

**Distt Consumer Disputes Redressal Commission
Ladowali Road, District Administrative Complex,
2nd Floor, Room No - 217
JALANDHAR
(PUNJAB)**

**Complaint Case No. CC/193/2019
(Date of Filing : 30 May 2019)**

1. Akvinder Kaur

Smt. Akvinder Kaur wife of Hardeep Singh

Jalandhar

Punjab

2. Sh. Hardeep Singh

Sh. Hardeep Singh sonof Sh. Surinder Singh, both
residents of House No. 3276, Ward No. 12, Main Road,
Adampur Doaba, Jalandhar.

Jalandhar

Punjab

.....Complainant(s)

Versus

1. Dr. Shwet Nanda & Ors

Dr. Shweta Nanda, MD (GYN/OBS) Obstetrician &
Gynecologist Fertility & IVF Specialist PMC Reg. No.
29469, M/s. Mannat Super Speciality Hospital, An
advanced Gastroenterology, Gynecology & IVF Centre,
16-Lajpat Nagar, Jalandhar

Jalandhar

Punjab

2. Dr. Mohit Nanda

Dr. Mohit Nanda, MD (GYN/OBS) PGI Senior
Consultant in Gastroenterology Hepatology &
Endoscopy, PMC Reg. 31187 M/s. Mannat Super
Speciality Hospital, An advanced Gastroenterology
Gynecology & IVF Cent

.....Opp.Party(s)

BEFORE:

Kuljit Singh PRESIDENT

Jyotsna MEMBER

PRESENT:

Ms. Amandeep Kaur Gill, Adv. Counsel for
Complainant.

.....for the Complainant

Sh. Rajat Nanda, Adv. Counsel for OPs No.1 and
2.

.....for the Opp. Party

Dated : 09 Mar 2021

Final Order / Judgement

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

Complaint No.193 of 2019

Date of Instt. 30.05.2019

Date of Decision: 09.03.2021

1. Smt.Akvinder Kaur wife of Hardeep Singh,
2. Sh.Hardeep Singh son of Sh.Surinder Singh, both residents of House No.3276, Ward No.12, Main Road, Adampur Doaba, Jalandhar.

.....Complainants

Versus

1. Dr. Shweta Nanda, MD (GYN/OBS) Obstetrician & Gynecologist Fertility & IVF Specialist PMC Reg. No.29469, M/s Manant Super Specialty Hospital , An advanced Gastroenterology, Gynecology & IVP Centre, 16-Lajpat Nagar, Jalandhar.
2. Dr. Mohit Nanda, MD (GYN/OBS) PGI Senior Consultant in Gastroenterology Hepatology & Endoscopy, PMC Reg.No. 31187 M/s Mannat Super Specialty Hospital, An Advanced Gastroenterology Gynecology & IVF Centre, 16-Lajpat Nagar, Jalandhar.

... .. Opposite Parties

Complaint Under the Consumer Protection Act.

Before: Sh. Kuljit Singh (President)

Smt. Jyotsna (Member)

Present: Ms. Amandeep Kaur Gill, Adv. Counsel for Complainant.

Sh. Rajat Nanda, Adv. Counsel for OPs No.1 and 2.

Order

Kuljit Singh (President)

1. The instant complaint has been filed by the complainants against OPs on the averments that they are husband and wife and they were desirous of having baby at an earliest but unfortunately complainant no.1 did not conceive baby even after two years of her marriage. They decided to get checkup just to know the position of their health for conceiving of baby in August 2018. Complainant no.1 was suffering from infertility disease and visited the hospital of OPs on 08.08.2018, but OP no.1 intentionally did not mention about problem of complainant no.1 on record rather wrongly mentioned that complainant no.1 Akvinder Kaur suffered with a severe pain in her abdomen, which is false. After conducting examination of whole body of the complainant no.1, OP no.1 told them that there is a cyst in the ovary of complainant no.1 was reason for not conceiving the child. OP no.2 assured them that complainant no.1 will conceive child after operation and will lead a healthy life. Both complainants come under the assurances of OP no.1 and complainant no.1 was admitted in the hospital of OPs on 13.08.2018 and on 14.08.2018. OP no.1 operated complainant no.1 for Cysts of the Ovary and they had paid a sum of Rs.38,000/- for the surgery as well as Rs.1,25,000/- was also spent on the medicines and complainant no.1 was discharged from the hospital on 16.08.2018. Before surgery, entire tests were conducted by OP no.1. The complainant no.1 was taken to operation theatre only for 20 minutes and after that she was brought out of the operation by saying that her surgery has been conducted. Histopathology test of complainant no.1 was conducted on 27.08.2018 and she was regularly checked from OP no.1 and prescribed medicines for the pain suffered by her. Complainant no.1 was not getting relief with the medicines and treatment given by OP no.1 they both complainants decided to get scanning from some scanning centre so that disease may be confirmed to them. On 24.12.2016, scanning of complainant no.1 was conducted from Mann Scanning & Diagnostic Centre, 201, Gujral Nagar, Near T.V. Centre, Jalandhar in the report of which it is clearly mentioned that:

