STATE CONSUMER DISPUTES REDRESSAL COMMISSION
THIRUVANANTHAPURAM

Complaint Case No. CC/02/15
(Date of Filing : 01 Jan 2002)

1. Abdul Rehman
Malappuram .....Complainant(s)

Versus

1. Dr.Johnson Marion
Calicut .....Opp.Party(s)

BEFORE:
HON'BLE MR. JUSTICE SRI.K.SURENDRA MOHAN PRESIDENT
HON'BLE MR. SRI.AJITH KUMAR.D JUDICIAL MEMBER
SRI.RADHAKRISHNAN.K.R MEMBER

PRESENT:

Dated : 29 Feb 2024

Final Order / Judgement

KERALA STATE CONSUMER DISPUTES REDRESSAL COMMISSION,

VAZHUTHACAUD, THIRUVANANTHAPURAM

O.P. No. 15/2002

JUDGMENTDATED: 29.02.2024

PRESENT:

HON'BLE JUSTICE SRI. K. SURENDRA MOHAN : PRESIDENT

SRI. AJITH KUMAR D. : JUDICIAL MEMBER

SRI. RADHAKRISHNAN K.R. : MEMBER

COMPLAINANTS:

1. Abdul Rehman, S/o Veeran Kutty, represented by his next friend and wife Rasheeda, Parapparambil House, P.O., Thalakadathur, Tirur-676 103, Malappuram.

2. Rasheeda, Parapparambil House, P.O., Thalakadathur, Tirur-676 103, Malappuram.

3. Rajila, Parapparambil House, P.O., Thalakadathur, Tirur-676 103, Malappuram.

4. Rameez, Parapparambil House, P.O., Thalakadathur, Tirur-676 103, Malappuram.

5. Pathumma, D/o Seethi Musaliyar, Parapparambil House, P.O., Thalakadathur, Tirur-676 103, Malappuram.

(By Adv. C.M. Andrews)

1.

OPPOSITE PARTIES:

1. Dr. Johnson Marion, E.N.T. Surgeon, Nirmala Hospital, Marikkunnu P.O., Calicut-673 012.

2. Dr. Vijayakumar, Anesthesiologist, Nirmala Hospital, Marikkunnu P.O., Calicut-673 012.

(By Adv. Sajeevu Mathew for OPs 1 & 2)

3. Nirmala Hospital, Marikkunnu P.O., Calicut-673 012 represented by its Administrator.

(By Adv. Tom K. Thomas)

JUDGMENT

HON'BLE JUSTICE SRI. K. SURENDRA MOHAN: PRESIDENT

This is a complaint filed seeking compensation of an amount of Rs. 50,00,000/- for the loss and injury sustained by the complainant due to the negligence on the part of the opposite parties who are doctors and medical practitioners. The original complainant, the 1st complainant herein died during the pendency of these proceedings. The 2nd complainant is his wife and the 3rd and 4th complainants are his daughter and son. The 5th complainant is his mother.

2. Opposite parties 1 & 2 are doctors working in the 3rd opposite party hospital. The hospital is represented by its Administrator.

3. The 1st complainant was employed at Qatar. When he had come down to his home town on leave, he had occasion to consult the 1st opposite party who is an E.N.T. Surgeon on 13.12.2001. His complaint was regarding a minor deformity of his nose. The 1st opposite party

after examination of the 1st complainant opined that the said deformity could be easily corrected by a minor surgery for which, he advised the 1st complainant to get himself admitted to the 3rd opposite party hospital. The 1st and 2nd opposite parties were working at the said hospital. They assured the 1st complainant that the hospital had all the necessary facilities and had qualified and experienced staff for conducting the surgery. The operation was called Septoplasty and the same was usually done under general anesthesia, according to them.

4. The 1st complainant was asked to get himself admitted in the 3rd opposite party hospital on 03.04.2001 and the surgery was proposed to be conducted on 04.04.2001 at 7.30 am. Accordingly, the 1st complainant was admitted in the 3rd opposite party hospital on 03.04.2001 and an advance payment of Rs. 4,000/- was collected from him at the time of admission. After pre-operative check-up, he was declared to be completely fit to undergo the surgery under general anesthesia. The 1st complainant was assured that it was only a routine minor operation with no likelihood of any complication whatsoever. The next day morning on 04.04.2001 the 1st complainant was taken to the operation theatre and the 2nd opposite party had administered anesthesia. When nothing was heard about him even at 11.30 am the persons who had accompanied him including his brother contacted the staff of the 3rd opposite party hospital and enquired about him. At that time the 1st opposite party came out from the operation theatre and informed that there was absolutely no problem and the patient could be shifted back to the room after he was kept for observation in the recovery room for some time.

5. At 12.30 noon the opposite parties intimated for the first time that there was some problem. When pursued further, they stated that the 1st complainant had not recovered after the surgery and that he was being shifted to the Intensive Care Unit (ICU). Even at that time, the opposite parties were assuring that the 1st complainant was alright since it was only a minor anesthetic complication. Later in the evening, the opposite parties stated that the condition of the 1st complainant was serious and that his relatives may be intimated. Thereafter the 1st complainant was put on ventilator support. The 1st complainant was kept in the 3rd opposite party hospital till 16.04.2001. But his condition did not improve, it only worsened. Throughout, the relatives and bystanders of the 1st complainant were requesting the opposite parties to permit them to take the patient to Madras or to SCT, Thiruvananthapuram where better facilities and qualified, competent and experienced doctors were available. In spite of the repeated requests the opposite parties declined to issue a discharge summary or the details of the treatment or a copy of the case sheet without which it was not possible to take the patient to any other hospital for better management or treatment. Finally after much persuasion the 1st opposite party reluctantly agreed to shift the 1st complainant to Manipal stating that one Dr. Ajith Kumar who was working in the 3rd opposite party hospital knew the doctors at Kasturba Hospital, Manipal. Thus during the night on 16.04.2001 at around 11 p.m the 1st complainant was taken to Kasturba Hospital, Manipal in the Ambulance of the National Hospital, Kozhikode accompanied by the 1st opposite party and another doctor.

