

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, PALAKKAD
Near District Panchayath Office, Palakkad - 678 001, Kerala

Complaint Case No. CC/69/2021
(Date of Filing : 08 Apr 2021)

1. C.K. Mohanan

H/o. Savithri, Mohanam, Vaniyathara, Pazhambalacode, Alathur Taluk,
 Palakkad Dist.

2. Vinod Mohanan

S/o. Savithiri, Mohanam, Vaniyathara, Pazhambalacode, Alathur Taluk,
 Palakkad Dist.

3. Vinitha Shylesh

D/o. Savithiri, Mohanam, Vaniyathara, Pazhambalacode, Alathur Taluk,
 Palakkad Dist.

.....Complainant(s)

Versus

1. Dr. Sunny Rajan

Orthopaedist, Thangam Hospital, West Yakkara, Palakkad Taluk, Palakkad
 Dist.

2. Thangam Hospital

West Yakkara, Palakkad Taluk, Palakkad Dist. Rep.by its Managing Director

3. The Managing Director

Thangam Hospital, West Yakkara, Palakkad Taluk, Palakkad Dist.

.....Opp.Party(s)

BEFORE:

HON'BLE MR. Vinay Menon.V PRESIDENT

HON'BLE MRS. Vidya A MEMBER

HON'BLE MR. Krishnankutty. N.K MEMBER

PRESENT:

Dated : 18 Mar 2024

Final Order / Judgement

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, PALAKKAD

Dated this the 18th day of March, 2024

Present : Sri. Vinay Menon V., President

: Smt. Vidya A., Member

: Sri. Krishnankutty N.K., Member

Date of Filing: 07/04/2021

CC/69/2021

1. C.K. Mohanan,

H/o. Late Savithri,

‘Mohanam’, Vaniyathara,

Pazhampalakode, Alathur – Palakkad.

2. Vinod Mohanan,

S/o. Late Savithri,

'Mohanam', Vaniyathara,
Pazhampalakode, Alathur – Palakkad.

3. Vinitha Shylesh,

D/o. Late Savithri,

'Mohanam', Vaniyathara,

Pazhampalakode, Alathur – Palakkad.

- Complainants

(By Adv. M/s. John John & Chenthamarakshan)

Vs

1. Dr. Sunny Rajan,

Orthopaedist,

Thankam Hospital,

West Yakkara, Palakkad.

2. Thankam Hospital

West Yakkara, Palakkad.

Rep.by its Managing Director.

3. The Managing Director,

Thankam Hospital,

West Yakkara, Palakkad.

- Opposite parties

(O.P.1 by Adv. V.K.Venugopalan,

O.P.s 2 & 3 by Adv. Ms. Preetha John K.)

ORDER

By Sri. Vinay Menon V., President

1. Essential pleadings of the complainants are that they are the legal heirs of one deceased Savithri. Savithri was taken and admitted in 2nd OP hospital on 5/2/2021 for medical treatment for back pain as IP. Savithri was under the care of the 1st O.P. During treatment Savithri was administered a medicine, MTX at dosage that was impermissible and higher than the recommended dosage. As a consequence, Savithri had to be admitted in ICU. As her condition became worse, she had to be taken to Amritha Hospital, Ernakulam where she died on 28/2/2021. Complainants alleged that the impermissible dosage of MTX was the cause of Savithri's death. This complaint seek for compensation and other consequential and incidental reliefs.

2. The first OP filed a detailed version stating that the deceased was provisionally diagnosed with seronegative rheumatoid arthritis. The deceased was prescribed MTX and HCQ which are medically accepted standard prescription for management of arthritic pain. The complainant was suffering from various other complaints like type-2 DM with peripheral neuropathy. The first OP has detailed the various treatments carried out at the 2nd OP hospital and has also stated that he had advised stoppage of HCQS on 11/2/2021. At the time of the deceased's transfer to AIMS, the first OP was not treating her as her condition had bettered and was taken off the 1st OP's treatment. The medication prescribed by the 1st OP was as per accepted pharmacological guidelines.
3. OPs 2 & 3 also tagged the same line of defense as the one adopted by the 1st OP.
4. The following issues were framed for consideration:
 1. Whether the deceased was administered MTX without precaution test in violation of standard protocol and accepted dosage?
 2. Whether the 1st OP had followed standard treatment protocol and exercised reasonable care and caution in diagnosis and prescription of medicines?
 3. Whether there is any other negligence on the part of the OPs?
 4. Whether the complainants are entitled to get medical and other expenses over and above the ECH claim?
 5. Whether there is any deficiency in service on the part of the OPs in the treatment rendered to the deceased which resulted in her death?
 6. Any other reliefs?

