

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION
THIRUVANANTHAPURAM**

**First Appeal No. A/15/862
(Date of Filing : 05 Nov 2015)**

(Arisen out of Order Dated 31/08/2015 in Case No. CC/290/2011 of District Alappuzha)

1. UNNIKRISHNAN NAIR
SAJITH BHAVANAM PUNNPRA P O ALAPPUZHA
ALAPPUZHA
KERALA

.....Appellant(s)

Versus

1. DR RAJU GEORGE
ENT SURGEON SAHRUDAYA HOSPITAL
THATHAMPALLY ALAPPUZHA
ALAPPUZHA
KERALA

2. SAHRUDAYA HOSPITAL
THATHAMPALLY ALAPPUZHA

.....Respondent(s)

BEFORE:

**HON'BLE MR. SRI.AJITH KUMAR.D PRESIDING MEMBER
SRI.RADHAKRISHNAN.K.R MEMBER**

PRESENT:

Dated : 03 Jan 2024

Final Order / Judgement

KERALA STATE CONSUMER DISPUTES REDRESSAL COMMISSION

VAZHUTHACAUD, THIRUVANANTHAPURAM

APPEAL No.862/2015 & APPEAL No.03/2016

JUDGEMENT DATED: 03.01.2024

(Against the order in C.C.No.290/2011 of the CDRF, Alappuzha)

PRESENT:

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

SRI. AJITH KUMAR D.
SRI. K.R. RADHAKRISHNAN

: JUDICIAL MEMBER
: MEMBER

A 03/2016

APPELLANTS:

1. Dr. Raju George, ENT Surgeon, Sahrudaya Hospital, Alappuzha
2. Sahrudaya Hospital, Alappuzha represented by its Director

(by Advs. Preetha John K. & R. Suja Madhav)

Vs.

RESPONDENT:

Unnikrishnan Nair, Sajith Bhavanam, Punnapra P.O., Alappuzha

(by Adv. Valsala Sadanandan)

A 862/2015

APPELLANT:

Unnikrishnan Nair, S/o Sukumara Pillai, Sajith Bhavanam, Punnapra P.O., Alappuzha

(by Adv. Valsala Sadanandan)

Vs.

RESPONDENTS:

1. Dr. Raju George, ENT Surgeon, Sahrudaya Hospital, Thattampally, Alappuzha
2. Sahrudaya Hospital, Thattampally, Alappuzha represented by its Director, Dr. Abraham Thayyil

(by Advs. Preetha John K. & R. Suja Madhav)

Common Judgement

SRI.AJITH KUMAR D. : JUDICIAL MEMBER

The two appeals arose from the order of the Consumer Disputes Redressal Forum, Alappuzha (the District Forum for short) in C.C.No.290/2011 dated 22.08.2011. The District Forum had allowed the complaint and directed the opposite parties to pay an amount of Rs.51,000/-(Rupees Fifty One Thousand only) towards the medical expenses, Rs.50,000/-(Rupees Fifty Thousand only) as compensation and Rs.2,000/-(Rupees Two Thousand only) as costs since medical negligence was established against the opposite parties. Appeal No. A 862/2015 has been filed by the complainant alleging inadequacy of the compensation awarded. The opposite party had filed appeal No.A 03/2016 challenging the correctness of the

finding in awarding compensation and costs. Both appeals are being disposed of vide this common judgement.

