NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 2922 OF 2015

(Against the Order dated 31/05/2014 in Appeal No. 390/2013 of the State Commission Kerala)

1. ELDHO DAVID
MADAPPILLIL HOUSE, OORAKKADU,EDATHALA,
P.O ALUVA .....Petitioner(s)

Versus

1. DR. DENNY P. KUTTIKKAT & ANR.
CARMEL HOSPITAL, ASOKAPURAM, P.O ALUVA,
DISTRICT : ERNAKULAM
KERALA
2. THE ADMINSTRATOR, CARMEL HOSPITAL,
ASOKAPURAM, P.O ALUVA,
DISTRICT : ERNAKULAM
KERALA .....Respondent(s)

BEFORE:
HON'BLE MR. JUSTICE R.K. AGRAWAL,PRESIDENT
HON'BLE DR. S.M. KANTIKAR,MEMBER

For the Petitioner :
For the Respondent :

Dated : 01 Apr 2021

ORDER

Appeared at the time of arguments through Video Conferencing

For Petitioner : Ms. Nishtha Sharma, Advocate for
Mr. Pawan Kumar Ray, Advocate

For Respondents : Ms. Priya Balakrishnan, Advocate for
Mr. K.N. Madhusoodhanan, Advocate

Pronounced on: 1 st April 2021

ORDER

PER DR. S. M. KANTIKAR, MEMBER

1. The present Revision Petition has been filed by the Complainant/Petitioner (Eldho David) under Section 21(b) of the Consumer Protection Act, 1986 against the impugned Order wherein the State Consumer Disputes Redressal Commission, Vazhuthacaud, Thiruvananthapuram (hereinafter referred to as the "State Commission") allowed the appeal and set aside the Order of the District Consumer Disputes Redressal Forum, Ernakulam (hereinafter referred to as the "District Forum") in Consumer Complaint No. 250 of 2010.

2. Brief facts of the case are that on 22.02.2010 the Complainant's daughter (hereinafter referred to as the "patient") was taken to the casualty at Carmel Hospital, Aluva (hereinafter referred to as the "Opposite Party No. 2") for severe abdominal pain. It was diagnosed as acute appendicitis and advised immediate surgery. On 23.02.2010, Dr. Denny P. Kuttikkat (hereinafter referred to as the "Opposite Party No. 1") performed laparoscopic appendectomy and after two days the patient was discharged. The patient continued taking medicines but there was no relief from pain. On 26.02.2010, again she was taken to the Opposite Party No. 2 Hospital and on 29.02.2010 the Opposite Party No. 1 referred the patient to PVS hospital for C.T. Scan and further treatment. The doctors at PVS hospital operated her and removed the pus from the abdomen. She was discharged on 12.03.2010. The Complainant alleged that it was deficiency in service of Opposite Party No. 1, therefore his daughter lost her one academic year. Being aggrieved, the Complainant filed Consumer Complaint No. 250 of 2010 before the District Forum and claimed a compensation of Rs. 2,45,000/- from the Opposite Parties.

3. The Opposite Parties filed their written version and denied the allegations. It was submitted that the patient was examined in casualty by Dr. George Mathews and diagnosed as acute appendicitis. The Opposite Party No. 1 on clinical examination and based on relevant blood and urine investigations confirmed the diagnosis of acute appendicitis. The treatment was started with proper antibiotics, IV fluids and other medications. The relatives were informed about the condition of patient and the need for urgent surgery. On 23.02.2010, the Opposite Party No. 1 performed laparoscopic appendectomy. The appendix showed features of mild inflammation and there was no evidence of local or generalized peritonitis. No free fluid or pus in the peritoneal cavity. The fallopian tubes and ovaries look normal. On 24.02.2010, the patient complained of mild pain in the umbilical port site which was treated symptomatically and the patient was discharged with follow-up advice. The patient was treated with utmost care and caution, there was no negligence.

4. The District Forum on hearing the averments of the parties held the Opposite Party liable for negligence and deficiency in service partly. The Complaint was partly allowed by the District Forum with the observations as
below:

"9. We are of the view that the complainant succeeded in prima-facie proving the deficiency in service of the part of the Opposite Parties in conducting the physical examination of the patient during pre-operative segment. The failure on the part of the Opposite Parties in taking abdominal X-ray of the patient to detect fecalith, ultra sound scan or computed tomography scan to confirm the disease though not mandatory amounts to the further deficiency on the part of the Opposite Parties since the modern medical world is so advanced to diagnose any such disease.

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11. In view of the above we are of the firm view that there was negligence and deficiency in service on the part of the Opposite Party in treating the patient indisputably on 28-02-2010 the patient was taken to PVS Hospital for better management. There she had to undergo prolonged treatment from 28-02-2010 to 12-03-2010 which includes laparoscopy and lavage and thereafter on 17-03-2010 for secondary suffering evident from Ext. A3 & A4 certificates. It is to be noted that the patient a tender aged girl had to suffer lot of inconveniences mental pain and suffering and physical agony due to the negligent acts of the Opposite Parties which could have well been avoided if proper care and caution been taken in which they failed. The complainant has to spend the amount as per Ext. A6 at PVS Hospital. The Complainant has not produced the records to show the treatment expenses incurred by him at the 2 nd Opposite Party hospital probably due to his mental agony are worse. However, the complainant is entitled to get refund of the treatment expenses at the 2 nd Opposite Party hospital and also to get reimbursement of the amounts as per Ext. Ab."

