

**KARNATAKA STATE CONSUMER DISPUTES REDRESSAL COMMISSION
BASAVA BHAVAN, BANGALORE.**

**Complaint Case No. CC/25/2010
(Date of Filing : 20 Feb 2010)**

1. T.R.Kantharaju

S/o.T.Ramalingaiah, Aged about 53 years, R/at No.107/2, 1st Block, Opp:Navrang Theater, Rajajinagar, Bangalore-10. ,

2. Darshan K

S/o.kantharaju, Aged about 23 years, R/at No.107/2, 1st Block, Opp:Navrang Theater, Rajajinagar, Bangalore-10. ,

3. Mr. Raman K

S/o.Kantharaju, Aged about 20 years, R/at No.107/2, 1st Block, Opp:Navrang Theater, Rajajinagar, Bangalore-10. ,

.....Complainant(s)

Versus

1. M/s Jaimaruthi Hospital

Reptd by its Director, Dr.Nagesh B Anesthesiologist, No.210,Hegganahalli Main Raod, Near Peenya 2nd Stage, Hegganahalli, Bangalore-91. ,

2. Dr Anjan Kumar

Consultant Orthopedician, S/o.Dayananda, Aged about 35 years, R/at No.1124/a, 1st Main Road, 3rd Cross, Kengeri Upanagar, Bangalore. ,

3. Dr. N.Raja

Aneshtesiologist, S/o.M.Nachimuttu, Aged about 35 years, R/at No.15, 1st Main road, S.B.M.Colony Ananda Nagar, Bangalore-24. ,

.....Opp.Party(s)

BEFORE:

HON'BLE MR. JUSTICE Huluvadi G. Ramesh PRESIDENT

HON'BLE MR. Krishnamurthy B.Sangannavar JUDICIAL MEMBER

HON'BLE MRS. Smt. Divyashree.M MEMBER

PRESENT:

Dated : 18 Nov 2023

Final Order / Judgement

Date of filing:20.02.2010

Date of disposal:18.11.2023

**BEFORE THE KARNATAKA STATE CONSUMER DISPUTES REDRESSAL
COMMISSION, BENGALURU (PRINCIPAL BENCH)**

DATED: 18.11.2023

PRESENT

HON'BLE Mr. JUSTICE HULUVADI G. RAMESH : PRESIDENT

Mr.K.B SANGANNAVAR : JUDICIAL MEMBER

Mrs. DIVYASHREE M : LADY MEMBER

CONSUMER COMPLAINT NO.25/2010

1) T.R. Kantharaju,
S/o. T.Ramalingaiah,
Aged About 53 years,

2) Darshan K,
S/o. Kantharaju,
Aged About 23 years,

3) Mr. Raman.K,
S/o. Kantharaju,
Aged About 20 years,

All are R/at: No.107/2,
1st Block, Opp. Navrang
Theater, Rajajinar,
Bangalore-10.

.....Complainant/s

(Advocate – Sri.Madhu.Y.D)

V/s

1) M/s.Jaimaruthi Hospital,
Reptd. By its Director,
Dr.Nagesh B, Anesthesiologist,
No.210, Hegganahalli Main Road, Near
Peenya 2nd Stage,
Hegganahalli, Bangalore-91.

2) Dr. Anjan Kumar,

Consultant Orthopedician,

S/o. Dayananda,

Aged About 35 years,

R/at: No.1124/A,

1st Main Road,

3rd Cross, Kengeri Upanagar,

Bangalore.

3) Dr.N.Raja, Anesthesiologist,

S/o.M.Nachimuttu,

Aged About 35 Years,

R/at: No.15, 1st Main Road,

S.B.M. Colony, Ananda Nagar,

Bangalore-24.

*(OP Nos.1 to 3 are represented by Advocate
– Sri. Dr.S.V.Joga Rao)*

.....Opposite Party/s

ORDER

HON'BLE Mr. JUSTICE HULUVADI G. RAMESH, PRESIDENT

01. The complainants have filed this Consumer Complaint Under Section 17 of the Consumer Protection Act, 1986 against the opposite parties seeking direction to pay a sum of Rs.50,00,000/- towards loss of life of Lakshmi and loss of her income and expenditure meted out by the opponents in the interest of justice.

