

Complaint is filed on 14.07.2015
Compliant disposed on 25.07.2024

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ::AT::
KARIMNAGAR, TELANGANA STATE.

PRESENT: SMT. S. SRILATHA, PRESIDENT (FAC)
SRI CH. V. NARASIMHARAO, MEMBER

THURSDAY, THE 25TH DAY OF JULY
TWO THOUSAND TWENTY FOUR

CONSUMER COMPLAINT NO.307 OF 2015

Between:

Katukam Srinivas S/o. Buchaih Occu: Business, Age: 49 Yrs, R/o.H.No.1-82./2, Village:
Tallapet, Mandal: Dandepalli, Distrc: Adilabad, Telangana State, PIN – 504 206.
...Complainant

AND

1. Renee Hospital, R/through its Medical Superintendent, 3-1-336, Behind Civil Hospital, Karimnagar, PIN – 505 001.
2. Dr.Bangari Swamy, Consultant Orthopaedic & Spine Surgeon, Renee Hospital, 3-1-336, Behind Civil Hospital, Karimnagar, PIN -505001.

... Opposite parties

This complaint is coming up before us for final hearing on 25.07.2024, in the presence of Sri Gundi Ramulu Advocate for the complainant and Sri P.Sajan Kumar Advocate for opposite party no.1 & 2, and on perusing the material papers on record, and having heard and stood over for consideration till this day, the Commission passed the following:

::ORDER::

(Order by: Sri Ch.V.Narasimha Rao, Member)

1. The complainant had filed this complaint under Sec 12 of Consumer Protection Act, 1986 praying this Commission to award compensation/ damages of Rs.20,00,000/- from the opposite parties (including costs and punitive damages) in favour of the complainant.
2. The averments of the complaint are that the complainant admitted in opposite party no.1's hospital on 13.06.2014 at 2.00PM with a complaint of road accident for treatment of injury to his right leg. That the opposite party no.1 doctor i.e., opposite party no.2 diagnosed that the complainant sustained Bi-condylor Tibial Plateau fracture (Schatzker-VI) with gross swelling and he was kept on traction for internal fixation of fracture Tibia. A surgery was conducted on 17.06.2014 for fixation of fracture Tibia (Rt) with LCP. After surgery he was shifted to ICU and he was suffering from severe pain but it was not properly attended by opposite party doctors. After repeated complaints of complainant about

persistent tingling pain out of proportion then the opposite party doctor removed three sutures from the site of surgery. Suddenly puss gushed out from the surgical wound site where sutures were opened. Several antibiotics and IV Fluids are administered to the complainant even then the pain became lancinating and complainant started crying and weeping, again sutures were removed from surgical site where puss was found as such again he was taken to operation theatre and both the surgical sites below the right knee were connected together. The opposite party doctor informed that the complainant was developed with the complication of compartment syndrome which was developed in right leg due to fracture of Tibia. Though fasciotomy procedure undergone, the pain was not subside and again he was shifted to operation theatre and opened all compartments involved in the right leg, even then there is no iota of relief to the complainant. He was also suffered fever and another complication of foot drop of his right leg is found to the complainant to the infected right leg. Having not satisfied with the services of the opposite party doctors the complainant and his relatives requested for discharge for taking treatment in higher centre. As there was negligence on the part of opposite party doctors they returned a sum of Rs.50,000/- which was deposited by the complainant with the opposite party no.1 for taking treatment. Subsequently he visited Srikara Hospitals where he was advised for amputation of his right leg. Instead of taking treatment at Srikara Hospitals, the complainant admitted in Apollo Hospitals, Secunderabad, where the complainant was found suffering from compartment syndrome which was not found by the opposite party doctors inspite of observing complications of said syndrome by the complainant. For about 30 days the complainant has taken treatment in Apollo Hospitals by spending sum of Rs.11,24,784/- and also incurred Rs.50,000/-. Subsequently, he was advised to undergo another surgery for correcting drop foot with an estimated cost of Rs.6,00,000/-. It is stated that the negligent treatment given by the opposite party doctors, complainant was subjected to much mental agony besides sufferings and loss of income and the cost of treatment. As such he filed the present complaint for recovery of the said amounts to a tune of Rs.20,00,000/-.

