

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 235 OF 2017

1. TARIQ KHUSRO
ORNATE HOMES, SULTANPURA.
HYDRABAD.
TELANGANA.

.....Complainant(s)

Versus

1. DR. MOHD. ISHRATULLAH KHAN & 2 ORS.
3RD FLOOR, ABOVE KUSUM DRESSES AND SAREES,
DOWNTOWN BANJARA, ROAD NO.1,BANJARA HILLS.
HYDERABAD-34

2. DR. TEJ KAZMI
3RD FLOOR, ABOVE KUSUM DRESSES AND SAREES,
DOWNTOWN BANJARA, ROAD NO.1,BANJARA HILLS.
HYDERABAD-34

3. DR. KHAN'S EXCLUSIVE HAIR TRANSPLANT
CENTRE.
3RD FLOOR, ABOVE KUSUM DRESSES AND SAREES,
DOWNTOWN BANJARA, ROAD NO.1,BANJARA HILLS.
HYDERABAD-34

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA,PRESIDING
MEMBER**

HON'BLE BHARATKUMAR PANDYA,MEMBER

FOR THE COMPLAINANT : MR. D. DEVENDRA RAO, ADVOCATE
MR. TALAAT SAJJAD, ADVOCATE

FOR THE OPP. PARTY : NEMO

Dated : 06 March 2024

ORDER

1. Heard Mr. D. Devendra Rao, Advocate, for the complainant.
2. Tariq Khusro has filed above complaint, for directing the opposite parties to pay (i) Rs.97715000/- with interest @12% per annum, as the compensation; (ii) Rs.200000/- as litigation costs; and (iii) any other relief which is deemed fit and proper in the facts and circumstances of the case.
3. The complainant stated that he was about 60 years old, employed at Jeddah, Kingdom of Saudi Arabia and working for one single company for the last 30 years and earning Rs.65/- lacs per annum. He was also into real estate business in India at Hyderabad and was earning Rs.30/- lacs approximately per annum. He grew by leaps and bounds. On account of his receding hairline and baldness, he was lured by the advertisements, bill boards and pamphlets relating to hair transplant, displayed by the opposite parties and consulted them.

During consultations, Dr. Mohd. Ishratullah Khan and Dr. Taj Kazimi (OPs-1 and 2) informed that they had requisite qualification and taken extensive training in hair transplant in USA and in India and were permitted to practice by Medical Council of India; They were pioneer in this field. They stated that hair transplant used to increase self-esteem/confidence of the person. By showing photos of various unknown persons, OPs-1 and 2 stated that they had successfully carried out hair transplant/grafting of these persons, who are leading normal life. Opposite parties-1 and 2 gave various examples and glib talk and adopted various methods in convincing the complainant for hair transplant. They stated that they were charging Rs.125000/- as total expenses for hair transplant and offered discount of Rs.10000/- to the complainant. Through misleading and unconventional marketing strategies, OPs-1 and 2 trapped the complainant for hair transplant. Believing upon their representations, the complainant deposited Rs.15000/- as advance for his hair transplant. OPs-1 and 2 fixed 25.07.2016 for the procedure to be done for hair transplant and took balance amount of Rs.100000/- on that day. OPs-1 and 2 sent the complainant to Aman Hospital for clinical investigations, which was under their management. Aman Hospital took blood sample of the complainant on 23.07.2016 and gave clinical investigation report, which reflected the Random Blood Sugar at 160 mg/dl, which was on higher side and required medical attention before taking up any surgical procedure as per Standard Medical Protocol but OPs-1 and 2 without controlling blood sugar took up procedure for hair transplant on 25.07.2016. When the complainant was shifted to operation theatre, he was shocked to see the appalling condition of the operation theatre, which was poorly managed, unhygienic and lacking of the necessary infrastructure as required as per medical science for procedure of hair transplant. There was neither any arrangement to tackle an eventuality of medical emergency nor it was equipped with any life-saving equipment. Looking the condition of operation theatre, the complainant expressed his concern for his safety, in case any situation arises during the procedure of hair transplant but OPs-1 and 2 brushed aside and assured that nothing unwanted would happen. OPs-1 and 2 started procedure and implanted 2800 grafts to make hair grow from the tissues out of 3500 grafts, which was initially planned. At this stage, the complainant developed adverse reaction due to which OPs-1 and 2 discontinued the procedure and told that remaining grafting would be done after 4 days. The complainant was discharged on that day after prescribing antibiotics and pain killer. In spite of medication as prescribed, the complainant experienced unabated pain and discomfort on the scalp. His head and face swelled up and the colour of skin was turned up blue and black. Discolouration and pain continued after reaching to the house. In morning of 26.07.2016, he developed temperature and oedema on the face and eyes, blisters were found on the forehead and scalp with severe pain in grafts. Due to serious and abnormal condition, the complainant visited to the centre OP-3. At that time OP-1 was present there, who without his hand sanitizing, opened the wound and burst the blisters by pinching through figure at the reception counter it-self and sent back the complainant to his house. The acts of OP-1 caused immense pain, inconvenience, discomfort and anguish to the complainant, apart from exposing him to further infection. Opening the wounds unhygienically, unprofessionally that too at the reception counter was against Standard Medical Protocol and amounts to sheer negligence. OP-1 and 2 did not make any investigation for finding out the real issue of severe reaction in the body of the complainant at that time and committed grave negligence. OP-1 told that it was normal phenomena post hair transplant. After coming to the house, oedema extended from face to neck, resulting into choking throat and it has become difficult for the complainant to consume even liquid. The complainant then went to Care Hospital, where he