02. The brief facts of the complaint is that, on 30.04.2007 the wife of 1st complainant Smt. Lakshmi who is the mother of 2nd & 3rd complainants met with an accident at Bangalore – Mysore Road, near Ramanagar and sustained crush injuries and fractures on her left arm from shoulder to wrist. Immediately she was taken to Government Hospital at Ramanagar, where first-aid was done and she was shifted to North side Manipal Hospital, Bangalore, where treatment was given and subsequently she was shifted to Manipal Hospital, Bangalore. Thereafter on the advice of Doctors she was again shifted to Hosmat Hospital, Bangalore where

she got admitted as an in-patient. The 2nd OP who was working as consultant orthopedician in Hosmat Hospital performed operations and 04 implants were made to the fractured bones to the left arm of Lakshmi and after operation and treatment she recovered a lot and on 16.05.2007 she got discharged from the Hosmat hospital. Thereafter as per the advice twice in a week she used to go to Hosmat Hospital for dressing. On 09.08.2007 OP-2 advised to admit her in Jaimaruthi Hospital for removal of implants stating that, he is also working in the said hospital and accordingly on 09.08.2007 Lakshmi was admitted to OP-1 hospital. At the time of admission her health condition was good and she went to the 1st floor by walk with complainant No.1 for necessary check-ups. At that time the Director Mr. Nagesh i.e., opposite party No.1 and Mr. Raja i.e., opposite party No.3 were inside to conduct some examination before the operation to removal of implants. In the operation theatre she was given anaesthesia by OP No.3, immediately OP No.1 came out and told that, she was completely collapsed and struggling for survival of her life. Complainant No.1 questioned the same the OP No.1 told that, it has happened due to the anaesthesia was improperly given by OP Nos.1 & 3 and expressed inability to conduct operation and they told that, she has to be shifted to Panecia Hospital to put her in ventilators and the same was not available in OP No.1 hospital. Immediately she was shifted to Panecia Hospital through ambulance where they declared she was dead. Thereafter she was shifted to Victoria Hospital on the advice of Dr.Mohan Kumar who is the adviser from the beginning to join her to Hosmat Hospital. Where a post-mortem was conducted without obtaining signatures of the complainant and it was learnt that, One Mamtaz Ahmed who is an advocate and advisor to Ops has put his signatures to conduct the post-mortem in the name of 1st complainant. Due to the death of Lakshmi complainant No.1 was shocked and at that time they are unable to obtain all the copies and they are in the plans of cremation. After obtaining the post mortem report they are all shocked to see that, she was declared dead due to cardiac arrest. There was no complaint of cardiac problem at any point of time. There were no symptoms regarding cardiac problems during the course of tests conducted in the Hosmat Hospital. Due to the administration of anaesthesia she died and it is negligence on the part of OP doctors. The doctors who performed post-mortem in Victoria Hospital were close friends of 2nd OP and managed to give a report that, she had got a cardiac arrest. In view of the said accident they spend more than 15 lakhs. The deceased Lakshmi was doing a business of selling sweets under the name and style of Raj Bhavan Sweets and was getting income of Rs.30,000/- per month and was also an income tax assessee. At the time of incident complainant No.2 was studying in 1st year BBM and complainant No.3 was studying in Diploma and they could not able to look after the business of their mother. Complainant No.1 is doing the business of sweets under the same name opposite to Navrang Theatre and he could not able to look after the business situated at Ganganagar. Hence complainants have incurred loss of several lakhs in the absence of Lakshmi. At the time of death Lakshmi was aged 42 years and due to her death complainants have suffered loss of life, pain and sufferings and also they spent Rs.50,000/- towards funeral expenses. Complainant Nos.2 & 3 have lost love and affection of their mother. On 17.04.2008 complainants issued legal notice to the Ops, but nobody had replied. Hence this complaint.

