

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 283 OF 2015

(Against the Order dated 20/02/2013 in Appeal No. 104/2011 of the State Commission Kerala)

1. E. SYAMALA & 2 ORS.

D/O ESWARIAMMA, ULIKKANAMKOTTU
VADAKKEKARA HOUSE PARAKODU.P.O., ADOOR
TALUK,

PATHANAMTHITTA

KERELA

2. ESWARIAMMA,

PLAVILA HOUSE, PUTHUSSERY BHAGAM,
ERATHU VILLAGE, ADOOR

PATHANAMTHITTA

KERALA

3. VINEETH KUMAR,

S/O LATE SYAMALA, ULIKKANAMKOTTU
VADAKKEKARA HOUSE, PARAKODU.P.O, ADOOR
TALUK,

PATHANAMTHITTA

KERALA

.....Petitioner(s)

Versus

1. DR. ALEXANDER ABRAHAM & 2 ORS.

S/O V.C ABRAHAM, MARIYA HOSPITAL, ADDOR,
PERMANANT ADDRESS AT. T.C 1/826, JESU
HOUSE KUMARAPURAM

THIRUVANANTHAPURAM

PATHANAMTHITTA

KERELA

2. DR. M.J. JOHN,

M.S. ORTHO MARIYA HOSPITAL, K.P. ROAD,
ADOOR,

PATHANAMTHITTA

KERALA

3. M/S MARIYA HOSPITAL ADOOR

REPRESENTED BY MANAGER PARTNER RAJAN
THOMAS, MARIYA HOSPITAL, K.P. ROAD, ADOOR

PATHANAMTHITTA

KERALA

.....Respondent(s)

BEFORE:

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

For the Petitioner : Mr. Arsh Khan, Advocate
Mr. A. Karthik, Advocate

For the Respondent : Mr. Abraham Mathews, Advocate

Dated : 13 May 2022

ORDER

PER DR. S. M. KANTIKAR, MEMBER

The instant Revision Petition was filed under Section 21 of the Consumer Protection Act, 1986 against the Order dated 20.02.2013 passed by the Kerala State Consumer Dispute Redressal Commission, Thiruvananthapuram (hereinafter referred to as 'State Commission') in First Appeal No. 104/11 whereby the Appeal filed by the Complainant was dismissed.

2. The main grievance of the Complainant that she had problem at D-5 level, however the opposite parties wrongly performed operation at L-4 and L-5 level and removed portions of the vertebra causing injury to nerves which resulted paralysis below the hip. It was alleged that the Opposite Parties Nos. 1 & 2 were not qualified to do neurosurgery. Thereafter, the prolonged Physiotherapy was not fruitful. She consulted a Neurosurgeon at the Medical College, Thiruvananthapuram, who diagnosed a cyst at D5 level and removed the cyst by operation. Being aggrieved by the negligent treatment by the Opposite Parties Nos.1 & 2, the Complainant filed a Complaint before the District Forum, Pathanamthitta.

3. The District Forum dismissed the Complaint. The Complainant challenged the dismissal by filing first Appeal before the State Commission. The Appeal was also dismissed. Hence, this Revision Petition.

4. We have heard the learned Counsel for both the sides. Perused the entire material on record inter-alia Orders of both the fora.

5. The District Forum passed the following Order. The relevant paragraphs are reproduced as below:

13. On the basis of the contentions of the parties, we have perused the entire materials on records. There is no dispute regarding the treatment of the complainant at the 3rd opposite party hospital by the opposite parties. The only point to be considered is whether the treatment of opposite parties was negligent and improper. According to the complainant, all complications including the paralysis of the complainant was due to the improper diagnosis and improper surgery and the treatment by unqualified doctors at hospital having no facilities to do a surgery like the surgery performed to the 1st complainant. From the available evidence, Ext. B2 to B5, it can be seen that the 1st opposite party is a qualified surgeon in orthopedics. So the allegation that the doctor who had performed the surgery is not a qualified person is not sustainable. It is also seen that the surgery was done by the opposite party on the diagnosis based on Ext. A2 scanning report brought by the complainant. Ext.A2 scanning report shows that degeneration of L34 and L4-5 in the vertebral disks and mild bulging annulus of L3-4 and L4-5 intervertebral disks causing compression over the existing nerve root bilateral and indentation over the thecal sac. According to the opposite parties, they have performed the surgery on the basis of the above scanning report and the surgery was successful. But there is no evidence to prove that the diagnosis and the surgery was wrong and improper. The main allegation of the complainant is that all the complications of the complainant including the paralysis was due to the negligent and improper

Surgery by the opposite parties and the 2nd surgery was necessitated due to the 1st surgery. The available evidence shows that the two surgeries were done at different portions of the vertebra of the complainant based on two separate MRI scanning reports obtained at a gap of 7 months. The two scanning reports disclose different diseases at different portions of the vertebra. So it cannot be said that the 2nd disease revealed from Ext. A3 scanning report is an after effect or the consequence of the 1st surgery.

