

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION, FEROZEPUR**

C.C. No.514 of 2019

Date of Institution: 11.06.2019

Date of Decision:13.07.2021

Lovepreet Singh aged 17 years minor son of Karnail Singh, resident of Village Saidan Wala, Tehsil and District Ferozepur through mother and next friend/natural guardian Gurmeet Kaur.

..... Complainant

Versus

1. Dr. Anil Baghi Hospital, Ferozepur City through its authorized signatory/responsible person.
2. Dr. Anil Baghi Hospital, Ferozepur City through its Radiologist/Dr. Parveen Popli, Consultant/Radiologist.
3. The Additional Chief Secretary, Health and Family Welfare Department, Room No.510, 5th Floor, Mini Secretariat, Section-9, Chandigarh.
4. Civil Surgeon, Ferozepur District Administrative Complex, Ferozepur.
5. The New India Assurance Company Limited., 195, Soti Ganj, Bdgampul Road, Meerut, Uttar Pradesh-250001.

..... Opposite parties

Complaint under Section 12 of the
Consumer Protection Act.

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PRESENT :

For the complainant

: Sh.J.S.Sodhi ,Advocate

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For opposite party Nos.1,2 & 5 : Sh M.L.Chugh Advocate

For opposite party Nos.3 & 4 : Exparte

QUORUM

Sh. Amardeep Singh Shergill, President.

Smt. Sukhwinder Kaur, Member,

ORDER

AMARDEEP SINGH SHERGILL PRESIDENT:-

Complainant has approached to the Commission seeking directions to the opposite parties to pay Rs.4,50,000/- as compensation for mental agony, pain and harassment and Rs.22,000/- as litigation expenses to the complainant.

2. Brief facts of the complaint are that the complainant alongwith his father were driving on the motor cycle and a car hit the motor cycle of complainant as a result of which he received multiple injuries. Thereafter, the complainant got treatment from various doctors, but he could not retrieve his good health. Someone recommended the name of opposite party Nos.1 & 2 or diagnose. On getting check up, the MRI was recommended for treatment. Opposite party No.2 who is part and parcel of opposite party No.1 has conducted theMRI on 25.1.2019, which reflect that Anterior Cruclate Ligament Tear & Mild Joint Effusion, which means that there was a problem of Ligament tear. It has been further pleaded that on getting MRI report, the doctors of Anil Baghi Hospital, recommended the surgical operation for recovery of teared ligament and then got more scannings and consultations i.e. from Atulaya health Care,

Muktsar, Nijjar Scan and Diagnostic Centre, Amritsar, Ohri Chest and Multispecialty Hospital, Sandhu Hospital Sri Muktsar Sahib GGS Medical College and Hospital, Faridkot and all these reports reveals that there was no problem of ligament tear. The reports of opposite party Nos. 1 & 2 are not true as per the actual and factual position of the patient's injuries. The act and conduct of the opposite parties amounts to deficiency in service and unfair trade practice, hence this complaint.

3. Upon notice, the opposite parties have appeared and filed their separate written replies to the complaint. In its written reply, opposite party No.1 took some preliminary objections inter alia that the present complaint is false, frivolous and vexatious; that complicated questions of law and facts are involved in the present case and that there is no deficiency in service on the part of opposite parties. On merits, it has been pleaded that as to how and in what manner the injury was received by the complainant. However, as per the record, complainant was admitted in the hospital of opposite party No.1 with history of pain in knee. It has been pleaded that the recommendation was at the time when the MRI was got conducted. The opposite parties denied that the complainant was in doubt or that there was no problem of ligament tear. All the other scanning and consultation was got done after 25 days and by that time, there was every possibility that tear being healed. It has been pleaded that the present case involved tear of anterior cruciate ligament. Ligaments are soft collagenous tissue