3. That the opposite party no.1 & 2 filed written version stating that the very complaint is not maintainable as there is no negligence on their part and as they have not taken any amount for the treatment rendered to the complainant. It is also stated that the

complainant was admitted for treatment of fracture of his right leg with gross swelling at the time of presentation at the hospital (impending compartment syndrome). After necessary medical tests like Colour Doppler, FBS, HBA1C, RBS and treating as denova hyper Glycaemia. The attendants of the complainant were explained about the complication of syndrome at the time of admission. Necessary surgeries were conducted and the swelling was subsided and wrinkles appear around the foot and leg. After conducting the surgery the general condition of the complainant is stable and after taking of precautions the main surgery was conducted and the immediate post operative patient condition was stable and on the next day he got sensation over a common peroneal distribution area and the feeling of tightness complained by the patient and with local anaesthesia fasciotomy was done and the patient reported subsidence of pain. On 20.06.2014 3rd post operative day, feeling of tightness and mild infection was seen, hence redo fasciotomy was planned. Nephrologist opinion was taken to bring blood pressure to normal levels. On 4th operative day the implant was stable. On 27.06.2014 Urine colour again changed to dark hence re-debridement planned on 28.06.2014. On 28.06.2014 the day of discharge removal of implant and Cross Leg Flap was planned but the patient denied as he wanted to go for a higher centre for further treatment. At the time of discharge patient attendants came with a mob of people and were demanding for return of the money which they have paid for treatment. On humanitarian grounds and after discussion with relatives the amount returned on humanitarian ground to Mr.Malla Reddy who was mediator. Opposite parties stated that there is no negligence, unfair trade practice or deficiency in service as they have discharged their duties diligently, prudently with utmost care and caution. That the claim of the complainant is illegal and unethical. The opposite parties stated that compartment syndrome (CS) was not caused by treatment given by opposite parties. Hence prayed to dismiss the complaint.

4. That the complainant filed evidence affidavit and got marked Ex.A1 to A16.
5. The opposite parties also filed evidence affidavit of opposite party no.2 and no document is filed hence not marked on their behalf
6. Now the point for consideration is whether there is any deficiency in service on the part of opposite parties and liable for payment of compensation claimed by the complainant? If so to what extent?

7. That the complainant deposed that due to road accident he admitted in the hospital of opposite party no.1 and he was treated by opposite party no.2 for injury to his right leg. He stated that his occupation is business and he is running Venkateshwara Fertilisers Shop and also doing rice business and thus he was earning a sum of Rs.3,00,000/- per annum. In support of his income he filed Ex.A15 & A16 Income Tax Returns and Bank Statements.

8. In the first instance the complainant was taken to RMP doctor who has referred him to opposite party hospital for treatment of fracture to his leg. On the day of admission the complainant was put on Calcaneal Pintraction till the open reduction and internal fixation of fracture tibia with LCP was performed at 9.00AM on 17.06..2014. After surgery he was shifted to ICU. In late night he developed with deep and persistent pain in his right leg. On 18.06.2014 he had tingling pain in the right leg. At about 7.00 PM the opposite party doctor removed three sutures from the site of surgery and suddenly puss gushed out from the surgical wound site. As such the wound was kept opened and was administered with anti biotics and IV Fluids. Complainant complained about the tightness in his right lower leg but was not attended by the opposite parties. As there was gross infection as well as persistent severe pain, tightness the complainant requested the opposite parties to discharge him so as to enable him to consult any higher centre. The opposite parties warned the complainant with the complication of compartment syndrome. The consequences of said syndrome will result severe tissue damage with loss of body function or even death. On that the opposite party doctor informed the complainant that with the treatment of fasciotomy the pain would subside and discharge of puss would stop. On that pretext again he was shifted to operation theatre and opened all the compartments involving in right leg on 20.06.2014, even then there is no relief to the complainant. That the opposite parties doctors prolonged his stay in the hospital assuring him that they would discharge him after completely eradication of infection. The complainant was also suffered with fever of 103F and another complication of foot drop occurred to the right leg of the complainant. As there was no improvement and as the condition of the complainant was deteriorating the complainant and his relatives insisted for discharge for taking treatment at higher centre. As the opposite parties could not give any relief to the complainant and on the other hand his condition was deteriorated, the opposite parties has

