

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
KOLKATA UNIT - II (CENTRAL)
8-B, NELLIE SENGUPTA SARANI, 7TH FLOOR,
KOLKATA-700087.**

**Complaint Case No. CC/354/2018
(Date of Filing : 02 Aug 2018)**

1. Jayanta Kumar Das

83/1, Diamond Harbour Road, Kidderpore, P.S. Watgunge,
Kolkata-700023.

.....Complainant(s)

Versus

1. Nightingale Hospital

11, Shakespeare Sarani, P.S. Shakespeare Sarani, Kolkata-
700071.

2. Dr. Subir Kumar Bose

FE-276, Salt Lake City, Sector-III, P.S. Bidhan Nagar South,
Kolkata-700106.

.....Opp.Party(s)

BEFORE:

**HON'BLE MRS. Sahana Ahmed Basu PRESIDING MEMBER
HON'BLE MR. Ashoke Kumar Ganguly MEMBER**

PRESENT:

Dated : 02 Nov 2022

**Final Order / Judgement
FINAL ORDER/JUDGEMENT**

SHRI ASHOKE KUMAR GANGULY, MEMBER

This is an application u/s.12 of the C.P. Act, 1986.

The facts of the case in brief is that the complainant in the first week of the April, 2018 felt pain on right knee and visited Dr. T N Sarkar on 16.04.2018 who advised for X-ray both hips AP and RT knee. After getting X ray report Dr. Sarkar advised on 19.04.2018 for reunion surgery THR (RT) side. Accordingly, the complainant went to OP-2 doctor on 02.05.2018 at Nightingale Hospital. After going through the reports, the OP-2 doctor advised him for revision surgery (RT) HIP. The complainant got admitted on 07.05.2018 in Nightingale Hospital for revision surgery and necessary tests were undergone on the said date. The OP-2 doctor suggested for surgery on 08.05.2018. which was done accordingly on 08.05.2018 and the complainant was shifted to male ward of the hospital

and post operative treatment was started. During operation, the foreign body instrument and medicated jelly were applied in the right hip of the complainant which is namely as follows.

1. Femoral head 12/14 tapper, date of expiry: 30.06.2027
2. Warnor SL Revision^R hip stem, date of expiry: 31.03.2022
3. Shell Porous 62MOD with cluster Holds, date of expiry: 30.04.2026
4. Liner, longevity crossed linked polythene 28M, ID, date of expiry: 30.04.2018

After completion of operation the complainant was shifted to male ward of the hospital and the authority of the OP-1 told the relative of the complainant to return back the container and level of the instruments and medicated jelly which were applied during the operation and accordingly, the relative of the complainant returned those container and level to the OP 1 in the evening on 08.05.2018. The OP-2 raised interim bill for the post operative treatment, medicine and doctor fees including operation charges on 10.05.2018 where from it is revealed that the complainant paid Rs. 1,20,500/- out of Rs. 1,21,326/- for interim final bill. In the said bill under the head hospital consumable the OP-1 charged Rs. 12,580/- wherein charge of implant is mentioned. On enquiry about "implant" the authority of the OP-1 clarified that those are for ward expenses

After returning home, the relative of the complainant ascertained that the instrument and other materials which were used during operation of the right hip Femur of the complainant. Out of that one item Linear, longevity crossed linked ploythenee M 28M ID was expired ON 30.04.2018. Immediately on 11.05.2018 the relative of the complainant went to the Hospital and met the residential medical officer and asked him how such expired medicine was applied in the body of the complainant at the time of operation. The RMO after going through the box and leveled of the used materials requested the relative of the complainant to return back the said box and leveled to the hospitals. The relative of the complainant denied to return back the said box and level to the OP-1 and contacted the OP-2 for such applied materials which are already expired. The OP-2 after knowing about such fact from the authority of the hospital told the relative of the complainant over phone that the housekeeping staff of the hospital due to mistake handed over the said box and level to the hospital authority which was returned to the relative of the complainant but failed to produce the box and level of the material which was applied during operation.