was admitted on 27.07.2016 in Emergency Ward due to serious condition. He was put to Life Support System to save his life. The investigation at Care Hospital revealed (a) Facial Oedema including scalp extending to neck; and (b) Bluish discolouration with Blebs. At the Care Hospital, he was under treatment of the team of Dr. Gyaneshwar (Plastic Surgeon) and Dr. Kola Venkata Ramana together with various specialists. The doctors found Necrotizing Fasciitis of scalp as such immediate surgical debridement was done along with Tracheostomy, gas found in Tissue Planes and he was in sepsis with shock, supported Hemodynamic with Inotropes. The oedema continued to spread and reach to the extent of both his eyes. The right eye was completely swollen with tense myositis of ocular muscles and had decreased eye vision. The right eye was completely removed, owing to the OPs procedure and treatment. M.R.I. was conducted and the complainant was found with Cellulitis features in scalp, face, neck with retro orbital oedema. In the course of treatment, several operative/surgical procedures were carried out i.e. (i) Fasciotomy of scalp/bilateral release done under GA on 27.07.2016. (ii) Surgical Tracheostomy was done by ENT surgeon on 27.07.2016. (iii) Debridement was done under GA on 29.07.2016. (iv) Relock debridement + tarsorrhaphy done under GA on 05.08.2016. (v) Debridement + Lower lid reconstruction + right tarsorrhaphy + Multiple drill hole placement + SSG + VAC application done under GA on 17.08.2016. (vi) Debridement + SSG of neck/bilateral temporal region + Suturing of neck done under GA on 07.09.2016. (vii) Enucleation done on 07.09.2016. After treatment, the complainant was discharged from the hospital on 12.09.2016. During this period it was a touch and go situation as the doctors at Care Hospital gave no hope of his survival owing to multiple effects caused to him due to gross negligence of the OPs. Entire family of the complainant was under deep shock and mental agony together with huge financial burden involved in the treatment during the stay at the hospital for 48 days. Although the complainant could survive but he has become disabled and lost his immune system from his body. He lost his right eye completely together with the skin from face to scalp. The complainant is still under medical supervision of various doctors and specialists attending him at home to monitor his health. The complainant continues to be attached with several surgical and medical appliances to drain the accumulating fluids in the wounds on scalp and also to release the gas formation in order to avoid further complications. It is not envisaged at this moment nor known when he would be weaned away from these appalling. Medication is likely to continue for a long time for stability and health. The doctors attending him, advised for several more surgeries in future to repair the damage caused to him due to unprofessional and unqualified treatment of the OPs. Negligence of the OPs caused irreversible and irreparable damage to the complainant's health and wellbeing. Severe pain, discomfort, mental agony, tension and anxiety apart from financial burden for his treatment continue. The complainant sustained heavy monetary loss not only on account of the expenses incurred and being continuously incurred but also due to incapacitation to move and attend his work. All these took a severe toll on his health, finances, mental wellbeing and continue to suffer with uncertainty of his future wellbeing, not knowing whether he will come out of it alive. The complainant has lost his earning both from employment abroad and business at Hyderabad plunging his entire family into financial distress. The dream of his career, which he could easily continue till the age of 70 years on a conservative estimate since his employment was guaranteed to continue at his work place at Jeddah. There is no hope of future income from any source and the life of entire family is at stake of proper livelihood. All his resources and finances have drained and exhausted and from being well to do has plunged to being dependent and indebted to several people having taken loan for his treatment, medication and