which connect bone with bone. MIR was done on 23.1.2019 and the complainant was diagnose as partial tear (grade II). This fact is well written in the first line of the report. Grade one tear means that there is a sprain. Grade II partial tear, grade III complete tear. It was only a partial tear and not the complete ACL rapture. Mild joint effusion was also seen. In partial tear, end of the torn dual ligament fibres do not go apart and remained in close approximation so get healed. The patient was low risk patient because of no instability of joint. It is only grade III tear when the ends of fibres go apart and surgical intervention is required. Healing process is also fast in children. The patient was on regular conservative treatment. In the case filed by the complainant, grade II word has not been intentionally mentioned that the case has been filed a look complete tear. The repeat MRI done on 16.2.2019 i.e after a gap of 25 days and this time was enough for healing of partial tear. No medical expert opinion has been taken about the changes during 25 days period. However the opposite party is having professional indemnity cover from HICL and is insured by the New India Assurance Company Limited from 27.3.2018 to 26.3.2019 for a sum of Rs.5 lac. Other allegations of the complaint have been denied and a prayer for dismissal of the complaint has been prayed for.

4. In its written reply, opposite party No.2 took some preliminary objections interalia that opposite party No.2 Dr Praveen Popli is a well know medical practitioner (Radiologist) and is a renowned Specialist and has done

various successful reporting in his long span of career; that this case involves tear of anterior cruciate ligament. Ligaments are soft collagenous tissue which connect bone with bone and that on 23.1.2019 MRI was done and was diagnosed as partial tear(Grade II) well written in first line of report Grade I tear means when there is sprain Grade II partial tear, Grade III complete tear. It was only a partial tear and not the complete ACL rupture. Mild joint effusion was also seen. In partial tear, end of the torn dual ligament fibres do not go apart and remained in close approximation so get healed. The patient was low risk patient because of no instability of joint. It is only grade III tear when the ends of fibres go apart and surgical intervention is required. Healing process is also fast in children. The patient was on regular conservative treatment. In the case filed by the complainant, grade II word has not been intentionally mentioned that the case has been filed a look complete tear. The repeat MRI done on 16.2.2019 i.e after a gap of 25 days and this time was enough for healing of partial tear. No medical expert opinion has been taken about the changes during 25 days period. However the opposite party is having professional indemnity cover from HICL and is insured by the New India Assurance Company Limited from 27.3.2018 to 26.3.2019 for a sum of Rs.5 lac. On merits, the preliminary objections have been reiterated and the other allegations of the complaint have been denied.

5. In their joint written reply, opposite party Nos.3 & 4 took some preliminary objections interalia that the complainant never hired the services of

opposite party Nos. 3 & 4 for any valuable consideration and as such he does not fall under the definition of consumer of opposite party Nos. 3 & 4 as defined under Section 2 (i) (d) of the Consumer Protection Act; that no cause of action has ever arisen to the complainant; that the present complaint is bad for misjoinder of opposite party No.3 & 4; that there is no deficiency in service on the part of the opposite party Nos. 3 & 4. On merits, the preliminary objections have been reiterated and the other allegations of the complaint have been denied.

6. Opposite party No.5 filed its written reply on the line of written reply filed by opposite party No.1 and it has also been pleaded that opposite party No.1 hospital is insured with opposite party No.5 under Dr Indemnity policy. There is no direct contract between opposite party and complainant. Opposite party No.5 is only to reimburse respondent No.1 in case any liability is mulcted upon opposite party No.1.

7. Learned counsel for the complainant tendered into evidence Ex.C-1 to Ex.C-30 and closed complainant evidence on behalf of the complainant. On the other hand, learned counsel for the opposite party No.1 tendered into evidence Ex. OP1/1 to ExOP1/5 and closed evidence on behalf of the opposite party No.1. Learned counsel for the opposite party No.2 tendered into evidence Ex. OP2/1 and closed evidence on behalf of the opposite party No.2. Learned counsel for the opposite party No.5 also tendered into evidence Ex. OP5/1 and closed evidence

on behalf of the opposite party No.5.

