

**Consumer Disputes Redressal Forum
Civil Station , Kollam-691013.**

**Complaint Case No. CC/338/2012
(Date of Filing : 30 Nov 2012)**

1. Saithu , Sabira Manzil, Thekkumbhagam , Kollam

,

.....Complainant(s)

Versus

1. The Manager , Travancore Medical College Hospital,
Mylapore, Kollam

,

2. Dr. Sheelamoni.A, Travancore Medical College
Hospital, Mylapore, Kollam

.

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. E.M.MUHAMMED IBRAHIM PRESIDENT
HON'BLE MRS. SANDHYA RANIS MEMBER**

PRESENT:

Dated : 18 Sep 2021

Final Order / Judgement

IN THE CONSUMER DISPUTES REDRESSAL COMMISSION, KOLLAM

Dated this the 18th Day of September 2021

Present: - Sri. E.M.Muhammed Ibrahim, B.A, LL.M. President

Smt.S.Sandhya Rani, Bsc, L.L.B,Member

CC.338/12

Saithu : Complainant

Sabira Manzil

Thekkumbhagam P.O

Kollam.

[By Adv.Arun Babu]

V/s

1. The Manager : Opposite parties

Travancore Medical College Hospital

Mylapore, Kollam.

[By Adv.Kavanad A.Thajudeen]

1. Dr.Sheelamoni.A

Travancore Medical College Hospital

Mylapore, Kollam.

[By Adv.A.Sudheer Bose]

FINAL ORDER

E.M.MUHAMMED IBRAHIM , B.A, LL.M, President

This is a case based on a consumer complaint filed u/s 12 of the Consumer Protection Act 1986.

The averments in the complaint in short are as follows:-

The 2nd opposite party is employed as a Gynecologist at the 1st opposite party hospital. The complainant approached the 2nd opposite party with a minor problem with regard to pain during her menstrual period and she had conducted investigation with regard to the same and it was reported that there was a cyst in her ovaries and also advised complainant to remove the same, even though the said growth is not cancerous. None of the non surgical treatment were suggested by the 2nd opposite party. A healthy mother, who had not crossed beyond the child bearing age had been subjected to surgery without even trying non surgical mode of treatment. The complainant was admitted in the hospital of the 1st party as I.P.7982 on 12th May 2011. The 2nd opposite party also made the complainant to believe that the operation was to remove the cyst

in the ovaries and it would be relatively safe operation considering the health of the patient. The procedure of operation and the details of the procedure were not disclosed to the patient or her relatives. No choice of treatment was ever given to the patient. After undergoing the said operation the complainant developed fever and pain. But the 2nd opposite party casually taken the above complaint and impressed upon the complainant that the pain and fever are natural after the surgery. The complainant was discharged on 18.05.2011 A.N. However immediately after the complainant reached at her home pain progressed and it became unbearable and she was again rushed to the 1st opposite party hospital and 2nd opposite party advised that it is only post operative pain and it used to happen in most cases. As requested by the anxious bystanders of the complainant the 2nd opposite party advised scan by 1 P.M on that day. Immediately without even given an opportunity to the complainant and the bystanders to go through the scan report the 2nd opposite party advised another operation. The bystanders were shocked by this news and they demanded that the complainant should be shifted to a higher centre having better facilities. But the 2nd opposite party impressed rather threatened them by stating that even a small delay life of the patient would be lost. Neither the complainant nor her relatives were convinced about the treatment to be made or any of the material particulars of the treatment. The complainant who was discharged by the 2nd opposite party was advised another operation at the same site within the period of 20 hrs of discharge. Fearing the safety of the patient the bystanders had signed on the papers the 2nd opposite party had given to them. The papers were made to be signed without affording an opportunity to read and understand the same. After a couple of hours, 2nd opposite party reported that the patient was unconscious, she was in the ICU and her uterus was removed. Perplexed, shocked and utterly dismayed the bystanders were dumb folded at the news. It was never disclosed to them that the uterus need be removed. They demanded to see the patient and demanded to reveal the true facts. No consent was issued by the patient nor the relatives for the removal of the uterus. The petitioner was of child bearing age and she was planning to have a second child in the near future. The same was clearly updated with the 2nd opposite party during the beginning of the treatment and the opposite party had initially informed that the removal of cyst will not affect the child bearing capacity. It was based on the said assurance that the patient had started the treatment with the opposite party. The 2nd opposite party told to the patient that there was some complications from her part. The bystanders demanded an immediate transfer of the patient to a better facility by around 3 pm. But the 1st opposite party did not give a discharge as demanded and stated that the patient would be transferred by dark. The patient was then transferred to KIMS in an unconscious stage and remained at KIMS in the same vegetative stage for 40 days. The medical report clearly shows that it was the fault in the operation done by the second opposite party that had resulted in the bitter experience of the patient. The patient after discharge from KIMS underwent rigorous physiotherapy and has now regained some of her body movements. A small pain during the menstrual period, later by the actions of both the opposite parties resulted in two operation and un consented removal of the uterus of the patient, untold suffering and loss of amenities of life. A healthy woman of child bearing age, lost her chances of motherhood, and was turned to a vegetative stage by your actions. The said conduct was not expected from a person like the second party who professes normal professional qualifications. The actions of the 1st opposite party was equally reprehensible in dealing with the situation, making it an ally for the medical negligence and the loss suffered by the complainant. The bystanders and the husband of the patient quite vividly recollects that the 2nd opposite party had visited the KIMS hospital enquiring about the condition of the complainant and also admitted the guilt to them. But the pathetic condition into which the complainant had plunged was solely because of the actions of both opposite parties.

