

**BEFORE THE TELANGANA STATE CONSUMER DISPUTES REDRESSAL
COMMISSION:HYDERABAD**

C.C.220/2013

Between :

Mohammed Fazih,
S/o.Shaik Abdul Hameed,
Aged about 26 years,
R/o.13-1-1235/228,
Jhirra, Asifnagar,
Hyderabad.

... Complainant

And

1.Mahesh Hospital and Research Foundation,
Rep. by its Managing Director Dr.Vamsi Krishna,
H.No.3-6-756, Street No.13, Himayatnagar,
Hyderabad - 500 029.

2. Dr.Vamsi Krishna,
Mahesh Hospital and Research Foundation,
3-6-756, Street No.13, Himayatnagar,
Hyderabad - 500 029.

R/o.Pallepalem, Kothapatnam Mandal,
Prakasham District, Andhra Pradesh - 523 286.
(Notice to R2 may be served
on Prakasham Address).

.Opposite parties

Counsel for the Complainant : M/s.G.Venugopal Reddy

Counsel for the Opposite Parties : Mr.Sarang J.Afzulpurkar -O.P.No.1
M/s.A.Alavendar Goud-O.P.No.2.

CORAM : Hon'ble Sri Justice M.S.K. Jaiswal, President.

And

Hon'ble Smt. Meena Ramanathan, Lady Member

**FRIDAY THE TWENTY FOURTH DAY OF SEPTEMBER,
TWO THOUSAND TWENTY ONE.**

Oral Order:

1. This is a complaint filed by the complainant u/s.17(1)(a)(i) of the Consumer Protection Act,1986 alleging deficiency in service on the part of the Opposite Parties and praying to direct them jointly and severally as follows:

- i). to pay compensation of Rs.4 lakhs towards loss of monthly salary from 27.2.2012 to 30.9.2013(for 20 months),
- ii). to pay Rs.72 lakhs (@ of his present earning capacity of Rs.20,000/- per month for next 30 years) towards causing loss to his financial earning

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capacity due to the medical negligence in conducting operation to his right hand elbow;

iii). to pay Rs.20 lakhs towards damages for causing mental agony and financial stress to the complainant for getting operation twice in NIMS Hospital, Hyderabad for medical negligence of the opposite parties conducted on 27.2.2012.

2. The brief facts of the complaint are as follows:

The complainant working as a Tiles and Stone Fitting Mason had sustained an injury to his right elbow 7 years back and underwent treatment in Osmania General Hospital, Hyderabad. After the treatment, he was advised to undergo physiotherapy for one month. It is his complaint that he developed severe pain and on the advise of his doctor, he approached opposite party no.2 doctor and underwent a surgery on 27.2.2012 with an assurance that he would be free from stiffness and pain in his right hand. However, the severe pain persisted and when he consulted opposite party no.2 doctor in opposite party no.1 hospital he was informed that the pain is due to implant failure and the X-ray revealed that the bone is completely dislocated. He approached NIMS hospital on 1.5.2012 for better treatment and underwent further two surgeries. This he alleges is due to the medical negligence of opposite party no.1 in not having conducted the operation in a diligent manner. He has sustained irreparable injury to his right elbow and for this disability he has filed the present complaint seeking the necessary compensation.

3. Opposite party no.1 filed their written version submitting that the complainant had sustained an injury to his right elbow 7 years ago and had undergone treatment at Osmania General Hospital. Despite the treatment, he was unable to fold the right hand completely and was advised to undergo physiotherapy. The contention of the complainant is that he took further treatment from the Dr.Vamsi Krishna-opp.party no.2 who is not even a regular consultant in their hospital. All the consultations between opposite party no.2 and the complainant took place without the knowledge of this opposite party. They only facilitated by providing the infrastructure and are in no way responsible for the partial disability suffered by the complainant nor can they be held liable for the alleged loss suffered by him. The complainant has failed to establish the responsibility or medical negligence on the part of this opposite party and therefore they pray the Commission may dismiss the present complaint against them.

