

**BEFORE THE BANGALORE URBAN II ADDITIONAL
DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
SHANTHINAGAR, BENGALURU - 560027**

DATED THIS THE 07TH DAY OF APRIL 2021

CONSUMER COMPLAINT NO.607/2009

PRESENT:

**SRI K.S.BILAGI, B.COM, M.A., LL.M.,
SMT.V.ANURADHA, B.A., LL.B.,**

**... PRESIDENT
... MEMBER**

COMPLAINANT:

Mr.Nagesh Rao,
S/o. Late Lakshman Rao,
Aged about 50 years,
R/at No.193,
4th 'C' Main, 3rd Stage,
3rd Block, Basaveshwaranagar,
Bangalor-560 079.

(Complainant is Rep. by M/s.ATV Legal Advocates
& Solicitors)

V/s

OPPOSITE PARTIES:

1. The Director,
National Institute of
Mental Health and Neuro Sciences,
Lakkasandra,
Bangalore-560 029.
2. The Registrar,
National Institute of
Mental Health and Neuro Sciences,
Lakkasandra,
Bangalore-560 029.

K. S. Bilagi
2/4

Date of filing: 16.03.2009
Date of Disposal: 07.04.2021

(OPs No.1 and 2 are Rep. by Adv. Sri.A.Madhusudhana Rao)

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Written by **SRI K.S.BILAGI, PRESIDENT**

// JUDGEMENT //

1. This complaint is filed by the complainant under Section 12 of the Consumer Protection Act 1986 (hereinafter referred as an Act) against the opposite parties seeking the following reliefs;

- a) Allow the complaint filed by the complainant by taking the consideration of the documents produced, which clearly shows that, the opposite party has committed medical negligence and deficiency of services for which the complainant had to undergo physical pain and mental pain, loss of earnings,
- b) Allow the complainant by prosecuting the opposite party for the medical negligence and deficiency of service meted out to the complainant,
- c) Direct the opposite party to pay compensation a sum of Rs.20,00,000/- for the medical negligence and deficiency of service meted out by the opposite parties to the complainant,
- d) Pass any such other order as deems fit.

2. The case of the complainant in brief is as under;

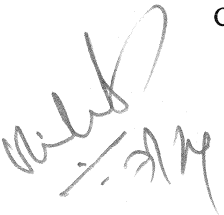
The complainant had developed acute pain under the neck which extended upto right shoulder. Accordingly,



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on 08.01.2008 he had been to opposite party hospital as outpatient. On examination and medical tests, doctor were able to diagnose that complainant was suffering C4-5 Mild Disc-Bulge C5-6 Disc Prolapse and advised to complainant and his attended wife that complainant had to be operated. With the consent of the complainant, was taken to operation theater on 10.01.2008 and due to negligence of the doctors of the opposite party during operation, the complainant had ruptured and damaged his food pipe (Esophageal tears). Thereby, opposite party started feeding the complainant by way of Jejunostomy. Due to negligence of the doctors of the opposite parties, the food pipe of the complainant came to be damaged. On 14.01.2008 another operation was performed on the complainant. He had consulted Dr. Sandeep, Gastroenterologist, St. John Hospital. Ultimately, he was discharged from the hospital of the opposite party on 11.06.2008. The complainant has been living on liquid diet due to the negligence of the opposite parties. He lost strength in his both legs and hands and he has also lost earning capacity. Hence this complaint.

3. After receipt of notice, opposite parties appeared and filed version. They admit that the complainant came to the opposite party hospital as outpatient in the first week of January 2008. The complainant has been suffering from neck pain since 20 years and since 1½ months he had severe neck pain. Accordingly, MRI was taken which indicates large right paracentral disc prolapsed with compression of root and cord at C5-6 level. There was



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also a small paracentral disc bulge at C4-5. They admit the operation dated 10.01.2008 and 14.01.2008. But they deny that due to the negligence of the doctors of the opposite party, the food pipe of the complainant torn.

4. They contend that Oesophageal tear which had occurred to the complainant is one of the known complications which can occur in Anterior Cervical discectomy. This complication is not due to the act of the opposite party and this is one of the complications which are associated with the procedure and it can happen in some cases.
5. They deny that the complainant lost strength in legs and hands and there is a deficiency of service. They also deny that the complainant has been living on liquid diet food only. They so contend Oesophageal tear is not due to any negligence on the part of the opposite parties. They request to dismiss the complaint.
6. The complainant files his affidavit evidence and further affidavit evidence and relies on the documents. Opposite party has filed affidavit evidence of its Associate Professor and relies on 2 documents. Heard the arguments of both the side. Perused the written argument.
7. The following points arise for our consideration;
 1. **Whether complainant proves the deficiency of service on the part of the opposite parties?**
 2. **Whether complainant is entitled to the reliefs mentioned in the complaint?**

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3. What order?