8. Opposite party Nos.3 & 4 were proceeded against exparte.

9. We have heard the learned counsel for the parties and have also carefully gone through the file.

10. The grievance of the complainant is that he alongwith his father were driving on the motor cycle and a car hit the motor cycle of complainant as a result of which he received multiple injuries. Thereafter, the complainant got treatment from various doctors, but he could not retrieve his good health. Opposite party No.2 who is part and parcel of opposite party No.1 has conducted the MRI on 25.1.2019, which reflect that Anterior Cruciate Ligament Tear & Mild Joint Effusion, which means that there was a problem of Ligament tear. On getting MRI report, the doctors of Anil Baghi Hospital, recommended the surgical operation for recovery of teared ligament and then got more scanning's and consultations i.e. from Atulaya health Care, Muktsar, Nijjar Scan and Diagnostic Centre, Amritsar, Ohri Chest and Multispecialty Hospital, Sandhu Hospital Sri Muktsar Sahib GGS Medical College and Hospital, Faridkot and all these reports reveals that there was no problem of ligament tear. The reports of opposite party Nos. 1 & 2 are not true as per the actual and factual position of the patient's injuries. The act and conduct of the opposite parties amounts to deficiency in service and unfair trade practice. To prove his case, the complainant has placed on record copy of document of Anil Baghi Hospital Ex.C-1, copy of department

of Radiodiagnosis Ex.C-2, copy of CT Angiography Lower Limbs Ex.C-3, copy of advanced diagnostics Ex.C-4, copy of report of Nijjar Scan & Diagnostic Centre as Ex.C-5, copy of report of Ohri Chest & Multispeciality Hospital as Ex.C-6, copy of report of Sandhu Hospital as Ex.C-7, copy of Bikram Joint & Trauma Centre as Ex.C-8, copy of report of Ranjit Hospital as Ex.C-9, copy of OPD slip of G.G.S.College Hospital as Ex.C-10, copy of receipts and bills Ex.C-12 to Ex.C-26 and other documents Ex.C-11 and Ex.C-27 to Ex.C-29 and affidavit of Gurmeet Kaur as Ex.C-30.

11. The plea of the opposite party No.1 is that as to how and in what manner the injury was received by the complainant. However, as per the record, complainant was admitted in the hospital of opposite party No.1 with history of pain in knee. The recommendation was at the time when the MRI was got conducted. The opposite parties denied that the complainant was in doubt or that there was no problem of ligament tear. All the other scanning and consultation was got done after 25 days and by that time, there was every possibility that tear being healed. The present case involved tear of anterior cruciate ligament. Ligaments are soft collagenous tissue which connect bone with bone. MIR was done on 23.1.2019 and the complainant was diagnose as partial tear (grade II). This fact is well written in the first line of the report. Grade one tear means that there is a sprain. Grade II partial tear, grade III complete tear. It was only a partial tear and not the complete ACL rupture. Mild joint effusion was also seen. In

partial tear, end of the torn dual ligament fibres do not go apart and remained in close approximation so get healed. The patient was low risk patient because of no instability of joint. It is only grade III tear when the ends of fibres go apart and surgical intervention is required. Healing process is also fast in children. The patient was on regular conservative treatment. In the case filed by the complainant, grade II word has not been intentionally mentioned that the case has been filed a look complete tear. The repeat MRI done on 16.2.2019 i.e after a gap of 25 days and this time was enough for healing of partial tear. No medical expert opinion has been taken about the changes during 25 days period. However the opposite party is having professional indemnity cover from HICL and is insured by the New India Assurance Company Limited from 27.3.2018 to 26.3.2019 for a sum of Rs.5 lac. In support of his case, the opposite party No.1 has placed on record affidavit Ex.OP1/1, copy of literature Ex.OP/1/3 to Ex.OP1/5.

12. The stand of opposite party No.2 is that opposite party No.2 Dr Praveen Popli is a well know medical practitioner (Radiologist) and is a renowned Specialist and has done various successful reporting in his long span of career. The instant case involves tear of anterior cruciate ligament. Ligaments are soft collagenous tissue which connect bone with bone and that on 23.1.2019 MRI was done and was diagnosed as partial tear(Grade II) well written in first line of report Grade I tear means when there is sprain Grade II partial tear, Grade III complete tear. It was only a partial tear and not the complete ACL rupture. Mild joint

effusion was also seen. In partial tear, end of the torn dual ligament fibres do not go apart and remained in close approximation so get healed. The patient was low risk patient because of no instability of joint. It is only grade III tear when the ends of fibres go apart and surgical intervention is required. Healing process is also fast in children. The patient was on regular conservative treatment. In the case filed by the complainant, grade II word has not been intentionally mentioned that the case has been filed a look complete tear. The repeat MRI done on 16.2.2019 i.e after a gap of 25 days and this time was enough for healing of partial tear. No medical expert opinion has been taken about the changes during 25 days period. However the opposite party is having professional indemnity cover from HICL and is insured by the New India Assurance Company Limited from 27.3.2018 to 26.3.2019 for a sum of Rs.5 lac. In support of his version, opposite party No.2 has placed on record his affidavit Ex.OP2/1.