4. Opposite party no.2 filed his written version submitting that the complainant has misrepresented the real facts and that he is unaware of the complainant's treatment at various hospitals. The complainant has sustained trauma to his right elbow 6 years ago for which he underwent treatment at a local bone setter and also at Osmania General Hospital. However, stiffness developed and he was referred by Dr.Aslam, a Physiotherapist to consult this opposite party. Upon thorough examination, opposite party no.2 found that the complainant had a malunited supra condylar fracture humerus leading to cubitus varus deformity.

Opposite party no.2 has submitted that he is a regular consultant at opposite party no.1 hospital and the patient/complainant was admitted on 24.2.2012 and surgery was conducted on 27.2.2012. He was discharged on 29.2.2012 and advised to come back for suture removal after 10 days. At the time of suture removal, the wound was healthy and he was further advised to come for a check up after 45 days. When the patient came for the routine review on 24.4.2012 an X ray was taken and it was found that there was, 'slipping of wire from the screws leading to implant failure'. This opposite party advised the complainant to wait for one month and if the same condition persisted he would conduct a second surgery with the assurance that he would do so free of cost if required.

It is further submitted that this opposite party had adopted standard methods of treatment and the patient was given all the required medical assistance. The patient suffered a set back and this cannot be established as medical negligence in the absence of any evidence. Reference is made to the Discharge Summary provided by NIMS (where the complainant underwent further treatment) and where they have opined that the 'concerned nerve was damaged due to screwed up with piece of bone at the time of operation'. This does not show that the opposite party had conducted the operation negligently or deficiently. He has followed the conventional method and treatment as prescribed by other specialists.

With the above submissions, he prays dismissal of the present complaint.

5. Evidence Affidavit of the complainant filed. Exs. A1 to A78 are marked on behalf of the complainant. Evidence Affidavit of Mr.Rasheed Ahmed Khan Javed (friend of the complainant) filed as PW.2. Evidence Affidavit of Dr.Ch.Vamsi Krishna-opp.party no.2 filed. Exs.B1 to B4 are marked on behalf of the opposite party no.2. Written Arguments of the complainant and opposite party no.1 filed.

6. Heard both sides and perused the material available on record.
7. The point that arises for consideration is whether the opposite party no.2 conducted the surgery negligently and is the complainant entitled to the reliefs as claimed for in the complaint?

8. It is the case of the complainant that around 7 years ago he sustained an injury to his right hand and elbow and underwent treatment at Osmania General Hospital. However, in the first week of February, 2012 due to severe pain in the right hand, he consulted Dr. Mohammed Aslam and was further advised to consult an Orthopedic specialist- opposite party no.2.

The complainant has alleged that he underwent the surgery with opposite party no.2 on the assurance that he would be relieved from the stiffness and pain in his right hand/elbow. Unfortunately even after the surgery there was severe pain & swelling and no movement in his fingers. An X-ray revealed that the pain was due to implant failure. The complainant alleges that he had to undergo two more operations at NIMS due to the negligence in treatment on the part of opposite party no.2 Doctor. The negligent manner in conducting the operation has caused him severe physical and mental agony. He has supported his claim by filing the necessary documentary evidence and we have carefully perused the material on record to consider his case.

9. The admitted facts are as follows:

- The complainant – a Tiles & Stone Fitting Mason – aged 26 years, had sustained an injury to his right hand/elbow 7 years ago and underwent treatment at Osmania General Hospital.
- In the year 2012, he developed severe pain in his right hand/elbow and consulted opposite party no.2 Doctor.
- On 27.2.2012, opposite party no.2 Doctor conducted the surgery after his condition was diagnosed as 'Cubitus Varus Deformity Right Elbow'.
- Review was after 45 days and a X-ray was taken and it was found –'slipping of wire from the implant screws leading to implant failure'.
- Opposite party no.2 prescribed medicines and advised Dynamic Cock Up Splint for active physiotherapy as the tourniquet palsy was slowly improving.
- Opposite party no.2 advised the complainant to wait for one more month and if the same condition persisted, he advised for

second surgery. The complainant instead chose to consult NIMS on 1.5.2012.