“ Right Ovary shows multiple complex cysts of up to 33+31 mm with low level internal echoes. A 18+14 MM developing follicle is also noted.

Left Ovary is seen adherent to the posterior wall of uterus which shows ill defined echogenic mass like area at this level. Multiple complex cysts of up to 45+33 mm with low level internal echoes are also seen.”

This clear that surgery was conducted by OP no.1 for Cysts in her Ovary and same was still existing on 24.12.2018. Both complainants shocked to know that the fact of cysts in the Ovary and decided to approach Dr. Neelu Khanna Suri SGL Charitable Hospital for obtaining second opinion regarding the disease of complainant Akvinder Kaur. On 07.02.2019, complainant showed all medical record of complainant no.1 to Dr. Neelu Khanna Suri SGL Charitable Hospital also told that the tablet ‘Sysron N 10 Mg’ prescribed by OP no.1 to complainant no.1. After approaching Dr. Neelu Khanna Suri SGL Charitable Hospital, tests of Ovarian Cancer of the complainant no.1 were also conducted from Dr. Lal Path Lab on 08.02.2019. Due to negligence of OP no.1, complainant no.1 has suffered a lot physical pain, mental agony and harassment due to time and again visit OP no.1 and due to wrong treatment they had paid lakhs of rupees for treatment. OP No.1 has spoiled the life of complainants. Now, there is no chance of child in future to complainant no.1. On 23.04.2019 Dr. Neelu Khanna conduct her necessary so that she may be operated at the earliest. The complainants estimates the loss of Rs.1,65,000/- spent by them on all medical expenses and further Rs.18 lakh for suffering a lot physical pain, mental agony, harassment, physical destruction of the complainant no.1 due to negligence and erroneous medical treatment given by OP no.1. OP no.2 is MD of hospital and is responsible for all the activities. The complainants have suffered unnecessarily harassment on account of unfair trade medical practice by OPs. A legal notice dated 29.04.2019 has also been sent to OP. Due to illegal act and conduct of OPs, they had filed the present complain and prayed that OPs be directed to pay Rs.1,65,000/- with interest @ 18% per annum till realization, Rs.15,00,000/- as damages for mental harassment and Rs.20,000/- as cost of litigation.

2. Upon notice, OPs appeared and filed written reply and contested the complaint of the complainant by raising preliminary objections that complaint is nothing misuse of process of law and there is no negligence on the part of OP no.1 at all. Complainant no.2 was not consumer of OPs. OP no.2 has not given any treatment to complainant no.1. On merits, it was averred that complainant no.1 visited the hospital of OPs with a complaint of infertility and abdominal pain for which she was correctly treated by OP no.1. Complainant no.1 was suffering from severe pain in her abdomen on account of endometriosis, so it was rightly mentioned in the prescription slip of the complainant no.1. After examination, it was correctly told by OP no.1 to complainant that there are cysts in the ovaries of the complainant and as the same is required to be removed by operation. For treatment complainant no.1 was admitted on 13.08.2018 and was operated for removal of cysts of Ovary. OP no.1 charged concessional fee from complainant no.1. It was denied that complainant no.1 spent Rs.1,25,000/- on the medicines. After performing successful operation, complainant no.1 was discharged from the hospital on 16.08.2018. It was denied that complainant no.1 was kept for 20 minutes in the operation theater rather OP no.1 took about 80 minutes in conducting the operation and post activity operation. The Laproscopic surgery of cyst removal was done under General Anesthesia on 14.08.2018. The chocolate cysts was drained and sample of the cysts wall was taken and sent for biopsy. The images of Laparoscopy operative findings and report is attached along with. Medicines were prescribed for the pain caused due to endometriosis which as "Sysron N10 Mg" which is not anti Conception drug when given at this dose and duration. The complainant no.1 had visited the hospital on 13.09.2018 for regular checkup and given medication for endometriosis. According to Textbook of Clinical Gynecological Endocrinology and Infertility by Leon Speroff, seventh edition pages 1121, 1122. Recurrent disease and pain after conservative surgical treatment are the rule rather than the exception, symptoms recur in at least 10-20% of treated women per year. As per text book : Progestogens in Obstetrics and Gynecology by Howard J.A Carp. Page 135 Moreover even after excision which seems to be complete, there is often recurrence. Recurrence has been reported to vary from 10 to 55% within 12 months, with recurrence affecting approximately 10% of the

