

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

**Complaint Case No. CC/121/2016**  
**( Date of Filing : 16 Aug 2016 )**

1. C.K.Bhaskaran

S/o.Krishnan Nair, Puthan Veedu, Marayamangalam  
South Ottapalam Taluk

Palakkad

Kerala

2. Ramani

W/o.C.K.Bhaskaran, Puthan Veedu, Marayamangalam  
South Ottapalam

Palakkad

Kerala

.....Complainant(s)

Versus

1. Kerala Medical College Hospital

Mangode, Cheruplasseri, Palakkad. Rep.by Authorised  
Person

Palakkad

Kerala

2. Dr.Baviji Balan

Kerala Medical College Hospital, Mangode, Cherplasseri  
Palakkad

Kerala

3. Dr.Sunil Maharair

Kerala Medical College Hospital, Mangode, Cherplasseri  
Palakkad

Kerala

4. Dr.Naveen

Department of General Medicine, Kerala Medical  
College, Mangode, Cherplasseri

Palakkad

Kerala

.....Opp.Party(s)

**BEFORE:**

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

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

**PRESENT:**

**Dated : 21 Oct 2021**

**Final Order / Judgement**

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, PALAKKAD

Dated this the 21<sup>st</sup> day of October 2021

Present : Sri.VinayMenon.V President

: Smt.Vidya.A, Member

Date of Filing: 12/08/2016

**CC/121/2016**

1. C.K. Bhaskaran,

S/o.Krishnan Nair,

Residing at “Puthanveedu”

Marayamangalam South, Ottappalam Taluk,

Palakkad

2. Ramani,

W/o C.K. Bhaskaran

Residing at “Puthanveedu”

Marayamangalam South, Ottappalam Taluk,

Palakkad

-

Complainants

(Represented by Adv. Ullas Sudhakaran)

Vs

1. Kerala Medical College Hospital,

Represented by its Authorised Person,

Mangode, Cherppulassery, Palakkad.

2. Dr. Baviji Balan,  
Kerala Medical College Hospital,  
Mangode, Cherppulassery, Palakkad.
3. Dr. Sunil Maharair,  
Kerala Medical College Hospital,  
Mangode, Cherppulassery, Palakkad.
4. Dr. Naveen,  
Dept. of General Medicine,  
Kerala Medical College Hospital,  
Mangode, Cherppulassery, Palakkad. - Opposite parties

### **ORDER**

By Sri.Vinay Menon. V., President

Brief facts of the complaint.

1. The complainant is aggrieved by the failure on the part of opposite parties 2 to 4, who were practicing doctors in opposite party 1 hospital in detecting the diseases being suffered by the 2<sup>nd</sup> complainant.
2. The 2<sup>nd</sup> complainant is the wife of the 1<sup>st</sup> complainant. The 2<sup>nd</sup> complainant approached opposite parties 2 to 4 in 1<sup>st</sup> opposite party hospital on 19.11.2015 with fatigue. She was made to undergo a number of tests and some day around 21.11.2015 (as it is not clear from the pleadings or documents) she was admitted to 1<sup>st</sup> opposite party hospital. As the condition of the 2<sup>nd</sup> complainant deteriorated, she was discharged on 24.11.2015 and was taken to EMS Memorial Co-operative Hospital and Research Centre,

Perinthalman, where her condition was diagnosed as Acute Meningo Encephalitis, severe Hyponatremia, Syndrome of inappropriate antidiuretic hormone secretion (SIADH) and Non-Insulin-Dependant Diabetes Mellitus (NIDDM).

The delay in diagnoses of the conditions suffered by the 2<sup>nd</sup> complainant facilitated increase in severity of conditions suffered by her. The 2<sup>nd</sup> complainant is still suffering from the adverse effects of the disease and requires the assistance of others to carry out day to day activities.

There is deficiency in service on the part of opposite parties and the complainant is entitled to a compensation of Rs. 15,00,000/- and a cost of Rs.25,000/- and other incidental reliefs.

2. Notice was served on opposite parties 1 and 3 and they did not appear and were set exparte as early as 19.09.2016. Notice by paper publication was taken against opposite parties 2 and 4 and were set exparte on 08.12.2016.

3. The following issues arise for consideration

- I. Whether the failure to diagnose the affliction of the 2<sup>nd</sup> complainant by the opposite parties 2 to 4 constitute deficiency in service?
- II. Whether any liability that can be cast on opposite party 1 ?
- III. Reliefs and cost, if any ?

4. Evidence comprised of Exhibits A1 to A15 and Exhibits X1 and X2. Exhibit A1 to A15 are photocopies. Original of the medical records were sent to the Medical Board, Thrissur, who issued Exhibit X1, for examination of the condition of the 2<sup>nd</sup> complainant. The same was lost while in the custody of the Medical Board. The factum of loss of documents is intimated by the Superintendent, District Hospital, Palakkad in Exhibit X2 communication. Hence photocopies were permitted to be marked.

**Issue No. 1**

5. The opposite parties were set-exparte. No versions were filed by them. Hence resort to the veracity of the pleadings can be made out from Exhibits A 1 to 12. Exhibit X1 is not of much use as it does not reflect the plight of the 2<sup>nd</sup> complainant. The reason stated is that the assistance of a Neurologist was not forthcoming.