10. The point that requires our attention is whether the surgery conducted by opposite party no.2 on 27.2.2012 was negligently and deficiently performed thereby causing immense agony and stress to the complainant?

11. Ex.A3 is the referral provided by Dr.Mohammed Aslam to opposite party no.2 Doctor to kindly do the needful. This is dated 9.2.2012. The opposite party doctor has diagnosed the problem as "Cubitus Varus (Rt) elbow".

In Ex.A4 opposite party no.2 Doctor has categorically recorded 'Condition on Admission'- 'C/o Pain (Rt) elbow .. 6 yrs. unable to fold the hand'.

It is pertinent to mention that the complainant has not provided any record pertaining to the treatment undergone six years earlier when he first sustained the injury. He has only referred to the fact that he underwent treatment at Osmania General Hospital and also that he underwent physiotherapy, but records of this are conspicuously absent.

Cubitus Varus can be understood as bow elbow or gunstock deformity and the result of malunion occurring as a complication of supra condylar fracture of the humerus.

We refer to the material provided by opposite party no.2 filed as Ex.B1:

" a lateral closing wedge osteotomy is the easiest, the safest and inherently the most stable osteotomy. The primary difference in the types of lateral closing wedge osteotomies are the methods of fixation , which include the use of two screws and a wire attached between them, plate fixation, compression fixation, crossed Kirschner wires and staples, some have used no fixation".

" Their results as to loss of fixation, correction of deformity and complications were superior using the modified French technique and they concluded that this method is safe and satisfactory".

What we gather from the material filed and the evidence of opposite party no.2 is that the complainant was suffering from 'Cubitus Varus deformity' and required a surgical procedure. Post operatively the complainant was unable to extend the wrist and fingers and the opposite party no.2 insists that they informed him that this was due to "Tourniquet Palsy" and he would recover in time.

12. Surgery was conducted on 27.2.2012 and discharge was on 29.2.2012. The complainant came for a routine review on 24th April, 2012 and an X-ray revealed - "Slipping of wire from the screws leading to implant failure". Opposite party no.2 prescribed him the necessary medicines and advised 'Dynamic Cock up Splint'. He was advised to wait for one month and if the

condition persists they assured to perform the 2nd surgery free of cost. However, the complainant did not consult opposite party no.2 and approached NIMS for further treatment.

13. The complainant had admittedly suffered the fracture almost 7 years ago and correction of deformity after so many years is difficult due to tight soft tissue structures. The main complications/problems of cubitus varus correction are lateral prominence, incomplete correction, loss of correction, nerve palsies, infection and re-operation. The opposite party no.2 cannot have guaranteed complete success after the surgery. There are various consequences like secondary fractures, lateral instability and nerve palsies. Lateral closed wedge osteotomy is a good method to correct the deformity; however surgeons should counsel the patients for the complications and decision is to be made by the patient after informed discussion. Nerve palsies are reported in cases of cubitus varus correction and are temporary. In the instant case, the deformity was untreated for a long time and PLRI is occasionally unmasked after surgical corrections. The complainant's complaint was for treatment of an old & established non union of the humerus and this remains controversial. Since he was suffering with severe pain, the opposite party no.2 Doctor considered the option of surgical repair.

14. Cubitus Varus deformity is the commonest complication after a neglected or badly managed displaced supra condylar fracture and undoubtedly it was neglected for more than six years in the instant case.

