

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION AT MAHABUBNAGAR**

Friday, the 27th day of August, 2021

Present:- Smt. M. Anuradha, President,
Sri K. Venkateshwarlu, Member

C.C.NO. 39 Of 2018

Between:-

G. Neelamma, W/o Swamynath Goud, aged 47 years, Occ: Household,
R/o H.No.8-48/1, Gandhinagar, Kalwakurthy town, Nagarkurnool district.

... Complainant

And

1. Srivani Hospital, Maternity & Surgical Nursing Home, Kalwakurthy,
Represented by Dr. P. Vani @ Srivani, Gynecologist, age: major,
Occ: Doctor, MBBS, DGO, Opp: Laxmi Talkies, Kalwakurthy,
Nagarkurnool District.
2. Srivani Hospital, Maternity & Surgical Nursing Home, Kalwakurthy,
Represented by Dr. Umakanth, General Surgeon, age: major,
Occ: Doctor, MBBS, MS, MRCS England, Opp: Laxmi Talkies,
Kalwakurthy, Nagarkurnool District.

... Opposite Parties

This C.C. coming on before us for final hearing on 8-4-2021 in the presence of Sri M. Chennaiah Goud, Advocate, Mahabubnagar for the complainant and of Sri J. Ravi Kumar, Advocate, Mahabubnagar for the opposite parties and the matter having stood over for consideration till this day, this Commission made the following:

ORDER

(Smt. M. Anuradha, President)

1. This is a complaint filed by the complainant under section 12 of Consumer Protection Act, 1986 seeking a direction to the opposite parties to pay compensation of Rs.20,00,000/- for wrong treatment given to the complainant.
2. The averments of the complaint in brief are that:- The complainant is a resident of Kalwakurthy town, eaking out her livelihood by doing tailoring

work. Her entire family depends on her earnings. When she was suffering with ill health, she consulted the OPs doctors on 28-3-2016. The said OPs doctors informed to her that she was suffering with lump to her uterus and need for operation. The complainant had got admitted in the Hospital of the OPs doctors for operation on 3-4-2016. After conducting all the tests, the operation was done by the OPs doctors and collected Rs.25,000/- towards expenditure for such operation. Thereafter, the complainant was shifted to general ward by the said doctors instead of ICU. The complainant suffered with dehydration during the hospitalization and after one day the complainant got retention of urine problem and motions, vomitings and like that she was struggled for 5 hours for such problems. Subsequently, the OPs doctors had brought the complainant to Osmania General Hospital, Hyderabad in the midnight on 05/06-04-2016, without giving any information to the relatives of the complainant. When the husband and relatives of the complainant asked about the situation of the complainant, the OPs replied that the complainant was suffering with kidney problem, for which she was shifted to the above said hospital. It is submitted by the complainant that her health problem was not cured and suffered the same even after treatment at Osmania General Hospital, Hyderabad. It is also stated that the relatives of the complainant requested the OPs to provide treatment for kidney problem and to relieve the same as it is caused due to the negligence of the OPs doctors, while conducting the operation and not taken precautionary measures medically after operation. The OPs had shifted the complainant only to the general ward without caring her and considering the time of operation as it was the summer season. The OPs doctors failed to take care and not shifted the complainant to ICU and not taken care, due to which the complainant suffered a lot and caused the said kidney and multiple health problems, which attribute deficiency of service on the part of the OPs doctors. It is also stated that the complainant got admitted in Osmania General Hospital, Hyderabad on 6-4-2016 as stated above and discharged on 3-5-2016 and at that time, the OPs doctors stated that the said kidney problem is relieved/cured and informed that the complainant's kidney creatine is 0.8 and it is normal and they have created forged test certificate in the hospital, who admitted the complainant by themselves and the said Osmania General Hospital, Hyderabad discharged the complainant on 10-5-2016. When the complainant's health condition was serious even

