he diagnosed that the complainant had Radial nerve palsy and to correct which requires a Radial nerve exploration surgery which itself is a major surgery. Complainant again went to first Neuro Brain and Spine Super specialty hospital at Mangalore on 28/1/2020. According to complainant, after Ultra sound scanning taken at Kasturba Medical college, Mangalore as given by Dr.A.J Guild. It is seen that complainant again visited 1st OP on 27/1/2020 and 29/1/2020 and explained to him the present condition and reports and opinion of other doctors. Complainant submits that then also 1st OP opinioned to continue physiotherapy.

From the action of complainant to approach 1st OP again and again, without availing treatment from any others, even after realizing the condition of his hand, seems he believe 1st OP that much. But from the medical records it is revealed that there was no improvement happened to the hand of complainant till 14/2/2020. In Ext.X1 case record from Specialists Hospital Kochi, final diagnosis on the admission day at the said hospital on 13/2/2020, was that left radial nerve palsy, nerve was found partially damage, 3 cm damaged segment reconstructed. 2nd operation was done 14/2/2020 conducted by Dr.A.J.Guild and discharged on 22/2/2020. In Ext.X1 series, it is recorded that in page 13. At the admission time “ the patient had gross stiffness of shoulder, wrist and hand joints with oedema”. From the said facts itself it is revealed that there was no improvement to the patient to the left hand, after the surgery done by 1st OP at 3rd OP’s hospital.

The learned counsel of OPs submitted that radial nerve injuries are usually treated with conservative modalities, such as physical therapy and splinting, and radial nerve palsy is a common complication of humerus fracture. Further the negligent action of OP could not be proved by the complainant through expert evidence. The learned counsel of OP submitted a number of decisions of Hon’ble appellate commissions that the burden is on the claimant to prove breach of duty. Further submitted medical literature that radial nerve injury can be cured 100%. In the medical literature, it is observed that radial nerve palsy do naturally occur following surgical therapy. Further observed that the two complications often seen are injuries to the radial nerve and non union of the fracture. Further revealed that injuries to the radial nerve are fairly common in a mid-shaft break because this nerve can be injured at the time of the fracture or during treatment. It is also observed that most radial nerve injuries typically improve with time, but the health care provide should follow up with the patient in case further treatment is needed.

In 2019 (2)CPJ(NC) 330 produced by the learned counsel of 1st OP. states that “ The radial nerve is the nerve most frequently injured with fractures of the humeral shaft and usually the radial nerve injury is a neuropraxia, with recovery rates of 100%. In another judgment 2007 4 CPJ (NC) 64, the Hon’ble National commission held that recovery of nerve can take about 4 to 6 months for re-generating. In the said case nerve was bruised because of accident.

In the instant case, there was only mid-shaft humerus fracture. At the admission time ie, on 5/1/2020, OPs 1&2 had not mentioned about damage to the nerve in the prescription or in the case records. Evidence of nerve palsy came to know through Ext.A10 after nerve conduction study on 15/1/2020, which was instantly informed 1st OP by the complainant. Then 1st OP had advised only to continue physiotherapy and cock up splinting. As per the advise of OPs 1&2, the complainant continued physiotherapy till 13/2/2020. But there was no improvement. The expert doctor DW2 deposed that “ if there is any radial nerve injury is suspected, cock up splint is used and it is one of the treatment for radial nerve injury. Further deposed “ if neuropraxia is not cured, a nerve conduction study can be done. Can the radial nerve injury caused by a fall? Yes, fall trauma etc.

In this case, after applying cock up splint and started physiotherapy from 6/1/2020 till 15/1/2020, radial nerve injury was found by doing nerve conduction study at another hospital. DW2 deposed that if radial nerve injury is suspected, cock up splint and physiotherapy can be advised. Here even after knowing about radial nerve injury through Ext.A10 report, 1st OP

advised to continue the prior treatment. Till 10/2/2020 complainant continued the said treatment as per the advise of OPs 1&2. Ext.X1 shows that at the admission time at the Specialists hospital Kochi, the condition of nerve was, radial nerve palsy.

During cross-examination DW2, deposed that “if the nature of fracture is complicated through X-ray, that will be noted in the case record. Further if there is pre-existing radial nerve palsy that will be noted in the case records. Further stated that in such case EMG test will be suggested, that will be noted in the case records. If there is suspected radial nerve palsy then cock up splint will be given.

Here in the instant case, on 15/1/2020 Ext.A10 reveals that there is radial nerve palsy. Even on the subsequent review dates also complainant reported the complaint of radial nerve palsy. Then OP has not given any advise to do EMG test to find out the gravity of nerve palsy for giving further treatment or for doing surgery.