The complainant underwent further procedures at NIMS and we have perused the Case Sheet (Discharge Record) Ex.A49. The final diagnosis is recorded as "Non union Fracture D/4th shaft of Right humerus c Implant insitu with no deficits". The records submitted by NIMS does not in any way refer to the surgery performed by opposite party no.2 as being negligent or deficient. They only state that the patient had history of RTA (7 years back and injured right elbow, managed conservatively with Above Elbow Slab Support - developed elbow stiffness underwent corrective osteotomy and radial nerve palsy developed and also non union of right humerus. The subject of the debate is did the opposite party no.2 perform the corrective surgery negligently thereby causing non-union fracture of right humeral shaft?

15. By strictly adhering to the operation technique, the severity of complications can be reduced but not guaranteed. The NIMS Case Sheet does in no way refer to the opposite party no.2 conducting the surgery without skill or care. The proper fracture alignment and stability are lacking in the complainant's case as it is an old injury and he

has not provided any records of the treatment undergone at Osmania General Hospital (7 years ago) after initial injury. Non union of humerus shaft is known to occur, particularly where patients seek treatment from traditional bone setters. When non-union does occur, it is very difficult to treat and often requires multiple procedures to achieve union. There is no record of the severity of the initial trauma, pattern of fracture or treatment taken.

16. Based on the foregoing discussion, medical negligence is not conclusively established against opposite party no.2 who performed the surgery at opposite party no.1 hospital. From the medical literature provided it is apparent that in any surgical procedure, complications are inherent. The X-ray revealed implant failure and the decision to conduct the second surgery as imminent. This cannot be construed as a short coming or medical negligence. In this regard we would like to quote the decision of the Hon'ble Supreme Court in the case of *Achutrao Haribhau Khodwa and Others v. State of Maharashtra and Others*, 1996 (SLT Soft) 1000= IV (2006) CPJ 8 (SC) =(1996) 2 SCC 634 (CPJ - March 2021, page 332) wherein it was held as under:

“ The skill of medical practitioners differs from doctor to doctor. The very nature of the profession is such that there may be more than one course of treatment which may be advisable for treating a patient. Courts would indeed be slow in attributing negligence on the part of a doctor if he has performed his duties to the best of his ability and with due care and caution. Medical opinion may differ with regard to the course of action to be taken by a doctor treating a patient, but as long as a doctor acts in a manner which is acceptable to the medical profession, and the Court finds that he has attended on the patient with due care, skill and diligence and if the patient still does not survive or suffers a permanent ailment, it would be difficult to hold the doctor to be guilty of negligence”.

In view of the above, the present complaint is liable to be dismissed.

17. In the result, the complaint is dismissed. No order as to costs.


PRESIDENT 
LADY MEMBER

Dated : 24.9.2021

APPENDIX OF EVIDENCE

Witnesses Examined.

For the complainant

Evidence Affidavits of complainant and Mr.Rasheed Ahmed Khan Javed filed.

For the opposite parties

Evidence affidavit of opp.party no.2 filed.



Exhibits marked on behalf of the Complainant :