The petitioner was not provided with any of the medical records. Only bills were provided. The petition had issued suit notice claiming compensation of Rs.19,00,000/- from the opposite parties and also seeking to provide all the medical records. But as a clear case of unfair trade practice, the opposite party have not provided the complainant with any of the medical records with regard to her treatment. The 2nd opposite party issued a reply notice, without even specifically denying any of the material particulars in the notice. The said reply notice clearly evidences the acceptance of liability, for the sole reason that none of the material allegations raised in the notice was specifically denied. The records produced were not true to the true facts and are manipulated. The complainant had filed CC.70/2012 for getting treatment records. The opposite party without filing any counter had submitted all the medical records and that too shows the acceptance of the truth of the allegations raised by the petitioner therein. The complainant had obtained the medical records and so the complaint was closed.

The 2nd opposite party was clearly negligent in conducting the 1st operation which was supposed to be a very minor one without any complications. The opposite party was negligent in not properly discussing the treatment or procedure with the patient. It is further alleged that the conduct of the opposite party in conducting the 2nd operation without taking into confidence the patient or the relatives and without disclosing the true facts is clearly negligence which falls far below the normal professional standards. The methods adopted by the opposite party were also not as per the normal process of treatments. The second operation was clearly the result of the negligent act on the part of the opposite party. The conduct of the second operation even when the patient/relatives wanted to be shifted to a better facilities prolonging better treatment of the patient is also clear negligence. The alleged letter of consent was signed without explaining the facts nor giving an ample opportunity to read and understand the same. The 1st and 2nd operation were done quite negligently, against the accepted modes of procedure, quite negligently causing irreparable loss and injury to the complainant. If the said operations were done with the reasonable care and competence of an average professional, there would not have been any injury to the petitioner. The complainant who was a healthy lady, is now reduced to a very fragile stage. She needs bystanders for moving out of her home. She needs help for doing the domestic needs which she was able to do quite competently. The petitioner has also suffered due to the loss of amenities of life arising from the operation. The petitioner had suffered acute pain and sufferings and the financial loss she suffered is beyond measure. For the purpose of litigation the complainant is now seeking a compensation of Rs.19,00,000/- from the opposite parties. Hence the complaint.