14. In this case, from the side of the complainant an expert witness was examined as PW2. PW2 is a Professor of Neuro Surgery. But the complainant failed to brought any evidence for supporting his case through PW2. The complainant had even failed to establish his case even by using the treatment records of the complainant brought from the 3rd opposite party hospital. No part of the deposition of PW2 goes in favour of the complainant's case. There is no evidence to show that, the diagnosis of the opposite parties, the 1st scanning report, the surgery done by the opposite parties are wrong and negligent. It is also not proved by the complaints that the surgery done by the opposite parties is neuro surgery and the administration of Cortisan drugs and the frequent taking of X-rays affected adversely to the complainant and the opposite parties have unnecessarily removed an healthy portion of the vertebra causing injury to the nerves from the brain. The depositions of PW1 and PW4 are also not helpful to the complainant's case as this case is related to medical negligence and they are not experts in medical field. The remaining evidence is the oral deposition of PW3. In his proof affidavit and in his deposition he had made severe allegations and made certain opinions regarding the treatment of the opposite parties for showing the negligence of the opposite parties. But it cannot be considered, as he is not an expert in the field of Orthopedic and Neurology and his statements are not supported with any medical texts. Moreover he is the authorised agent of the complainants. He had treated the 1st complainant for about two years and he had collected an amount of Rs. 2,60,000 from the complainants for the said treatment. Further, as per the deposition of PW4 there is an understanding between the complainants and the said Vijayan that if this case is decreed in favour of the complainants 50% of the awarded amount will be given to the said Vijayan as the balance payment of the treatment charges entitled by him, in connection with the treatment given by the said Vijayan. Under the above circumstances, PW3 is an highly interested witness. So his deposition alone cannot be relied.

15. From the overall-facts, circumstances and from the available evidence and in the absence of any cogent evidence including expert evidence in favor of the complainant's, we cannot find any deficiency of service from the part of opposite party. Therefore this complaint, is not allowable and is liable to be dismissed.

6. Being aggrieved the Complainant approached the State Commission which dismissed the Appeal with the following observations:

11. An argument is taken for the opposite parties that since nothing abnormal was found at D4-D5 level where operation was earlier performed, it can be inferred that the operation performed by the 1st opposite party was successful. While this much inference may not be possible if it is quite obvious that no harm was done by the earlier operation as-claimed by the complainants.

12. Referring to Ext. A1 discharge summary issued from the hospital of the 3rd opposite party PW2 deposed that she had approached the opposite parties complaining of weakness of left lower limb instability of left knee. On examination she was found to have spondylolisthesis with spondylosis L5 vertebra. It was accordingly laminectomy was done. Clinical findings are not mentioned in Ext. A1 The complaints in Exts. A1 and A4 might be common, the weakness of

lower limbs was due to compression in the spinal cord: According to PW2 due to growth of tumour the complaints noted in Ext.A1 can develop but pain need not develop. This version of PW2 is material for it appears to be the common case that the patient returned in the opposite party hospital with increased pain in her legs. PW2 also explained that if as a consequence of the disease noted in Ext.A4 pain develops it would be first at D9 portion and would later spread to stomach area if pain develops as a consequence of the disease noted in Ext.A1 it would be at lumbar region. As explained earlier it may spread to the legs. This version of PW2 is very significant and it shows that in fact Syamala was having problems both at L4-L5 level and D9 level. So it cannot be said for a moment that the diagnosis at the hospital of the opposite parties was erroneous or negligent. The version that nearly 8 months' time would have taken to develop the tumour at D9 level would indicate that it began to develop by or around the time, the patient went to the hospital of the opposite parties and at that time the tumour was at the initial stage of the development. A pointed question was asked to PW2 whether treatment was made at the hospital of the opposite parties wrongly diagnosing that there was disease mentioned in Ext.A1. PW2 answered that it was difficult to answer with the particulars in Ext.A1. According to him whether laminectomy was needed or not could be said only if MRI report and clinical findings are perused so PW2 refused to give an inference in the absence of clinical findings in Ext.A1. He also gave the opinion that if there was weakness and pain meningioma could be done and it is mentioned in Ext. A1 that the patient returned with greater pain. So, from the evidence of PW2 there is no material to arrive at the conclusion that the surgery performed at the hospital of the 3rd Opposite party was unnecessary or was based on erroneous diagnosis. As mentioned earlier even a wrong diagnosis need not necessarily be negligent diagnosis. It appears that both opposite parties 1 and 2 are qualified Orthopedic surgeons. The records as a whole show that they have discharged their duties with reasonable expertise.