- Ex.A1 : Original Payment Receipt dt.19.12.2011 issued by 3M Dignostics in favour of the complainant.
- Ex.A2 : Original X-Ray of complainant issued by 3M Diagnostics.
- Ex.A3 : Photostat copy of reference Lr.Dt.9.2.2012 of Dr.Mohd.Aslam, Sama Poly Clinic.
- Ex.A4 : Original Discharge Summary dt.29.2.2012 of the complainant issued by opposite party no.1 hospital.
- Ex.A5 : Original receipt dt.24.4.2012 issued by opposite party no.1 hospital in favour of the complainant.
- Ex.A6 : Original Cash Memo dt.24.4.2012 issued by Sri Srinivasa Electronics (Surgicals) in favour of the complainant.
- Ex.A7 : Original X-ray of the complainant dt.24.4.2012 issued by Tapadia Diagnostic Centre.
- Ex.A8 : Copy of receipt dt.1.5.2012 issued by NIMS, Punjagutta-New Registration Counter in the name of the complainant.
- Ex.A9 : Copy of receipt dt. 1.5.2012 issued by NIMS, in the name of the complainant.
- Ex.A10 : Original X-ray of the complainant dt.1.5.2012. issued by NIMS.
- Ex.A11 : Copy of receipt dt. 17.5.2012 issued by NIMS -Revisit Registration Counter in favour of the complainant.
- Ex.A12 : Copy of receipt dt. 23.5.2012 issued by NIMS in favour of complainant.
- Ex.A13 : Photostat copy of ENMG Report dt.23.5.2012 issued by NIMS pertaining to the complainant.
- Ex.A14 : Photostat copy of Discharge Record issued by NIMS dt.4.6.2012 pertaining to the complainant.
- Ex.A15 : Original X-ray of the complainant dt.29.5.2012 issued by NIMS.
- Ex.A16 : Original bill dt.31.5.2012 issued by NIMS relating to complainant.
- Ex.A17 : Original bill dt.1.6.2012 issued by NIMS relating to complainant
- Ex.A18 : Original bill dt.1.6.2012 issued by Anukar Pharmacy relating to the complainant.
- Ex.A19 : Original X-ray dt.3.6.2012 of complainant issued by NIMS.
- Ex.A20 : Copy of receipt dt.12.6.2012 issued by NIMS in favour of the complainant.
- Ex.A21 : Copy of receipt dt.12.6.2012 issued by NIMS in favour of the complainant.
- Ex.A22 : Original bill dt.12.6.2012.
- Ex.A23 : Copy of receipt dt.7.7.2012 issued by NIMS in favour of the complainant.
- Ex.A24 : Original X-ray of the complainant dt.7.7.2012 issued by NIMS.
- Ex.A25 : Copy of receipt dt.7.7.2012 issued by NIMS in favour of the complainant.
- Ex.A26 : Copy of receipt dt.7.8.2012 issued by NIMS in favour of the complainant.
- Ex.A27 : Original X-ray of the complainant dt.7.8.2012 issued by NIMS.
- Ex.A28 : Copy of receipt dt.7.8.2012 issued by NIMS in favour of the complainant.
- Ex.A29 : Original bill dt.7.7.2012 issued by NIMS.
- Ex.A30 : Consultation receipt dt.8.8.2012.
- Ex.A31 : Copy of receipt dt.30.8.2012 issued by NIMS in favour of the complainant.
- Ex.A32 : Copy of receipt dt.30.8.2012 issued by NIMS in favour of the complainant.
- Ex.A33 : Copy of receipt dt.30.8.2012 issued by NIMS in favour of the complainant.
- Ex.A34 : Original X-ray of the complainant dt.30.8.2012 issued by NIMS.
- Ex.A35 : Original bill dt.6.9.2012.