after treatment at Osmania General Hospital, Hyderabad as she has been suffering since the very next day of such discharge from the said hospital and has been suffering the same problem, she got admitted in Care Hospital, Hyderabad. The said Care Hospital authorities conducted kidney test on 12-5-2016 and as per tests, the kidney creatine shown as 7.5. On the advice of the doctors, again the complainant was shifted to Mahesh Hospital, Hyderabad for kidney treatment and dialysis. The complainant has been suffering the said kidney problem and she has been continuously under dialysis. During the course of the hospitalization as stated above, she spent huge amount of Rs.10,00,000/- and an amount of Rs.1,500/- is required to be spent by the complainant towards daily dialysis. It is submitted that the complainant is poor lady and her husband is also suffering with eye problem and her entire family depends on the complainant's earnings only. It is also submitted that due to negligence of the OPs doctors while conducting the operation and without taking precaution measures, the complainant had been suffered and also she is continuously suffering with such dialysis and kidney problem and need continuous dialysis for which it cannot be calculated the sum for the loss and future expenditure. The complainant restricted her claim only for Rs.20,00,000/- towards treatment. The complainant's husband lodged a police complaint in P.S., Kalwakurthy and the said police registered the crime vide Cr.No.104/2016 U/s 338 IPC against the OPs doctors. The complainant finally submits that she had suffered and has been suffering due to the negligence of the OPs doctors physically, mentally and financially and accordingly the present complaint is filed alleging the deficiency of service on the part of the OPs and to grant relief as prayed for.

3. The opposite parties 1 and 2 filed counter denying all the allegations made in the complaint and stated that the present complaint is filed without proper knowledge which is defamatory, derogatory, reckless and the complainant is put to strict proof of the same. The OPs stated that the complaint is liable to be dismissed for non joinder of proper and necessary parties and that the complaint itself is not maintainable as there was no deficiency of service. The OPs submitted that the OPs' Hospital is running by the qualified and highly learned doctors, who are husband and wife, and the Hospital is having all infrastructure and licences, secured with insurance. The allegation of the complainant, more particularly, that the

conducting of the operation to theft the kidneys is very derogatory and only with an intention to tarnish the reputation and mudslinging on the OPs for unlawful gain by the complainant. The allegations leveled against the OPs all are fabricated with an intention to defame the OPs doctors and there is no deficiency of service, more particularly, any medical negligence as alleged by the complainant.

It is submitted by the OPs that the complainant Mrs.G. Neelamma approached the OPs' Hospital on 3-4-2016 with pain in abdomen for treatment. On investigation, she found to have fibroid uterus and advised hysterectomy. Since the complainant consented, hysterectomy was done on 3-4-2016. It is further submitted that *it is revealed that the complainant even before approaching the OPs., consulted the Yashoda Hospital, Malakpet, Hyderabad, where also she was advised for hysterectomy* and therefore, it is evident that there is no fault of the OPs in investigation and advice for the disease of the complainant. It is submitted by the OPs that after surgery the complainant was given post operative care, monitored continuously by pulse oxymeter and hourly pulse, BP and Urine output as noted in case sheet, that the said standard of care given to the patient who underwent hysterectomy with preoperative investigations within normal limits. The OPs doctors further submitted that they had obtained preoperative cardiologist opinion for surgical fitness.

It is further submitted by the OPs that in cases where the patients who have preoperative risk factors such as any associated comorbid conditions, who require hemo dynamic support with ionotropes or ventilation or require invasive monitoring and special care will be monitored in ICU. But in the case of the complainant, there was no risk factors requires such monitoring in ICU and therefore, the complainant was monitored in postoperative ward and not in ICU as usual procedure and since the complainant was shifted to postoperative ward and was given due postoperative care as is being given anywhere and there was no single instance of any medical negligence and therefore, there is no deficiency in services and medical care was given to the complainant as standard in accordance with protocol and the same was given to the patient. It is further submitted by the OPs that the utmost care was taken to the complainant after surgery.