03. Though LC for opposite party Nos.1 to 3 has filed separate versions, but the contentions raised in each of the version were one and the same. In the version the opposite party Nos.1 to 3 have contended that, on 30.04.2007 Lakshmi was brought to Hosmat Hospital for the injuries sustained by her due to road accident and on 01.05.2007 between 2.00 AM to 7.00 AM she

underwent required surgery like wound debridement, radial artery and nerve repair with excision arthroplasty, left elbow with elbow spanning external fixator. Thereafter confirming that, the patient's condition was fair she was discharged on 16.05.2007. Lakshmi was on regular follow-up at M/s. Sarojini Hospital and Panacea Hospital and she was advised to consult treating doctor for removal of external fixation after three months. Since Dr. Anjan Kumar was at Jai Maruthi Hospital at that point of time he called the patient to visit the said hospital for removal of external fixation. Accordingly patient visited the said hospital and at this point of time Dr.Nagesh and Dr. Anjan Kumar examined the patient. The patient and her husband insisted to conduct the procedure under anaesthesia and in response to the same, both the doctors explained in detail about the pros and cons of anaesthesia administration. Particularly, focusing on general risks and complications involved in such procedure to which the patient's husband had positively responded and accordingly requested for anaesthesia. Thereafter Dr. Raja, Consulting Anaesthesiologists was called for the purpose of monitoring anaesthesia care and to assist the treating doctor in the said procedure. On enquiring Lakshmi informed that, she had diabetes and she had undergone Mastectomy and also abdomen surgery. Her ECG showed inferior wall Ischemia. Dr. Raja wanted to inform her husband, but however her husband was not available as he had gone out to buy medicines. In the meantime doctors were getting ready for the procedure, suddenly patient started sweating and complained chest discomfort with drop in saturation and heart rate and the doctors tried resuscitation and once she was feeling better, they decided to shift her to a nearby hospital for ICU care. Accordingly after obtaining consent from her husband patient was shifted to Panacea Hospital and she was accompanied by the above said doctors and two nursing staff along with oxygen, monitors and emergency kit. At the said hospital she was immediately taken to ICU and put on ventilator. Despite all their efforts the patient could not be saved and she passed away on the same day around 02.45 PM. As the patient was feeling tensed and nervous she was given injection MIDAZOLAM 1mg and Glycopyrolate 0.2 mg and decided to wait till she feels fine and comfortable and then commence the procedure. The above medicines given are not for sedative purpose – MIDAZOLAM is given for the purpose of reducing anxiety, tension which is used to avoid any cardiac problem and Glycopyrolate is a pre-anaesthesia drug which is given to reduce oral secretions. After some time, it was noticed that, patient was sweating and complained chest discomfort. Immediately her blood glucose level was checked which was normal. However her BP, saturation and pulse rate was gradually decreasing. Warranted steps were taken and since oxygen saturation was dropping gradually, she was shifted to OT and she was ventilated through ET Tube. All required measures were taken as per advanced cardiac life support protocol. After some time patient seemed to be feeling better. However since she required ICU care, the Ops decided to shift her to a hospital where the ICU facilities were available. The allegations made by the complainants are all concocted one and when the procedure itself had not been commenced question of giving improper anaesthesia does not arise at all. Only pre-anaesthetic drugs were given and no sedative/aesthesia was given to the patient. The post-mortem report clearly shows the cause of death is due to cardiac arrest. In the OP No.1 hospital except ICU all necessary infrastructural facilities are available. The complainants have filed police complaint against the Ops and police has given 'B' report based on the enquiry report. There is no deficiency or negligence on the part of Ops and prays for dismissal of the complaint.

04. As per the order-sheet dated: 05.03.2010 it reveals that, the commission in the above case before admission of the case, suo-moto had referred the matter to RMO of St. John's Medical

College, Bangalore, seeking expert opinion along with required documents, for which one Dr. Varghese.P.S, Professor & Head, Forensic Medicine, Medico Legal Consultant-Emergency medicine, R.M.O, St. Johns Medical College Hospital, Bangalore, has submitted his expert opinion dated: 23.04.2010 before the commission. After obtaining the said expert opinion the above case got admitted before the commission.

05. To support their contentions both parties have filed their respective affidavit evidences along with supporting documents and the same were marked from EX.C.1 to C.30 on behalf of complainant's side and Ex.R.1 to Ex.R.25 on behalf of Ops side. One Dr. Rajendra.P. Manjrekar, an expert on behalf of opposite parties had also filed his affidavit evidence. Both parties have filed interrogatories and so also filed their answers to the said interrogatories. The LC for complainants has filed Memo with copy of Medical Jurisprudence in Anaesthetic and operative Deaths. The LC appearing on behalf of Ops have also filed Memo along with some Medical Literatures with regard to the above case.