5. (i) Complainants' evidence comprised of proof affidavit and Exhibits A1 to A7. Marking of Exts.A5 to A7 were objected to since they were issued by a third party hospital. Complainant was e

Since this Commission is not bound by Indian Evidence Act and as the OPs have no case that the said documents were false and fabricated, objections are unsustainable.

- (ii) Both OPs filed proof affidavit and Exts. B1 & B2 were marked. Pages 6, 13 & 35 in Ext.B2 were marked as Exts.B2(a), B2(b) & B2(c) respectively through DW1.
- (iii) OP1 was examined as DW1.

Issue Nos.1, 2 & 5

6. These issues are considered together since these issues are of the same nature dealing with the administration of medication that allegedly led to the death of the deceased. Complainants' case is that the 1st OP advised administration of folitrax containing methotrexate(MTX) at 7.5 mg twice, morning and night ignoring medical protocol of administering MTX according to which the permissible dose is 7.5 mg per week. Per complainants, the dosage administered on the deceased was excessive and impermissible under medical treatment protocol.

7. 1st OP, against whom the main offensive is directed, filed a detailed version highlighting the treatment rendered to the deceased. He had contested that he had ordered administration of MTX @7.5 mg twice daily once in a week. Thereafter when the complainant showed adverse symptoms HCQS and folitrax were ordered to be stopped. The complainant was not entitled to any treatment expenses since the expenses were covered under ECHS.

8. In support of their pleadings, the complainants had marked Exts. A1 to A7.

Ext.A4 is a referral letter to another institution (Amrita Institute of Medical Science). Case summary of the patient shows that the patient was suffering from "*sepsis probably MTX induced*".

Ext.A5 is the admission form for ECHS issued by AIMS. Per Ext.A5 the provisional diagnosis is '*sepsis (methotrexate induced bone marrow suppression)*'.

Ext.A6 is a medical certificate issued justifying emergency admission which shows the same diagnosis.

9. But none of the documentary evidence adduced by the complainant is cogent enough to prove that the 1st O.P. was negligent in continuing with MTX or that the dosage was in excess.

10. Yet a perusal of Ext. B2 brings out certain discrepancies.

11. (a) Dates are recapped for easy consideration. Medications started on 5/2/2021. Administration of MTX continued till 10/2/2021. Complaint of ulcer arose of 10/02/2021. O.P.1 claims that stoppage was ordered on 11/02/2021.

(b) Ext.B2 is the medical records pertaining to the treatment of the deceased wherein the present admission and treatment in question are recorded. DW1, the 1st OP, rely on Exts. B2 (a), B2(b) & B2(c) of Ext.B2 records to show that he had taken ample precautions to stop MTX as and when the ulcer was observed. They are pages 6, 13 & 35 of Ext. B2 respectively.

(c) Ext. B2(a) dated 5/2/2021 shows that the 1st O.P. had advised folitrax.

(d) Ext. B2(b) dated 11/02/2021 shows that the 1st O.P. had advised cessation of HCQS and “weekly dose of folitrax”. This entry does not tally with the entry in Ext. B2(a) and the pleadings, wherein the 1st O.P. has advised administration of MTX twice a day(1 – 0 – 1).

(e) Ext. B2(c) is the Drug chart. It shows that folitrax was stopped on 6/02/2021 (Day II). This entry also does not tally with the pleadings that stoppage was effected on 11/02/2021 and the advice in Ext. B2(b) and pleadings.

12. Even though not marked in evidence as part of Ext. B2, records made by nurse in charge also forms part of the treatment rendered to the complainant.

Page 74 of Ext.B2 pertains to the Nurse’s record made on 10/2/2021. At 2pm it is seen that the patient had complaints of oral ulcer. Ext.B2(b) is the Doctor’s note made on 11/2/2021 at 9am. It can be seen that the doctor had directed stoppage of HCQS and MTX. Corresponding entries in page 74 nurses record on 11/2/2022 at 10 am shows that the 1st OP had seen the complainant and advised continuation of same treatment. New medicines were added. On 11/2/2021, 12/2/2021 and 13/2/2021 it is seen that the same medication is continued as per Nurses record in pages 75 and 76 of Ext.B2. On 13/2/2021 at 7.50 am the 1st OP had advised transfer of patient to medical side.

13. OPs have no case that the treating nurses had acted against the directions of OP1. Therefore, the only conclusion that can be reached from a reading of the discrepancy in the pleadings of the 1st O.P., Exts. B2(a), B2(b) and B2(c) is that the 1st OP has concocted Ext.B2(b).

14. In the cross of DW1, counsel for complainant had put in questions so as to insinuate that the documents were kept in the office of the counsel for 1st OP. Incidentally, this question and the insinuation do not find a place in the argument note filed by the counsel for the complainant.