other incidental expenses. OPs-1 and 2 are not qualified Plastic Surgeon or holding any specialized degree or diploma to practice hair transplant procedure. In violation of Rule 7.20 of the Rules for Medical Practitioners, framed Medical Council of India, they claimed as specialist in hair transplant. By claiming as specialist in hair transplant, they are committing fraud with the public and cheating them. The complainant gave legal notice to the OPs dated 01.10.2016, calling upon them to pay compensation of Rs.977.15 lacs. The OPs gave reply notice dated 01.11.2016, denying any negligence being committed by them. Then, the complaint was filed on 27.01.2017.

4. The opposite parties filed their joint written reply and stated that Dr. Mohammed Ishrat Ulla Khan did M.B.B.S. from Osmania University, Hyderabad, in 1991 and enrolled as Medical Practitioner with Medical Council Registration No.HMC13872. He did FRCS from Royal College of Physicians and Surgeon of UAS, 2003. He was House Surgeon during 01.04.1991 to 31.03.1992 and Senior House Surgeon in Orthopaedics during 20.05.1992 to 16.01.1993 in the College of Medical Sciences, Hyderabad. He was Resident Surgeon in Plastic Surgery during 30.09.1994 to 29.03.1995, Resident in Emergency Medicine during 30.03.1995 to 29.09.1995 and Resident in General Surgery in King Abdul Aziz Hospital, Jeddah, KSA. He was Registrar in Plastic Surgery during 20.03.2006 to 19.09.2008 in King Khalid General Hospital, Majmaa, Riyadh, Saudi Arabia, under the Ministry of Health. He established Amaan Hospital, Tolichowki, Hyderabad in October, 2008. He did Fellowship Programme during 10.09.2011 to 10.12.2011, in FUE Hair Transplant at Darling Buds, Chandigarh in association with Hair Science Centre, Colorado, USA. In February, 2012, he went to VASA's Hair Academy in Ahmedabad, where Dr. Sanjeeva Vasa, MS, MCh, a renowned and Senior Hair Transplant Surgeon, trained him. He started Dr. Khan's Exclusive Hair Transplant Centre, Hyderabad from March, 2012. OP-1 is member of International Society of Hair Restoration Surgery, USA and member of International Association of Hair Restoration Surgeons, India. He regularly attends conferences and seminars to improve his knowledge and skills. He attended British Association of Plastic Surgeons Summer Meeting, at Dublin, Ireland during 07.07.2004 to 09.07.2004, Fuecon (FUE Harvest Course) at Darling Buds, Chandigarh during 22.06.2012 to 24.06.2012, ISHRS 20th Scientific Meeting, held in Bahamas, West Indies, during 17.12.2012 to 20.10.2012, Haircon 2013, held in Bangalore during 22.11.2013 to 24.11.2013 and Haircon 2017, held in Ludhiana during 24.02.2017 to 26.02.2017. Dr. Mrs. Taj Kazimi did M.B.B.S. from NTR University of Health Sciences, Vijaywada, India in 2001 and registered with Medical Council Registration No.49038. She was House Surgeon at Deccan College of Medical Sciences, Hyderabad from 10.07.2001 to 09.07.2002. She is member of International Society of Hair Restoration Surgery, USA. She attended Fuecon (FUE Harvest Course) at Darling Buds, Chandigarh during 22.06.2012 to 24.06.2012 and Haircon 2017, held in Ludhiana during 24.02.2017 to 26.02.2017. She is an Assistant in Hair Transplant Surgeon, at Dr. Khan's Exclusive Hair Plant Centre, Hyderabad. Dr. Khan's Exclusive Hair Transplant Centre, Hyderabad has a well-equipped Operation Theatre, with hydraulic table, Boyles Apparatus, Bulk oxygen cylinders, Multipara, Pulseoximeter, Fumigation Machine, two chambers Autoclave for sterilization process, emergency medicines kit and standby Anaesthetist to tackle any kind of emergencies. The OPs denied that the condition of their operation theatre was appalling, poorly managed, unhygienic and lacking of the necessary infrastructure. The OPs have performed more than 1550 hair transplant procedure at their centre with excellent results and highest customer's satisfaction. The complainant voluntarily visited the OPs for hair transplant and he was