returned the amount of Rs.50,000/- which was deposited by the complainant on humanitarian ground. There after the complainant admitted in Apollo Hospital, Secunderabad and has taken treatment by spending a sum of Rs.11,24,784/- and spent Rs.50,000/- towards incidental expenses during the stay of 30 days in Apollo Hospital. Thereafter for skin grafting the complainant incurred expenditure of Rs.1,05,617/-. An estimation was given for a sum of Rs.6,00,000/- for correction of drop foot. All these amounts are forcibly spent by complainant for correct treatment and to save from the negligent treatment given by the opposite parties. It is the case of the complainant that opposite party has knowledge about the consequences of compartment syndrome but neglected in handling the same and thereby driven the complainant to take treatment at Apollo Hospitals. Though the PW1 was cross examined nothing was elicited contrary to the pleadings of the complaint except giving suggestions to the complainant. Ex.A1 to A13 disclosing that he has taken treatment at higher centre as he could not rectify his disease from opposite party hospital. It is observed that if the opposite parties have given right treatment keeping in view of complications of compartment syndrome there would be no necessity to the complainant to take treatment at higher centre. The complainant could escape from severe complication of amputation of his right leg due to treatment taken at Apollo Hospitals. So the Discharge Summary of Apollo Hospital is disclosing the nature of treatment given to the complainant.

9. On the other hand the opposite party no.2 has given evidence affidavit stating that there is no negligence on their part in the treatment given to the complainant and as the opposite parties returned the amount paid by the complainant the opposite party has not come under the purview of Consumer Protection Act and it is also stated that the entire treatment is in accordance with the medical standard and that there is no negligence on their part and that inspite of symptoms of the patient they could not identify the compartment syndrome is not correct and thereby pleaded that complaint is not tenable and liable to be dismissed. In the cross examination the opposite party no.2 to some extent admitted the development of complications regarding the compartment syndrome but however denied the negligence attributed to him. The surgery of fasciotomy was done for the first time on 20.06.2014 but whereas the opposite parties in para no.8 of their counter stated that they planned redo-fasciotomy and did extended fasciotomy on 20.06.2014 in

operation theatre. Whereas in Reply Notice Dt: 11.03.2015 the opposite parties did not speak of extended fasciotomy or redo-fasciotomy and the said plea of redo-fasciotomy or extended fasciotomy did not figure in the Discharge Summary. It was simply stated that they had done debridement. It is due to negligence of the opposite parties as they did not respond to the complaints of the severe pain and tightness in the leg and thereby delayed diagnosis of compartment syndrome which resulted in gross infection and foot drop to the complainant. Though the opposite parties denying the symptoms of compartment syndrome of the complainant but the opposite parties falsely stating that complainant was presented in the opposite party hospital with impending compartment syndrome. So the contention of impending compartment syndrome and feeble Distal ATA is not shown in discharge summary. So many important treatment aspects were not shown in the discharge summary and other aspect during his cross examination the opposite party no.2 stated that all the aspect of treatment shown in the case sheet but the case sheet was not filed by the opposite parties. On going through the evidence affidavit and counter filed by the opposite parties and the way of answering in cross examination of opposite party no.2 it is establishing some sense of negligence on the part of opposite parties in treating the complainant. On the other hand the burden lies on the complainant to prove negligent treatment of opposite parties. Except examining himself, the complainant did not choose to examine the doctors who have given treatment in Apollo Hospital, Secunderabad. In such sense there is no expert/technical authority to say about the negligent treatment of the opposite parties but in cumulative reading of complaint, counter, evidence affidavits and the documents filed by the complainant it is established that there would be a chance of amputation of right leg of the complainant if he has not taken treatment in the higher centre i.e., Apollo Hospital, Secunderabad. On the request of the complainant and his relatives the opposite parties have discharged the complainant otherwise the opposite parties would have continued the treatment in their hospital though there is no possibility of giving better treatment and there would be possibility of amputation of right leg of the complainant. As such in that angle it can be viewed that there is some sort of negligent attitude on the part of opposite parties in rendering services to the complainant. As such deficiency in service is appeared on the part of opposite parties in rendering their services