2. The case as set out in the complaint in brief are as follows:

On 04.07.2011 the complainant had consulted with the 1st opposite party, the ENT Surgeon attached to Sahridaya Hospital, Thathampally. The 1st opposite party had prescribed medicines for the complainant for two days and on 06.07.2011 the 1st opposite party, after conducting a thorough examination had advised the complainant that he had Polypectomy and he has to undergo a surgery for permanent recovery. In view of the advice given by the 1st opposite party, the complainant got admitted in the hospital on 28.07.2010. On that day the 1st opposite party had conducted the surgery for rectification of nasal polypectomy. On that day evening, the bystanders of the complainant noticed swelling on the left eye of the complainant and they informed the matter to the 1st opposite party. On getting the above information, the 1st opposite party had visited the complainant and examined him. the complainant was told by the 1st opposite party that the swelling is only a side effect of the surgery which will be cured within twenty four hours. But on the next evening, vision of the left eye of the complainant was lost and the bystanders again reported the matter to the 1st opposite party. But he advised the complainant and his relatives that the problem will be solved within a few days. He allowed the complainant to remain in the hospital and discharged him on 03.08.2011. The complainant was admitted in the hospital with a history of breathing problem. But after the surgery he had been suffering with watery discharge from the nostrils, loss of vision of left eye and severe pain and he was admitted in the Medical College Hospital, Alleppey in the Ophthalmological Department. On 06.08.2011 he had consulted with Dr. Dalia, the Ophthalmologist who informed the complainant that while undergoing surgery, a vein leading to the eye was injured. He had to undergo inpatient treatment in the Medical College Hospital for one week and later got admitted in the Little Flower Hospital, Angamaly on 13.08.2010. Several tests were conducted and availed the treatments as detailed below:

“Left Sphenoid Ostium identify and lateral wall exposed, optic nerve prominence identified traced back to Sphenoethmoidal Junction. Injury due to the previous surgery noted at the Junction with medical wall contents protruding fragments removed and contents freed”.

The initial diagnosis in the Little Flower Hospital, Angamaly shows “left optic nerve injury and left medial rectus injury”. These injuries were caused on account of the rash and negligent act of the 1st opposite party. If the 1st opposite party was cautious while conducting the surgery, these problems could have been avoided. The act of the 1st opposite party is a clear case of medical negligence and deficiency in service.

3. The 2nd opposite party is vicariously liable for the negligent act done by the 1st opposite party. The complainant was a driver by profession and on account of the problem occurred to him due to the negligent act of the opposite party he had lost the vision of one eye and divergent squint eye which is a total disablement to perform his job. The complainant was working as a driver and drawing a salary of Rs.25,000/- (Rupees Twenty Five Thousand only) per month. Since the complainant had lost vision, he was not able to do the work of a driver. So his employer appointed him as a helper with a low salary of Rs.8,000/- (Rupees Eight Thousand

only) per month and he had to suffer a loss of Rs.17,000/-(Rupees Seventeen Thousand only) per month. He had spent a total amount of Rs.94,000/-(Rupees Ninety Four Thousand only) for his treatment.

4. Complainant had filed a criminal complaint against the 1st opposite party before the Judicial First Class Magistrate Court and a crime has been registered against them as Crime No.856/2010. The complainant would seek for realisation of Rs.94,000/-(Rupees Ninety Four Thousand only) as the costs of the treatment and Rs.10,20,000/-(Rupees Ten Lakh Twenty Thousand only) as compensation for his loss of earnings and Rs.1,00,000/-(Rupees One Lakh only) as compensation for his pain and sufferings.

5. The opposite parties entered appearance and filed a joint version with the following contentions: -

There is no deficiency in service. They would admit that on 01.07.2010, the complainant had consulted with the 1st opposite party with a complaint of persistent nasal block and provisionally diagnosed as allergic rhinitis and nasal polyp and he was treated for the same by providing tablets. On 03.07.2010, the 1st opposite party had prescribed nasal spray. But the obstruction persisted. He was given medicines for seven more days and ultimately, he was advised for polypectomy for the release of the obstruction, if the complaint persists after the course of the medicines. On 24.07.2010 he came to the hospital for a review and there was no change in his condition. So he was advised to come to the hospital for admission on 28.07.2010. Both anesthetic and medical checkups were done and it was found that he was fit for surgery. The surgery was fixed on 29.07.2010 and surgery started at 10.00a.m. After the removal of the polyp the 1st opposite party had noticed a minimal fullness of the left eyelid in the left corner of the eye. So immediate consultation of the Ophthalmologist, Dr. Venugopal was sought for. He gave a tight bandage to the eye and prescribed medicines to the complainant and was shifted to the post operative room. As the complainant had sudden hematemesis, Physician was called for into the post operative room and blood transfusion was done. On examination it was found that the cause of bleeding was from the stomach. Due to the timely intervention of the doctors, the patient became alright. The anterior nasal pack was removed by the 1st opposite party on 30.07.2010. On 31.07.2010 ecchymosis of conjunctiva on left side was noticed and he was asked to continue medicines for five more days as advised by the Ophthalmologist. Dr. Venugopal reported that the patient's orbit was absorbing well and it will take some more days to absorb blood and he was discharged from the hospital on 03.08.2010 with advice to take antibiotics, anti-inflammatory drugs, vitamins and nasal drops. There was no negligence or deficiency in service on the party of the 1st opposite party. The opposite parties are unaware about the treatment allegedly availed from the Medical College Hospital, Alleppey and Little Flower Hospital, Angamaly.