remaining women each additional year. The complainant had visited any other doctor for second opinion. There was absolutely no harm caused to the patient, in fact, the surgery was successfully performed without any complication. Standard post operative care was given to the patient and she was discharged in a healthy condition. There was no negligence of medical treatment given by OP no.1 to complainant no.1. Rest of the averments made by the complainants were denied by OPs and they prayed for dismissal of the complaint.

3. The complainant has tendered in evidence affidavit of complainant no.1 as Ex.C-A along with copies of the documents Ex.C-1 to Ex.C-17. On the other hand, OPs tendered in evidence affidavit of Dr. Shweta Nanda as Ex.OP-A along with copies of documents Ex.R-1/1 to Ex.R-16(1) to Ex.R-16(14), Ex.R-17(1) to Ex.R-17(24), Ex.R-18(1) to Ex.R-18(5), Ex.R-19(1) to Ex.R-19(2), Ex.R-20(1) to Ex.R-20(27), Ex.R-21(1) to Ex.R-21(6) and Ex.R-22 is postal receipt thereof.

4. We have heard learned counsel for the complainant as well as written arguments filed by both parties and have also gone through record of the case very carefully.

5. We have referred to evidence on the record with the able assistance of counsel for the parties. The complainant no.1 has tendered in evidence her affidavit Ex.C-A on the record. Ex.C-1 is copy of history & examination. Ex.C-2 and Ex.C-3 are copies of prescription slips. Ex.C-4 to Ex.C-6 are copies of bill receipts. Ex.C-8 is copy of Histopathology Report of complainant no.1. Ex.C-9 is copy of test report of complainant no.1 prepared by Maan Scanning & Diagnostic Centre. Ex.C-10 is copy of ultrasound abdomen. Ex.C-11 is copy of legal notice served upon OPs. Ex.C-12 is copy of postal receipt thereof. Ex.C-13 is copy of reply to legal notice. Ex.C-14 and Ex.C-15 are copies of aadhar card of the complainants. Ex.C-16 is copy of OPD Slip. Ex.C-17 is copy of ultrasound photos.

6. To counter this evidence of the complainants, OPs tendered in evidence affidavit of Dr. Shweta Nanda wife of Mohit Nanda as Ex.OP-A on the record. This witness denied any negligence on the part of OPs. She stated that the treatment of the complainant no.1 has been done as per standard

medical protocol. Ex.R-1/1 to Ex.R-1/7 are copies of prescription slip of the doctor. Ex.R-2/1 to Ex.R-2/4 are copies of treatment chart. Ex.R-3/1 to Ex.R-3/2 are copies of vital chart. Ex.R-4/1 to Ex.R-4/2 are copies of intake output chart. Ex.R-5 is copy of consent form for treatment and surgical operation. Ex.R-6 is copy of form for high risk consent. Ex.R-7/2 is copy of test report. Ex.R-8/1 to Ex.R-8/3 are copies of prescription slips. Ex.R-9 is copy of laparoscopy and hysteroscopy report. Ex.R-10/1 and Ex.R-10/2 are copies of Histopathology Report of complainant no.1. Ex.R-10/3 and Ex.R-10/4 are copies of AFB DNA detection by Real Time PCR. Ex.R-11/1 to Ex.R-21(6) are copies of medical literature placed on the record.

7. From perusal of entire record, it has established fact that complainants visited the hospital of OPs for check up of complainant no.1 to know position of her health for conceiving of baby in August 2018. On 08.08.2018 complainant no.1 was examined by OP no.1 and mentioned on record about Cyst in the ovaries which was suggestive of endometriosis. On 13.08.2018 complainant no.1 was admitted in the hospital and on 14.08.2018 laparoscopic surgery for removal of cyst was done under general anesthesia and discharged on 16.08.2018. This fact was admitted by OPs themselves in their written reply on the record. The complainants alleged that they spent Rs.1,25,000/- on the medicines. They alleged that complainant no.1 was kept for 20 minutes in the operation theatre rather OPs stated that they took 80 minutes in conducting the operation and post activity operation. On 24.12.2018, the complainant no.1 conducted her scanning from Maan Scanning & Diagnostic Centre Jalandhar and in their report complainant shocked and stunned to know that fact of Cysts in the Ovary and decided to approach Dr. Neelu Khanna SGL Charitable Hospital for obtaining second opinion regarding her disease. On 07.02.2019 when complainants showed all medical record to Dr. Neelu Khanna Suri SGL Charitable Hospital and the said doctor also told that the tablet "Sysron N 10 Mg" prescribed by OP no.1 is a anti-conceive tablet and due to regularly taken of this medicine, she has suffered so much physical ruination of her internal body parts and it gave birth to go many other diseases.