6. The 1st complainant was admitted to the Kasturba Hospital, Manipal on 17.04.2001. No discharge summary or a copy of the case sheet was given from the 3rd opposite party hospital evidently with malafide and ulterior motives. It was the 1st opposite party who contacted the

concerned doctors at Kasturba Hospital, Manipal and it was on the information given by him that further treatment was given from the Kasturba Hospital. The 1st complainant was treated as an inpatient in the Department of Neurology from 17.04.2001 till 12.05.2001. The patient remained deeply in comatose condition and there was no improvement. Finally it was decided by the doctors of the Kasturba Hospital that nothing more could be done in the matter and that the 1st complainant could be taken back and treatment continued from the local hospital. The final diagnosis was hypoxic, hypoxemic, encephalopathy and persistent vegetative state. The 1st complainant was discharged and admitted to the Al-Shifa Hospital Private Limited, Perinthalmanna in the department of ENT, head and neck surgery. He was treated there from 14.05.2001 to 08.08.2001. He was discharged thereafter because his neurological status continued to remain statusquo without any improvement. It was advised that his treatment could be continued with the assistance of two trained nurses at home and periodic check up by doctors. Accordingly, he remained at home. He was given food through a tube and a catheter was inserted for urination. Since the filing of the complaint, he had not shown any improvement.

7. At the time of surgery, the 1st complainant was aged only 33 years. He was employed at Qatar earning around Rs. 25,000/- per month. He was healthy and having no ailments. He was married to the 2nd complainant and had two children, complainants 3 & 4. The elder daughter was aged 6 years and the younger son aged 8 months. According to the complainants, all their loss, injury and hardships were consequences of the negligence, carelessness, deficiency in service and unfair trade practice on the part of the opposite parties. Had they bestowed reasonable care, caution and attention while treating the complainant during the surgery and thereafter, all the complications that ensued could have been avoided. The surgery that was conducted on the 1st complainant was an elective one and was akin to a cosmetic surgery. If there was any doubt regarding the complete fitness of the 1st complainant to undergo the same under general anesthesia the surgery could have been either postponed or avoided. Even according to the opposite parties, the 1st complainant was perfectly fit to undergo the said surgery under general anesthesia and there was absolutely no contra indication.

8. In spite of repeated requests and reminders the 3rd opposite party willfully failed and neglected to either give a copy of the case sheet or at least the discharge summary. Only when legal action was threatened that the 1st opposite party gave a letter dated 09.07.2001 stating that the surgery was uneventful and the patient was extubated and was fully awake with stable vital signs and full consciousness after the surgery. Therefore he was shifted to the recovery room. However, he developed cardio respiratory arrest which was claimed to have been attended immediately and resuscitated. It was stated that the 1st complainant was put on ventilator and shifted to the Intensive Care Unit. But because of the above event the 1st complainant developed hypoxic brain damage following which he developed seizures. According to the complainants, the allegations and statements contained in the said letter are not true, correct or sustainable. The said statements are contradictory to the contentions of the 3rd opposite party hospital in their reply letter dated 18.07.2001 sent to the notice dated 09.07.2001 issued on behalf of the other complainants. In the said reply it was stated that the 1st complainant did not recover after the surgery. However, it is pertinent to note that both opposite parties 2 & 3 have admitted that the present condition of the complainant was due to the complication that arose during the surgery. The 3rd opposite party has gone to the extent of stating that “when a patient is operated upon or

treated in any hospital there is an element of risk and that has happened in the case of the 1st complainant". It is further alleged by the complainant that, admitting their liability for the present condition of the 1st complainant, the 3rd opposite party had not issued hospital bill to the complainants nor was any further amount demanded. The complainants further stated that, the present condition of the 1st complainant had occurred because of the surgery that was conducted on him. It was something that happened during the treatment of the 1st complainant. Thus, the very fact that the injury was caused in the circumstances in which such an incident did not normally happen unless there was negligence on the part of someone, it is clear that the present condition of the 1st complainant would not have resulted had there not been negligence. Therefore, it cannot be disputed that there was negligence and lack of care on the part of the opposite parties.

9. A police complaint was filed on 09.09.2001 before the Dy. S.P. Tirur which was forwarded to the Assistant Commissioner of Police, Kozhikode. The Police seized the case sheet and other records relating to the treatment of the 1st complainant. Only months after the incident, it was returned. Therefore it is alleged that the case sheet would have been manipulated and tampered with, for the convenience of the opposite parties. The complainants filed a petition before the Judicial First Class Magistrate, Kozhikode for the issue of a direction to the Police to furnish a true copy of the case sheet regarding the 1st complainant. The said petition was allowed on 02.11.2001 and finally a Xerox copy of the case sheet was obtained from the Police. On a perusal of the records, it was found that they had been tampered with and manipulated, especially pages 29 to 33 were seen to have been changed and rewritten. Even going by the case sheet, the surgery was over by 10.20 am and the patient was extubated. Thereafter, the next entry is seen only at 10.50 am and nothing has been noted about the condition of the patient or post operative management for around 30 minutes. It is evident from the above that, there was absolutely no monitoring or care to the patient during that crucial period. Even according to the entries made in the case sheet, the patient was stated to have been shifted from the Operation Theatre in good condition at 10.50 am and received in the recovery room at 10.55 am in conscious condition. Within 5 minutes it is seen stated that the patient was restless and cyanosed with drastic fall in BP and pulse rate.