6. Bleeding is an accompaniment of the surgery. As per the medical literature when polyps are removed in nasal surgery by avulsion by Luc's forceps and when it has to be completely eradicated from root, blood may sweep into orbital cavity which appears as fullness in the lateral most corner of orbit and within two or three days, this leaked out blood will go into the lids and conjunctiva which may cause ecchymosis in the lids and laziness of vision may occur. The complainant had a bleeding tendency due to unknown factors. Proper treatment was given to the complainant.

7. The 2nd opposite party had charged about Rs.18,000/-(Rupees Eighteen Thousand only) as hospital expenses. The 1st opposite party is a doctor having more than thirty years experience as a Surgeon. The complainant is not entitled to get any relief and the opposite parties would seek for dismissal of the complaint.

8. The evidence consists of the testimony of the complainant as PW1 and that of doctors attached to the medical college and Little Flower Hospital as PW2 and PW3. Exhibits A1 to A3, A4 series, A5.A6 series and A7 series were marked on the side of the complainant. On the side of the opposite party, the 1st opposite party was examined as DW1 and a witness as DW2. Exhibits B1 and B2 were also marked.

9. In the appeal memorandum filed in appeal A 862/2015, it is averred that the District Forum went wrong in not awarding any amount towards the loss of earnings and the compensation ordered is inadequate. In the appeal filed by the opposite parties it is contended that the appreciation of evidence by the District Forum was patently wrong and the answer of the District Forum in issue no.1 is contrary to the expert evidence.

10. Heard the counsel for both sides. Both counsel filed separate notes of arguments. We have perused the records received from the District Forum.

11. The complainant had given evidence as PW1 strictly in accordance with the pleadings contained in the complaint. Exhibit A1 is the discharge summary issued by the 2nd opposite party with regard to the treatment availed for the period from 28.07.2010 to 03.08.2010. The complainant was admitted in the Medical College Hospital, Alleppey on 06.08.2010 since complications arose on account of the surgery conducted by the first opposite party. Exhibit A2 is the discharge card issued by the Medical College Hospital, Alleppey which would show that the complainant was admitted with a complaint of redness and deviation of left eye after surgery for nasal polypectomy. He had availed treatment from the Medical College Hospital, Alleppey up to 13.08.2010. Subsequently, he was admitted in the Little Flower Hospital, Angamaly for expert treatment. Exhibit A3 is the discharge record issued by the Department of Ophthalmology, Little Flower Hospital. The initial diagnosis is incorporated in Exhibit A3 as left optic nerve injury and left medial rectus injury. The complainant was having diminution of vision LE and limited inward movement LE eye following ENT procedure. The final diagnosis also does find a place in Exhibit A3 as left optic nerve injury and left medial rectus injury with left divergent squint. He was again admitted in the Little Flower Hospital on 30.08.2010 for correction of post traumatic divergent squint. The treatment given to the complainant during this period is also shown as RE MR Exploration, BE LR Recession. A correction was done on 31.08.2010. He had also consulted with the ENT Department of the Little Flower Hospital and underwent treatment for "left Sphenoid Ostium identify and lateral wall exposed, optic nerve prominence identified traced back to Sphenoethmoidal Junction. Injury due to the previous surgery noted at the Junction with medial wall contents protruding fragments removed and contents freed". Exhibit A4 series are the medical bills issued by the 2nd opposite party. Exhibits A5, A6 and A7 series are also the bills pertaining to the treatment availed by the complainant.