explained with the procedure, side effects and risks involved in such treatment. Recognized complications of diabetes were explained to the complainant. He was informed that after transplant there would be swelling of the head and eyes. At the time of admission for hair transplant, the complainant concealed the fact that he was dependant on the drugs for diabetes mellitus-II and hypertension from the OPs. Sample for blood test of the complainant was taken on 23.07.2016 and report came on 24.07.2016, in which RBS 160 mg/dl was noted, which was just above normal. OP-1 asked the complainant about it and asked to discuss with his treating physician and adjust the dose of medication as per his advice. Before starting hair transplant procedure on 25.07.2016, OP-1 repeated blood sugar test which showed RBS 105 mg/dl. which was within normal limit. The OPs conducted the procedure for hair transplant of the complainant on 25.07.2016 with full care & caution and adopted Standard Medical Protocol. After conducting the procedure of hair transplant, the condition of the patient was normal and he was discharged in good condition on 25.07.2016 at 15:15 hours and sent to home with proper dressing. The complainant was advised to check blood sugar levels twice in a day i.e. in morning and in evening and in case blood sugar shoots 150/100 mg/dl, he was asked to consult with his physician. Maximum limit of extraction and plantation of graft in one session is 3000 grafts as such it used to be done in two sessions i.e. one major session and other minor session after 3-4 days. The OPs denied that they discontinued transplant after 2800 grafts as the complainant developed reaction at that time. When the complainant visited the OPs, in morning on 26.07.2016, there was oedema on face and fever and no discolouration on his forehead, which was admitted by the complainant before Telangana State Medical Council. The OPs denied that OP-1 burst the blisters through hand on reception counter. OP-1 removed dressing of the complainant in the proper dressing room under total aseptic precautions and put a sterile surgical cap. At that time there was no blister. Mr. Vasiq Khusro, the brother of the complainant, informed on telephone call on 26.07.2016 at 18:00 hours that there was discolouration on the forehead and also send picture of the forehead on whatsapp. OP-1 expected possibility of infection and advised to bring the patient at his centre immediately. Mr. Vasiq Khusro told that as there was no one in the family at the home as such it was not possible for him to bring the patient at the centre. Then OP-1 himself rushed to house of the complainant and reached there at 19:00 hours and asked for blood sugar checking apparatus to check up blood sugar level. They denied of having blood sugar checking apparatus. The wife of the complainant showed blood test report of one week prior, in which his RBS level was 220 mg/dl. Then OP-1 advised for immediate hospitalization. In spite of advice of OP-1, the complainant went to the hospital on 27.07.2016 at 4:00 hours. OP-1 visited the house of the patient, diagnosed his disease in time and referred him to proper hospital. The complainant suffered from Necrotising Fasciitis, which happens in rare to rare case. In hair transplantation procedure, Necrotising Fasciitis disease is very rare and rarely happens in a common and healthy person except in persons whose immunity is less due to comorbidities like diabetes mellitus. Blood sugar report of the complainant at the time of admission in Care Hospital showed RBS 400 mg/dl. Culture reports from the wound and blood taken at the time of admission showed “no growth”, which is indicative that infection started from deeper tissue layers and not from the hair transplant area. The complainant did not follow the precautions as advised at the time of discharge on 25.07.2016. They denied that the complainant was influenced by display board. Display board was installed in August, 2016. The OPs denied that they showed photos of persons and projected that all these person’s lives have been changed overnight after hair transplant or adopted any method to convince the complainant for hair transplant. The OPs

never declared themselves to be pioneer in hair transplant. Op-3 is not a juristic person. The complaint is liable to be dismissed.

5. The complainant filed Affidavit of Evidence, Affidavit of Admission/Denial of documentary evidence of Tariq Khusro and documentary evidence. The opposite parties filed Affidavits of Evidence, Affidavits of Admission/Denial of documentary evidence of Dr. Mohd. Ishratullah Khan and Dr. Mrs. Taj Kazimi and documentary evidence. The complainant cross-examined Dr. Mohd. Ishratullah Khan and also served interrogatories which were answered by OP-1 and OP-2. The complainant answered the interrogatories of the OPs.