Opposite party No.1&2 vehemently opposed the averments in the complaint made against them by filing separate version raising more or less same contentions. The main common contentions of the above 2 opposite parties in short are as follows. The complaint is not maintainable either in law or on facts. There is no negligence or deficiency in service on the side of hospital and doctor. The complainant is not entitled to get any relief as paid in the complaint. The complaint is barred for mis joinder of necessary parties. The complaint has been filed on an experimental basis for undue financial advantage without any cause of action. However the opposite parties would admit that the complainant went to the outpatient section of the 1st opposite party hospital on 05.05.2011 and consulted the 2nd opposite party with complaints of irregular periods and progressive dysmenorrhoea since 14 years. After examination she was advised necessary investigation. USG dated 05.05.2011 revealed cystic mass of right ovary measuring 7.8x4.9 cm in the right adnexa and endometriotic cyst. Uterus was enlarged with small subserous fibroid, multiple seedling fibroids and suspected Adenomyosis. It was also diagnosed

from the cervical smear that she was having human papilloma virus. 97% of the cervical cancer is caused by the said virus. Hence hysterectomy was very much indicated because of all the above reasons. The clinical findings and USG indications were explained to the complainant and she was advised hysterectomy along with ovarian cyst removal. But the complainant opted to undergo surgery for cyst removal for the time being and got admitted to the hospital on 12.05.2011. The complainant underwent pre-operative anaesthetic evaluation and check-up and posted for laparotomy for right ovarian cystectomy after getting informed consent for surgery. Under all aseptic care and precautions the 2nd opposite party had conducted laparotomy. During surgery it was found that the right ovary was enlarged with endometriotic cyst of size 10x10 cm. The surgery was uneventful. Post operative period was also uneventful except for a mild rise in temperature which subsided by means antibiotics and remained normal from 5th post operative day onwards. The complainant was discharged on 18.05.2011 with an advice to continue antibiotics. The complainant reported with severe pain in abdomen at 04.00 am on 19.05.2011. She was seen at labour room by the duty gynaecologist, who is also qualified post graduate gynecologist. On her examination abdomen was soft and vital signs were stable and directed necessary investigations and put under close observation. On 20.05.2011 the patient complained giddiness and on examination the 2nd opposite party noticed fullness and tenderness in the lower abdomen and emergency USG investigation was ordered. Ultra sound showed two complex cystic masses with fluid levels, minimal ascitis and pleural effusion. Uterus was found to be enlarged to 9.7x4.7 cm with fibroid and adenomyosis. The fluid level indicated as per scan report could be due to hemorrhage and the 2nd opposite party made a detailed discussion with the complainant and her relatives on the basis of the findings in the scan report advised emergency laparotomy and also suggested hysterectomy in view of the enlarged size of uterus with multiple fibroids and adenomyosis along with HPV(Human Papilloma Virus) infection with high risk for cervical cancer. Unless otherwise the patient would have required another laparotomy and hysterectomy and gave written informed consent for the surgery. Under aseptic care and precautions including arranging B negative blood, the 2nd opposite party had conducted laparotomy and intra operatively peritoneal cavity was found filled with blood and blood clots, uterus was found enlarged to 12 weeks size with fibroids. Bowels were adherent to back of uterus. Total abdominal hysterectomy with left salpingo oophorectomy was done. With the help of surgeon bleeding points were ligated and intra abdominal packing was done to arrest bleeding as per the decision of the surgeon and abdomen was closed with tube drain. The patient was given two pints of blood intra operatively. Since the patient was suspected to have Disseminated Intra vascular Coagulation(DIC) it was decided to shift the patient to higher centre and in discussion with relatives she was shifted to KIMS hospital. The complainant was treated in the 1st opposite party's hospital as per the accepted medical practice and the 2nd opposite party had exercised all reasonable degree of skill and care in the treatment of the complainant. There was no negligence or deficiency in service on the part of the 2nd opposite party and hence she is not liable to compensate the complainant. Regarding issuance of medical records pertaining to the treatment of the complainant in the 1st opposite party hospital the 2nd opposite party submits that she is not the custodian of the treatment records. Hence no unfair trade practice is attributable against the 2nd opposite party and she is not liable to compensate the complainant on this point. Before surgery informed consent of the patient/relative was taken. It goes without says before taking such consent the nature of surgical procedure is made known to the parties, which is followed by the informed consent. The further allegation that the methods adopted by the opposite party was not as the normal process of treatment is also stoutly denied. The 2nd opposite party who had treated the complainant with all reasonable degree of skill and care in tune with accepted medical