8. On the other hand, OPs denied all the allegations leveled against them by complainants. They alleged that they have given the treatment to complainant no.1 as per standard medical protocol.

9. The main grouse of the complainant no.1 is that OP no.1 negligently operated her. This fact is clear that complainant no.1 has taken the treatment of Cyst from OP no.1. The complainant no.1 wanted to obtain second opinion regarding her disease and she showed all medical record to Dr. Neelu Khanna SGL Charitable Hospital and the said doctor also told that the tablet “Sysron N 10 Mg” prescribed by OP no.1 is a anti-conceive tablet and due to regularly taken of this medicine, she has suffered so much physical ruination of her internal body parts and it gave birth to go many other diseases. The OPs placed on record various medical literate on this point. According to **Textbook of Clinical Gynaecological Endocrinology and Infertility by Leon Speroff**, seventh edition pages 1121, 1122, recurrent disease and pain after conservative surgical treatment are the rule rather than the exception, symptoms recur in at least 10-20% of treated women per year. As per **Text Book : Progestogens in Obstetrics and Gynecology by Howard J.A Car Page 135** after excision which seems to be complete, there is often recurrence. Recurrence has been reported to vary from 10 to 55% within 12 months, with recurrence affecting approximately 10% of the remaining women each additional year. As article **published in Front Biosci (Elite Ed) 2013 Jan 1:5:676-83** stated that Laparoscopic excision is considered as of “gold standard” treatment of ovarian endometrioma. A frustrating aspect is that disease can recur. Recurrence rates for endometrioma are reported from 11 to 32% within 1-5 years after excision. The recurrence rate is higher in patients with advanced endometriosis at surgery and in your patients. The cumulative recurrence rate of ovarian endometrioma after a second line surgery appears to be correlated to the duration of follow up. Severe endometriosis at the second line surgery seems to be a factor associated with a high recurrence risks as per report of **American Journal of Obstetrics & Gynecology. According to Jeffcoates Principles of Gynaecology**, Seventh Edition Page 379, Prgesterones are often used as a front line of medical management because they produce symptomatic relief and their side effects and cost are less.

10. From perusal of the entire medical literature produced on record by OPs, we are of the view that the treatment obtained by the complainant no.1 from OP no.1 as per standard medical norms. No such medical record has been produced by the complainant in this case to prove any problem suffered by the complainant no.1, when she was admitted in the hospital of the OPs at the time of operation. As per medical literature contained as discussed above, it is difficult to differentiate between intestinal tuberculosis from Crohn's disease in some of the cases. The patient had responded to the said treatment well and therefore the said line of treatment was followed up by OPs. The complainant himself given consent for admission, treatment and surgical operation as Ex.R-5 on the record. There is also placed on record document of High Risk Consent as Ex.R-6. In this document, it is clear that patient is a high risk candidate for anesthesia and surgery procedure can suffer from any complication. This document was signed by both complainants and they are aware about the same. OPs prescribed treatment to the patient on the basis of her clinical symptoms. If any medicine was wrongly given in a carelessness manner by OPs, the lab reports always co relate with symptoms of patients and it is not conclusive in itself. There is no expert body's report on the file by the complainant to prove any medical negligence against OPs. The complainant has not proved by means of any expert doctor that OPs prescribed this treatment against medical protocol. There is simple oral evidence of the complainant, which is not sufficient in our opinion to charge the Ops with civil liability for compensation on account of their alleged medical negligence. Even Apex Court has also held in "*Kusum Sharma and others versus Batra Hospital & Medical Research Centre and others,*" reported in 2010(2) CLT that doctor who performed the operation had reasonable degree of skill and knowledge and hence no medical negligence is proved against him. The Apex Court has held in this authority has held that the Negligence is the breach of a duty exercised by omission to do something, which a reasonable man, guided by those considerations, which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. A medical practitioner would be liable only, where his conduct fell below that of the standards of a reasonably competent practitioner in his field. Negligence cannot be attributed to a doctor so long

as he performs his duties with reasonable skill and competence. It would not be conducive to the efficiency of the medical profession, if no doctor could administer medicine without a halter round his neck. There is nothing on the record that OPs were not qualified doctors or they have not followed the medical protocol, while prescribing the treatment of tuberculosis to life assured. In the absence of expert doctor's report, we are unable to rely upon the bald submissions of complainant in this regard, who is not an medical expert person in the medical science, attributing medical negligence to OPs.