6. This Commission, vide order dated 13.07.2017, called for an expert opinion from All India Institute of Medical Sciences, New Delhi (AIIMS). The Director of AIIMS constituted an Expert Committee, who after examining the papers, held meeting on 11.10.2017, in which, they opined that blood test report of the complainant dated 24.07.2016 showed RBS 160 mg/dl and Acucheck value dated 25.07.2016 showed RBS 105 mg/dl. This was an elective procedure for a non-urgent indication and pre-operative work-up for assessment and control of diabetes of the patient should have been performed more rigorously by the doctor. When the patient visited in morning on 26.07.2016 with pain and swelling, he was prescribed oral antibiotics as the swelling was considered to be normal post-surgery oedema. Outcome of the complications, possibly arising from the procedure, the patient needed hospitalization and intravenous antibiotics in an appropriate health care facility at that time. Had the doctor been more proactive at this point, condition would have been better. Immediate hospitalization on 26.07.2016 in evening could have improved the outcome. Due to lack of documents, the board is unable to comment on intraoperative component of the hair transplant procedure, which may have influenced the postoperative complications, particularly since complications arose within 24 hours of the procedure.

7. The complainant filed Additional documentary evidence through IA/5285/2018. The OPs filed Additional documentary evidence, including Affidavits of Dr. Boosa Krishnanand and Dr. Altamash Zubair, Hair Transplant Specialists and order of Board of Governors, In Supersession of Medical Council of India dated 11.01.2019, approving the report of Ethics Committee dated 16.11.2018 and setting aside the order of State Medical Council, Telangana dated 10.01.2018. The OPs filed additional documentary evidence along with IA/1195/2023, i.e. copy of Writ Petition No.6320 of 2019, filed by the complainant against the order of Board of Governors, In Supersession of Medical Council of India dated 11.01.2019. He has undergone training in Hair Transplant. He had done pre-operative assessment of blood sugar. Necrotising fasciitis is a rare complication port surgery for which, the patient was adequately advised for further management at a higher centre. Both the parties filed written synopsis.

8. We have considered the arguments of the counsel for the parties and examined the record. The complainant has challenged the qualifications of OP-1 and 2 for hair transplant. The OPs stated that Dr. Mohammed Ishrat Ulla Khan did M.B.B.S. from Osmania University, Hyderabad, in 1991 and enrolled as Medical Practitioner with Medical Council Registration No.HMC13872. He did FRCS from Royal College of Physicians and Surgeon of UAS, 2003. He was House Surgeon during 01.04.1991 to 31.03.1992 and Senior House Surgeon in Orthopaedics during 20.05.1992 to 16.01.1993 in the College of Medical Sciences, Hyderabad. He was Resident Surgeon in Plastic Surgery during 30.09.1994 to

29.03.1995, Resident in Emergency Medicine during 30.03.1995 to 29.09.1995 and Resident in General Surgery in King Abdul Aziz Hospital, Jeddah, KSA. He was Registrar in Plastic Surgery during 20.03.2006 to 19.09.2008 in King Khalid General Hospital, Majmaa, Riyadh, Saudi Arabia, under the Ministry of Health. He established Amaan Hospital, Tolichowki, Hyderabad in October, 2008. He did Fellowship Programme during 10.09.2011 to 10.12.2011, in FUE Hair Transplant at Darling Buds, Chandigarh in association with Hair Science Centre, Colorado, USA. In February, 2012, he went to VASA's Hair Academy in Ahmedabad, where Dr. Sanjeeva Vasa, MS, MCh, a renowned and Senior Hair Transplant Surgeon, trained him. He started Dr. Khan's Exclusive Hair Transplant Centre, Hyderabad from March, 2012. OP-1 is member of International Society of Hair Restoration Surgery, USA and member of International Association of Hair Restoration Surgeons, India. He regularly attends conferences and seminars to improve his knowledge and skills. He attended British Association of Plastic Surgeons Summer Meeting, at Dublin, Ireland during 07.07.2004 to 09.07.2004, Fuecon (FUE Harvest Course) at Darling Buds, Chandigarh during 22.06.2012 to 24.06.2012, ISHRS 20th Scientific Meeting, held in Bahamas, West Indies, during 17.12.2012 to 20.10.2012, Haircon 2013, held in Bangalore during 22.11.2013 to 24.11.2013 and Haircon 2017, held in Ludhiana during 24.02.2017 to 26.02.2017. The OPs filed all the documents in support of above allegations.