practice is not liable to pay any compensation on the ground of non issuance of treatment records for the obvious reason that she is not the custodian of the treatment records. The complainant has no cause of action against the 2nd opposite party. The 2nd opposite party is having qualification of MD(Gynec), DGO and also M.Phil and Ph.D. She was the retired Professor and HOD from the Government Medical College, Alleppy and now working as Professor in the Department of Gynaecology and 31 years of unblemished professional experience to her credit. The opposite parties would further contend that the amount claimed as compensation is exorbitantly high and unreasonable. It has no nexus with the alleged damage suffered by the complainant. No medical bills or other documentary evidence are produced to substantiate the pecuniary or non pecuniary damages suffered by the complainant. The complainant should be put to strict proof regarding the bonafides and eligibility of the compensation as sought for in the complainant.

It is further contented that the 1st opposite party hospital is having all reasonable facilities, procedures in the case of the complainant and the 2nd opposite party and her colleagues who have carried out the surgeries experienced in the field of medical science and no negligence on the part of the opposite party No.1&2 had resulted in the alleged hardship caused to the complainant. The opposite parties are not at all liable for any compensation to the complainant for any ground. If at all the Forum finds any negligence on the part of the 2nd opposite party order may be passed to pay any compensation to the complainant by the Professional negligence of the 2nd opposite party ie, the Secretary to the Professional Protection Scheme of IMA, Kerala State Branch who indemnified for professional negligence on the part of the 2nd opposite party and the 1st opposite party further prays to exonerate it from any such liability. Both the opposite parties further prays to dismiss the complaint with costs.

In view of the above pleadings the points that arise for consideration are:-

1. Whether there is any medical negligence or deficiency in service on the part of the 2nd opposite party doctor in respect of the treatment of the complainant at the 1st opposite party hospital?
2. Whether the 2nd opposite party has obtained valid consent from the complainant for subjecting her to surgery?
3. Whether opposite party no.1&2 are liable to pay compensation, if so what would be the quantum of compensation to be awarded?
4. Reliefs and costs.

Evidence on the side of the complainant consists of the oral evidence of PW1 to 5 and Ext.P1 to P10 documents.

The 1st opposite party has not adduced any evidence. The 2nd opposite party Gynecologist has been examined as DW1 and got marked Ext.D1 series to D3 series documents.

Both sides have filed notes of argument.

Heard both sides.

Point No.1&2

For avoiding repetition of discussion of materials these 2 points are considered together. The complainant has approached this Forum/Commission seeking compensation on the ground of medical negligence and deficiency in service to the tune of Rs.19,00,000/- for the damages caused to her on account of the negligent treatment of the 2nd opposite party doctor at the 1st opposite party hospital. The specific case of the complainant is that she approached the 2nd opposite party doctor with a minor problem with regard to pain during her menstrual period and the 2nd opposite party doctor in turn has conducted investigation with regard to the same and reported that there was a cyst in her ovaries and also advised the complainant to remove the same even though the said growth is not cancerous. The complainant would further allege that none of the non surgical treatment were suggested by 2nd opposite party who is a healthy mother, who had not crossed beyond the child bearing age. The learned counsel for the complainant has argued that when the patient of child bearing age approached the Gynecologist with a cyst on her ovaries the doctor should have been first treated with a first line of treatment like medicines and other symptoms alleviating steps with a care that the child bearing capacity of the patient shall not be hindered. Instead of adopting that procedure the complainant was first subjected to surgery and according to the learned counsel for the complainant the fact that doctor insisted on the removal of cyst without considering the complainant's age as the first line of treatment is nothing but negligent.

The learned counsel for the 1st and 2nd opposite party has vehemently argued before the Commission that the treated doctor has not done anything against the protocol of the treatment and there is no negligence on her part or the part of the opposite parties. We may examine whether there is any merit in the above allegations. The learned counsel for the 2nd opposite party by relying on the dictum laid down in **Dr.Manpreet Kaur Vs Lekshmi Devi 2014(3)CPR-430(NC)** has argued that in medical negligence cases there is no presumption or inference of negligence merely because an unfortunate result which might occurred despite exercise of reasonable care by the treated doctor. it is further argued that mere error of judgment occurs when a doctor makes a decision that turns out to be wrong. Whether such error is so egregious to constitute negligence. That doctor is not liable for every injury suffered by a patient but he is liable only for those that are consequences of breach of his duty. Now we shall consider whether the 2nd opposite party doctor has acted in accordance with the accepted protocol or whether he committed any breach of duty.