6. Exhibit A1 shows that the 2<sup>nd</sup> complainant was seen on 19.11.2015. (In fact she was a regular in the opposite party 1 hospital as can be ascertained from Exhibit A5.) Exhibit A12 is the discharge summary from EMS Memorial and Co-operative Hospital & Research Centre. History in Ext. A12 shows that the second complainant was “*Evaluated outside and find to have UTI*”(sic). Here the word “outside” refers to OP1 hospital. None of the other symptoms are recorded to have been found in the opposite party 1 hospital. Hence we take averment of non diagnosis of the actual indisposition of the second complainant to be a clear case of Res Ipsa Locquiter. From 19.11.2015 to 24.11.2015, the opposite parties 2 to 4 failed to recognize the symptoms of the diseases suffered by 2<sup>nd</sup> complainant. In the absence of any evidence forthcoming to show that the failure is not owing to any negligence, we have no option but to hold that there is deficiency in service on the part of the opposite parties 2 to 3. Issue no. 1 is held accordingly.

### **Issue no. 2**

7. As already discussed supra, no evidence was forthcoming as to arrive at a conclusion as to who amongst opposite parties 2 to 4 is responsible in failing to detect the condition of the 2<sup>nd</sup> complainant. But for the failure of its employees/staff, the 1<sup>st</sup> opposite party is vicariously liable to compensate the complainants.

### **Issue No. 3.**

8. The claim raised by the complainants in the relief portion of the complaint is exorbitant. It is clear from the records that the complainant was already suffering from various diseases like Seizure, UTI, schizophrenia and Type 2 DM. Exhibit X1 is also not helpful to arrive at a clear picture as to the disability suffered by the 2<sup>nd</sup> complainant owing to the delay occurred in detecting Acute Meningo Encephalitis, severe Hyponatremia, Syndrome of inappropriate antidiuretic hormone secretion (SIADH). In the absence of evidence to prove entitlement to the reliefs sought, we are inclined to grant only a compensation for failure in detecting the maladies suffered by the complainant.

9. In the facts and circumstances of the case, we believe that an amount of Rs. 50,000/- (Rupees Fifty thousand only) would suffice as compensation for the deficiency in service on the part of opposite parties 2 to 4. The complainants are also entitled to a cost of Rs. 25,000/- (Rupees Twenty five thousand only). The 1<sup>st</sup> opposite party is vicariously liable for the deficiency in service on the part of the opposite parties 2 to 4. We hold that

the 1<sup>st</sup> opposite party shall be liable and responsible to pay the compensation and cost to the complainants. The assets of the 1<sup>st</sup> opposite party, both movable and immovable, shall be charged with this sum.

Hence opposite party 1 is directed to pay Rs. 50,000/- (Rupees Fifty thousand only) as compensation and Rs.25,000/- (Rupees Twenty five thousand only) as cost to the complainants.

This order shall be complied within a period of 45 days from the date of receipt of this order.

Pronounced in the open court on this the 21<sup>st</sup> day of October 2021.

Sd/-

Vinay Menon V

President

Sd/-

Vidya.A

Member

#### APPENDIX

##### Exhibits marked on the side of the complainant

Ext.A1 – Copy of OP ticket bearing OP NO.93552/15 dated 19/11/15

Ext.A2 – Copy of lab results bearing lab No.70420/15 dated 19/11/15

Ext.A3 – Copy of lab results bearing lab No.70438/15 dated 19/11/15

Ext.A4 – Copy of lab results bearing lab No.70559/15 dated 20/11/15

Ext.A5 – Copy of referral letter dated 21/11/15 of Amala Medical College

Ext.A6 – Copy of lab results bearing lab No.70958/15 dated 21/11/15

Ext.A7 – Copy of lab results bearing lab No.71032/15 dated 22/11/15

Ext.A8 – Copy of lab results bearing lab No.71210/15 dated 23/11/15

Ext.A9 – Copy of lab results bearing lab No.71282/15 dated 23/11/15

Ext.A10 – Copy of lab results bearing lab No.71441/15 dated 24/11/15

Ext.A11 – Copy of bill dated 24/11/2015 issued from Kerala Medical College Hospital

Ext.A12 – Copy of discharge summary bearing MRD No.293569 dtd.7/12/15

Ext.A13 – Copy of e.mail communication issued by the complainant

Ext.A14 – Copy of e.mail communication dated 23/12/2015 issued from Kerala Medical  
College Hospital

Ext.A15 – Copy of e.mail communication dated 2/1/2016 issued by the complainant

Exhibits marked on the side of the opposite party

NIL

Witness examined on the side of the complainant

NIL

Witness examined on the side of the opposite party

NIL

Evidence from third party

X1 – Medical Certificate alongwith covering letter dated 18/9/2017 issued from the Senior  
Superintendent, Dist.Hospital, Palakkad

X2 – Communication bearing No.B4/8659/19 dated 29/10/19 issued by the Superintendent,

Dist. Hospital, Palakkad

Cost : Rs.25,000/- allowed as cost of this litigation.

NB : Parties are directed to take back all extra set of documents submitted in the proceedings in accordance with Consumer Protection (Consumer Commission procedure) Regulations, 2020 failing which they will be weeded out after 30 days of issuance of the order.

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

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