10. According to the complainants irreversible damage to the brain caused to the 1st complainant is due to non-attendance and lack of proper care and monitoring during the said crucial period. There was negligence and carelessness during the operation also. The entries seen made in the case sheet regarding the said crucial period are conflicting and unsustainable. Pulmonary oedema is also shown to be present for which no cause is stated. Features of pulmonary oedema can occur due to post operative aspiration of blood, fluids, vomitus into lungs. Aspiration of blood is anticipated especially in operations in the nose. No reason is stated for the alleged post operative cardio respiratory arrest. It is alleged that the same was due to inadequate recovery from anesthesia/sedation, over sedation or post operative aspiration referred to above. All the above complications had occurred when the 1st complainant was either in the operation theatre or in the recovery room under the exclusive supervision, control and treatment of the opposite parties and where utmost care caution and attention was to be bestowed on a patient. Since it is stated that it is a known medical complication associated with such surgeries, the opposite parties were duty-bound to have taken appropriate remedial measures to anticipate and control such a complication. As a consequence of the negligence, a

healthy 33 year old man who had undergone a minor surgery on the nose has been rendered in a persistent vegetative state, deeply comatose due to the negligence, carelessness, deficiency in service and indifference on the part of the opposite parties. Had sufficient care been taken the onset of the alleged cardiac respiratory arrest and cyanosis could have been detected at an early stage and irreversible brain damage could have been avoided.

11. It is alleged that improper administering of anesthesia and conduct of surgery could be attributed to the cardio respiratory arrest caused to the 1st complainant. His wife and minor children are put to much hardship, pain and suffering due to the conduct of the opposite parties. The 2nd complainant is deprived of the companionship and consortium of a loving husband and the children are deprived of the love, affection, guidance and support of a responsible and affectionate father. Complainants 2 to 4 were dependent upon the 1st complainant for their livelihood. For the above reasons, the complainants claimed Rs. 50,00,000/- as compensation from the opposite parties apart from costs of the proceedings.

12. This complaint is contested by all the opposite parties. Opposite parties 1 & 2 have filed a joint version, while the 3rd opposite party has filed a separate version.

13. According to the common version filed by opposite parties 1 & 2 the complaint is not maintainable either in law or on facts. It is further contended that it is frivolous, vexatious and devoid of truth or bonafides. There was no negligence or deficiency in service on the part of the opposite parties 1 & 2, as alleged. Therefore, the complainants were not entitled to get any of the reliefs prayed for in the complaint. Opposite parties 1 & 2 admitted that the 1st complainant had been treated by them in the 3rd opposite party hospital. He had been admitted for septoplasty operation under general anesthesia on 03.04.2001. All necessary investigations were done and pre anesthetic check up was also done before the surgery. After obtaining a written and informed consent, the surgery was done on 04.04.2001 observing all established precautions with utmost care and caution. The surgery was uneventful. The patient was extubated and was fully awake. He showed stable vital signs with full consciousness. Therefore, the patient was shifted to the recovery room. In the recovery room the patient developed cardio respiratory arrest which was detected immediately and resuscitated. The patient was put on ventilator support and shifted to the Intensive Care Unit. As a result of the above event, the patient developed seizures. The patient was treated conservatively with anti-oedema measures, anti-epileptics, antibiotics and all other possible supportive measures, in consultation with the Neurologist. Seizures were controlled and the patient showed marginal improvement. Later on, the patient was shifted to the KMC, Manipal, as requested by the relatives of the patient, for further management on 16.04.2001, with a reference letter.

14. The allegation in paragraph (1) of the complaint that the patient approached the 1st opposite party at Savera Hospital, Tirur on 13.02.2001 regarding a minor deformity of the nose is false and hence denied. According to the opposite parties 1 & 2 the patient had approached the 1st opposite party at Savera Hospital, Tirur with severely deviated nasal septum which is not a minor deformity of the nose. This is for the reason that it causes nasal block which is very disturbing to the day-to-day activities of the patient and it causes chronic headache due to sinusitis and also causes severe morbidity to the subject affecting the day-to-day activities. Septoplasty under general anesthesia is not a minor surgery. Neither the patient nor his relatives were also given any information that it was a minor surgery.

15. The patient was admitted to the 3rd opposite party hospital not because it was convenient to opposite parties 1 & 2 but because the said hospital was better equipped with all modern facilities for the surgery. The allegation that consent was managed and manipulated to be obtained by over simplification of the entire procedure and stating that it was only a routine minor operation with no complication whatsoever is false and hence denied. Before surgery written consent of the patient was obtained. The consent form which is in Malayalam stating all possible complications of the surgery and the general anesthesia was signed by the patient as well as his relatives. The averment that even by 11.30 am nothing was heard about the patient is denied. The 1st opposite party had informed the relatives by about 10.50 am that the surgery was over and that the patient was alright.

16. The allegations in the complaint that it was only much later around 12.30 pm that the opposite parties for the first time indicated that there was some problem and when pursued further stated that the 1st complainant had not recovered after surgery is totally false and hence denied. The patient had fully recovered from anesthesia and was talking with all protective reflexes intact. After ensuring the same, the patient was shifted to the recovery room. The further allegation that even then the opposite parties were assuring that the 1st complainant would be alright and it was only a minor anesthetic complication is also denied. It was never conveyed to the relatives of the patient that the complication which occurred was a minor one. It was explained to the relatives that the patient had a cardio respiratory arrest, which was detected immediately and resuscitated promptly. The further averment that later in the evening the opposite parties had stated that the condition of the 1st complainant was serious and that the relatives may be intimated and he was put on ventilator support is not correct. The 1st complainant was put on ventilator at 12 noon in the recovery room itself to give positive pressure ventilation. The further allegation that the relatives of the patient were not allowed to take him to Madras or SCT, Trivandrum is false and baseless and therefore denied. In the earlier stage the patient was not in a condition to be transported to another institution. However, the opposite parties agreed to take the patient to a referral hospital when the patient became stable. A proper reference letter was given at the time of reference of the patient. Dr. Ajith Kumar is the Consultant Neurologist of the 3rd opposite party hospital. The patient was shown to Dr. Ajith Kumar on the day of the surgery itself and was under his close supervision and management. All the allegations in the contrary are denied.