It is further submitted by the OPs that on the second post operative day the complainant was allowed orally liquids treatment given *as noted in the case sheet*. *The patient was stable hemodynamically and the patient developed sudden anuria unusually. The complainant was given fluid challenge and diuretic and low dose dopamine was started which is standard treatment given elsewhere also, however, there was no response to the treatment given.* Immediately, the OPs have explained that it is a rare presentation and advised need for nephrologist care and need for dialysis at higher centre and since expressed their financial inability, the OPs have referred the patient to Osmania General Hospital (OGH), which is a territory referral hospital at 8:15 p.m., on 5-4-2016. It is further submitted by the OPs that further management was done at Osmania General Hospital Nephrology Department and even the OP-2 was used to visit the complainant as the said symptoms are very rare and unusual and even the doctors at Osmania General Hospital have taken special care since the complainant has developed unknown and rare symptoms. It is further submitted by the OPs that even in Osmania General Hospital also did not find the actual problem till it received the medical reports from Appollo Hospital on 16-4-2016 and also submitted that the investigations conducted by the *Osmania General Hospital have confirmed that there is no surgical problem to the patient* and then referred to Nephrology Department for further management and necessary care was given by Nephrology Department in Osmania General Hospital (OGH).

It is further submitted by the OPs doctors that after evaluation by Nephrology Department, the patient was found to have thrombotic micro angiopathy (TMA), which was duly noted in discharge summary of Nephrology Department at Osmania General Hospital. It is submitted that after doing renal biopsy, diagnosed the Thrombotic Micro Angiopathy, which is very very rare complex disease due to multiple causes and can be hereditary and not at all related to post operative surgical negligence as alleged by the complainant. It is submitted that the TMA is not because of surgery or postoperative treatment given at the hospital of the OPs. It is submitted by the OPs that the complainant lodged a police complaint to Police, Kalwakurthy alleging that the OPs have been indulging in kidney selling business and other false allegations of similar negligence of service. The Police have referred the matter to expert committee as it involved

alleged medical negligence and serious allegations of removal of kidneys etc. In this regard, it is stated by the OPs that *the expert committee opined that the renal failure due to TMA is not related to surgery and has occurred due to thrombotic micro angiopathy, proved by biopsy and the treatment was given as per protocol and there is no negligence in the treatment by the OPs.* It is specifically mentioned that TMA was not related to surgery (hysterectomy) and there was no indication of any attempt for removal of kidneys, ultrasound was done at OGH. *The expert committee further specifically opined that TMA is due to multiple reasons and sometimes due to genetic causes of compliment defects.* The OPs submitted accordingly that the allegations of the complainant are baseless and it is only to blame and defame the OPs and there is no deficiency of service on their part. The OPs are no way liable or responsible for the alleged expenditure incurred by the complainant. When the said problem is no way connected for the surgery, the question of payment of alleged expenditure incurred by the complainant does not arise at all. All those allegations are invented by the complainant for the purpose of filing the complaint for unlawful gains. It is submitted that the criminal case itself is false and the expert committee also found that there was no negligence on the part of the OPs. Therefore, the complaint is liable to be dismissed with exemplary costs.

4. The complainant deposed the facts of the case through an evidence affidavit and placed the documents which are marked as Exs.A-1 to A-4 on her behalf to support her case. On the other hand, the opposite parties/ doctors only filed the counter and they did not adduce any evidence either by themselves or any other witness and no documents are filed to support their version as stated in their counter.

5. It is observed through the docket of the proceedings that despite time to time adjournments, the OPs have failed to adduce and place their evidence and ultimately posted for arguments and even after posting the matter for arguments, they did not appear and no representation either by their counsel or by themselves to present their arguments and ultimately closed the arguments on their side and posted for orders on 22-1-2021.

6. The matter was subsequently posted on 10-2-2021 and 22-2-2021 as the Hon'ble President of the Commission is on leave and no quorum.