8. Our findings on the above points are as under;

POINT NO.1: In the Affirmative,

POINT NO.2: Affirmative in Part,

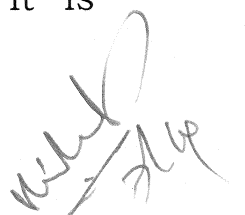
POINT NO.3: As per final order for the following;

REASONS

9. **POINTS NO.1 & 2:** At the first instance, we would like to refer admitted facts and documents. It is admitted fact that on 08.01.2008 the complainant had been to the hospital of opposite party as outpatient. This fact is proved from Document No.1. Document No.2 dated 08.01.2008 indicates that the duty doctor explained to the complainant the nature, purpose and possible consequences of each operation or procedure. The wife of the complainant signed the same who was present with the complainant. Document No.3 is Anesthesia Records dated 10.01.2008. Document No.4 indicates that on 10.01.2008 the procedure was conducted on the complainant. Document No.5 dated 13.01.2008 indicates that the complainant had developed mild weakness of (LUC4) and other parts. Document No.6 is the consent letter of wife of complainant dated 13.01.2018. It is admitted and proved from Document No.7 that operation was conducted on the complainant on 14.01.2008. But Document No.8 dated 18.01.2008 clearly indicates that Dr.Sandeep, Gastroenterologist of St.John Hospital explained the details to the patient.

Document No.9 has been issued by opposite party about injury caused to Esophageal.

10. According to the complainant, due to the negligence of the doctors of the opposite party, his Esophageal was teared. Whereas, opposite parties stated that it happens in some case and this Esophageal tear is not due to the negligence of the doctors of the opposite party. Document No.10 is the OPD Card issued by Victoria Hospital on 28.01.2008. Document No.11 discharge summary clearly indicates that complainant was admitted in opposite party hospital on 08.01.2008 certain procedures were conducted on 10.01.2008 and on 14.01.2008 complainant discharged from the hospital on 11.06.2008. Discharge summary indicates that the complainant was diagnosed C4-5 and C5-6 prolapsed Intervertebral Disc. It further indicates about procedure dated 10.01.2008 and 14.01.2008. It is admitted fact that there was esophageal tear. The complainant was admitted in the hospital of the opposite party, the question arises whether esophageal tear is due to the negligence of the doctors of the opposite party?
11. Other bills produced by the complainant indicate that he had spent money for medical treatment including purchase of medicines. The say of complainant that due to the negligence act of doctors of the opposite party there is Esophageal tear. Whereas, opposite parties admit Esophageal tear, but they contend that it is



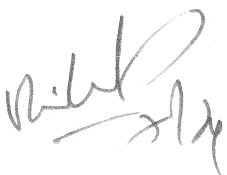
common complication and not due to the negligence of the opposite parties.

12. Both the parties have been stick on to their contention by filing their affidavit evidence. Dr.S.Dwarakanath who filed affidavit evidence of opposite party has clearly stated that "It is submitted that the Esophageal tear which had occurred to the complainant is one of the known complications which can occur in Anterior Cervical discectomy". This complication is not due to any negligence on the part of the doctors of opposite party and it is one of the complications which are associated with the procedure and it had happened in some cases. The witness further stated that the purpose of conducting the Anterior Cervical discectomy, food pipe i.e. Esophagus blood vessels trachea have to be moved aside for having an easy access to the vertebra for the purpose of conducting discectomy". This say of the evidence of opposite party coupled with the say of the complainant clearly indicate that the Esophageal tear occurred to the complainant. The question arises whether this is due to the negligence of the doctors of the opposite party?

13. The opposite party has relied on two documents. Document No.1 is MRI report which indicates that;

"INTERVERTEBRAL DISCS:

C4-5: Small central disc osteophyte lesion with mild impression on thecal sac and adjacent nerve roots.



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C5-6: Large right paracentral disc osteophyte lesion with significant impression on the cord and thecal sac and exiting right C6 nerve root. There is partial extension into right neural foramina.

Other Discs: No significant disc herniations.

Cord: Moderate cord edema noted at C5-6, suggestive of compressive myelopathy. Rest of the cord shows normal signal morphology.