Subsequently, the OP-1 called the relative of the complainant and press hard to return back the box and level of trilogy Linear and to take discharge immediately from the hospital. The relative of the complainant immediately rush to the local police authority and lodged the complaint stating all the facts. The police personnel of Shakespeare Sarani PS came to the hospital and told the authority to discharge the patient immediately after accepting outstanding the bills. The OP-1 raised the final bill Rs. 2,50,600/- which was paid by the relative of the complainant to discharge the patient. After discharge it was revealed that in the discharge summary there was no mentioning of the date of operation though time of discharge was mentioned through handwritten. The relative of the complainant wrote a letter to the administrator of the OP-1 demanding clarification for the negligence on the part of the OP-1 and also requested to take necessary action to avoid future harm. The administrator refused to accept the letter by hand for which the relative of the complainant sent the letter by speed post with AD which was received by the OP-1 on 15.05.2018. Inspite of

receiving such letter the OP-1 did not bother to take any step or take any step through the OP-2. The OP-2 during follow up check up assumed that there was no negligence on the part of the OPs.

The complainant took advice from the reputed orthopedic surgeon about future harm to the complainant for using the expired materials within the body. As per advice, the complainant may suffer abnormal pain or damage in the operated part permanently. Due to such negligence on the part of the OPs the complainant is in panic and suffering continuously from mental agony.

For the said act of negligence on the part of the OPs the complainant has approached the commission for justice with relief/reliefs as detailed in the complaint petition.

The OP-2 has contested the case by filing their WV contending inter alia that the complaint petition is a total misconception so far as the treatment of the OPs is concerned. It is not maintainable either in facts or in law. The OP-2 submits that the complainant Mr. Jayanta Kumar Das aged about 50 years had undergone total hip replacement surgery under the orthopedic surgeon Dr. Subir Kumar Ghosh being the OP-2. In the year, 2009. The patient was almost asymptomatic with normal activity of daily life. After 09 years the patient developed pain in his same limb. On investigation, it was observed that his prosthetic plate has been broken and under gone surgery under the same orthopedic Dr. Subir Kumar Ghosh on 08.05.2018, at the OP-1 hospital. The OP-1 states that prosthesis, its accessories, the linear etc. are supplied by M/s Standard Chemicals Company that had supplied directly to the OT in Nightingale Hospital being the OP-1. The treating doctor and attending nurse duly verified the material in OT and the materials stickers are attached with patient case file by the attending nurse with lot number, expiry date and etc. The OP-1 further states that all those materials are supplied in card board boxes. Empty boxes are usually used for carrying loose accessories to the OT. One such old empty box was returned to the party by the company personnel, unfortunately, which showed the expiry date to be older one. The patient party after returning home observed that the Linear box had older expiry date. They apprehended that the expired material was used to the patient in the process of operation and it might cause harm to the patient. The patient is still in good medical condition and nicely performing his normal activities. The Linear sticker that was used to the patient has lot number-62661245, EDI: 00631006228 reference; 6310-62-28 with expiry date: 04/2019. The OP-1 further states that the patient party never came to take their original box which actually contained the Linear. It is to mention that there are unintentional mistake by the agent of M/S Standard Chemical Company and there was no role of hospital authority to handover the said empty box to the party. The stickers of the said Linear on bed head ticket shows the expiry date to be April, 2019. This can be verified with the stickers attached to the case file. At present the said patient is quite healthy, fit and resuming his normal activities. So, there is no deficiency of service on the part of the OPs. It is denied by the OP-1 that the Linear, Longevity Crossed Linked Polyethylene 28 M ID of expiry date 30.04.2018 was used. It is also denied that the OP-1 gave those container to the patient party. It is further denied that the authority of the OP-1 without clarifying the implant clearly told that those are for ward expenses. The sole motive of the instant case is to get some money out of nothing from the OPs.

The OP-2 has also filed his WV contending inter alia that the case is not maintainable in either in law or in facts and the same is liable to be dismissed for the following reasons. The OP-2 submits that the complainant visited the OP-2 on 19.04.2018 at OPD of Nightingale Hospital being the OP-1 for his problem in the right knee and femur and advised him to undergo the different test.

