

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 463 OF 2018**

(Against the Order dated 01/02/2018 in Complaint No. 54/2017 of the State Commission Chhattisgarh)

1. DR. HULESH MANDLE, M.D.

GAGAN DIAGNOSTIC & MEDICAL RESERARCH  
CENTRE (P) LTD AMRAPALI SOCIETY GATE NEAR  
COLORS MALL PACHPEDI NAKA  
RAIPUR 492901

.....Appellant(s)

Versus

1. NEERAJ KUMAR

S/O. SATYENDRA KUMAR R/O. JAIHIND CHOWK  
LDHIPARA CHOWK PANDRI  
RAIPUR  
CHHATTISGARH

.....Respondent(s)

**BEFORE:**

**HON'BLE DR. S.M. KANTIKAR, PRESIDING MEMBER**

**For the Appellant :**

**For the Respondent :**

**Dated : 16 Feb 2023**

**ORDER**

*Appeared at the time of arguments:*

For the Appellant : Mr. Fanish Kr. Rai, Advocate

Mr. Gaurav Sahdev, Advocate

For the Respondent : In person

**Pronounced on: 16<sup>th</sup> February 2023**

**ORDER**

1. The instant Appeal has been filed under Section 17 of the Consumer Protection Act, 1986 (the 'Act 1986') by the Appellant, Dr. Hulesh Mandle (the 'OP') against the Order dated 01.02.2018 passed by the Chhattisgarh State Consumer Disputes Redressal Commission, Pandri, Raipur (the 'State Commission') in CC/2017/54, whereby the State Commission partly allowed the Complaint.

2. Brief facts to dispose of this Appeal are that the Respondent (the 'Complainant') underwent ultrasonography (USG) for abdominal pain on 12.05.2015. It was performed at BSR Pathology Lab and reported that the left kidney of the Complainant was having calculus (stone). The doctors at Avanti Hospital prescribed medicines, but he did not get the relief. Thereafter, he went to Ramkrishna Care Hospitals and on 19.05.2015, USG of abdomen was performed by the OP, who reported no stone or any abnormality in both kidneys. The pain further persisted, therefore, the Complainant went to Vidya Hospital Kidney Centre, Raipur. The USG was performed at Apollo Diagnostic Centre at Raipur, which reported the presence of

stone. Being aggrieved by the wrong report given by the OP, the Complainant filed a Consumer Complaint before the State Commission and prayed for Rs. 25 lakh as a compensation under different heads.

3. The OP did not appear before the State Commission and was proceeded against ex-parte.

4. The State Commission, considering the averments of the Complaint and based on the evidence adduced by the Complainant, partly allowed the Complaint and directed the OP to pay Rs. 50,000/- as compensation alongwith interest @ 9% p.a. and Rs. 5,000/- as litigation cost.

5. Being aggrieved, the OP filed the present Appeal before this Commission.

6. Heard the learned Counsel for the OP and the Complainant in person. Perused the material on record.

7. The short delay of 12 days in filing the Appeal is condoned.

8. The learned counsel for the OP submitted that the OP had left his job in the Ramkrishna Hospital much before the date of filing of the Consumer Complaint, therefore the notice could not be served upon him. The State Commission wrongly proceeded ex-parte against him. The allegations in the Complaint are vague, made to extract money from the OP even after he had left the hospital and was employed elsewhere. The OP performed USG as per protocol and merely because there is difference in opinion or interpretation among medical professionals, negligence cannot be conjectured or surmised. He further argued that the possibility of misinterpretation by the other doctors cannot be ruled out. The reporting depends upon the type of machine and software according to technological advancement. The State Commission ought to have sought independent opinion on all USG films, rather than deciding the case based on one-sided submissions of the Complainant when the OP was not present and was unheard.

9. The Complainant reiterated his allegations and submitted that it was gross negligence on the part of the OP, who gave a wrong USG report.