as such they are liable to reimburse to some extent to the complainant. The opposite parties have given treatment after receiving the amount of Rs.50,000/- from the complainant. As their treatment is causing hardship to the complainant the opposite party has discharged the complainant and paid a sum of Rs.50,000/- to the complainant on humanitarian grounds. As such it cannot be said that the treatment rendered by the opposite parties is on free of cost. Thus the opposite parties are squarely covered by the definition of Consumer Protection Act. On that pretext the opposite parties shall not escape from their liability. The opposite parties relied upon so many settled precedents in support of their contentions stating that as they have not charged anything they have not come under the definition of service provider and that as there is no negligence on their part they are not liable to pay compensation. As discussed above the opposite parties have rendered services after taking the amount from the complainant and their way of treatment which required treatment from the higher centre shows their negligent treatment towards the complainant, are not covered with the Rule of Law as discussed in the citations relied upon by the opposite parties. The citations and the study material about the subject surgery and the symptoms compartment syndrome in the Medical Counsel notifications are somewhat closely related to the present facts of the case and as such they are relied upon in disposal of the present case. Though the complainant alleged the negligent on the part of opposite parties in rendering services by the opposite parties could not establish the negligence in a scientific way by examining the experts on the field or by examining the doctors of Apollo Hospital who treated the complainant. As such it is not possible to grant entire claim pleaded by the complainant. In view of the sufferance and agony of the complainant due to the treatment of the opposite parties which led to treatment at higher centres shows some amount of negligence on the part of the opposite parties as such the opposite parties are liable to compensate the complainant for a sum of Rs.2,50,000/- with interest and for all the reliefs claimed by the complainant along with interest and costs of the proceedings.

10. In the result the complaint is allowed in part. Opposite parties are directed jointly and severally to pay a sum of Rs.2,50,000/- with interest @ 9% PA from the date of filing of this complaint i.e., 14.07.2015 to till payment of entire amount for all the reliefs claimed by the complainant. The opposite parties are further directed to pay Rs.5,000/- towards costs

of the proceedings. Compliance within one month from the date of receipt of copy of this order.

Dictated to Stenographer, transcribed by her (DUR) and after correction the orders pronounced by us in the open Court this the 25th day of July, 2024.

Sd/-
MEMBER

Sd/-
PRESIDENT (FAC)

ORAL EVIDENCE HAS BEEN ADDUCED ON BOTH SIDES

EXHIBITS MARKED ON BEHALF OF COMPLAINANT:

- Ex.A1 is the photo copy of discharge summary Dt: 28.06.2014 issued by opposite party Hospital.
- Ex.A2 is the Cash Receipt Dt: 25.06.2014 issued by opposite party Hospital.
- Ex.A3 is the photo copy of LMA Summary Dt: 29.06.2014 issued by Srikara Hospital, Secunderabad.
- Ex.A4 is the Discharge Summary Dt: 28.07.2014 issued by Apollo Hospital, Secunderabad.
- Ex.A5 is the photo copy of Discharge Bill Dt: 28.07.2014 issued by Apollo Hospital, Secunderabad.
- Ex.A6 is the photo copy of Discharge Summary Dt: 13.08.2014 issued by Apollo Hospital, Secunderabad.
- Ex.A7 is the photo copy of Discharge Bill Dt: 13.08.2014 issued by Apollo Hospital, Secunderabad.
- Ex.A8 is the photo copy of notice Dt: 16.09.2014 on behalf of complainant caused on opposite party doctor by Consumer Council, Karimnagar.
- Ex.A9 is the reply notice Dt: 11.03.2015 caused by opposite party doctor.
- Ex.A10 is the photo copy of Estimate Dt: 15.11.2014 for surgery of Foot Drop Correction issued by Dr.S.V.Chandrashekar Reddy, Ortho Surgeon, Apollo Hospital, Secunderabad.
- Ex.A11 is the photo copy of Secondary School Certificate Dt: 09.07.1980 in respect of complainant issued by Board of Secondary Education, A.P.
- Ex.A12 is the photo copy of TIN Dt: 25.06.2014 in respect of Fertilizer Business carried by complainant.
- Ex.A13 is the Three Photographs showing 1.Calarnal Pin Traction performed on Rt.leg and Two sutured surgical sites below the Right Knee of complainant and three Fasciotomy wound.
- Ex.A14 is the Two photographs showing the External Fixator applied on Rt. Leg of complainant.
- Ex.A15 is the photo copy of acknowledgment of Income Tax Returns filed by complainant.
- Ex.A16 is the attested copy of Statement of Bank account held with SBI, Luxettipet Branch, Adilabad.

EXHIBITS MARKED ON BEHALF OF OPPOSITE PARTIES: -Nil-

Sd/-
MEMBER

Sd/-
PRESIDENT (FAC)