The patient was previously operated in 2009 for total hip replacement. On X ray it is found that his prosthetic plate which was implanted earlier has broken due to reason best known to the patient and was advised to under go revision surgery in the same limb. The patient was admitted to hospital on 07.05.2018 and the operation was done on 08.05.2018 and the same was uneventful. The patient got discharged on 11.05.2018 in a good condition with necessary advice of medicine. The present complaint is filed with regard to the implant which has been used in the surgery. It is stated that the prosthesis, its accessories the liner etc are supplied by M/s Standard Chemical Company Ltd. that had supplied directly to the OT in Nightingale hospital to minimize infection. The OP-2 further submits that he along with attending nurse duly verified the materials in OT and as a routine measure the material's stickers were attached with patient case file with lot number, expiry date etc. All implants are supplied in card board boxes. The empty boxes are used for carrying loose accessories to the OT. One such old empty box was returned to the party by the company personnel, unfortunately which showed the expiry date to be older one. The patient party after returning home observed that the Liner box had older expiry date. They apprehended that the expired material was used in the patient in the process of operation and it might cause harm to the patient. The patient is still in good medical condition and nicely performing his normal activities. It is further stated that the operation was uneventful and before operation all the material was checked by the patient party. It is further stated that the original box which actually contained Liner is still in the hospital which can be collected at any time by the complainant. It is true that there was a mistake of unintentional change of covering box offered the party by the agent of M/s Standard Chemical Company and there was no role to handover the said empty box to the patient party by the surgical team. It is also mentioned that stickers of said Liner on bed head ticket show the expiry date to be April, 2019. This can be verified with the stickers attached to the case file.

Points for Determination

In the light of the above pleadings, the following points necessarily have come up for determination.

- 1) Whether the OPs are deficient in rendering proper service to the Complainant?
- 2) Whether the OPs have indulged in unfair trade practice?
- 3) Whether the complainant is entitled to get relief or reliefs as prayed for?

Decision with Reasons

Point Nos. 1 to 3 :-

The above mentioned points are taken up together for the sake of convenience and brevity in discussion.

We have travelled over the documents placed on record. The complainant and the OPs have filed their respective evidences along with replies against the questionnaires filed by the concerned parties. BNAs as per CP Regulations have also been filed by the complainant and the OPs.

The fact of the case in brief is that the complainant underwent revision surgery of his right limb at the OP-1 hospital under the care of OP-2 doctor on 08.05.2018. The complainant was discharged from the said hospital on 11.05.2018. Here, the point of controversy is during operation the foreign body instruments and medicated jelly were applied in the right hip of the complainant out of which one item in the name of Liner, Longevity^R Crossed Linked Polyethylene 28M ID used in the operation was expired on 30.04.2018. The operation was made on 08.05.2018. As such, the particular item stands expired on the date of operation. The complainant has brought the allegation that the expired medicine was used in the body of patient during operation carelessly as well as negligently. The complainant apprehends that the expired medicine might be fatal afterwards. The OP-1 and the OP-2 in their WV have denied that they have used the expired medicine as pointed out by the complainant. They have however, admitted that the house keeping staff of the hospital due to mistake handed over the said box and level to the hospital authority which was returned to the relative of the complainant. Somewhere, they have stated that the agent of M/s Standard Chemical Company had erroneously handed over the empty box of the said medicine which stands expired before the operation.

Now let us concentrate over the questions and replies of the parties involved herein. Question No. 8 of the complainant put forth before the OP-1.

Question 8 : Is it true that container box of Liner, Longevity Crossed Linked Polyethylene was handed over to the complainant after operation?

Answer : **Yes. The concerned surgeon and his members handed over the box to the patient party.**

Question No. 11 : Which accessories are used at the time of OT?

Answer : **The surgeon and his team members can answer this question.**

Question No. 12 : How old empty boxes are used in OT to bring the accessories.

Answer : **Old empty boxes are not used in OT.**

Question No. 13 : Will you admit that the boxes of medicine and material which was used at the time of operation were handed over to the complainant after completion of operation.?