- Ex.A36 : Copy of receipt dt.6.9.2012 issued by NIMS in favour of the complainant.
- Ex.A37 : Original bill dt.6.9.2012 issued in favour of the complainant.
- Ex.A38 : Copy of receipt dt.9.10.2012 issued by NIMS in favour of the complainant.
- Ex.A39 : Original X-ray dt.9.10.2012.
- Ex.A40 : Copy of receipt dt.9.10.2012 issued by NIMS in favour of the Complainant.
- Ex.A41 : Copy of receipt dt.9.10.2012 issued by NIMS in favour of the Complainant.
- Ex.A42 : Copy of Cash Bill dt. 20.10.2012 issued by Dr.Sayani's Health Care Pvt. Ltd.
- Ex.A43 : Original Cash Memo issued by Anukar Pharmacy .
- Ex.A44 : Copy of receipt dt.20.11.2012 issued by NIMS in favour of the Complainant.
- Ex.A45 : Original X-Ray dt.20.11.2012 of the complainant issued by NIMS.
- Ex.A46 : Copy of receipt dt.20.11.2012 issued by NIMS in favour of the Complainant.
- Ex.A47 : Copy of receipt dt.15.12.2012 issued by NIMS in favour of the Complainant.
- Ex.A48 : Copy of receipt dt.22.12.2012 issued by NIMS in favour of the Complainant.
- Ex.A49 : Photostat copy of Discharge Record dt.4.6.2012 of the complainant issued by NIMS.
- Ex.A50 : Original bill dt.27.12.2012 issued in favour of the complainant.
- Ex.A51 : Copy of receipt dt.27.12.2012 issued by NIMS in favour of the Complainant.
- Ex.A52 : Original X-Ray dt. 27.12.2012 of the complainant issued by NIMS.
- Ex.A53 : Original X-Ray dt. 27.12.2012 of the complainant issued by NIMS.
- Ex.A54 : Original bill dt. 28.12.2012 issued in favour of the complainant.
- Ex.A55 : Original X-Ray dt.30.12.2012 of the complainant issued by NIMS.
- Ex.A56 : Original bill dt.30.12.2012 issued in favour of the complainant.
- Ex.A57 : Original Bill dt.8.1.2013 issued in favour of the complainant.
- Ex.A58 : Original bill dt.8.1.2013 issued in favour of the complainant.
- Ex.A59 : Copy of receipt dt.8.1.2013 issued by NIMS in favour of the complainant.
- Ex.A60 : Original bill dt.5.2.2013 issued in favour of the complainant.
- Ex.A61 : Copy of Receipt dt.5.2.2013 issued by NIMS in favour of the Complainant.
- Ex.A62 : Copy of Receipt dt.5.2.2013 issued by NIMS in favour of the Complainant.
- Ex.A63 : Copy of Receipt dt.5.2.2013 issued by NIMS in favour of the Complainant.
- Ex.A64 : Copy of Receipt dt. 5.2.2013 issued by NIMS in favour of the Complainant.
- Ex.A65 : Original X-Ray dt.5.2.2013 of the complainant issued by NIMS.
- Ex.A66 : Original X-Ray dt.9.4.2013 of the complainant issued by NIMS.
- Ex.A67 : Original Medical Certificate dt.13.4.2013 issued by NIMS hospital.
- Ex.A68 : Copy of legal notice dt.29.4.2013 issued by the complainant to the Opposite parties.
- Ex.A69 : Acknowledgement Card.
- Ex.A70 : Returned postal cover.
- Ex.A71 : Copy of Reply legal notice dt. 11.5.2013 issued by opposite party no.2 to the counsel for the complainant.
- Ex.A72 : Copy of reply legal notice issued by opposite party no.1 to Complainant .
- Ex.A73 : Copy of Wage Earning Certificate issued by Stona Flooring Technicians in favour of the complainant.
- Ex.A74 : Original X-Ray dt.11.6.2013 of complainant issued by NIMS.

- Ex.A75 : Copy of reply notice Dt. 6.7.2013 issued by opp.party no.2 to the counsel for the complainant.
 Ex.A76 : Original certificate for physically handicapped person issued in favour of the complainant dt.16.7.2021 by Gandhi Hospital.
 Ex.A77 : Original receipt dt.29.7.2013 issued by M.K.Digital Studio.
 Ex.A78 : Original photographs of the complainant.

Exhibits marked on behalf of the opposite parties :

- Ex.B1 : Literature regarding Elbow joint fractures and dislocation
 Ex.B2 : Journal of Bone & joint surgery(JBJS, ORG. Volume 91-A-Number12-December 2009)
 Ex. B3 : Photostat copy of CMCO Referral Card issued by Rajiv Aarogyasri in favour of the complainant.
 Ex.B4 : Literature on Radial Nerve.

Ms:1975
 30/9/2021


 PRESIDENT


 LADY MEMBER

 Dated : 24.9.2021