11. The main controversy involved in this case, whether there is any medical negligence on the part of OPs or not. There is no valid document or report of expert doctors on the record to prove that OPs negligently treated complainant no.1. The complainant no.1 wanted to obtain second opinion in her case. As per Dr. Neelu Khanna Suri SGL Charitable Hospital the tablet "Sysron N 10 Mg" prescribed by OP no.1 is a anti-conceive tablet and due to regularly taken of this medicine, she has suffered so much physical ruination of her internal body parts and it gave birth to go many other diseases. But as per medical literature, which has discussed above, we find no lacuna in this medicine. This medicine given by OPs as per medical standard norms and literature. Ex.C-2 is copy of prescription slip with discharge summary on the record. In this document, it is clear that the complainant discharged from the OPs hospital in a stable condition. This document signed by Dr. Shweta Nanda MD (Gyn/Obs). The complainants placed on record Ex.C-9 copy of scan report, which is prepared by Mann Scanning Centre and Diagnostic Centre in this report, there is no mention that wrong treatment or diagnosis given by OPs hospital. In this document, Right Ovary shows multiple complex cysts of upto 33*31 mm with low level internal echoes. A 18* 14mm developing follicle is also noted. Left Ovary is seen adherent to the posterior wall of uterus which shows that ill defined echogenic mass like area at this level. Multiple complex cyst of upto 45*33 mm with low level internal echoes are also seen. The complainants have not produced any document on the record that they contacted OPs again for facing them any problem in their treatment. The complainants wanted to obtain second opinion for which they contacted Dr. Neelu Khanna Suri SGL Charitable Hospital and the said doctor also told that the tablet "Sysron N

10 Mg” prescribed by OP no.1 is a anti-conceive tablet and due to regularly taken of this medicine, she has suffered so much physical ruination of her internal body parts and it gave birth to go many other diseases. But from perusal of plethora of medical literature on this point, it is clear that this medicine is not wrongly given by OPs to complainant no.1.

12. The learned counsel for OPs placed on record various judgments in support of their case :-

1. The case titled as ***Jacob Mathew vs. State of Punjab, of Hon’ble Supreme Court reported in Appeal (Crl) 144-145 of 2004, date of decision 05.08.2005*** that “*negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do.*”
2. The case titled as ***Martin F. D Souza Vs Mohd. Ishfaq reported in Civil Appeal No. 3541 of 2002 , date of decision 17.02.2009 of Hon’ble Supreme Court*** that “*a medical practitioner faced with an emergency ordinarily tries his best to redeem the patient out of his suffering. He does not gain anything by acting with negligence or by omitting to do an act. Obviously , therefore, it will be for the complainant to clearly make out a case of negligence before a medical practitioner is charged with or proceeded against criminally. A surgeon with shaky hands under fear of legal action cannot perform a successful operation and quivering physician cannot administer the end-dose of medicine to his patient.*”
3. The case titled as ***Vinod Jain Vs. Santokba Durlabdhji Memorial Hospital & Another reported in Civil Appeal No.2024 of 2019 , date of decision 25.02.2019 of Hon’ble Supreme Court .***

As per ***Hucks v Cole, Lord Denning*** speaking for the court that A medical practitioner was not to be held liable simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference of

another. A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonable competent practitioner in his field. The aforesaid judgments produced on record by OPs are applicable in the case in hand.

13. As a result of our above discussion, we are unable to come across any substance on the file to prove medical negligence on the part of OPs. There is nothing on the record that OPs prescribed treatment ignoring the medical standard practice or medical protocol. We find no substance in the allegations leveled by complainant raised on behalf of OPs in the complaint and same is hereby dismissed by leaving the parties to bear their own costs.

14. C copies of the order be sent to the parties, as permissible, under the rules.

15. File be indexed and consigned to the record room.

Dated : (Jyotsna) (Kuljit Singh)

09.03.2021 Member President

[Kuljit Singh]
PRESIDENT

[Jyotsna]
MEMBER