Answer : **The concerned surgeon and his team members handed over the box to the patient party.**

Question No. 15 : Will you admit that the Lot No. expiry date etc. containing materials which are mentioned on the stickers of the boxes used during OT are handed over to the complainant attached with the petition?

Answer : **The surgeon can answer the question.**

Question No. 16 : Will you admit that the container box of Trilogy Liner 28x62 (6310-62-28) having expiry date 30.04.2018 handed over to the complainant after operation?

Answer : **The concerned surgeon and his team members can say.**

Question No. 21 : Is it true that containers/boxes containing materials, medicines used for the complainant during operation were handed over to the complainant after operation?

Answer : **Yes, the concerned surgeon and his team member handed over the patient party after operation.**

Question No. 25 : Will you admit that all boxes/containers used for the complainant at the time of operation were handed over to the complainant immediately after operation?

Answer : **Yes.**

Question No. 30 : Is it true that all medicines/material used in OT supplied by the supplier received by the Hospital Authority?

Answer : **The supplier handed over the material to the surgeon and his team member.**

Question No. 31 : Is it true that the used boxes/container are returned to the patient party by the hospital authority?

Answer : **No. The team member of the concerned surgeon do this.**

From the above replies given by OP-1 hospital, it is absolutely clear that the OP-2 surgeon is liable for giving replies to the questions put forth by the complainant where the hospital authority has no role in the matters starting from receiving materials and medicines from the supplier company to the return of the used materials and medicines to the patient party after operation. The OP-1 hospital accordingly has no role in the said scenario.

Now let us, observed the replies of the OP-2 against the questions put forth by the complainant.

Question No. 11 : Will you admit that before applying the implant materials you check everything?

Answer : **Yes.**

Question No. 12 : Is it true that the patient was entitled to get back empty box of the implant materials which are used in surgery?

Answer : **I, being the treating physician only, am not concerned about return of the box.**

Question No. 13 : Is it true that the patient get back empty box of the used implant materials from the hospital?

Answer : **Hospital protocols can best be answered by the hospital authority only.**

Question No. 14 : Can you say in presence of you the empty box of used implant materials were handed over to the patient?

Answer : **Box was never handed over to the patient in my presence.**

Question No. 15 : Is it true that the patient party is allowed to OT in every operation?

Answer : **The relatives of the patient are not allowed in the OT.**

Question No. 17 : I suggest that you are not present when the box of implant was delivered to the OT.

Answer: Being a consultant surgeon, I am not concerned to see what box are received in the OT. However, I had checked the implant and its sticker which confirmed that they were within the expiry date.

Question No. 18 : I suggest that you have no personal knowledge about hand over empty box of implant material to the patient party after operation.

Answer : **True.**

From the above replies of the OP-2 doctor under question No. 12 and 13, it is clear that the doctor is avoiding his responsibility in the matter of return of the used implants to the patient party rather he is referring the protocols of the hospital concerned in the said matter. The Hospital authority as per protocol has clearly stated in their reply that it is the duty of concerned surgeon to return the empty boxes of the used implant materials to the patient party. As per the hospital, the empty boxes of the used implant materials has been handed over to the patient party by the doctor and his team members whereas the doctor is avoiding to reply properly in the said matter. This admission as well as non-admission give rise to so many contradiction in between the OP-1 and the OP-2 where the patient is the helpless victim of the situation. The OP-2 doctor in his evidence has stated that there was a mistake of unintentional change of covering box offered to the party by the agent of M/s Standard Chemical Company who normally supplies medicines and material directly to the OT. In the said matter, there are no role to handover the said empty box to the patient party by the surgical team. This is a clear denial of the OP-2 against the reply on oath by the OP-1. The OP-1 in their evidence has stated that there is no role of hospital authority to hand over the said empty box to the party. As such, both OP-1 and the OP-2 are of the opinion that they have no role to hand over the said empty box to the patient party which appears to be very much unacceptable. The questions put forth by the OP-1 and the OP-2 to the complainant have been carefully perused and there was no question of handing over the empty box of used implant in the OT. The complainant has repeatedly replied that the empty box has been handed over by the staff of the OPs and on studying the box they have come to the conclusion that the expired medicines has been used in the said operation. We are also very much surprised to learn from the WV filed by the OP-2 doctor under para 10 where the OP-2 is submitting that “**I state that the operation was uneventful and before operation all material was checked by the patient party**” and under para 08 it is