13. Opposite party Nos.3 & 4 has contended that the complainant never hired the services of opposite parties for any valuable consideration and as such he does not fall under the definition of consumer of opposite party Nos. 3 & 4 as defined under Section 2 (i) (d) of the Consumer Protection Act, so there is no deficiency in service on the part of the opposite party Nos. 3 & 4.

14. Opposite party No.5 has contended that opposite party No.1 hospital is insured with opposite party No.5 under Dr Indemnity policy. There is no direct

contract between opposite party and complainant. Opposite party No.5 is only to reimburse opposite party No.1 in case any liability is mulcted upon opposite party No.1.

15. We have thoroughly gone the file and evidence led by the parties.

16. It is the admitted case of the parties that the complainant got conducted the MRI on 25.01.2019 from the opposite party No.2, who is part and parcel of opposite party No.1. The complainant has placed on record report of Anil Baghi Hospital as Ex.C-2 which reflect that Anterior Cruciate Ligament Tear & Mild Joint Effusion. On getting MRI report, the doctors of Anil Baghi Hospital, recommended the surgical operation for recovery of teared ligament. The complainant was in doubt that there is no such problem of ligament tear. Then he got more scanning's and consultations i.e. from Atulaya health Care, Muktsar, whose report is as Ex.C-3 vide which both the superficial femoral arteries, profunda, popliteal arteries, anterior and posterior tibial arteries and peroneal branch is norma. Thereafter he got more scanning's and consultations i.e. from advanced diagnostics, whose report is as Ex.C-4 vide which both the menisci have normal size, shape and signal. No evidence of any tear is observed. Complainant also got scanning from Nijjar Scan and Diagnostic Centre, Amritsar, which is placed on record as Ex.C-5, vide which there is partial straightening of lumbar lordotic curvature. Vertebrae are normal in height, alignment and marrow

signal intensity. No disc protrusion is seen. Cord ends at L1-2 vertebral level and shows normal signal intensity. All these reports reveals that there was no problem of ligament tear. Opposite party Nos. 1 & 2 are given wrong report without applying the proper medical procedure as per the medical science, which is clear cut deficiency in service on the part of the opposite party Nos.1 & 2 i.e. Dr. Anil Baghi Hospital due to which the complainant again took two opinions for the clarification of the medical report given by Dr Anil Baghi Hospital and the complainant spent a huge amount for further opinion from the different diagnostic centre i.e. Atulaya health Care, Muktsar and Advanced diagnostics. Moreover, the complainant is also suffered harassment and mental agony at the hands of opposite party Nos.1 & 2 due to wrong report given by Dr. Anil Baghi Hospital.

17. In view of what has been discussed above, the present complaint is allowed with Rs.20,000/- as litigation expenses and the opposite party Nos.1 & 2 are directed to pay Rs.20,000/-, which spent for obtaining the opinions from the various diagnostic centre. Opposite party Nos.1 & 2 are further directed to pay Rs.50,000/- as compensation for mental agony, pain and harassment to the complainant.

18. This order is directed to be complied with within a period of thirty days from the date of receipt of its copy, failing which, complainant shall be at liberty to get the order executed through the indulgence of this Forum.

Complaint against opposite party Nos. 3 & 4 stands dismissed. Admittedly opposite party No.1 is insured under the doctor Indemnity policy, so the opposite party No.1 is at liberty to claim this amount from opposite party No.5 after payment of the awarded amount to the complainant as per terms and conditions of their insurance policy.

19. The complaint could not be decided within the statutory period due to Covid-19 and incomplete of quorum. A copy of this order be communicated to the parties concerned free of costs. File be consigned to the record room.

Announced
13.07.2021

(Amardeep Singh Shergill)
President

(Sukhwinder Kaur)
Member