

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
SISUVIHAR LANE
VAZHUTHACAUD
THIRUVANANTHAPURAM
695010**

**Complaint Case No. CC/12/333
(Date of Filing : 26 Sep 2012)**

1. N. Pushpadharan
Paringimambila , Ezhukone Village, KollamComplainant(s)
Versus
1. Kerala Institute Of Medical Sciences and 2
others
Represented by its Manager
2. Dr Shubha Philip
KIMS
3. Dr Ajith K. Nair
KIMSOpp.Party(s)

BEFORE:

**HON'BLE MR. Sri.P.V.JAYARAJAN PRESIDENT
HON'BLE MRS. Preetha .G .Nair MEMBER
HON'BLE MR. Viju V.R MEMBER**

PRESENT:

Dated : 14 May 2021

Final Order / Judgement

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION

VAZHUTHACAUD : THIRUVANANTHAPURAM

PRESENT

SRI. P.V. JAYARAJAN : PRESIDENT

SMT. PREETHA G. NAIR : MEMBER

SRI. VIJU V.R. : MEMBER

C.C.No. 333/2012 Filed on 26/09/2012

ORDER DATED: 14/05/2021

Complainant:

N.Pushpadharan, Paringimambila, Ezhukone Village,
Ezhakone.P.O., Kollam, Rep. by Power of Attorney Mrs.Vimala Pushpan,
Paringimambila, Ezhukone Village, Ezhukone.P.O., Kollam.

(By Adv.R.Bahuleyan)

Opposite party:

1. Kerala Institute of Medical Sciences, Represented by its

Manager/Person in charge, Thiruvananthapuram.

(By Adv.Mohandas Pai)

1. Dr.Shubha Philip, Anaesthesia, KIMS.

2. Dr.Ajith.K.Nair, Department of Medical Gastro, KIMS.

(By Adv.K.Muralidharan Nair OP 2&3)

ORDER

SRI.P.V. JAYARAJAN, PRESIDENT:

This is a complaint filed under section 12 of Consumer Protection Act 1986 and the matter stood over to this date for consideration. After hearing the matter the commission passed an order as follows:

1. The case of the complaint is that, the complainant consulted the 3rd opposite party for a slight trouble of bowel irritation in 2012 and the 3rd opposite party advised for colonoscopy. The 2nd opposite party certified that the complainant is fit for colonoscopy. The complainant came to the 1st opposite party for colonoscopy on 17/04/2012. The complainant stayed as IP in the 1st opposite party from 17/04/2012 to 26/04/2012. The complainant states that there was negligence on the part of the 2nd and 3rd opposite party in conducting the colonoscopy which rang the death bell of the complainant. The complainant state that before the examination he was a healthy, active person and after the colonoscopy the complainant becomes very weak, suffers, loss of active limb movement, loss of weight etc. The complainant states that the colonoscopy examination was done with an utter lack of regard and it is clear deficiency and negligence on the part of the 2nd and 3rd opposite party in the 1st opposite party hospital. They are clearly and directly responsible for the present condition of the complainant and guilty for, such negligence and unfair trade practice. Hence the complainant approached this Commission for appropriate remedy.
2. The opposite parties appeared before the Commission and filed their version separately contenting that the patient went to the hospital on 09/04/2012 with complaints of abdominal pain and altered bowel habits for last several months. He had also disclosed that he had upper endoscopy elsewhere and was reported to be unremarkable. In the circumstance, on the basis of alleged complaints, a colonoscopy was planned for him in view of the symptoms, to exclude colonic polyps, colon cancer etc. Anesthesia consultation was done, the patient was found medically fit for the Colonoscopy. Colonoscopy was on 17/04/2012 under monitored anesthesia care (MAC) and the procedure went on smoothly without any problems.
3. After the colonoscopy procedure was completed, the patient developed rashes presumably due to drug reaction. He was immediately attended to and, with proper medications the patient recovered and discharged in good physical condition on 26/04/2012. Patient came for review on 08/05/2012, and he was in perfect health and very much satisfied with the care given to him. The description in paragraph 5 is nothing but an exaggeration and has no nexus with reality. The drug reaction is a minor, uneventful problem.
4. The opposite party doctors are competent and experienced and had good care and caution in treatment. There is no unfair trade practice as alleged. The care and treatment, given was proper, adequate, and standard. The doctors were also able, experienced and having expertise. Advocate notice was replied by this opposite party also. The discharge summary was given to the complainant, on discharge and the same would reveal the true facts. The allegations were raised much after the discharge, and the same is a calculated attempt

arising out of ill advice. Complainant is not eligible for any compensation. Without admitting liability, it is stated that the claim is exaggerated fanciful, and imaginary. The alleged weakness of the complainant, if true is not an outcome of the Colonoscopy or the procedures followed by the doctors. The claim of the complainant is false and frivolous and liable to be dismissed.