Sheet of paper containing pages 13 & 14 (Ext.B2(b)), the headings are seen made of an entirely different ink pen and the handwriting from those made in other sheets in daily notes. The same hand writing is not seen repeated anywhere else in Ext.B2 file. The Doctor’s note in Ext.B2 is also entirely different in that the handwriting and ink are different from previous and subsequent notes. In page 14, where Dr.Lijo Isac John had entered his findings, the same pen used in page 13 is used to enter the patient details and date and time. Therefore, the same person who had entered the contents in page 13 had entered the details in page 14 using the same colour ink and pen. The same is not observed anywhere else.

Further, Ext. B2(a) shows that folitrax was prescribed to be administrated twice a day (1 – 0 – 1). There is no change in any subsequent pages till Ext. B2(b). But entry in Ext. B2(b) is to the effect that folitrax was

scheduled on Saturday (on verification of 2021 calendar, it is seen that 11/02/2021 is Thursday). If, even as per the case of the 1st O.P., folitrax was advised daily and no change whatsoever was made until 11/02/2021, the entry on 11/02/2021 directing stopping of folitrax scheduled on Saturday does not appeal to logic.

So we are of the opinion that Ext.B2(b) is a forged and concocted document.

15. Ext.B2(c) is the Drug chart. A perusal of Ext.B2(c) shows that folitrax (MTX) was stopped on 6/2/2021. Had folitrax been discontinued on 6/2/2021, what was the necessity of entry in Ext.B2(b) stopping folitrax on 11/02/2021?

The only conclusion is that the entry in Ext.B2(c) is also forged to misguide and mislead this Commission.

16. Why would the 1st O.P. resort to forging the documents, if not to hide some vital/fatal flaws? We, therefore, are under the impression that there is grave negligence on the part of 1st OP in diagnosing/mis-diagnosing the condition of Savitri. He has also resorted to forging of documents so as to mislead and misguide the process of law.

Issue No.3

17. As already stated supra, we find that over and above the negligence, the first OP has falsified records to mislead and misguide this Commission. We find this to be a gross deficiency in service on the part of OPs, trying to subvert and sabotage the process of law.

Issue Nos. 4

18. Complainants have not produced any documents to prove that they had expended exorbitant amounts. But the documents marked by them shows that the deceased was treated under ECHS. Therefore, the complainants are not entitled to the amounts expended for the treatment of the deceased.

Issue Nos. 6

19. As already stated supra, there is gross negligence and deficiency in service on the part of OP1. OPs 2 & 3 are vicariously liable for the negligence perpetrated and deficiency in service. We therefore grant the following reliefs.

- | | | |
|---------------------------------------|---|--------------|
| 1. Compensation for negligence | - | Rs. 5 lakhs |
| 2. Compensation for forging documents | - | Rs. 10 lakhs |
| 3. Cost of proceedings | - | Rs. 2 lakhs |
4. OPs 1 to 3 shall be jointly and severally liable to pay these amounts to the complainants.
5. The aforesaid orders shall be complied within 45 days of receipt of this Order, failing which, each of the OPs shall pay Rs.1,000/- each to each of the complainant (ie. Rs. 2000 x 3) per month or part thereof by way of solatium.

Pronounced in open court on this the 18th day of March, 2024.

Sd/-

Vinay Menon V

President

Sd/-

Vidya.A

Member

Sd/-

Krishnankutty N.K.

Member

APPENDIX

Exhibits marked on the side of the complainant

- Ext.A1 - Copy of test results dated 5/2/2021
- Ext.A2 - Copy of CT Scan report
- Ext.A3 - Copy of test results dated 15/2/2021
- Ext.A4 - Copy of referral letter
- Ext.A5 - Copy of admission form for ECHS
- Ext. A6 - Copy of medical certificate for justification of emergency admission
- Ext.A7 - Printout of a picture of death certificate

Exhibits marked on the side of the opposite party:

- Ext.B1 - Original medical records pertaining to the treatment rendered to Savithri.
- Ext.B2 - Original medical records pertaining to the treatment rendered to Savithri.
- Ext.B2(a) - Page 5 of Ext.B2
- Ext.B2(b) - Page 13 of Ext.B2
- Ext.B3 (c) - Page 35 of Ext.B2

Court Exhibit: Nil

Third party documents: Nil

Witness examined on the side of the complainant :

PW1 – Mohanan C.K. (1st complainant)

Witness examined on the side of the opposite party:

DW1 – Dr.Sunny Rajan (OP1)

Court Witness: Nil

NB : Parties are directed to take back all extra set of documents submitted in the proceedings in accordance with Regulation 20(5) of the Consumer Protection (Consumer Commission Procedure) Regulations, 2020 failing which they will be weeded out.

**[HON'BLE MR. Vinay Menon.V]
PRESIDENT**

**[HON'BLE MRS. Vidya A]
MEMBER**

**[HON'BLE MR. Krishnankutty. N.K]
MEMBER**