17. The allegation in paragraph 4 of the complaint that no discharge summary or copy of the case sheet was given from the 3rd opposite party hospital, evidently with malafide and ulterior motive is denied as totally false. The patient was shifted to KMC Manipal with a reference letter. The allegation to the contra is false. A referral hospital never admits a patient without a reference letter. The 1st opposite party along with a Senior Medical Officer had accompanied the patient to Manipal, only with the intention of ensuring his safety during travel and to entrust the patient in safe hands. According to the opposite parties 1 & 2 utmost care and caution were taken in the treatment of the patient. There was no negligence, carelessness, deficiency in service or unfair trade practice on the part of the opposite parties. What had happened was an established known complication of any procedure under general anesthesia and the situation was tackled sincerely and wholeheartedly to the best of abilities of the opposite parties. The allegation that the surgery undergone by the patient was akin to a cosmetic surgery is not correct. It was a corrective surgery of a defect.

18. All the allegations in paragraph 6 of the complaint are totally false and hence denied. The patient was referred to KMC Manipal, with a reference letter. The allegation that the 1st complainant did not recover after surgery is totally false and hence denied. In the reply given by the 3rd opposite party hospital it has been stated that the patient did not recover from the surgery as expected. The phrase 'as expected' was conveniently and wilfully omitted by the complainants. This does not mean that the patient had not recovered from the surgery or general anesthesia. What it meant was that the outcome of the surgery was not as satisfactory as expected.

19. Opposite parties 1 & 2 denied the allegation in the complaint that there was manipulation or tampering of the records. A proper reference letter was given at the time of reference to the KMC, Manipal which contained the details of the case. The further allegation that there was absolutely no monitoring or care of the patient during the crucial period is totally false. The operation was over by 10.20 am. The period after that is the period for the anesthetist, the 2nd opposite party to wean off the patient from anesthesia. During this time, nasal pack was applied by the 1st opposite party, blood was sucked out of the throat and bandage was applied to the nose of the patient. In continuation of the above procedures the 2nd opposite party started weaning off anesthesia by giving full oxygenation, giving reversal drugs, checking BP, pulse rate and protective reflexes and sucking out of secretions throughout and judging the patient's response to the reversal process and extubate the endotracheal tube. During this period, the 2nd opposite party was fully engaged in monitoring the patient and doing the above procedures. At the end of weaning process, it was recorded in the anesthesia chart that the condition at the end of the operation was, awake, talking, head lifting positive, BP 110/80 mm of Hg. PR-90/mt, reversal completed, throat clean, protective reflexes intact etc. For the patient this period went up to 10.50 am and after that the patient was certified fit to be taken to the recovery room. At this stage it was informed to the relatives by the 3rd opposite party that the surgery was over. The patient was alright and ready to be shifted to the recovery room.

20. After the above stage, the patient was alright, awake and talking with protective reflexes intact. The complication that occurred to the patient was an established known complication which was detected timely and treated promptly. Pulmonary oedema is a complication of cardiac arrest. Therefore, the allegation that the present condition of the complainant has been caused and occasioned due to the callous, negligence, culpable indifference and deficiency in service on the part of the opposite parties is denied as false. There was no improper administration of anesthesia and conduct of surgery since the recording at the end of the operation clearly indicated that the patient at the end of the operation was fully awake, talking and protective reflexes were intact. Standard technique was used for administering anesthesia. The surgery was done as per the standard guidelines. All the allegations to the contra are false and hence denied.

21. Opposite parties 1 & 2 alleged that the amount claimed as compensation by the complainants was exorbitant and without any basis. What happened to the patient was an established known complication which was timely detected and properly treated by the opposite parties. On the above averments they prayed for dismissal of the complaint with costs.

22. The 3rd opposite party has filed a separate version denying all the allegations raised by the complainant. According to the said version, the complaint is not maintainable and is bad for

non-joinder of necessary parties. The allegation that the 1st complainant was rendered in a vegetative state due to the negligence and deficiency in service on the part of the opposite parties is denied as not proved. The allegation that the 1st complainant had approached the opposite parties with a minor deformity of his nose is denied. According to the 3rd opposite party the patient had approached the opposite parties with a severely deviated nasal septum which is not a minor deformity. This condition though not life threatening, causes severe morbidity to the patient affecting the day-to-day activities. It is also incorrect to say that septoplasty under general anesthesia is a minor surgery. It was never represented by any of the opposite parties to the 1st complainant or his relatives that it was a minor surgery.

23. The 1st complainant was admitted to the 3rd opposite party hospital not at the convenience of the opposite parties 1 & 2 but as requested by the 1st complainant and his relatives. They were aware that the 3rd opposite party hospital was better equipped with all modern facilities for such a surgery. The allegation in the complaint that consent was managed and manipulated to be obtained by over simplification of the entire procedure and stating that it was only a routine minor operation with no complication whatsoever is stoutly denied by the 3rd opposite party. The 1st complainant had been clearly advised with regard to the complications that may arise due to the operation and he had given consent after fully understanding the procedure and the risk factors involved in the operation. The averments to the contra are made only for the purpose of this complaint and the same are devoid of any truth. According to the 3rd opposite party, the consent form itself was in Malayalam and the 1st complainant and his relatives had signed the same after fully understanding the same and the 1st complainant had signed the consent in the presence of his relatives. After the surgery, at about 10.50 am the relatives were informed that the surgery was over and that the patient was recovering. Therefore, the statement in the complaint that after the surgery till 11.30 am nothing was heard about the patient was not true.

