

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-II UDYOG SADAN C
22 23
QUTUB INSTITUTIONAL AREA BEHIND QUTUB HOTEL NEW DELHI 110016**

**Complaint Case No. CC/244/2014
(Date of Filing : 30 Jun 2014)**

1. Harsh Sanehanshu

HOUSE NO. 54 2nd FLOOR KHIRKI VILLAGE
MALVIYA NAGAR NEW DELHI 110017

.....Complainant(s)

Versus

1. Max Super Specialty hospital

2 PRESS ENCLAVE ROAD SAKET NEW DELHI
110017

.....Opp.Party(s)

BEFORE:

**MONIKA A. SRIVASTAVA PRESIDENT
KIRAN KAUSHAL MEMBER
UMESH KUMAR TYAGI MEMBER**

PRESENT:

Dated : 14 Mar 2022

Final Order / Judgement

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-II

Udyog Sadan, C-22 & 23, Qutub Institutional Area

(Behind Qutub Hotel), New Delhi- 110016

Case No.244/2014

Harsh Snehanshu

S/o Sh. Sudhanshu Shekhar Pathak,

R/o House No.54, 2nd Floor,

Khirki Village, Opposite Saket Select City Walk,

Malviya Nagar,
New Delhi - 110091

....Complainant

Versus

Max Super Speciality Hospital & Ors.

2, Press Enclave Road, Saket,
New Delhi - 110017

....Opposite Party

Date of Institution : 30.06.2014

Date of Order : 14.03.2022

Coram:

Ms. Monika A Srivastava, President

Ms. Kiran Kaushal, Member

Sh. U.K. Tyagi, Member

ORDER

President: Ms. Monika A Srivastava

The complainant has filed the present complaint seeking an amount of Rs.10,25,000/- towards negligence, mental agony and harassment with 18% interest per annum and Costs. The complaint is filed against Max Super Speciality Hospital OP 1, Chairman of OP 1 is OP 2, Director of OP 1 was impleaded as OP 3 who was later deleted, Chief Medical Officer was OP 4 and Chief Administrative Officer is OP 5.

The complainant has stated that he was suffering from some problem regarding high homocysteine which he came to know because of a blood test. Detection of high levels of homocysteine has been linked to cardiovascular disease where a person is more prone to

endothelial injury which leads to vascular inflammation, chronic renal failure, congestive heart failure, acute and chronic myeloid leukemia, polycythemia vera, carcinoma with liver metastasis, liver disease drug induced cholestasis and protein malnutrition.

It is averred by the complainant that he approached OP 1 on 21.02.2014 and consulted Dr. Rahul Naithani, DM clinical haematology (AIIMS). The said consultant, after having physically examined, informed the complainant that since his homocysteine is above 50 which is on the higher side he was advised to undergo surgery clinical tests such as 1.Serum homocysteine 2.APTT 3.PT 4. D-Dimer 5.Vitamin B 12 and 6. Folate levels. It is stated that as advised by Dr.Rahul Naithani, the complainant underwent the test in the inhouse laboratory of OP 1 and on the next day that is 22.02.2014 the report was made available which is annexed as Annexure C2. It is stated that on 24.02.2014 the complainant again consulted Dr. Rahul Naithani who prescribed the complainant Trineurosol- H intramuscular injection(1000 mcg) for next 7 days and thereafter once a week for 6 weeks. The complainant was also advised anti parietal cell antibody and anti intrinsic factor tests and thereafter he was advised to meet Dr. Shanti Swaroop, gastroenterologist with OP I. It is further averred by the complainant that as advised by Dr. Rahul Naithani, the complainant consulted Dr. Shanti Swaroop who advised the complainant to continue with the medication as advised by Dr. Rahul Nathani.

It is further stated by the complainant that he purchased the prescribed injection train Trineurosol-H intramuscular injection from a nearby chemist shop as the said injection was not available in the pharmacy of OP 1. The complainant was administered the said injection for 3 consecutive days on 5th, 6th and 7th March 2014. The receipts are annexed as Annexure C4. It is stated by the complainant that on the 4th day since the nursing OPD was closed, he went to the emergency care unit of OP 1 and when the complainant gave the injection vial Trineurosol-H to the nurse at the emergency care unit she noticed that the complainant had been wrongly administered high doses(5000 mcg) as the vial was of 5000 mcg and not of 1000 mcg. It is the case of the complainant that the nurses in the OPD negligently misread the instructions contained on the vial of the injection which had in clear terms indicated that the bottle contained 5 ml of the drugs and only one ml of the drug(1000 mcg) was to be administered. And since the dose is administered to the complainant for 5 times the prescribed dosage, the complainant had irritation, nausea, tremors and other related complications including severe pain at the time of administration of the injection. It is the case of the complainant that even on 8th of March, the emergency care unit of OP I administered further one ml of the dose when it was duly informed by the complainant about him having been administered 15,000 mcg of doses.

The complainant thereafter consulted at AIIMS trauma center and on being advised got his Vitamin B12 conducted at Lifeline laboratory Green Park and Dr. Lal Path Lab at SDA. The said investigation report is annexed as Annexure C- 5 wherein Vitamin B 12 is shown as '1801' in one case as against the normal range of 187-1059 pg/ml. The case of the complainant that the doctor at AIIMS trauma center expressed shock over the manner in which the complainant was handled and treated and given dosage of Vitamin B 12 without first analysing the root cause of deficiency of Vitamin B 12 and that B 12 can also be fatal, at times if not taken under medical supervision. The complainant admits that there is no written evidence in this regard. It is stated by the complainant that the negligence is writ large on the OPs which could have costed the life of the complainant and that he had to undergo severe trauma and was unable to focus on his work causing loss and harassment. It is the case of the complainant that because of this unwarranted trauma, he was disturbed and was not able to concentrate on his literary and media work which affected him financially and resulted in the delay in his work. He further states that this was brought to the knowledge of the OPs but they did not pay any heed.