CV Junction: Normal. No marrow pathology.

Pre and Para vertebral soft tissues appear normal.”

It further indicates the following Impression;

“IMPRESSION:

➤ *Large right paracentral disc osteophyte lesion at C5-6 with significant impression on the cord and thecal sac and exiting right C6 nerve root. Moderate cord edema, suggestive of compressive myelopathy noted.”*

14. Document No.2 is not in dispute. Such document is also produced by the complainant which has been already referred.

15. The contention of the complainant is twofold. Firstly, he contends that due to negligence on the part of the doctor of opposite party during the operation his food pipe was damaged and secondly, due to Esophageal

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injury he lost control over both legs and hands and thereby he sustained loss of earnings.

16. The complainant has also produced two more documents on 05.01.2016. Document No.1 is the Disability Certificate issued by the Government of Karnataka which only indicates 40% physical impairment. But it does not help the complainant to prove that due to damage caused to his food pipe, he became disabled completely.

17. The second document is the discharge summary issued by Fortis Hospital on 12th August 2008 which indicates that the patient had history of cervical operation at NIMHANS i.e. in the opposite party institution 6 months back. There was injury to esophagus during operation hence Jejunostomy done for feeding. It further indicates that patient developed swelling and discharged from the jejunostomy site. Incision and drainage done for the same since then there is continuous discharge from the site, purulent, foul smelling and continuous.

“Esophageal ruptures are tears that penetrate the wall of the esophagus. Ruptures can be caused by surgical procedures, severe vomiting, or swallowing a large piece of food that becomes stuck in the esophagus, but some ruptures occur spontaneously”.

Jejunal Feeding:

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Jejunal feeding is the method of feeding directly into the small bowel. The feeding tube is passed into the stomach, through the pylorus and into the jejunum. This type of feeding is also known as post-pyloric or trans-pyloric feeding.

Jejuna feeding is indicated in patients who have a functioning gastro-intestinal tract, but who have an absent gag reflex, gastric dysmotility or persistent vomiting resulting in faltering growth. “

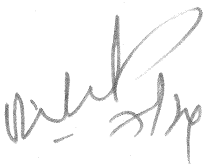
18. The complainant has produced two more documents on 13.04.2018 namely discharge summary issued by Wockhardt hospital on 15.08.2008 and copy of disability certificate. This certificate has been also referred. The discharge summary issued by Wockhardt indicates that the complainant was admitted on 12.08.2008, surgery was conducted on 13.08.2008 and he has been discharged on 15.08.2008. It clearly indicates that the complainant had history of cervical operation at NIMHANS 6 months back. There was injury to esophagus during operation. Hence Jejunostomy was done for feeding. It further indicates that patient developed swelling and discharge from the jejunostomy site. Incision and drainage done for the same since then there is continuous discharge from the site, purulent, foul smelling and continuous. The Gastro-Duodenoscopy Report issued by the Wockhardt that there was an indication of Cervical esophageal injury. It further indicates that small linear mucosal tear seen just at the level of cricopharynx, on the right side. Esophagus appears normal. No stricture. Subsequent to

15.08.2008 till filing this complaint or subsequent to filing this complaint, the complainant has not produced any medical records to show that he lost control over his both legs and hands and there is reduction of his earning capacity.

19. The counsel for the complainant placing reliance on the following decisions vehemently argues that the doctors of opposite parties were negligent and there is deficiency of service.

1. 2015 SCC Online NCDRC 2137 in the matter between Dr.Anil Kumar Mittal vs. Smt. Neelam Gupta Ors,
2. AIR 2015 SC 2836 in the matter between V.Krishnakumar vs. State of Tamil Nadu and Ors.,
3. AIR 1998 SC 1801 in the matter between Spring Meadows Hospital and Ors. vs. Harjol Ahluwalia K.S.Ahluwalia and Ors.,

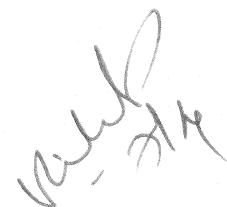
20. The second decision of the Hon'ble Supreme Court of India has been referred by the Hon'ble National Commission in the first decisions. In the first decision it was held that Dr.Anil Kumar Mittal was negligent in diagnosing the blood group of the patient. There were different reports with regard to the blood group of the patient. After assessing all the reports, the Hon'ble National Commission categorically ruled that Dr.Anil Kumar Mittal and SBD Hospital were responsible for payment of compensation on medical grounds. In the last decisions, it was held that the parents of the child



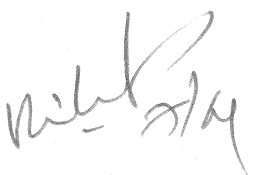
were the beneficiary. Accordingly, contention of the appellant has been rejected.