06. Heard arguments of LC appearing for complainants and both parties have also filed their respective written arguments.

07. Perused the complaint, versions, affidavit evidences, interrogatories and answers to the interrogatories filed on behalf of both the parties along with expert opinion and documents placed before us on record.

08. Admittedly on 30.04.2007 the wife of 1st complainant and mother of complainant Nos.2 & 3 Smt. Lakshmi met with road accident at Bangalore – Mysore Road, near Ramanagar and as a result of which she sustained crush injuries and fractures on her left arm from shoulder to wrist. Immediately she was taken to Ramanagara Government, where first-aid was done and from there she was shifted to North side Manipal Hospital, Bangalore, where treatment was given and subsequently she was again shifted to Manipal Hospital, Bangalore. Further it is not in dispute that, on the advice of Doctors at Manipal Hospital, Bangalore, she was again shifted to Hosmat Hospital, Bangalore, where she underwent surgery to the fractured bones by administering 04 implants to the left arm and after recovery on 16.05.2007 she got discharged from the Hosmat hospital with an advice to attend twice in a week for dressing.

09. Further it is also an admitted fact that, as per the advice of OP-2 i.e., Dr.Anjan Kumar on 09.08.2007 Lakshmi got admitted to OP-1 - Jaimaruthi Hospital for removal of implants. At that time before conducting surgery for removal of implants the doctors conducted some examination while so she suffered very hard for survival of her life immediately she was shifted to Panacea Hospital through ambulance where the doctors had declared that she was dead. It is also an admitted fact that, thereafter she was shifted to Victoria Hospital where post-mortem was conducted and in the post mortem it is declared that, the cause of death was due to cardiac arrest.

10. Now the main allegations of the complainants are that, due to the road accident deceased Lakshmi had undergone surgery in Hosmat Hospital at Bangalore and after confirming recovery of her condition by the treating doctors she got discharged on 16.05.2007 from the said hospital.

Thereafter on the advice of OP-2 on 09.08.2007 Lakshmi approached OP-1 hospital for undergoing a procedure in respect of removal of implants, wherein in the said OP-1 hospital, OP-3 doctor had administered anaesthesia to her due to which she suffered very hard for survival of her life and immediately she was shifted to Panacea Hospital through ambulance where they declared Lakshmi was dead. Hence complainants have filed this complaint alleging that, due to the medical negligence committed by the opposite parties in administering anaesthesia improperly the wife of complainant No.1 Smt. Lakshmi dead. Further allegation of the complainants is that, the doctors who conducted post mortem report of deceased Lakshmi narrated that, the cause of death was due to cardiac arrest, but they said, doctors who performed post-mortem in the Victoria Hospital were close friends of 2nd OP and they managed to give a report that, she had got a cardiac arrest, but deceased Lakshmi had no complaint of cardiac problem at any point of time and there were no symptoms regarding cardiac problems during the course of tests conducted in the Hosmat Hospital.

11. Per contra, the contentions of Ops are that, when the procedure itself had not been commenced question of giving improper anesthesia does not arise at all. Only pre-anesthetic drugs i.e., injections MIDAZOLAM 1mg and Glycopyrolate 0.2 mg were given and no sedative/anaesthesia was given to the patient. The post-mortem report clearly shows the cause of death is due to cardiac arrest.

12. On perusal of affidavit of expert Dr. Rajendra P. Manjrekar at para-5 it is stated that, the doctors had administered only “monitored anaesthesia care” which is used for monitoring the vital signs like BP, Pulse and Oxygen saturation for doing a procedure and unfortunately patient developed signs of circulatory collapse independent of the drugs given to her. It can be attributed to her pre-existing IHD, Diabetic, and Autonomic Neuropathy. However the Ops never disclosed in their version about the doctors of Ops had administered only “monitored anaesthesia care” instead of this they contended that, no sedative/anaesthesia was given to the patient and only pre-anaesthetic drugs i.e., injections MIDAZOLAM 1mg and Glycopyrolate 0.2 mg were only given. Hence the expert evidence of Dr. Rajendra P. Manjrekar filed on behalf of Ops does not corroborate the contentions raised by the OPs.