9. Although State Medical Council Telangana, in its order dated 10.01.2018, found that the degrees and certificates relating to hair transplant of the OPs are not from any recognised institution but both the OPs are MBBS and duly enrolled with Medical Council. Hair transplant is a surgical technique that removed hair follicles from one part of body to another balding part of body. In this procedure vital organs of the body are not affected. Dermis is in syllabus of study of M.B.B.S. course. A person having MBBS degree can perform the procedure of hair transplant. Board of Governors, In Supersession of Medical Council of India, in its dated 11.01.2019, did not find lack of qualification. OP-1 had qualification and experience of minor surgery, therefore he was competent for hair transplant on 25.07.2016.

10. The complainant has stated that the operation theatre of the OPs was in appalling condition, poorly managed, unhygienic and lacking of the necessary infrastructure as required as per medical science for procedure of hair transplant. The OPs have denied these allegations and by producing photos of inner side of the operation theatre, they have stated that operation theatre was maintained properly. The complainant has not filed any application for local inspection as such it cannot be said that the operation theatre was not maintained properly at the time of implant of the complainant.

11. The complainant stated that Aman Hospital took his blood sample on 23.07.2016 and gave clinical investigation report, which reflected the Random Blood Sugar at 160 mg/dl, which was on higher side and required medical attention before taking up any surgical procedure as per Standard Medical Protocol but OPs-1 and 2 without controlling blood sugar took up procedure for hair transplant on 25.07.2016. According to the OPs at the time of admission for hair transplant, the complainant concealed the fact that he was dependant on the drugs for diabetes mellitus-II and hypertension. Sample for blood test of the complainant was taken on 23.07.2016 and report came on 24.07.2016, in which RBS 160 mg/dl was noted, which was just above normal limit. OP-1 informed the complainant on telephone about it. At that time the complainant informed that his blood sugar was well controlled. OP-

I asked him to discuss with his treating physician and adjust the dose of medication as per his advice, but the complainant stated that there was no need to consult diabetes physician and assured that he would consult his diabetes physician. Before starting hair transplant procedure on 25.07.2016, OP-1 repeated sugar test which showed RBS 105 mg/dl. i.e. within normal limit. Expert Committee of AIIMS, in its report dated 11.10.2017, opined that blood test report of the complainant dated 24.07.2016 showed RBS 160 mg/dl and Acucheck value dated 25.07.2016 showed RBS 105 mg/dl. This was an elective procedure for a non-urgent indication and pre-operative work-up for assessment and control of diabetes of the patient should have been performed more rigorously by the doctor. OP-1 proceeded with the procedure of hair transplant on 25.07.2016, when the blood sugar was within normal range then at the most, it was an error of judgment not negligence.

12. The complainant stated that during transplant on 25.07.2016, he developed adverse reaction due to which OPs-1 and 2 discontinued the procedure and told that remaining grafting would be done after 4 days. The complainant was discharged on that day after prescribing antibiotics and pain killer.

The OPs denied that they discontinued transplant after 2800 grafts as the complainant developed reaction at that time. The OPs stated that maximum limit of extraction and plantation of graft in one session is 3000 grafts as such it used to be done in two sessions i.e. one major session and other minor session after 3-4 days. After conducting the procedure of hair transplant, the condition of the patient was normal and he was discharged in good condition on 25.07.2016 at 15:15 hours and sent to home with proper dressing. The complainant was advised to check blood sugar levels twice in a day i.e. in morning and in evening and in case blood sugar shoots 150/100 mg/dl, he was asked to consult with his physician. The OPs filed copy of 'Operation Note' dated 25.07.2016 along with IA/6112/2017. A perusal of 'Operate Note' shows that the procedure for hair transplant was started at 9:00 hours and after transplant of 2800 grafts his condition was checked up 15:00 hours. Figure of transplant of 2800 grafts is admitted to the complainant. This figure shows that it was a targeted figure and not that transplant was stopped due to reaction. Medical check-up shows that his condition was normal. 'Operate Note' shows that he was discharged in good general condition at 15:15 hours with special instruction for diabetes and hypertension control.

13. The complainant further stated that in spite of medication as prescribed, he experienced unabated pain and discomfort on the scalp. His head and face swelled up and the colour of skin was turned up blue and black. Discolouration and pain continued after reaching to the house. In morning of 26.07.2016, he developed temperature and oedema on the face and eyes, blisters were found on the forehead and scalp with severe pain in grafts. Due to serious and abnormal condition, the complainant visited to the centre. At that time OP-1 was present there, who without his hand sanitizing, opened the wound and burst the blisters by pinching through figure at the reception counter it-self and sent back the complainant to his house.