21. The counsel for the opposite parties took us to the observation of different authorities with regard to Esophageal and relied on the following decisions;

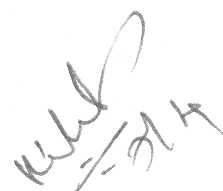
1. Opinion of Ellas Dakwar, M.D. on Management of delayed esophageal perforations after anterior cervical spinal surgery,
2. Report of Natasha Rueth M.D. on Management of Cervical Esophageal Injury after Spinal Surgery,
3. Opinion of Dr.M.Hancl and Ors on Oesophageal perforation subsequent to anterior cervical spine screw/plate fixation,
4. Opinion of Dino Solerio and Ors on Successful surgical management of a delayed pharyngo-esophageal perforation after anterior cervical spine plating,
5. Opinion of Kochhar R. Poornachandra K.S. and Ors on Comparative evaluation of nasoenteral feeding and jejunostomy feeding in acute corrosive injury: a retrospective analysis,
6. Opinion of Gaudinez RF on Esophageal perforations after anterior cervical surgery,
7. Opinion of Van Berge Henegouwen DP on Esophageal perforation during surgery on the cervical spine,
8. Opinion of S.N.Shenoy, A Raja on Delayed pharyngo-esophageal perforation: Rare complication of anterior cervical spine surgery,
9. Opinion of Epimenio Ramundo Orlando, MD Hypofarinx Perforations Complicating Anterior Cervical Spine Surgery.
10. AIR 2010 SC 1052 in the matter between Kusum Sharma and Ors vs. Batra Hospital and Medical Research Centre and Ors.,
11. 2012 NCJ 211 (NC) in the matter between Ram Avatar Sharma vs. Dr.Nabin K. Pattanaik,



12. 2012 NCJ 215 (NC) in the matter between Dr.Vikas V Patharkar vs. M/s. Aditya Associates,
 13. II (2011) CPJ 535 in the matter between Inderjit Singh Buttar vsl Dr.H.S.Bakshi, Bakshi Ortho and Maternity Centre & Ors.,
 14. I (2008) CPJ 386 (KSCDRC) in the matter between National Institute of Mental Health & Neuro Science vs. Hanumanthaiah,
 15. (2009) 4 SCC 705 in the matter between Ins. Malhotra (MS) vs. Dr.A.Kriplani and Others.
22. We carefully perused the opinion of all the different authorities and the facts and ratio involved in the above decisions. The authorities have opined about perforations after anterior cervical spinal surgery. In the first decision the allegations of the complainant that the doctors adopted wrong approach i.e. anterior cervical spinal surgery should have been done by adopting perforation operation. But in the present case on hand no such plea is taken either by the complainant or by the opposite parties. In the second decision it was held that to hold a medical practitioner guilty of professional negligence, the standards of an ordinary practitioner of that discipline will have to be applied and not those of the highest order of skills. In the third decision the contention implant failure and non-union of sub-tronchantric amounts to medical negligence has been rejected. In the fourth decision the surgery was conducted to remove the blood clot and in the last decision the statement by respondent doctors neither rebutted nor appellant leading evidence.



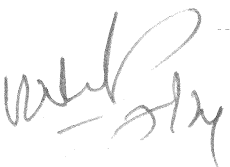
23. Keeping in mind the above proposition of law and observation of different authorities once again we have carefully perused the contention of respective parties with reference to the documentary evidence.
24. It is admitted fact that the complainant as outpatient took the treatment on 08.01.2008 in opposite party hospital and he was advised to admit into hospital. On 10.01.2008, the operation was conducted on the complainant. Similarly, another operation was conducted over the complainant on 14.01.2008 in the opposite party hospital. According to the complainant, during the course of operation in the opposite party hospital his food pipe was damaged due to the negligence of doctors of the opposite party hospital and opposite party begin feeding the complainant by way of Jejunostomy. The opposite parties admit the damage caused to the food pipe, but contend that esophageal tears is not due to any negligence on the opposite party doctors and same is one of the complications which are associated with the procedure.
25. In view of the above contention, it has been now established that the food pipe of the complainant was damaged during the course of operation in opposite parties hospital. According to the opposite parties esophageal tears is due to complications which are associated with the procedure. Under such circumstances, the doctors who conducted the surgery of the complainant are best person to say that esophageal