Admittedly the complainant approached the 2nd opposite party in connection with her menstrual pain on 05.05.2011. It is brought out in evidence that well before 05.05.2011 the complainant was under treatment at SAT Hospital, Thiruvananthapuram on 03.05.11 with the history of endometriotic cyst which is clear from Ext.P2 document. The oral evidence of PW1 coupled with Ext.P1 scan report (Pelvic USG) dated 07.04.2011 would indicate that complainant has taken an ultra sound of abdomen which would show evidence of large cystic area measures 6.9x4.8cm of the right adnexa and 2.8x2.3 cm of the left ovary. Ext.P3 issued by Cancer Center, Kollam would indicate that there is evidence of Cytology. The report would further show that there is inflammation with Koilo Cytosis. It is clear that based on these clinical features and investigation result 2nd opposite party doctor has advised for removal of cyst on 05.05.2011 and accordingly the patient came and prepared for surgery and admitted on 12.05.2011. It is also brought out in evidence that informed consent (Ext.D2(a)) was obtained on 13.05.2011 and there after surgery was done. It is also clear that separate consent for Anesthesia was also obtained. It is also brought out in evidence that during surgery it was found that right ovary was enlarged with endometriotic cyst of 10x10 cm. It is clear from the available materials that surgery was uneventful, that the patient was observed in surgical ICU for 24 hrs by closely monitoring pulse,

BP, respiration, temperature, oxygen saturation, urine output and looked for evidence of internal and external bleeding and thereafter shifted to post operative ward. The patient was also monitored in the post operative ward throughout till her vitals are stable and adequate. It is clear from the available evidence that as the condition of the patient was normal and stable she was discharged on 18.05.2011 with an advice to continue antibiotics, that her wound was healing at the time of discharge and there was no other abnormalities. Hence it is clear that she was completely fit for discharge on 6th post operative day. Even the complainant has no specific case that she was having any discomfort or any other abnormal pain. According to PW1 she was having no bleeding at the time of discharge on 18.05.2011. In view of the above materials on record we are satisfied that the 2nd opposite party has subjected the complainant to surgery for removal of cyst at the 1st opposite party hospital was admittedly necessary and in accordance with the accepted protocol and that there is no merit in conducting that she would have given first line of treatment such as medication etc. instead of opting for surgery.

There is absolutely no negligence on the part of the 1st and 2nd opposite party for discharging the complainant in the 6th post operative day as her condition at that time was stable. It is brought out in evidence that the complainant was brought to the hospital on the next day morning at about 4 am. After examination by the duty doctor and necessary observations and investigations 2nd opposite party doctor examined her. The ultra sound scan report would indicate that 2 complex cyst masses with fluid levels, minimal ascitis and pleural effusion. It was also noticed that there was enlarged uterus of 9.7x4.7 cm with fibroid and adenomyosis. The fluid level indicated as per the scan report could be due to hemorrhage. It is also brought out in evidence that the seriousness of the matter was discussed with the relatives of the patient and appraised the need for an emergency laporotomy. 2nd opposite party has also suggested hysterectomy in the same operation, on the basis of the evidence of enlarged uterus with multiple fibroids and adenomyosis along with human pappiloma virus infection with high risk for cervical cancer. The learned counsel for the 2nd opposite party would argue that unless otherwise the patient would have require another surgery to remove her diseased uterus on a later stage. Only during laprotomy the gynec surgeon will be able to locate the source of bleeding inside the abdomen and if there is uncontrolled profuse bleeding, there is no other option other than to perform hysterectomy as a life saving measure. It is also brought out in evidence that the complainant after discussing her husband and her relatives over phone agreed for laprotomy and hysterectomy and gave Ext.D1(a) written informed consent wherein it is specifically agreed to remove her uterus along with the operation. The said consent is seen signed by the patient as well as her sister who was bystander at that time. It is also brought out in evidence that apart from emergency consent high risk consent was explained by the anesthetist also. Accordingly laparotomy was conducted and abdominal hysterectomy with left salpingo ophorectomy was done. Bleeding points were ligated with the help of surgeon and intra abdominal packing was done to arrest the bleeding. Abdomen was closed with tube drain. The patient was given two pints of blood.