submitted by the OP-2 **that the prosthesis, its accessories, the Liner etc. are supplied by M/s Standard Chemical Company that had supplied directly to the OT in Nightingale Hospital to minimize infection.** Both the submission under the para 10 and para 08 are contradictory. How the patient party can verify the materials which are directly supplied to the OT where normally there is no access allowed to the patient party. This continuous contradiction in between the OP-1 and OP-2 and shifting liability even to the patient party definitely give rise to the doubt that the medicines particularly the Liner which had expired on 30.04.2018 is seemed to be used to the patient with or without the knowledge of the surgeon or the hospital. The blaming of the hospital towards the surgeon alone is not expected of and is not sufficient enough for excuse whereas the denial of the doctor and shifting of responsibility as well as liability to the hospital authority is also very unfortunate and not acceptable.

In support of his contention, the complainant has annexed one Xerox copy of the label of the container of Liner Longevity^R Crossed Linked Polyethylene wherefrom it appears that the expiry date of the said medicine is 30.04.2018 but while perusing the tax invoice issued by standard chemical corporation the expiry date of the said medicine is 04/2019. The cost of the said medicine was Rs. 8,970/- which has been paid by the complainant. The OPs have referred the said medicine as detailed by the Standard Chemical Corporation which as per their submission was used during operation. The OP-2 doctor being the technical expert has conducted the whole surgery with the said medicine and the patient complainant is absolutely in sound health after operations. Under the situation, the use of the expired medicine cannot be affirmed but it can be confirmed that the OP-1 and OP-2 have not made the patient party undoubtful about non applying the unexpired medicine. There was no effort from the part of the OPs to that effect rather there inactions in the matter has made the patient party doubtful. Instead of clarifying the entire scenario in a friendly manner by handing over the actual empty box of used medicine they have dragged the matter in dispute. This sort of attitude on the part of the OPs definitely tantamount to deficiency in service and also indulgences of unfair trade practice. We are really surprised to note that the hospital authority is out rightly shaking off their responsibilities for the alleged lapses for the patient admitted there in the hospital under their care and control. They cannot be escaped from the liabilities by shifting the responsibilities to the doctor and his team. So, by not replying the letter of the complainant received on 15.05.2018 by the OP-1 and by not taking proper steps in clarifying the allegation leveled against them the OP-1 has definitely committed deficiency in service.

So, is the case of OP-2 also who has not performed his role in a befitting manner knowingly fully well of the protocol of the hospital and has not taken any effective step to satisfy the patient party about their doubt of the expired medicine and also did not take the effective steps in the matter of return of medicine and materials used in the OT as well.

In view of the above observation, we are of the opinion that the deficiency in service, medical negligences and unfair trade practice on the part of the OP-1 and OP-2 are established.

In the result, the consumer complaint succeeds.

All the points under determination are answered accordingly.

Ordered

That the complaint case be and the same is allowed on contest against the OPs with the following directions.

1. The OPs 1 and 2 are directed to pay jointly and severally a sum of Rs. 50,000/- as compensation to the complainant towards harassment and mental agony.
2. The OPs 1 and 2 are also directed to pay jointly and severally a sum of Rs. 20,000/- as litigation cost.

The above order is to be complied within a period of 30 days from the date of the order in default, the complainant will be at liberty to put the order into execution.

The copy of the judgment be handed over to the parties free of cost as per Regulations of CP Act.

The judgment be uploaded to the website of the Commission forthwith for perusal of the parties

**[HON'BLE MRS. Sahana Ahmed Basu]
PRESIDING MEMBER**

**[HON'BLE MR. Ashoke Kumar Ganguly]
MEMBER**