24. The patient had fully recovered from anesthesia and was talking with all protective reflexes intact. After ensuring this, the patient was shifted to the recovery room. It was only thereafter that the 1st complainant had a cardio respiratory arrest, which was detected immediately and resuscitated promptly. The patient was also put on ventilator at 12 noon in the recovery room itself to give positive pressure ventilation. It is incorrect to say that the opposite parties had declined to issue the discharge summary or at least the details of the treatments given or a copy of the case sheet for the purpose of taking the patient to Madras or SCT, Thiruvananthapuram. Though the patient was not in a condition to be transported to another hospital, there was no such request made by the relatives of the 1st complainant. In fact it was agreed by the opposite parties to take the patient to a referral hospital as and when his condition became stable. In fact a reference letter was also given by Dr. Ajith Kumar, the Consultant Neurologist working with the 3rd opposite party hospital. The patient was under the close supervision and management of Dr. Ajith Kumar from the date of surgery itself. The averments to the contra made in the complaint are therefore denied. According to the 3rd opposite party the patient was taken to the KMC, Manipal not at the instance or persuasion of any of the opposite parties. The patient was taken as desired by the relatives to the KMC Hospital, Manipal.

25. The 3rd opposite party has denied the allegation that no discharge summary or case sheet was given to the patient. A referral hospital would not admit a patient without a reference letter along with the other case records. The 1st opposite party along with another Senior Medical Officer accompanied the patient to Manipal in order to give complete attention and safety during the travel.

26. According to the 3rd opposite party, utmost care and attention were given to the treatment of the patient. There was absolutely no negligence or deficiency in the service rendered by the opposite parties. What had happened is an established and known complication of any procedure under general anesthesia which was handled sincerely to the best of their abilities by the opposite parties. The surgery was a corrective surgery and not a cosmetic surgery as alleged by the complainant.

27. In the reply given by the 3rd opposite party hospital it is stated that "the patient did not recover from surgery as expected". The phrase 'as expected' has been conveniently omitted by the complainants. What it meant was that only the outcome of the surgery was not as satisfactory as expected. The hospital bills were not given by the 3rd opposite party only out of the humanitarian consideration and there was no deficiency in service in the treatment given to the defacto complainant. Since no amounts have been paid, there was no consideration and therefore the complaint is not maintainable. There was also no promise to pay the amount due to the opposite parties and therefore the complaint is liable to be dismissed on this sole ground. The complainants are not consumers as defined under the Consumer Protection Act.

28. The 3rd opposite party has denied all the averments and allegations in the complaint regarding the manipulation and tampering of records raised against them. A proper reference letter was given at the time of reference to the KMC Hospital, which contained the entire case history of the patient. Xerox copy of the case sheet was not manipulated or tampered with as alleged by the complainants. The allegation that there was no monitoring or care to the patient during the period from 10.20 am to 10.50 am as alleged by the complainant has been denied. In fact, during this time, nasal pack was applied by the 1st opposite party, blood from the throat sucked out, bandages were applied and cleaning of the face of the patient was done. Thereafter the 2nd opposite party started weaning off anesthesia by giving full oxygenation, reversal drugs, checking BP, pulse rate and protective reflexes and sucking out of secretions throughout and judging the patient's response to the reversal process and extubate the endotracheal tube. The 2nd opposite party was fully engaged in monitoring the patient during this time and allegations to the contra have been denied. According to the 3rd opposite party clerical recording is not practical during this period and it is not practiced also. It is clearly seen from the case records that it is recorded in the anesthesia chart as follows: "Condition at the end of the operation-awake, talking, head lifting positive, BP-110/80 mm of Hg, PR 90/mt., reversal completed, throat clean, protective reflexes intact etc.". Only by 10.50 am the above procedures were completed and the patient was certified fit to be taken to the recovery room. It was at this stage that the relatives of the patient were informed that the surgery was over and the patient was alright and ready to be shifted to the recovery room.

29. According to the 3rd opposite party, the complication was not caused due to the negligence or lack of proper care or monitoring by the opposite parties. Pulmonary Oedema is a

complication of cardiac arrest which was detected in time and treated promptly. Therefore, there was no negligence or lack of care on the part of the opposite parties as alleged.

30. The present condition of the 1st complainant was caused and occasioned not due to any negligence or deficiency in service on the part of the opposite parties. The statement that such complication would not have happened had the opposite parties bestowed proper care is not correct. Utmost care and caution had been exercised in giving treatment to the 1st complainant.

31. According to the 3rd opposite party the complainants are therefore not entitled to claim any amount as compensation from the opposite parties. The complainants have claimed an exorbitant amount without any basis. On the above grounds, the 3rd opposite party sought for dismissal of the complaint.

32. Both sides have adduced evidence in support of their pleadings. On the side of the complainants, Exts. A1 to A19 documents have been marked and PWs 1 to 3 have been examined as witnesses. On the side of the opposite parties DWs 1 to 5 have been examined as witnesses and Ext. B1 case record for the treatment of the 1st complainant has been marked.

33. After the close of evidence both parties have been heard, at length. We have also carefully examined the case record of the patient and the other evidence, both oral and documentary.

34. The points that arise for consideration in this case are:

i. Whether there was any professional negligence or deficiency in service on the part of the opposite parties in treating the 1st complainant?
ii. Reliefs and costs?