It is also brought out in evidence that after subjecting the complainant to 2nd surgery she was suspected to have Disseminated Intra Vascular Coagulation(DIC) and hence 1st and 2nd opposite party decided to shift the patient to a higher center. After discussing with the patient's relatives the patient was shifted to KIMS hospital in a ventilator support ambulance. The rest of management was done by critical care department and surgery department of the KIMS hospital. At KIMS Hospital also patient was subjected to exploratory laprotomy. But even after repeated laprotomies the condition of the post operative DIC is persisted. It is clear from the available

materials that DIC following surgery is one of the accepted complications of major surgery. DIC can occur intra operatively and post operatively. It is clear from the available materials that in difficult surgeries with extensive adhesions as in case of endometriosis there is a possibility of uncontrolled bleeding and there is a continuous coagulation failure it may lead to DIC. DIC can also produce uncontrolled bleeding. Undoubtedly it is a life threatening condition which requires immediate management in a major hospital, having all infra structure and expert management. In the circumstances opposite parties have rightly referred the patient at the right time to the KIMS hospital where her life was saved by timely intervention.

In view of the materials discussed above it is clear that the 2nd opposite party Gynecologist who treated the patient has not done anything against the accepted protocol of treatment and there is no medical negligence on her part. It is to be pointed out that even the complainant has no case either in the complaint or in the proof affidavit that there was no internal bleeding due to surgery done at the 1st operation on 13.05.11 for removal of cyst. It is definite that if at all there is any internal bleeding due to any surgical trespass or intervention, which resulted in damage to any internal organ, there should have been profuse bleeding in all the 5 post operative days and there should have been BP and hemoglobin drop which resulted in the collapse of the patient within a short span of time. In view of the condition of the patient in this case it cannot be inferred that there was any internal hemorrhage due to any wrong techniques of operation or negligent operation done by the 2nd opposite party doctor.

It is brought out in evidence through PW3 who is none other than the HOD and senior consultant of KIMS Hospital, that the DIC following surgery is one of the complications of any major surgery. PW3 has further added that there was no multi organ failure at the first day. PW3 has further opined that the complainant was rightly referred to the KIMS Hospital at the right time and that none of the treated Gynecologist has expressed any opinion that the DIC condition of the patient was due to or after effect of initial laprotomies done by the 2nd opposite party. According to PW4 doctor when there is coagulation failure blood transfusion is one of the remedial measures and the complainant already undergone blood transfusion in the initially treated hospital(OP1) also within their limit they have managed the patient very well. PW3&4 are 2 expert doctors working at KIMS Hospital. None of them had given evidence regarding any element of negligence either in the surgery or in the post operative care on the part of 2nd opposite party gynecologist. According to PW4 complexity of medical condition of the coagulation failure and the resultant DIC is beyond the control and expectation of the treating doctor. He has further opined that simply because of such unexpected sudden complication and development, the treating doctor cannot be blamed as negligent.

In view of the materials discussed above it is cristal clear that the 1st opposite party hospital and 2nd opposite party Gynecologist have managed the patient/complainant to the best of their ability and within their limit. In the circumstances simply because something went wrong or complication occurred it cannot be inferred that there is some negligence on the part of the treating doctor as held by the National Commission in Lalitha Ramesh Vs Talesara Hospital-2013(2)CPR-515(NC).