Subsequently, on 5-3-2021, when the matter was scrutinized by the Commission, it was found that there is a need to clarify doubts by the counsel for the complainant and the matter was suo motto reopened and posted to 25-3-2021 for rehearing. On 25-3-2021, as the counsel was absent, again posted for rehearing on 8-4-2021. On 8-4-2021, the arguments advanced by the counsel for the complainant heard and reserved the matter again for orders. Again the matter was time to time adjourned till 23-8-2021 as there is no quorum. Again, on 23-8-2021, as the President is on leave, the matter was posted to 27-8-2021 for orders.

7. The points for consideration and determination now are:

- (i) Whether there is any deficiency on the part of the OPs doctors in rendering service to the complainant as alleged by her?
- (ii) Whether the complainant is entitled for the relief sought for by her, if so, to what extent?

8. Point Nos.1 and 2:- The case of the complainant is that when she was operated for her uterus by the OPs doctors, they did not take care, due to which she suffered with multiple problems and thereby the OPs doctors shifted her to Osmania General Hospital, Hyderabad and where the said OPs doctors stated that the kidney problem was cured and creatine rate is 0.8 and it is normal and got discharged from the said OGH by obtaining forged test certificates of the kidney. Even after discharge from the said OGH, Hyderabad she again got admitted in Care Hospitals, Hyderabad by her relatives within short period as her condition is serious and suffering with the same problem, where the said hospital authorities conducted kidney tests, which disclosed kidney creatine as 7.5 and again on the doctor advice, the complainant again got admitted to another hospital, viz., Mahesh Hospital, Hyderabad for kidney treatment and dialysis. The main allegation made by the complainant is that the OPs doctors did not take care any precautions at the time of operation and thereafter also. Without taking any precautions, the OPs doctors conducted operation with negligent manner, due to which she suffered all the above said kidney problems and thereafter continuously she was under dialysis.

9. On the other hand, the OPs contended that the said hospital is running by qualified and high learned doctors, who are husband and wife,

having all infrastructures and licence, secured with insurance and there is no deficiency on their part as alleged by the complainant. It is admitted by them that the complainant was joined in their hospital with a pain in abdomen for treatment and they found on investigation that she has fibroid uterus and advised hysterectomy. After obtaining consent, the said hysterectomy was done on 3-4-2016. It is observed through the counter as stated by the OPs doctors that the complainant before approaching to them, consulted the Yashoda Hospital, Malakpet, Hyderabad, where also she was advised for hysterectomy. The OPs doctors stated that there was evidence to that extent, but they did not file any piece of documentary evidence to establish that they have verified the report of the Yashoda Hospital doctors. The OPs doctors also stated that in case, where the patient who has preoperative risk factors such as any associated comorbid conditions, who require hemo dynamic support with ionotropes or ventilation or require invasive monitoring and special care will be monitored in ICU. But in the case of the complainant, there was no risk factors requires such monitoring in ICU and therefore, the complainant was monitored in postoperative ward and not in ICU as usual procedure. Whatever the statement made in respect of treatment explained in the counter, the OPs failed to produce all the material papers before the Commission to establish that they have opted all the precautionary measures. In the absence of the documentary evidence to establish the OPs doctors version as stated in the counter such as the admission card and discharge sheet of OPs hospital before shifting to OGH and the doctors advice of the Yashoda Hospital as stated by them before conducting the operation and other supporting evidence, the version of the OPs doctors cannot be justified and they could not establish that there is no negligence on their part. On the other hand, the documents filed by the complainant, i.e., especially the Ex.A-2, the discharge summary of OGH is evidencing that the complainant was discharged when she was under still dialysis on a stable condition. The documents filed by the complainant establish that the complainant is suffering with kidney problem, which caused only after the hysterectomy operation done by the OPs doctors. The OPs stated that in rare and rare conditions, the unknown and rare symptoms as developed as in the case of the complainant. However, in the absence of any evidence to show that the doctors managed medically pre and post operation and at the time of operation of hysterectomy, it appears that the OPs doctors