35. Points (i) & (ii):- For the sake of convenience both the above points are considered together.

36. It is vehemently contended on behalf of the complainants that, this is a case where the principle 'res ipsa loquitor' applies and therefore without insistence of clinching evidence the compensation as claimed is necessary to be ordered. The 1st complainant was well employed in Qatar aged only 33 years old having two small children and wife had been reduced to a vegetative state. After being treated in various hospitals initially, he was discharged and sent home because there was no significant improvement in his condition. Thereafter, for 2½ years he was treated in his house with the assistance of two trained nurses. Finally he succumbed to the complications created by his medical condition and passed away on 31.08.2003. He was not a person who needed a surgical procedure due to any medical emergency. He was a healthy young man who had undergone a septoplasty surgery for the correction of his deviated nasal septum on 04.04.2001. It was an elective surgery. The opposite parties had advised the surgery since he had been complaining of nasal block and head ache. According to the learned counsel, had the opposite parties exercised due care and caution in treating the 1st complainant, he would not have met with the premature death.

37. Reliance is placed on Ext. A17 case sheet to point out that the 1st complainant had only minor complaints like nasal block, sneezing and occasional headache etc. It is the case of the counsel for the complainants that the opposite parties were responsible for the injury that was

caused to the 1st complainant. The 1st opposite party who conducted the surgery, the 2nd opposite party who was the anesthetist and the 3rd opposite party hospital were equally liable for the negligence in treating the 1st complainant. According to the learned counsel, it is clear from the treatment records of the 1st complainant that the surgery had been conducted uneventfully and the patient had appeared to regain consciousness at 10.50 am. Therefore, he was shifted to the recovery room. But at 11 am he was found to be restless and cyanosed. It was only by 11.08 am that he was intubated and a cardiac monitor was connected to the patient only thereafter. By that time, according to the learned counsel brain damage had already been caused by the lack of supply of oxygen. As per the case records, the patient is seen to have been put on ventilator and oxygen support only at 12 noon. By that time, irreversible brain damage would have occurred. Therefore, it is contended that this is a fit case in which the compensation sought for should be granted. Magnitude of the loss suffered by the family cannot be described in words, it is pointed out. The 2nd complainant was aged just 25 years and the children were aged only 6 years and 8 months at the time of demise of the patient. As a result, the 2nd complainant was deprived of the companionship and consortium of a loving husband and the children were deprived of the love, affection and care of their father. No amount of money would be sufficient to compensate the loss. The amount of Rs. 50,00,000/- claimed as compensation is only reasonable, for the above reasons.

38. The contentions of the counsel for the complainants are opposed by the counsel appearing for the opposite parties. The counsel appearing for the respective opposite parties have advanced similar arguments. On behalf of the 1st opposite party it is contended that the surgery had been uneventful and the patient had been weaned off the effects of the anesthesia, shortly thereafter. He had regained his consciousness and the protective reflexes had also appeared. It was thereafter that the patient was shifted to the recovery room. The cardio respiratory arrest that occurred after that was a known complication of such surgeries and the claim for paying compensation could not be fastened on the opposite parties. They had treated the patient exercising utmost care. There was no deficiency or shortcoming in their treatment as alleged by the complainant. It was in view of the unfortunate situation into which the family had been plunged, that they had accompanied the patient to Kasturba Medical Hospital, Manipal. Every care was taken to ensure that the patient got the best treatment that could be procured. Therefore, according to the counsel for the 1st opposite party no liability could be fastened on him.

39. According to the counsel for the 3rd opposite party, their hospital was one of the best hospitals in Kerala. They were well equipped with all modern equipments and treatment facilities. They enjoy the impeccable reputation as an institution providing medical treatment of a very high quality. Among the general public, they are regarded as an institution that provides medical care in accordance with medical ethics and service mentality. The case of the 1st complainant was an unfortunate incident where in spite of the best care and attention, the patient had to suffer the mishap. According to the learned counsel, the complaint has been filed making wild allegations against them as well as the quality of treatment provided by them. All such allegations are baseless and unsupported by the evidence on record. The case record in the case of the 1st complainant was maintained properly at all times. Immediately after his death, a crime had been registered before the Dy. S.P. Tirur and the police had seized all the medical records. They were all produced before this Commission. Therefore the allegation regarding

manipulation and tampering of the medical records are denied. According to the learned counsel in Ext. B1 medical record, page 111 shows that the patient was obese. However all other health parameters were normal. It was for the said reason that surgery was posted on the next day. Before the surgery, all the details of the treatment, the likely complications of anesthesia and the risks involved were explained to the patient and his bystander (One Monhammed Kutty- a neighbour). It was thereafter that the written consent was obtained for the surgery of the patient. The surgery was conducted observing all necessary precautions. The surgery was completed at 10.30 am on 04.04.2001. The details of the surgery are noted at page 113 of Ext. B1. The pulse and blood pressure of the patient were noted every 5 minutes in the Record of Anesthesia at page 112 of Ext. B1. The anesthesia and medicines administered till extubation and during surgery were noted at page 112 of Ext. B1. The patient was extubated from general anesthesia and was found to be fully stable with vital signs intact. The condition of the patient at the end of the operation had been noted in Ext. B1 as "awake, talking, head lifting positive". Since everything was normal the patient was shifted to the recovery room at 10.55 am in conscious condition. As per page 30 of Ext. B1 BP noted as 130/80 mm of Hg, pulse rate 70/mt and respiration 22/mt. But at 11 am the patient was found to be restless and cyanosed due to cardio respiratory arrest which was detected immediately. Opposite parties 1 & 2 were informed and they examined the patient. Respiration was found to be shallow, respiratory support with ampu bag given. Inj. Atropine 1.2 mgyu and Inj. Efcortin 200 mgyu were administered. It is stated that all necessary care and attention was immediately provided. The cardiac monitor was connected and various life saving medicines were administered during that period.