12. PW2 is the Assistant Professor attached to the Ophthalmology Department of the Medical College Hospital, Alleppey. He proved Exhibit A2 and gave evidence that on 06.08.2010 he had

examined the complainant who came to him with a complaint of defective vision, redness and deviation of left eye. The patient had a history of nasal polypectomy and PW2 had discharged the complainant for better treatment and management.

13. The complainant had examined the Surgeon attached to the Ophthalmology Department of the Little Flower Hospital as PW3. He had given evidence that on 13.08.2010 the complainant was admitted in the hospital. MRI scan, CT cisternography were done and later the complainant was referred to the ENT Department. ENT consultation was also done. At the time of admission, there was loss of vision to the left eye of the complainant and also squint eye. He continued the treatment on 31.08.2010 for correction of squint eye. On a perusal of the scan report, PW3 could notice an injury to a bone between the nose and the eyes on the left side. He tendered evidence that after the correction the squint condition was reduced but there was no change in the loss of vision. He added that there will be no improvement to the vision in this peculiar situation. He proved Exhibit A3. The scan report dated 13.08.2010 is also proved through PW3.

14. As against the evidence let in by the complainant, the 1st opposite party was examined as RW1. The medical records pertaining to PW1 has been marked as Exhibit B1. During the cross examination of RW1, the facts noted in Exhibit A3 was shown to the effect that a left optic nerve injury and left medial rectus injury occurred and a suggestion was also put to RW1 that those injuries are complications which arose on account of the surgery, he did not deny the suggestion. According to him, the surgery was a closed one and he was not able to see the inner part during the process and he added that the peripheral part alone was visible at the time of surgery. So, in certain occasions there is a possibility of causing medial rectus injury. His attention was drawn by the cross examiner to page 16 of Exhibit B1. In the bottom portion of page 16 of Exhibit B1, a paper is seen pasted wherein certain entries are subsequently written and a suggestion was put that pasting of a paper amounts to concoction of evidence and he was pretending ignorance. After reading out the writings of the pasted portion of the medical record, the witness said he cannot say as to who had made those writings in the documents. This particular entry is very important as it relates to an Ophthalmological consultation. He was relying upon the entries contained in page no.6 of Exhibit B1 and spoke that those entries were made by the Ophthalmologist, but no initials of the said doctor is seen in the sixth page. He also added that if an optical injury occurs, there is a possibility of loss of vision. He also admitted that if an injury occurs to medial rectus, there is possibility of a squint eye.

15. The opposite party had examined one doctor Manoj Venugopalan who is the son of Dr. Venugopalan, the then Ophthalmologist who had allegedly attended the complainant. His attention was drawn to the sixth page of Exhibit B2 and he identified the writings as that of his father. He also identified the writings of his father in page No.10. He had given evidence that if orbital hemorrhage took place there is possibility of injury of medial rectus muscles and added that on account of surgery if any bony particles are found detached, they may cause optic nerve injury. RW2 has no direct knowledge about the treatment given to the complainant from the opposite parties.