5. Being aggrieved, the Opposite Parties preferred an appeal before the State Commission, which was allowed and set aside the Order passed by the District Forum with the following observation:

"6. ….It is clear from the complaint itself that the surgeon diagnosed and recommended immediate Appendectomy. The opposite party was having 12 years' experience in Laparoscopic surgery. The performance of appendectomy was the standard treatment in the case of an appendicitis patient. As per Ext.C1 it is clear that the pre-operative diagnosis was 'acute appendicitis' and post operation diagnosis 'acute appendicitis' and it also confirms from the Histopathology report. Ext.C1 that the impression appendix showing acute appendicitis. Hence the surgery appendectomy is the correct procedure adopted by the first opposite party and contrary remark made by the District Forum is not sustainable."

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9. ….. From clinical examination itself the appendicitis can be diagnosed by a prudent doctor and the performance of the appendectomy is the proper diagnosis and the standard treatment had given to the daughter of the complainant. From Ext.C1 the pre-operation diagnosis was acute appendectomy and it is also evident from the histopathology report showing 'impression-appendectomy showing acute appendicitis'. So there can be no other possibility for any default in the diagnosis of the 1 st opposite party."

6. Being aggrieved by the Order of the State Commission, the Complainant has filed the present Revision Petition.

7. We have heard the arguments from both the sides, perused the entire material on record, *inter alia* , medical record and operative findings.

8. There was delay of 365 days in filing the instant Revision Petition. We have perused the application for condonation of delay filed by the Petitioner. The Petitioner submitted that he was in debt due to costly treatment of his daughter and the legal proceedings. He was spending on the treatment for the fast recovery and his daughter lost one academic year. Due to debt and other expenses, the Petitioner could not approach the Counsel within time. We consider it is a justifiable ground. In the interest of justice, to provide fair opportunity to the Petitioner / Complainant, to decide the case on merit, the self-admitted delay of 365 days in filing the petition is condoned.

9. On merit, let us go through the operative and clinical findings. On careful perusal the discharge summary of PVS Hospital revealed that the patient was diagnosed as "intra-abdominal abscess" and treated therein. The details of treatment are mentioned as below:

"After stabilization of general condition, she underwent emergency diagnostic laparoscopy and lavage on 01.03.2010. At operation, there was purulent turbid fluid in the peritoneal cavity, in the para colic gutter, pelvis, both sub diaphragmatic sub phrenic region. Appendix stump, entire small bowel, stomach and duodenum were normal. Integrity of stomach and colon was tested intra operatively. The pelvic organs were congested with left bulky fimbria. There was no injury to bowel or any other intra-abdominal viscera. Thorough peritoneal lavage and intra-abdominal drainage were performed. Her initial post-operative course was marked with generalized discomfort, tiredness and fever for initial two days and she was started with antibiotics sensitive to intra-abdominal fluid culture and gradually her general condition stabilized. She was started on oral liquids on 3 rd post-operative day and gradually allowed to have semi solid diet. At the time of discharge patient was asymptomatic, afebrile and tolerating a normal diet. She had a surgical site infection in the sub umbilical region of lap site which required daily dressing and probably secondary suturing ."

Thus, "Ms. Sheba David had been admitted here from 28.02.2010 to 12.03.2010 for treatment of intra-abdominal abscess when she had undergone laparoscopy and lavage. She developed superficial wound dehiscence and was admitted on 17.03.2010 for secondary suturing which was performed under short GA and was discharged after an uneventful post procedure period."

10. We have gone through the standard surgical text books and articles on Laparoscopic Appendicitis. The literature analysis shows that laparoscopy is advantages compared with open surgery in cases of pediatric appendicitis. Laparoscopic surgery, which is often described as minimally invasive surgery, involves making a handful of small incisions and then inserting small surgical equipment and a camera inside the abdomen. With laparoscopic surgery, the surgeon isn't able to directly see the area of operation, but instead is able to view things on a screen after the camera is inserted internally. One of the risks is that an unintended structure will get injured, punctured, or lacerated. The patients undergoing Laparoscopic Appendectomy present a lower incidence of surgical wound infection, lower incidence of postoperative ileus, a lower use of analgesics in the postoperative period, an earlier resumption of normal diet, a shorter hospitalization, and a more rapid recovery to resume normal activities compared with patients undergoing open surgery. An intraabdominal abscess occurs rarely after Laparoscopic Appendectomy and is strongly associated with complicated appendicitis. Its treatment is associated with the need for intervention.

11. It is pertinent to note that the Histopathology Report was confirmatory of Acute Appendicitis. The patient was under cover of higher antibiotics after the laparoscopic procedure. The operative findings of PVS Hospital did not show any injury to small bowel, stomach or any internal organs. The stump of appendix was normal. The purulent turbid fluid in the abdominal cavity was due to peritonitis-infection without any injury to the bowels or internal organs. The infection or abscess in the peritoneal cavity was not due to any negligence or any shortcoming during the laparoscopic procedure. The treating doctor Opposite Party No.1 correctly diagnosed the case and treated as per the accepted standard practice.

12. Based on the discussion above, we find the Order of the State Commission to be well-appraised and well-reasoned. In the given facts and the entire evidence on record, it is difficult to conclusively establish medical negligence / deficiency on the Opposite Party hospital and/or doctor.

The Revision Petition is dismissed.

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R.K. AGRAWAL
PRESIDENT

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DR. S.M. KANTIKAR
MEMBER