The OPs denied these allegations and stated that when the complainant visited the OPs, in morning on 26.07.2016, there was oedema on face and fever and no discolouration on his forehead, which was admitted by the complainant before Telangana State Medical Council. At that time there was no blister nor OP-1 burst the blisters through hand on reception counter. OP-1 removed dressing of the complainant in the proper dressing room under total

aseptic precautions and put a sterile surgical cap. "Operation Note" dated 26.07.2016 at 11:00 hours mentioned that "came for dressing removal. C/O pain. Dressing removed. Donor and transplant area healing well, dry. Oedema on forehead present. Expected. Enquired about blood sugar level. Attender said, it was normal. Discharged home in good general condition & sterile surgical cap. Cap. Sporidex-500 T D added". The complainant filed a photo Exhibit A-9. Same photo was filed by the OPs as Annexure-P-5. In this photo, the complainant was bearing sterile surgical cap and he had oedema on the face and eyes. In this photo, no mark of blister on forehead appears as such allegation that in morning on 26.07.2016 blisters appeared on the forehead, before removal of dressing, is not proved. Allegation of the complainant that due to serious and abnormal condition, he visited to the centre on 26.07.2016 in morning does not appear to be correct rather his visit for removal of the bandage appears more probable.

14. The complainant suffered from 'Necrotising Fasciitis', which was rare complication in hair transplant, as per medical literature. Expert Committee, in its report dated 11.10.2017, opined that when the patient visited in morning on 26.07.2016 with pain and swelling, he was prescribed oral antibiotics as the swelling was considered to be normal post-surgery oedema. Outcome of the complications, possibly arising from the procedure, the patient needed hospitalization and intravenous antibiotics in an appropriate health care facility at that time. Had the doctor been more proactive at this point, condition would have been better. Immediate hospitalization on 26.07.2016 in evening could have improved the outcome.

On 26.07.2016 at 11:00 hours, when the complainant visited the OPs for removal of dressing, there was oedema on the face and eyes, with pain and temperature which was normal reaction and symptoms after hair transplant. From these symptoms, it is not expected that the OPs would have diagnosed 'Necrotising Fasciitis' on 26.07.2016 at 11:00 hours, which was rare complication in hair transplant and got the complainant admitted in the hospital. As soon as, OP-1 was informed about serious symptoms on 26.07.2016 in evening, he visited the house of the complainant and advised for immediate hospitalization.

15. The complainant, in answer to the interrogatories, admitted that he was detected diabetes 5 years ago from transplant. At the time of counselling for hair transplant, his diabetes were under total control. He was taking Tab JIra-500 daily during last 3 months preceding hair transplant surgery. 'Necrotising Fasciitis' being a rare complication in hair transplant, it could not be diagnosed on 26.07.2016 in morning. There are various source of infection of the bacteria of 'Necrotising Fasciitis'. Subsequent suffering of the complainant was due to his being diabetes patients as at the time of his admission at Care Hospital on 28.07.2016, his Random Blood Sugar level was found 469 mg/dl. Thus medical negligence is not proved. Medical Council of India has considered all the aspects and found that there was no negligence on the part of the OPs as alleged.

16. Supreme Court in **Jacob Mathew v. State of Punjab (2005) 6 SCC 1**, held that (1) Negligence is the breach of a duty caused 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. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person

sued. The essential components of negligence are three: “duty”, “breach” and “resulting damage”. (2) Negligence in the context of the medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used. (3) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence. (iv) Mere deviation from normal professional practice is not necessarily evidence of negligence. (v) Mere accident is not evidence of negligence. (vi) An error of judgment on the part of a professional is not negligence per se. (vii) Simply because a patient has not favourably responded to a treatment given by a physician or a surgery has failed, the doctor cannot be held liable per se by applying the doctrine of res ipsa loquitur. Similar view has been taken in **C.P. Sreekumar (Dr.) Vs. S. Ramanujan, (2009) 7 SCC 130, Kusum Sharma Vs. Batra Hospital and Medical Research Centre, (2010) 3 SCC 480 and M.A. Biviji Vs. Sunita and other, 2023 SCC OnLine SC 1363.**

ORDER

In view of the aforesaid discussions, the complaint is dismissed.

.....J
RAM SURAT RAM MAURYA
PRESIDING MEMBER

.....
BHARATKUMAR PANDYA