16. The stand taken by the 1st opposite party is that the Ophthalmologist is the competent person who has to attend the complications caused to the eye of the complainant and according to him the service of the Ophthalmologist was availed by him during the process of surgery. But clear manipulation is seen in page sixteen of Exhibit B1. A paper is seen pasted on the bottom

portion of the sixteen page of Exhibit B1 which bears the details regarding the Ophthalmologist consultation given to the complainant. But on further verification, it could be seen that this paper was affixed on the bottom portion of the sixteenth page above the original entries of the medical record. It is a clear case of manipulation. In the starting portion of the seventeenth page a correction is seen made by erasing the original entries. A medical record is a contemporary document simultaneously prepared by the hospital authorities during the process of treatment. So there cannot be any possibility of pasting another sheet of paper. So this is a clear example of creating evidence so as to justify the negligent act done by the hospital authorities. The opposite parties had set up a case that if a complication arose to the eye, it is up to the Ophthalmologist to look into the matter and an ENT surgeon is not liable for any such complications. But the materials on record would show that there was no Ophthalmic consultation done at the crucial stage as claimed by the opposite parties for the reason that these entries are subsequently concocted by pasting another piece of paper in the medical record. Exhibit B1 was in the custody of the hospital. So it is up to the hospital authorities to offer satisfactory explanation as to why manipulation was done in the said record.

17. The evidence let in by PW2 and PW3 would convincingly establish that while conducting the surgery, a nerve injury was also resulted. The above fact is not ruled out by the 1st opposite party when the subsequent medical records, Exhibit A3 were shown to him. When polypectomy is done there cannot be any possibility to cause an injury to the optic nerve since the optic nerve is located away from the nostrils. The doctor was trying to explain the possibility of causing injury to the optic nerve by saying that he was unable to see the internal organs as the surgery was done from the surface. A doctor is expected to assess the internal organs when surgery is sought to be carried out. If the surgery was done in a proper manner, it would never result in causing an injury to the optic nerve and medial rectus.

18. When medical negligence on the part of the hospital authorities was sought to be probed through criminal investigation, there was a calculated attempt to fabricate evidence from the part of the opposite parties by forging the medical records in causing manipulations by pasting separate sheets so as to conceal the original entries contained in Exhibit B1. This conduct on the part of the employees of the 2nd opposite party is a clear indication that they had to hide certain things. In this connection, it is pertinent to observe that the patients have no access to the medical records. The entries contained in the manipulated portion is a crucial one which was subsequently incorporated with a view to escape from the consequence which may arise due to the negligent act of the opposite parties. The medical records would convincingly establish that the 1st opposite party had negligently conducted the surgery and that is why an optical nerve injury and medial rectus injury was caused to the complainant.

19. On a careful analysis of the entire evidence on records we have no hesitation to reach a conclusion that the 1st opposite party was careless and negligent while conducting the surgery.

20. The complainant had approached the opposite party for a nasal correction. But nasal correction was not done as discharge from the nose continued. In addition to that the left eye sight of the poor patient was lost and he got a disability in the form of a squint eye. The learned counsel for the opposite parties would place reliance upon a decision of the National Commission reported in *Dasharathamand & Ors. Vs. Dr. Hema Raghu Chetnen & Ors. 2022(1) CPR 214 (NC)* to argue a preposition that a medical practitioner cannot be held liable

for medical negligence simply because something went wrong as long as the doctors performed their duties with ordinary degree of professional skill and competence. She also cited another decision of the National Commission reported in ***Kapil Aggarwal & Ors. Vs. Sarvodaya Hospital & Research Centre & Ors. 2022(2) CPR 178 (NC)*** to canvas a preposition that unfortunately the patient develops serious complications post-operatively which were promptly treated by the team of doctors and in such circumstances, negligence cannot be attributed. She would also cite the ruling of the Apex Court reported in ***Bombay Hospital & Medical Research Centre Vs. Asha Jaiswal & Ors. 2021(4) CPR 419 (SC)*** to canvas a preposition that simple lack of care, an error of judgement or an accident is not a proof of negligence on the part of a medical professional. Doctors are expected to take reasonable care, but none of the professionals can assure that a patient would overcome surgical procedure. ***Harish Kumar Khurana (Dr.) Vs. Joginder Singh & Ors. 2021 KHC 6436*** was also cited by the learned counsel that where treatment is not successful or the patient dies during surgery, it cannot be automatically assumed that the medical professional was negligent.

P.A. Appasamy Vs. Manager, Vijaya Health Centre & Ors. 2019(3) CPR 229 (NC) was also cited to canvas the very same preposition.