40. The patient was thereafter examined by Dr. Fernanda at 11.20 am. He was put on ventilator support and shifted to the Intensive Care Unit. Because of the above events, the patient developed seizures. The patient was treated conservatively with anti-oedema measures, anti-epileptics, antibiotics and all other possible general supportive measures were given, in consultation with the Neurologist. Seizures were controlled and the patient showed marginal improvement. Later on, the patient was shifted to the KMC, Manipal as requested by his relatives for further management on 16.04.2001. At that time, a reference letter was also issued from the hospital. Later, the 1st complainant died on 31.08.2003.

41. After the death of the patient, a Medical Board was constituted on the basis of the Police complaint filed by the complainants. The Medical Board evaluated the medical treatment that was provided by the 3rd opposite party hospital and concluded that there was no negligence on the part of the opposite parties. On the basis of the said report, the Police referred the case reporting that there was no negligent act warranting criminal action against the opposite parties. Therefore it is contended that this complaint is only to be dismissed accepting the said opinion of the Medical Board.

42. The further contention of opposite parties 1 & 2 is that, if at all there was any liability on their part, it is the 3rd opposite party who is vicariously liable for the same since opposite parties 1 & 2 were only employees of the 3rd opposite party.

43. Though the wife of the 1st complainant and his brother have been examined as PWs 1 & 2 in this case, they are persons who had absolutely no knowledge about the treatment of the 1st complainant or about the incidents that happened in the hospital following the surgery. PW2, the brother of the 1st complainant had visited the hospital only after the 1st complainant had been

taken to the operation theater. It was one Mohammed Kutty, a neighbour of the 1st complainant who had accompanied him. But, he has not been examined as a witness in this case. PW3 Dr. M.P. Manoj is an ENT surgeon. He was examined as an expert doctor on the side of the complainant.

44. On the side of the defence, DW1 is ASI of Police who had produced Ext. B1 treatment record. He also has no direct knowledge about the complications that had occurred. DWs 2 & 3 are opposite parties 1 & 2. According to them, they had provided proper treatment to the 1st complainant, in conformity with the standard medical protocol. There is no deficiency in service or lack of care on their part. DW4, the Principal of Amala Medical College Thrissur was the Chariman of the Medical Board. The certificate issued by the Medical Board is marked as Ext. B1(b). According to the said certificate, the Medical Board could not identify any professional negligence on the part of the doctors who treated the 1st complainant.

45. In the present case, it is not in dispute that, surgery of septoplasty was done on the 1st complainant by opposite parties 1 & 2 at the hospital of 3rd opposite party. It is also not in dispute that it is an elective surgery. In other words, the surgery was not necessitated by any disease or medical condition of the 1st complainant. What has been recorded is only that he had nasal block and occasional headache. He was a 33 year old young man well employed at Qatar. It has been found that he was advised to undergo the surgery by the opposite parties and it was accordingly that the surgery was performed on him on 04.04.2001. According to opposite parties 1 & 2, the surgery was uneventful and he was weaned off the anesthesia successfully. What is recorded is that he was awake, talking and 'head lifting positive'. His blood pressure and other vital signs were found to be normal. He was therefore shifted to the recovery room at 10.50 am. At 11 am he was found to be restless and cyanosed. According to the opposite parties his condition had deteriorated suddenly because of cardio respiratory arrest, which is a known complication which cannot be attributed to professional negligence or deficiency in service. Therefore, the crucial question narrows down to examining whether there was lack of care or negligence in the said crucial 10 minutes that plunged the 1st complainant into the vegetative stage. In the above context, the evidence adduced by PW3 is crucial. He is an ENT Surgeon and a person who has done more than 500 septoplasty surgeries. For the above reason, a very competent witness. To a pointed question from the Court as to whether he could say that the 1st opposite party ENT Surgeon was negligent in doing Septoplasty surgery under G.A., he has replied as certainly not. According to him for an average and very young people it was better to do the surgery under G.A (general anesthesia). He was further questioned as to what was the root cause for the irreversible brain damage caused in this case. He has replied that it was pulmonary oedema. The pulmonary oedema has occurred between 10.30 am and 11 am. Therefore according to the witness, it could have been either due to aspiration or negative pressure. Aspiration means blood or vomit or fluids getting into the wind pipe from the nose or oral cavity. Negative pressure means a deep inspiration against a closed glottis. Negative pressure can happen due to the effects of anesthesia also, according to PW3. In such a situation according to PW3, the recovered patient can also go back to deep sedation which is why post operative monitoring is very important. The witness has gone on to state that negative pressure can happen during the effect of anesthesia. This can be detected when the patient is under close monitoring. However, he adds that the complication may occur even in a case closely

monitored. In such a situation, the patient can be managed, but the outcome may be unpredictable.

46. It is clear from the deposition of PW3 that, the events that took place during the period from 10.30 am to 11 am on 04.04.2001 caused the deterioration of the condition of patient. According to DW2, there was no monitoring of oxygen saturation at the relevant time when the surgery on the 1st complainant was conducted. It was not necessary to be done until the year, 2009. According to the said witness, himself and the anesthetist, the 2nd opposite party were in the operation theatre until the patient was shifted to the recovery room. To a pointed question as to whether the vital parameters of the patient have to be constantly monitored and recorded after the septoplasty surgery he has replied that it was necessary for the vital parameters to be monitored, but it was not necessary to be recorded. According to DW3 Dr. Vijayakumar at page 11 of his cross examination, during the crucial time from 10.30 am to 10.55 am, the surgical and anesthetic team monitoring the patient were weaning off the patient from anesthesia, cleaning of secretion from the mouth and trying to arouse the patient. Recording was not practical at that time. But, monitoring was done.