10. Perused the impugned Order of the State Commission, wherein it has *inter alia* been observed as below:

“13. The Sonography Report of BSR Diagnostics Centre, Raipur was given by Dr. R.N. Verma, M.D. Consultant Radiologist on 12.05.2015, the report was given by Vidya Hospital & Kidney Centre on 20.05.2015 and the report was given by the O.P. on 19.05.2015. The reports dated 12.05.2015 and 20.05.2015 were given by two different hospitals and the presence of stone in left kidney of the complainant, is confirmed by the above reports. The sonography report dated 19.05.2015 issued by the O.P. did not show presence of calculus / stone in the left kidney of the complainant. Looking to the reports of BSR Diagnostics Centre and Vidya Hospital & Kidney Centre, the report issued by O.P. is erroneous and certainly the O.P. has committed negligence while conducting sonography of the complainant. These two reports show presence of stone in the left kidney of the complainant. The report issued by the O.P. did not show presence of stone in the left kidney of the complainant. In these circumstances, it can safely be presumed that the complainant has suffered mental agony, therefore, the complainant is entitled to get compensation from the O.P.”

11. The three USG reports on record have been perused. It is noted that:

(a) USG done at BSR Pathology, Raipur dated 12.05.2015 showed

**"Left Renal Stone"**. And the X-Ray KUB was **"No Left Renal Stone"**.

(b) USG done at Ramkrishna Hospital, Raipur dated 19.05.2015, reported by OP that no obvious abnormality **"No Left Renal Stone"**.

(c) USG done at Apollo Diagnostic Centre, Raipur dated 21.05.2015 showed **"Left Lower Ureter Stone"**

12. Medical literature and standard textbooks on Radiology have been gone through. The USG of renal stone detection involves different misinterpretations, as for example:

- (a) Few calcifications along the corticomedullary junction appear as stone and a few sonologist mention it as renal stone;
- (b) Prominent vascular markings along the renal calyx appear as white spots in USG imaging and may be misinterpreted as renal stone;
- (c) Sometimes few prominent mucosa with fatty tissue within renal pelvicalyceal system appears as white spots in USG imaging and may be misinterpreted as renal stone;
- (d) Renal Stone can disappear earlier which depends on the type of material within e.g. calcium is dominant it disappear within hours or days.
- (e) Renal stones can appear earlier which depends on the type of material within e.g. calcium granules can appear within hours or days.
- (f) Renal abdominal pain has many causes not only renal stone is responsible for that always.

13. It is pertinent to note that the OP was wrongly proceeded against ex-parte before the State Commission, even though the service of the notice upon him was not effected since the OP had by that time already left the hospital. The cause of action arose on 21.05.2015, when the last USG was conducted, but the Complaint was filed before the State Commission on 01.07.2017, which was beyond the two-year limitation period prescribed under Section 24A(1) of the Act, 1986. The Complainant did not file any application for condonation of delay. As such sufficient cause to condone the delay under Section 24(A)(2) was not shown at all. Despite this, the State Commission went ahead to entertain the Complaint without attempting to see whether the same was within limitation or beyond. A mere perusal of the prayer clause of the Complaint shows that on the face of it itself an exaggerated claim was made without any justification given.

14. The OP is a qualified Radiologist, having post graduate degree, MD (Radiology), and having extensive experience in performing USG of abdomen. There are certain limitations in USG. Sometimes the renal calculi are not visible due to intestinal gases shadows in the abdomen, sometimes stones even pass out through urine. Even the best of Radiologists cannot be better than the machine used for the USG, he cannot improve on the technical soundness or advancement of the machine available at his command. The more advanced a machine, the more precise is its report. However, not every hospital can afford the latest state of the art machines. And the Radiologist has to function with the machine available to him. Pertinently, an advanced Apollo Diagnostic possesses USG 730 (GE) Machine having Advanced Live 4-D Voluson, which has more precision and accuracy, was used in the USG cited at (c) in para 11 above, in which left lower ureter stone was detected.

15. The State Commission appears to have hastily arrived at its findings of medical negligence on the part of the OP, without examining to the requisite depth, the limitations and technicalities of USG, and without taking independent expert opinion on the subject where experts in the field could have thrown light from standard medical literature and brought forth limitations of the level of advancement of the machine used for imaging. As such its appraisal cannot sustain.

On the basis of the entire material on record and the critique made hereinabove no negligence is attributable to the OP Dr. Hulesh Mandle.

It is apparent that the instant Complaint was filed by the Complainant with wrong current address of the OP, beyond limitation, with highly inflated claim. The same, being bereft of any substance, being frivolous and vexatious, merits dismissal with cost of Rs. 10,000/- contemplated for such Complaints under Section 26 of the Act, 1986, to be deposited in the Consumer Legal Aid Account of the State Commission within six weeks from this Order.

The impugned Order of the State Commission is set aside. The Appeal succeeds.

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**DR. S.M. KANTIKAR**  
**PRESIDING MEMBER**