Mohamed Tanq A.K. & Ors. Vs. Savera Hospital Pvt. Ltd. & Ors. 2019(5) KHC 88 a ruling of our Hon'ble High Court, ***Girishchandra V. Bhatt & Ors. Vs. Sterling Hospital 2018(2) CPR 296 (NC)***, ***Dr. Samir Rai & Anr. Vs. Medanta Hospital & Ors. 2021(1) CPR 30 (NC)*** were also cited.

21. We have gone through the precedents cited by the learned counsel for the complainant. A case has to be decided on the basis of the evidence available. Here the evidence on record would go to show that while conducting polypectomy an injury was caused to the left optical nerve and left medial rectus of the complainant. There is no case for the 1st opposite party that any injuries were caused to the optical nerve, but the medical records marked as Exhibit A3 would convincingly establish that serious nerve injury and left medial rectus were caused during the surgery done by the 1st opposite party and the opposite parties were negligent in not providing Ophthalmologist consultation to the complainant when he was availing treatment from the hospital.

22. There is a calculated attempt on the part of the opposite parties in concocting evidence by pasting papers in the crucial medical record by hiding the original entries to create evidence that Ophthalmic consultation was given to the complainant when the impugned surgery was conducted. On a careful analysis of the entire evidence on record there is convincing evidence adduced by the complainant to reach an irresistible conclusion that the 1st opposite party was careless and negligent when the surgery was done. The precedents cited by the opposite parties are not applicable to this case. The District Forum had appreciated the evidence on record and reached a proper conclusion that the 1st opposite party was negligent in conducting the surgery. We find no reason to interfere with the finding of the District Forum. So the appeal filed by the opposite party lacks merits and it is only to be dismissed.

23. Now the compensation awarded has to be taken into account. Though the complainant had to suffer much hardships which resulted in losing vision of his left eye, the District Forum had awarded only Rs.50,000/- (Rupees Fifty Thousand only) as compensation. Considering the hardships suffered by the complainant the compensation awarded appears to be too insufficient.

Having due regard to the difficulties caused to the complainant on account of the medical negligence on the part of the opposite parties, it is found that the complainant is entitled to get Rs.1,00,000/-(Rupees One Lakh only) as compensation towards pain and sufferings. So we are inclined to increase the compensation as Rs.1,00,000/-(Rupees One Lakh only) instead of Rs.50,000/-(Rupees Fifty Thousand only). The complainant had raised a claim of Rs.10,20,000/-(Rupees Ten Lakh Twenty Thousand only) towards loss of earnings. But no evidence has been tendered by the complainant to prove the loss of earnings. Admittedly, the complainant is working under the very same employer in a different capacity but no acceptable evidence is forthcoming in this regard. So the claim of the complainant to award loss of earnings was rightly disallowed. The complainant is also allowed to realise Rs.10,000/-(Rupees Ten Thousand only) as costs of the proceedings from the opposite parties. The order allowing the complainant to realise Rs.51,000/-(Rupees Fifty One Thousand) as medical expenses is affirmed.

The complainant is also allowed to realise interest @ 8% per annum for the whole amount from the date of filing the complaint i.e. on 22.08.2011 till payment in full.

In the result, appeal A 862/2015 is allowed, the compensation awarded by the District Forum is enhanced to Rs.1,00,000/-(Rupees One Lakh only). The complainant is allowed to realise Rs.10,000/-(Rupees Ten Thousand only) as costs of the appeal. The complainant is allowed to realise @ 8% interest for the whole amount from the date of filing of the complaint i.e. on 22.08.2011 till the payment. Appeal 03/2016 is dismissed.

**JUSTICE SRI. K. SURENDRA MOHAN:
AJITH KUMAR D.:
K.R. RADHAKRISHNAN:**

**PRESIDENT
JUDICIAL MEMBER
MEMBER**

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

**[SRI.RADHAKRISHNAN.K.R]
MEMBER**