Per contra, in their reply filed by OP 1 and 3, it has been stated that the OP follows stringent protocols and processes, it believes in the concept of total patient care and delivers care by combining medical and service excellence and that it has a team of highly qualified trained and leading doctors, nurses patient care and provides the higher standard of care. It is stated that it is offering the best medical assistance delivered seamlessly through state of the art medical facilities and it has received various awards for excellence from various prestigious organizations. It is further stated that the doctors in medical staff at the OP are highly qualified and immensely experienced in their respective fields and that the health of their patients is their first consideration.

It is further stated that in this case also they counselled and perform their duties bona fide and diligently to the best of their ability and judgment. OP 1 has taken a preliminary objection that since the hospital is owned by Devki Devi foundation which is a society and which has no chairman, the impleadment of OP 2 as chairman is neither necessary nor a proper party to the complaint and therefore it is bad for mis joinder of parties. It is stated that loss is a generic term and that the provisions of this Act are attracted only against the person from whom damages are claimed is found to have acted negligently and such negligence must result in some loss to the person claiming damages. In other words, loss or injury, if any must flow from negligence. It is stated that the allegations made in the complaint are unfounded big spacious perverse and without any substance or truth and does not have any cause of action and no calls in the eyes of law.

The OP has further stated that Dr.Rahul Nathani had seen the complainant and the complainant had informed Dr. Rahul Nathani that he was taking treatment for pulmonary embolism outside OP 1 hospital. Since the complainant was found to have low Vitamin B 12 levels he was advised to get injections vitamin B 12 1000 mcg daily intramuscularly into 7 days and thereafter once a week for 6 weeks. It is denied by the OP that they said injection Trineurosol-H is 1000 mcg was not available in the pharmacy of OP 1. It is stated that the complainant purchased the set intramuscular injection from an unknown source and therefore its purity, originality and potency is not known and cannot be commented upon by the OP. It is further denied by the OP that there was any occasion for the complaint to complain of irritation, nausea tremor or related complications including pain at the time of administration of injection. It was also denied that there was any negligence in administration of injection or that the nursing section continued with the alleged negligence or administered 5000 mcg instead of the prescribed dose of 1000 mcg.

It is further stated that presuming that any high dose of Trineurosol-H was administered to the complainant only a maximum of 15% is retained by the body and the higher dose is excreted out of the body immediately and even the 10-15% which is retained by the body is not harmful and eventually the result of the reading will come down. It was submitted that Vitamin B 12 is a safe medicine and it is extremely rare for the patient to get nausea, vomiting and diarrhea. It was further denied by the OP that emergency care unit on the night of 8th March 2014 administered further one ml dose to the complainant. It is further stated by the OP that the correctness of results conducted elsewhere pertaining to Vitamin B 12 tests are to be interpreted medically and by a medico. It was further denied by the OP directed Vitamin B 12 was administered without analysing the root cause of the deficiency or that act of OP it was against medical ethics. The OP has also denied that the administration of high dose of Vitamin B 12 can be fatal. The OPs further denied that the complainant has suffered any trauma or is disturbed or unable to concentrate on his work due to any act or omission on the part of the OPs.

An application was filed on behalf of OP to have OP 2 deleted from the array of parties however the same was not allowed vide order dated 06.11.2015. Rejoinder on behalf of the complainant is on record. Evidence and written submissions on behalf of OP 1 and 3 and complainant have been filed and are on record. The entire material has been perused and gone through carefully.

It is noticed that the OPs have not filed any document in support of their averment that the Pharmacy of OP1 stocked injection Trineurosol-H. Irrespective of the fact that the said injection was purchased from the pharmacy of OP 1 or from outside of OP1, it is the duty of the medical facility to take care to see what is being injected to a patient as also the quantity of injection. This is a part of duty to take reasonable care especially on the part of the OP 1 who in their own terms:

“follows stringent protocols and processes, it believes in the concept of total patient care and delivers care by combining medical and service excellence and that it has a team of highly qualified trained and leading doctors, nurses patient care and provides the higher standard of care. It is stated that it is offering the best medical assistance delivered seamlessly through state of the art medical facilities and it has received various awards for excellence from various prestigious organizations.”

The Hon’ble Supreme Court in Jacob Mathew vs. State of Punjab and Ors. (05.08.2005 – SC) has held that

“ (3) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.....”

However, the complainant also has not been able to place on record any document in proof of the averment that he either suffered from side effects of high dosage of the said injection of Trineurosol-H or he got treated for the same. The complainant has also not produced any expert opinion on it. At most, it can be concluded that the complainant suffered mentally on account of having high dosage of Vitamin B12 as is evident from the reports of the laboratories filed on record.

Keeping in view all these facts, this Commission concludes that though OP1 has been negligent in providing service to the complainant, it would serve interest of justice by directing OP1 to be careful in future in providing proper care to their patients and OP1 is further directed to pay a sum of Rs. 20,000/- to the complainant for the mental harassment caused to him within a period of three months from the date of this order failing which OP 1 would be liable to pay interest @ 6%p.a from the date of the order till realization.

File be consigned to the record room after giving copy of the order to both the parties. Order be uploaded on the website.

[MONIKA A. SRIVASTAVA]
PRESIDENT

[KIRAN KAUSHAL]
MEMBER

[UMESH KUMAR TYAGI]
MEMBER