This is a case where the doctrine of Res-Ipsa-Loquitur is applicable considering giving of continuous same treatment (physiotherapy and splinting) even after knowing the complaint of radial nerve injury. The medical records itself shows the fact that 1st OP was negligent in giving proper treatment to the complainant by advising EMG test to ascertain the gravity of nerve palsy and to do nerve grafting or necessary treatment. Hence our opinion that no expert opinion from the side of complainant is not necessary.

Here with regard to other allegations of the complainant about reason for the loss of job due to disability of the hand and percentage of disability of his left hand etc there is no evidence. DW2 and medical literature submitted by OPs, reveals that, radial nerve palsy can be cured 100% if proper treatment were given. In this case, complainant could obtain treatment from other hospital than OP hospital by other doctors. So without any disability certificate, we cannot presume that complainant is suffering disability on his left hand due to the fracture happened. Hence our opinion is that complainant is entitled to get treatment expenses for the treatment availed at Specialists Hospital, Kochi because of the negligence on the part of OPs 1&2, in giving proper treatment after seeing Ext.A10 report, even though it is not proved that nerve palsy was happened due to the negligence on the part of OPs 1&2 in conducting surgery in a negligent way at 3rd OP hospital. Complainant is entitled to get compensation also for the mental and physical agony and for financial loss.

In the result, complaint is allowed in part, the opposite parties 1 to 3 are directed to pay Rs.1,87,514/- , the 2nd surgery expense incurred to the complainant. Opposite parties 1 to 3 are further directed to pay Rs.2,00,000/- towards compensation and Rs.25,000/- towards cost of the proceedings of the case. Opposite parties 1 to 3 are directed to comply the order jointly and severally within one month from the date of receipt of this order. Failing which Rs.187514/-+ Rs.2,00,000/- carries interest @7% per annum from the date of order till realization. Complainant can execute the order as per the provision in Consumer Protection Act 2019.

Exts:

A1-Copy of lawyer notice

A2 to A4-Acknowledgment card

A5 to A7- Reply letter of OPs

A8-Copy of discharge summary dtd.9/1/20

A9-copy of discharge bill from 3rd OP

A10-copy of ENMG report

A11- Radio Diagnosis and imaging report from KMC Mangalore

A12- Copy of letter from Dr.Rakshit .C to Dr,Guild

A13- copy of prescription

A14-copy of inpatient bill summary from MBR Medical Trust Hospital

A15-copy of medical certificate issued by Dr.Guild

A16- Copy of Discharge card from MBR Medical trust hospital

A17-copy of certificate issued by MBR Medical trust hospital

A18-Laboratory investigation report

A19- Discharge summary issued by 3rd OP

A20&A21-letterfrom specialists Hospital

A22-3rd OP hospital prescription

A23 to A25- X-ray report issued by 3rd OP

A26-Report by superintendent Dist. Hospital Kannur

A27-HDFC Bank statement

A28(series) 1st OP prescription(3 in Nos.)

A29-Specialists Hospital prescription

A30- IP deposit(Specialists Hospital)

A31-New Registration(Specialists Hospital)

A32,A33,A35,A38,A30,A42,A43,A45,A46,A48-Revisit(Specialists Hospital)

A34,A36,A37,A39,A41,A44,A47- cash bill

A49- Sumi medicals

A50- Bill of supply

A51- OP deposit

A52&A53-Revisit(2 in Nos)

A54(series)- Physiotherapy charges (77 in Nos.)

A55- cash bill (series 31 Nos)

A56(series)-Physiotherapy and Rehabilitation cash bill(16 in Nos)

A57-cash bill(27 in Nos) Specialists Hospital

A58- ThalaSssery Co-op hospital General bill

A59-cash bill (31 in Nos)

A60- revisit

A61- Thalassery Co-op hospital General bill(10 in Nos)

A62- Bill from Aswas Physiotherapy and Neuro Rehabilitation(34 in Nos)

A63-General Hospital Thalassery OP record(2 in Nos)

A64- Revisit

A65- Train Ticket(2 in Nos)

A66- Eagle hunter Sol Apartment letter

A67- letter of relieving

A68- photograph.

B1-case sheet

Ext.X1-(series)-Case record from Specialists Hospital

PW1-Radhakrishnan .C- Complainant

DW1- Rajeev.R- 1st OP

DW2-Mahesh.R.P-witness of OP

Sd/

Sd/

Sd/

PRESIDENT

MEMBER

MEMBER

Ravi Susha

Molykutty Mathew

Sajeesh K.P

eva

/Forwarded by Order/

ASSISTANT REGISTRAR

**[HON'BLE MRS. RAVI SUSHA]
PRESIDENT**

**[HON'BLE MRS. Moly Kutty Mathew]
MEMBER**

**[HON'BLE MR. Sajeesh. K.P]
MEMBER**