13. There is yet another interesting aspect in this case Dr. Vijayan who gave evidence as PW3 is conducting the case on behalf of the additional complainants. He has issued Ext.A5 cash bill for Rs.260,000/- for doing physiotherapy and Ayurvedic treatment for the deceased complainant from October 2002. He claims to be a qualified Allopathic doctor as well as Ayurvedic doctor. In Ext.A5 registration numbers as A-class practitioner of modern medicine and ayurvedic medicine are mentioned. But there is nothing to show, that he holds MBBS degree or BAM degree. The contention of the opposite parties is that he had in fact instigated a complainant to approach the Consumer Forum. In support of their argument, the opposite parties relied on the version of PW4, the 3rd additional complainant. He admitted that amount is due to Dr.Vijayan towards the treatment of the deceased complainant. There is agreement between them and Vijayan that in case favorable order is obtained half the amount would be handed over to Dr. Vijayan. So, the intention is clear and at the same time opposite parties 1 and 2 are certainly highly qualified when compared to PW3. On the whole negligence in the matter of diagnosis and treatment of deceased Syamala is alleged without sufficient basis. There is no error in the findings of the CDRF, Pathanamthitta. Hence the appeal is devoid of merit.

In the result the appeal is dismissed but without costs.

7. After our thoughtful consideration, it is evident from the record that Opposite Parties No.1 is an Orthopedic surgeons and Opposite Parties No.2 is a Surgeon. After the relevant investigations, X-ray, etc. The MRI report dated 09.01.2001 of Devi Scans, showed degeneration at L3-4 and L4-5 intervertebral discs causing compression over the exiting nerve root bilaterally and indentation over the thecal sac. The X-ray revealed spondylitis L-5 pedicle with probable spinal stenosis at L4-5 and S-1. On 17.01.2001 with an informed consent the Opposite Party No.1 performed the laminectomy as per standard procedure with his expertise. The patient was discharged on 24.01.2001. The Patient came to hospital on 24.03.2001 with complaints of

weakness in both lower limbs due to fall in the house two weeks back. X-ray was performed, no new fracture revealed and prescribed medicines. The Opposite Party No.1 suspected the possibility of cord edema and advised to go for Neuro checkup. But she did not follow the advice.

8. In the instant case the cyst at D-5 level was noted after 8 months. The D-5 level is above the level of L-4 and L-5 the area of laminectomy operation and the spinal cord was not touched or operated. There is no nexus or relation between the two sites (D5 and L4-5) and the lesions were entirely different. The MRI dated 9.1.2001 did show any Cyst at D5 level.

9. Thus, considering the entirety of the case in our considered view, it was a reasonable standard of practice adopted by the Opposite Party No.1 & there was no role of Opposite Party No.2 in performing laminectomy. There was neither negligence nor any deficiency /any lapses during the laminectomy operation at L-4 and L-5. Thus, for the reasons stated above , we do not find any material irregularity and jurisdictional error in the Order passed by the Fora below warranting our interference u/s 21(b) of the Act.

10. As, the Revisional Jurisdiction of this Commission is extremely limited as has been recently held by the Hon'ble Supreme Court in 'Sunil Kumar Maity vs. State Bank of India & Anr.' [Civil Appeal No. 432 / 2022 Order dated 21.01.2022] observed as under:-

“It is needless to say that the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity. In the instant case, the National Commission itself had exceeded its revisional jurisdiction by calling for the report from the respondent-bank and solely relying upon such report, had come to the conclusion that the two fora below had erred in not undertaking the requisite in-depth appraisal of the case that was required.”

11. The Revision Petition is devoid of any merit and it is dismissed accordingly. However, there shall be no orders as to the costs.

.....J
R.K. AGRAWAL
PRESIDENT

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DR. S.M. KANTIKAR
MEMBER