Yet another allegation of the complainant is that no consent was issued by the patient nor the relatives for the removal of the uterus and the records produced are not genuine records which are manipulated one. According to the complainant the opposite party was negligent in not properly discussing the treatment or procedure with the patient, that the conduct of the 2nd

opposite party in conducting the second operation without taking into confidence the patient or relatives disclosing true facts is clearly negligent which falls far below the normal professional standards. The further case of the complainant is that the alleged letter of consent was signed without explaining the facts nor giving ample opportunity to read and understand the same. The learned counsel for the complainant has further argued that the doctor who seek and secure the consent of the patient before commencing treatment including surgery. The consent so obtained should be real and valid which means that the patient who have the capacity and competence to consent, her consent should be voluntarily and should be on the basis of adequate information concerning the nature of treatment procedure so that she knows that is consenting to. It is further argued that consent given only for diagnostic procedure cannot be considered as consent for therapeutic treatment. It is also argued by the learned counsel for the complainant that consent given for a specific treatment procedure will not be valid for conducting some other treatment procedure and only exception to this rule is where the additional procedure though unauthorized surgery is necessary in order to save the life or health of the patient.

It is to be pointed out that regarding first operation done on 13.05.11 the complainant has no specific allegation of absence of consent. But it is alleged that procedure of operation and details of procedure were not disclosed to the patient or to her relatives. In the light of the materials available on record we find no merit in the above allegation. Page No.8 of Ext.D2(which is separately marked as Ext.D2(a)) shows that consent for the 1st surgery has been signed by the patient and her sister Smt.Salmath. The complainant when she was in the witness box as PW1 has admitted her signature in the consent dated 13.05.2013. In the said consent it is specifically stated that there is cyst on the ovary and there is bleeding and it has to be removed by surgery and if necessary the need for removing the ovary itself. The above consent is written in Malayalam and signed by the patient and her sister who was the bystander. In view of the above materials on record it is clear that there is proper consent for the first surgery done on 13.05.2011 as argued by the learned counsel for the opposite parties.

However the complainant would alleged that there was no consent for the 2nd surgery and it was never disclosed to them that uterus need to be removed. Fearing the safety of the patient the bystanders had signed on the papers the 2nd opposite party had given to them that the papers were made to be signed without affording the opportunity to read and understand the same. The second surgery of hysterectomy was admittedly done on 20.05.2011 ie, on the very next day of the second admission. Up on 2nd admission USG was done which shows increased fluid level and the plural effusion uterus was also found to be enlarged with fibroid and adenomyosis. It could have been due to hemorrhage and hence emergency laparotomy was absolutely necessary to save the life of the patient. It is also brought out in evidence that on understanding the above facts on analysis of USG report the treating doctor done a detailed discussion with the patient and relatives about the need for removal of deceased uterus also after having patient required another laparotomy later on to remove her uterus. The matter was also discussed with the relative of the patient including telephonic talk with her husband who was abroad at that time. As a result of the discussion the patient as well as her husband and relatives voluntarily agreed for laprotomy and hysterectomy and given written consent for surgery. The said informed consent contained in D1 case sheet is separately marked as Ext.D1(a). We shall quote the relevant portion of the written consent in the language in which it is written in Ext.D1(a) which reads “F\ñjv KÀ`-]m-{X-ñâ caw sI<nInS-;p-¶-Xn-\mÂ th--hn[NnIn-Õ-Ifpw Hm,-td-j\pw sN¿m³ k½-X-am-Wv, AtXm-sSm,w KÀ`-]m-{Xhpw \o;m³ k½-X-am-Wv. Hm,-td-j³ ka-bt`m ab-;p-a-cp¶v \ÂIp-t¼mtgm D-m-tb-;m-hp¶`hn-j-y-`p-IÂ Bb]£m-Lm-Xw, lrZbm-LmXw, cà-k-½À±w,- a-cp-¶n-t\m-SpÂ AeÀPn F¶n-h-sb-;p-dn`pw tUmIvSÀ]d-ªXv a\Ên-em;n

X¶n-«p--v. IqSmsX Rm³ cmhnse Blmcw Ign-·-Xn-\mepw cà-ñÂ jpK-dnsâ Afhv IqSp-XÂ
DÄ-Xn-\mepw Cu]dª `hn-j-y-~p-IÄ IqSp-XÂ BsW¶pw acWw hsc kw`-hn;pw F¶-Xn-s\-, -änbpw
tUmIvSÄ]d-ªv a\Ên-em;nX¶n«p-v. CX-dn-ªp-sIm--p-Xs¶ Hm,-td-j³ sN; m³ k½-X-am-Wv ”.