13. Further on perusal of Expert opinion submitted by Dr. Varghese.P.S, R.M.O., of St. Johns Medical College Hospital, Bangalore, in the last line under the heading of ‘Brief History of the case’ it is stated that, “cause of death is not available in the available records” and further at para-2 it is stated that, “Mrs. Lakshmi for external fixator removal goes to Jaimaruthi hospital; preoperative review (before giving anaesthesia and surgical procedure), Lakshmi gave history acute chest discomfort before Anaesthetic was administered and acute chest discomfort worsens after administration of Anaesthetic drugs, general condition of Lakshmi worsens doctors try to resuscitate the patient for about 2 hours, then decide to shift to higher centre and no surgical procedure was undertaken”. Further in the ‘Remarks column’ it is stated that, “on perusal of medical records, I am of the opinion that, anaesthetist should not have administered anaesthetic drugs when patient Lakshmi complained of acute chest discomfort with ECG changes suggestive

of infero lateral wall ischemia, before administration of anaesthetic drugs and also it was not a life saving surgical procedure". From the above expert opinion given by Dr. Varghese.P.S we come to the conclusion that, the OP doctors had administered anaesthetic drugs to the deceased Lakshmi when patient complained of acute chest discomfort with ECG changes and it was not a life saving surgical procedure. In view of the above discussions we are of the considered opinion that, the OP - Doctors have committed medical negligence by administering anesthetic drugs to the deceased Lakshmi before going to the procedure of removal of 04 implants which resulted in to her death and it is evident that, before consulting these OP – doctors she was heal and healthy and there is no sign of cardiac disease symptoms. Due to the said act of the Ops the death of wife of complainant No.1 was happened, for which complainant No.1 being husband of deceased Lakshmi and complainant Nos.2 & 3 being children of deceased Lakshmi have suffered lot of mental trauma.

14. During the course of arguments the LC for complainants addressed that, the wife of complainant No.1 and mother of complainant Nos.2 & 3 Smt. Lakshmi was doing business of selling sweets under the name and style of Raj Bhavan Sweets at Ganganagar, Bangalore, and out of the said business she was earning Rs.30,000/- per month the same was evident from Ex.C.22 i.e., copies of I.T. returns submitted by the LC for complainants. Now to award compensation in the instant case we have to consider three facts i.e., (a) age of the deceased; (b) income of the deceased: and (c) the number of dependents. By considering age of the deceased Lakshmi we are applying 15 multiplier for the purpose of calculation of compensation as guided by M.V Act to assess just compensation payable to the complainants. Hence if we calculate her income at Rs.30,000/-P.M. x 12 months x 15 multiplier, the total loss of dependency comes to Rs.54,00,000/-. Since deceased Lakshmi was no more, we have to deduct Rs.18,00,000/- by applying $1/3^{\text{rd}}$ towards expenditure for her personal and living habit on the total loss of dependency, which comes to Rs.36,00,000/- which the Ops are liable to pay to the complainants towards compensation. Further the Ops are liable to pay a sum of Rs.1,00,000/- towards loss of consortium, loss of estate, loss of love and affection. Furthermore due to the medical negligence committed by the Ops death of Smt. Lakshmi was occurred and the Ops made the complainant to run from pillar to post and subsequently made him to file this consumer complaint, hence the Ops are directed to pay a sum of Rs.1,00,000/- to the complainants towards litigation expenses and are liable to pay interest at the rate of 6% per annum on the total awarded amount of Rs.38,00,000/- to the complainants from the date of accident to till the date of realization or payment as the case may be. Accordingly we proceed to allow the complaint in-part. The Ops are jointly and severally directed to pay a total sum of Rs.38,00,000/- along with interest at 6% per annum from the date of the accident till realization. The Ops are directed make compliance within 45 days from the date of the order.

15. Provide certified copy of this order to both parties to the consumer complaint.

LADY MEMBER

JUDICIAL MEMBER

PRESIDENT

[P*

**[HON'BLE MR. JUSTICE Huluvadi G. Ramesh]
PRESIDENT**

**[HON'BLE MR. Krishnamurthy B.Sangannavar]
JUDICIAL MEMBER**

**[HON'BLE MRS. Smt. Divyashree.M]
MEMBER**