5. The Issues to be considered:

- i. Whether there is any deficiency in service on the part of the Opposite Parties?
- ii. Whether the complainant is entitle for the relief claimed in the complaint?
- iii. Order as to cost?

1. The issue No: 1 & 2 are considered together for the sake of convenience. The complainant states that there was negligence on the part of the 2nd and 3rd opposite party in conducting the colonoscopy which rang the death bell of the complainant. The complainant state that before the examination he was a healthy, active person and after the colonoscopy the complainant becomes very weak, suffers, loss of active limb movement, loss of weight etc. The complainant states that the colonoscopy examination was done with an utter lack of regard and it is clear deficiency and negligence on the part of the 2nd and 3rd opposite party in the 1st opposite party hospital. They are clearly and directly responsible for the present condition of the complainant and guilty for, such negligence and unfair trade practice.
2. At the outset, it is well settled that a medical doctor can be held liable only where his conduct falls below that of the standard of a reasonably competent practitioner in the field. There is a heavy burden on the complainant to prove his case of negligence beyond reasonable doubt. In the case before us, other than bare pleadings, the complainant has not brought anything on record that would suggest any negligence on the part of the opposite parties. It was incumbent on the part of the complainant to place material before us that would indicate the normal standard of treatment or the procedure of medical treatment and how the opposite party had failed to meet the requirements.
3. A three Judge Bench of Hon'ble Supreme Court in the case of [Jacob Mathew v. State of Punjab and Another](#) [(2005) 6 SSC 1] observed that "*the onus to prove medical negligence lies largely on the claimant and that this onus can be discharged by leading cogent evidence. A mere averment in a complaint which is denied by the other side can, by no stretch of imagination, be said to be evidence by which the case of the complainant can be said to be proved. It is the obligation of the complainant to provide the *facta probanda* as well as the *facta probantia*.*" This dictum laid down by the Hon'ble Supreme Court is aptly applicable to the facts of this case, as the complainant has not put forward any evidence to establish her case. On the other hand the opposite parties, on their part, has dealt with each and every averment made in the complaint and according to them there is no negligence on their part. Though sufficient opportunities were given, the complainant failed to adduce any evidence to establish the allegations raised in the complaint.
4. As stated earlier, courts have to be circumspect when dealing with cases of medical negligence and there is a rather heavy burden of proof cast on the complainant to bring home his case. Except for bare pleadings, we did not find any material that even vaguely suggests any negligence on the part of the opposite parties. In view of the above discussions, we did not find any substance in the complaint. Hence Issue No: 1 & 2 are found against the complainant and in favour of the Opposite Parties.

In the result, the complaint stands dismissed. In the circumstances, the parties are left to bear their own costs.

A copy of this order as per the statutory requirements is forwarded to the parties free of charge and thereafter the file be consigned to the record room.

Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in the Open Court, this the 14th day of May, 2021.

Sd/-

P.V.JAYARAJAN : PRESIDENT

Sd/-

PREETHA G. NAIR : MEMBER

Sd/-

VIJU V.R : MEMBER

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C.C. No. 333/2012

APPENDIX

I COMPLAINANT'S WITNESS:

NIL

II COMPLAINANT'S DOCUMENTS:

NIL

III OPPOSITE PARTY'S WITNESS:

NIL

IV OPPOSITE PARTY'S DOCUMENTS:

NIL

Sd/-

PRESIDENT

R

**[HON'BLE MR. Sri.P.V.JAYARAJAN]
PRESIDENT**

**[HON'BLE MRS. Preetha .G .Nair]
MEMBER**

**[HON'BLE MR. Viju V.R]
MEMBER**