F¶v

F¶v

(H-,v)

(H-,v)

_Ôp(-tPã~n)

tcmKn

It is clear from the available materials that in Ext.D1(a) consent itself it is stated that its an emergency consent. It is also clear from the available materials that the Gynecologist was busy with the preparation of emergency surgery and the signature was obtained with duty nurse in the presence of junior doctor. In the said consent the bystander Smt.Salmath who is the elder sister of the complainant is also seen signed. It is true that the complainant has denied her signature in Ext.D1 (a) consent. However we have gone through D1(a)and also Ext.D2(a) documents different page of the deposition of the complainant(PW1) and on comparison it is clear that there is some minor variation in the signature in Ext.D1(a) and D2(a) and also in her signature in the vakalath. The signature in the vakalath has been put at the advise of learned counsel for the complainant. There is every chance of falsely putting signature in the vakalath as the complainant intends to deny her signature in the consent in 2nd surgery. All other admitted signature are more or less same except some minor variations. It is to be pointed out that in Ext.D1(a) consent the signature has been put when she was at critical stage. It is also seen put at the lower end of the paper were consent is written. Therefore it appears to be illegible and very small in appearance which is for want of sufficient space to put a legible signature. The complainant has not examined Smt.Salmat to establish that the 2nd opposite party has threatened the patient and bystander and by fearing the safety of the patient she being the bystander had signed on the papers that the 2nd opposite party had given to them and that the consent papers were made to be signed without affording an opportunity to read and understand the content of the same. It is further to be pointed out that the complainant has not filed any grievance petition in the hospital management or any other authorities alleging that 2nd surgery was done without her consent. In view of the materials available on record we come to the conclusion that there is no merit in contenting that the 2nd operation was done by the 2nd opposite party without obtaining the informed consent of the complainant and her relatives.

On evaluating the entire materials available on record we come to the conclusion that the complainant has failed to establish medical negligence, deficiency in service or any unfair trade practice on the part of the 1st and 2nd opposite parties in treating the complainant and the allegation that the 2nd opposite party has subjected the complainant to the 2nd surgery without valid informed consent is also devoid of any merit. The points answered accordingly.

Point No.3

In view of our finding with regard to point No.1&2 the complaint is only to be dismissed. In the result the complaint stands dismissed. Parties are directed to suffer their respective costs.

Dictated to the Confidential Assistant Smt. Deepa.S transcribed and typed by her corrected by me and pronounced in the Open Commission this the 18th day of September 2021.

E.M.Muhammed Ibrahim:Sd/-

S.Sandhya Rani:Sd/-

Forwarded/by Order

Senior Superintendent

INDEX

Witnesses Examined for the Complainant:-

PW1 : Saithu
PW2 : George Varghese
PW3& PW4 : Dr.K.N.Vijayan&Dr.Deepak
PW5 : Sabeera

Documents marked for the complainant

Ext.P1 : Copy of scan report
Ext.P2 : Copy of doctors prescription(SAT Hospital)
Ext.P3 : Copy of examination report (cancer care centre, Kollam)
Ext.P4 : Copy of certificate(KIMS Hospital)
Ext.P5 : Copy of lawyer notice
Ext.P6 : Reply notice
Ext.P7 : Copy of Discharge Summary from KIMS hospital
Ext.P8 : Case sheet
Ext.P9 : Copy of certificate from KIMS Hospital

Ext.P10 : Copy of reference letter

Witnesses Examined for the opposite party:-

DW1 : Dr.Sheelamoni

Documents marked for opposite party:-

Ext.D1 series&D1 (a): Hospital records

Ext.D2 series&D2(a): Hospital records

Ext.D3: Travancore Medical College Hospital records

E.M.Muhammed Ibrahim:Sd/-

S.Sandhya Rani:Sd/-

Forwarded/by Order

Senior Superintendent

**[HON'BLE MR. E.M.MUHAMMED IBRAHIM]
PRESIDENT**

**[HON'BLE MRS. SANDHYA RANI.S]
MEMBER**