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tears was due to complications which are associated with procedure. Even though opposite parties have examined doctor S.Dwarakanath, who is working as Associate Professor of Neurosurgery in opposite party hospital. But he is not a doctor who conducted procedure either on 10.01.2008 or on 14.01.2008. The non-examination of the doctor who conducted the procedure over the complainant is a clear indication that due to negligence of the doctor of opposite party the food pipe of the complainant was damaged. It is also admitted fact that due to damage caused to the food pipe, the food was being supplied through Jejunostomy. To this extent complainant proves the negligence of the opposite parties. Even though it has been proved even in the month of August 2008, the complainant was made to suffer. But subsequent to 2008, the complainant has not produced any medical records about his further sufferance with regard to loss of control over both legs, hands and loss of income.

26. The complainant claims Rs.20,00,000/- as compensation from the opposite parties. But this claim is exorbitant. Even though complainant proves the negligence on the part of the opposite party hospital causing damage to food pipe of the complainant, but complainant having failed to prove his further disability due to such negligence and loss of income, under such circumstances, it is proper to award Rs.5,00,000/- only as compensation against Rs.20,00,000/-. No acceptable



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foundation is lay down to award compensation more than Rs.5,00,000/-.

27. **POINT NO.3:** In view of the discussion made in the preceding paragraphs, the complainant requires to be allowed in part. The complainant is entitle to Rs.5,00,000/- as compensation from the opposite parties and Rs.25,000/- towards cost of litigation. We proceed to pass the following;


ORDER

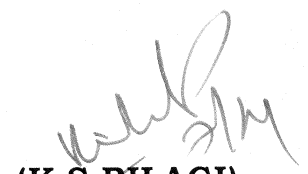
The complaint is allowed in part.

The opposite parties are directed to pay Rs.5,00,000/- (Rupees Five Lakhs only) towards compensation and Rs.25,000/- (Rupees Twenty Five Thousand only) towards cost of litigation to the complainant within 30 days from this date. If the opposite parties fail to pay this amount, they shall pay interest at the rate of 12% p.a. on Rs.5,00,000/- from the date of complaint till the date of realization.

Supply free copy of this order to both the parties and return spare copies of the pleading and evidence to the parties.

(Dictated to the Steno, typed by her, transcript corrected, revised and then pronounced by the open Commission on **07TH DAY OF APRIL 2021**).


(V.ANURADHA)
MEMBER

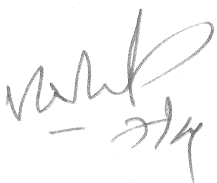

(K.S.BILAGI)
PRESIDENT

//ANNEXURE//**Witness examined for the complainant side:**

Mr.Nagesh Rao, who being the complainant has filed his affidavit.

List of documents filed by the complainant:

1. Document No.1: Copy of the Out-Patient Records dated 08.01.2008,
2. Document No.2: Copy of the consent to surgical & other procedures anesthetics & other medical services,
3. Document No.3: Copy of the Anesthesia Records,
4. Document No.4: Copy of the Operation Note Sheets dated 10.01.2008,
5. Document No.5: Copy of the Note Sheet dated 13.01.2008,
6. Document No.6: Copy of the consent to Surgical or other Procedures Anesthetics and other Medical Services dated 13.01.2008,
7. Document No.7: Copy of the Operation Notes dated 14.01.2018,
8. Document No.8: Copy of the correspondence letter,
9. Document No.9: Copy of the letter dated 26.01.2008,
10. Document No.10: Copy of the OPD card,
11. Document No.11: Copy of the Discharge Summary,
12. Document No.12: Medical Bills,
13. Document No.13: Disability Certificate,
14. Document No.14: Discharge Summary dated 15.08.2008,
15. Document No.15: Copy of the Discharge Summary dated 15.08.2008,
16. Document No.16: Copy of the Disability Certificate dated 19.10.2012 issued by the Medical Authority for Disability,
17. Citations,


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Witness examined on behalf of the Opposite Parties:

Dr.S.Dwarakanath, Associate Professor of Neurosurgery, of the opposite party hospital has filed his affidavit.

List of documents filed by the Opposite Parties:

1. Document No.1: MRI Report,
2. Document No.2: The informed consent dated 18.01.2008 which was obtained from the complainant.
3. Different authorities,
4. Citations.


(V.ANURADHA)
MEMBER


(K.S.BILAGI)
PRESIDENT