47. It is clear from the evidence of DW2 and DW3 that there was no recording of the vital parameters of the patient during the crucial period. It is claimed that there was close monitoring of the condition of the patient. But, there is no evidence to support the said contention. Going by the notings in the case sheet, what emerges is that, no monitoring of the patient was done from 10.30 am to 10.55 am. There is no recording of monitoring in Ext. B1(a) regarding the vital parameters of the patient during that time. In the absence of any such evidence, the only conclusion possible is that there was no monitoring of the condition of the patient during the crucial period that changed his entire life. Though it is seen recorded at page 31of Ext. B1(a) that the patient was conscious till 10.55 am that can even be a deceptive impression and cannot support the conclusion that the vitals of the patient were normal. It is for the said reason that five minutes thereafter the patient had become cyanosed.

48. It is also a fact that cardiac monitor was not used immediately after the surgery during the post surgical period. It was connected only at 11.08 am (page 31 of Ext. A17 case sheet) after the complication had occurred. According to PW3 a normal patient to become cyanosed would require definitely more than 3-4 minutes. It is a gradual process which could be easily identified, if there is constant monitoring. PW3 has further contended that complication of irreversible brain damage is not a surgical issue, but a possible delay in identifying the complication. It is a monitoring issue.

49. The above statements expressing definite opinions formed by PW3 after examining the case sheet have not been seriously challenged or disproved by the opposite parties in this case. Therefore, we have no hesitation in concluding that the vegetative condition of the 1st complainant was caused as a direct result of the monitoring lapse on the part of the opposite parties after the surgical procedure was completed. The omission on their part to follow the standard medical protocol in this case is therefore proved beyond any doubt. In view of the above, we are satisfied that the complainants are entitled to succeed in their claim for compensation against the opposite parties.

50. We are conscious of the fact that, the loss suffered by the complainants are not capable of being quantified in terms of money. The 2nd complainant lost her husband when she was just 25

years old. She lost the society of her husband at a very young age. The children lost the love, affection and guidance of a loving and responsible father. The family lost their only life support. No amount of money would be able to approximate the above losses. But in such cases the only alternative is to give some monetary compensation that would provide some recompense for all their sufferings. The 1st complainant was young, healthy and well employed. He lost a career that would have been fruitful and profitable. Therefore, we consider that an amount of Rs. 30,00,000/- shall be a reasonable compensation for the loss of the 1st complainant in this case. The 1st opposite party who conducted the surgery, the 2nd opposite party, the anesthetist as well as the 3rd opposite party hospital are equally responsible for the death of the 1st complainant. As the surgeon, the 1st opposite party ought to have taken care to avert the complication created by the lack of monitoring after the surgery. The 2nd opposite party, Anesthetist, who was responsible for weaning off the patient from anesthesia failed to anticipate the cardio respiratory arrest that followed the surgery. In view of their contention that it was a known complication associated with any surgery under general anesthesia it was necessary for them to have been more alert and to have taken precautionary measures to handle such eventuality, which they sadly did not do. For the above reasons, all the opposite parties shall be liable to compensate the complainants.

In the result, the complaint is allowed as follows:

1. The opposite parties are directed to pay an amount of Rs. 30,00,000/- (Rupees Thirty Lakhs only) as compensation towards the loss, mental agony and hardships suffered by the complainants.
2. The opposite parties shall further pay an amount of Rs. 25,000/- (Rupees Twenty Five Thousand only) as costs of this litigation.
3. All the amounts shall be paid by the opposite parties 1 to 3 with interest thereon @ 8% per annum from 08.02.2002, the date of filing of this complaint till the date of payment.
4. If the amounts are not paid within one month from the date of receipt of a copy of this judgment, all the amounts shall carry interest @ 9% per annum.

JUSTICE K. SURENDRA MOHAN: PRESIDENT

AJITH KUMAR D.: JUDICIAL MEMBER

jb **RADHAKRISHNAN K.R. : MEMBER**

APPENDIX

I COMPLAINANT'S WITNESS

PW1 - Rasheeda

PW2 - P.P. Musthafa

PW3 - Dr. M.P. Manoj

II COMPLAINANT'S DOCUMENTS

- A1 • Photograph of the 1st complainant prior to the operation
- A2 • Photograph showing the present condition of the 1st complainant
- A3 • Copy of Passport of the 1st complainant
- A4 • Request made by the brother of the 1st complainant
- A5 • Representation submitted to the opposite parties by the 2nd complainant
- A6 - Letter issued by 1st opposite party
- A7 • Reply issued by the 3rd opposite party hospital
- A8 • Discharge summary issued by KMC Hospital, Manipal
- A9 • Discharge summary issued by Al-Shifa Hospital, Perinthalmanna
- A10 • Bills relating to the treatment at 3rd O.P Hospital
- A11 • Bills relating to the treatment at Kasturba Hospital
- A12 • Bills relating to treatment at Al-Shifa Hospital
- A13 • Bills relating to availing of ambulance service
- A14 • Mangalam daily dated 29.07.2001
- A15 • Report in the Keralashabdam weekly
- A16 • Copy of certificate issued by Cornerstone
- A17 • Copy of case sheet
- A18 • Certificate issued by Alukkas Hospital
- A19 • Copy of death certificate

III OPPOSITE PARTY'S WITNESS

- DW1 • Prabhakaran

DW2 - Dr. Johnson Marian
DW3 - Dr. Vijayakumar

- DW4 Dr. M.R. Chandran
- DW5 Sister Dr. Mariya Fernandez

IV OPPOSITE PARTY'S DOCUMENTS

- B1 Case Record

JUSTICE K. SURENDRA MOHAN: PRESIDENT

AJITH KUMAR D.: JUDICIAL MEMBER

RADHAKRISHNAN K.R. : MEMBER

jb

[HON'BLE MR. JUSTICE SRI.K.SURENDRA MOHAN]
PRESIDENT

[HON'BLE MR. SRI.AJITH KUMAR.D]
JUDICIAL MEMBER

[SRI.RADHAKRISHNAN.K.R]
MEMBER