could not manage medically during the course of the operative and thereafter and even it appears that the OPs doctors failed to manage precautionary measures for such unknown rare and rare symptoms as happened to the complainant according to the medical literature as stated by them. The counter of OPs also discloses that the OP-2 doctor used to visit the complainant at OGH, Nephrology Department and management was done as the said symptoms are very rare and unusual and even the doctors at OGH have taken special care since the complainant has developed unknown and rare symptoms. In this regard, it is observed that if such rare and rare symptoms develop to the patient, the doctor who operates must take full care and attention and all precautionary steps as laid down in medical literature without any negligence. In the instant case, it appears that there is no evidence to that extent that the OPs doctors have taken all precautionary measures to avoid unwarranted, unusual and unknown, rare symptoms either during conducting surgery or post operative time or at any point of treatment till discharge of the patient with good condition from the OPs hospital without any complications. It is not seen the same in the present case and whereas the complainant has been affected the problems as stated above immediately after operation and has been suffering even after due treatment even at the hospitals as stated above and she has been still suffering with the kidney problem and thereby she was under continuous dialysis. The expert committee report/opinion as mentioned in the counter and as stated by the OPs is also not submitted to establish that there is no negligence in the treatment given by the OPs doctors. In the instant complaint, there is no allegation made by the complainant in respect of attempt to removal of the kidney and the complaint is based only on the allegation that the OPs doctors failed to provide necessary treatment to avoid such complications which are affected to the complainant. The complainant has not submitted any documents to show that she incurred the expenditure of Rs.20,00,000/- for treatment, but in view of the aforesaid discussion, it is clear that she is suffering with kidney problem and she is under dialysis. So, it appears that she might have spent certain amount earlier and in future also she has to spend money for dialysis and towards further treatment, for which, we are of the opinion that a reasonable and consolidated compensation is necessary to be granted in favour of the complainant, which is liable to be paid by the both OPs doctors.

10. In view of the above discussion, we the Commission conclude that there is a deficiency in rendering the services to the complainant on the part of the OPs doctors while treating the patient during the course of conducting the operation, post operation and thereafter and as such, they are liable to pay Rs.2,00,000/- towards consolidated compensation by all means to the complainant and also Rs.10,000/- towards costs of the proceedings. The points No.1 and 2 are answered and decided accordingly.

11. In the result, the complaint is allowed partly, directing both the OPs/ Doctors to pay an amount of Rs.2,00,000/- towards consolidated compensation by all means and Rs.10,000/- towards costs of the proceedings to the complainant within one month from the date of receipt of this order.

Typed to dictation, corrected and pronounced by us in the open Commission on this the 27th day of August, 2021.

**Sd/-
MEMBER**

**Sd/-
PRESIDENT**

Appendix of evidence
List of Witness examined

On behalf of Complainant:

- Nil -

On behalf of Opposite Parties:

- Nil -

List of documents marked:-

On behalf of Complainant:-

Ex.A-1: Photostat copy of the medical prescription issued by the OPs, dt.28-3-2016.

Ex.A-2: Photostat copy of Discharge Summary issued by OGH, Hyderabad dt.3-5-2016.

Ex.A-3: Photostat copy of Test Report issued by Care Hospitals, Hyderabad, dt.12-5-2016.

Ex.A-4: Photostat copy of F.I.R., dt.17-5-2016.

On behalf of OPs:

- Nil -

**Sd/-
PRESIDENT**

Case No. _____

Date of Disposal: _____

Free copy of order delivered to
Complainant/Opposite Party
by hand or dispatched on: _____

Dis.No. _____, Dt. _____

Copy to:

1. Sri M. Chennaiah Goud, Advocate, Mahabubnagar for the complainant.
2. Sri J. Ravi Kumar, Advocate, Mahabubnagar for the opposite parties.