

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

**FA NO.300/2016 AGAINST CC No.673/2012 ON  
THE FILE OF DISTRICT FORUM-III,HYDERABAD.**

Between :

1.The Director, Nizam's Institute of  
Medical Sciences, Punjagutta,  
Hyderabad.

2.Dr.R.A.Sastry,  
Professor & Head of Department,  
Surgical Gastrology, NIMS,  
Punjagutta , Hyderabad.

... Appellants/  
Opposite parties 1 & 2

And

1.Smt A.Mallikamba , W/o.A.Cheralu,  
Aged about 40 years, Occ: Agriculture,  
R/o.H.No.5-93, Mogilicherla Village,  
Geesugondha Mandal, Warangal Dist.

... Respondent/  
Complainant

2.Sakhamuri Narayana Memorial Nursing Home ,  
Laxmipuram, Kashibugga, Chowrastha,  
Warangal.

3. The Oriental Insurance Company Ltd.,  
Registered & Head Office, A-25/27,  
Hasafali Road, New Delhi, 11002,  
Represented by its Regional Manager,  
Opp: Blue Moon Hotel, Begumpet,  
Hyderabad.

... Respondents/  
Opposite parties  
3 & 4

Counsel for the Appellants : M/s. G.Anandam

Counsel for the Respondents : M/s Lasetty Ravinder -R1  
(Mr. P. Bhaskar Mohan-R2)  
M/s. Agastya Sharma-R3

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

**Hon'ble Smt. Meena Ramanathan, Lady Member**

**WEDNESDAY, THE EIGHTH DAY OF JUNE,  
TWO THOUSAND TWENTY TWO.**

**Oral Order: ( Per Hon'ble Smt. Meena Ramanathan,  
Lady Member)**

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1. This is an appeal filed by the Appellants/Opposite Parties 1 &
- 2 feeling aggrieved by the order dt.27.10.2016 in C.C.No.673/2012  
on the file of District Forum-III, Hyderabad.

2. For the sake of convenience, the parties are described as arrayed in the complaint.

3. The brief facts of the case are as follows:

The complainant consulted doctors at NIMS as she was suffering from abdominal pain and after undergoing required tests it was diagnosed as Cystic Lesion of Pancreas (Uncinate). The opposite parties advised the complainant to undergo an operation for which she gave consent and operation was conducted on 3.11.2009 by opposite party no.2 and she was discharged on 10.11.2009. After two years the complainant got unbearable abdominal pain and body pains and she approached the local clinic at Warangal and after undergoing required tests she was informed that there is a tumor like object in the abdomen and it needs another operation to remove it. On 22.7.2012 she underwent another operation in opposite party no.3 hospital and she was informed that there is no tumor but there was surgical MOP in the stomach which was left behind during previous surgery. In view of the treatment of opp.parties 1 & 2, the complainant underwent another life risk operation and suffered a lot of mental agony and also sustained physical and monetary loss. Hence the complainant approached District Forum to direct the opposite parties 1 and 2 to pay in total Rs.13,20,000/- towards expenditure incurred for obtaining opinion from the opposite party no.3 including the cost of the drugs; towards compensation and costs etc.

4. In the Written Version filed by the opposite parties 1 & 2 they submit that the complainant required a complicated operation called Pancreatico -Duodenectomy (Whipple's operation) and she was admitted on 26.10.2009, operated on 3.11.2009 and discharged on 10.11.2009. The said surgery takes about 5 to 6 hours of operating time and NIMS boasts of a well trained and reputed faculty in the field of surgical Gastroenterology.

All major operation in the Department of surgical Gastroenterology are done under the supervision of a senior consultant . It is a matter of strict protocol in the Department that at the end of any operation all the disposables and non disposables including surgical MOPs and instruments are accounted for and recorded. It is highly improbable that in the instant case, the



patient did not suffer any permanent disability since none of her internal organs are affected because the alleged MOP was accidentally left behind. It is their submission that a foreign body accidentally left in the abdomen, once removed will not leave any permanent disability.

It is submitted that there was no negligence on the part of the treating doctors at any stage. Reasonable precautions were taken and an act that was totally accidental perhaps occurred for the first time when more than 25,000 major operations have been conducted. With these submissions they deny deficiency in service and plead for dismissal of the case.

5. Before the District Forum, Evidence Affidavit of the complainant filed and Exs.A1 to A17 marked on her behalf. Chief Examination Affidavits of Dr.N.Satyanarayana , Executive Registrar of NIMS and opposite party no.2 filed and Exs.B1 to B5 marked on their behalf. Dr.H.Sandhya Rani of opposite party no.3 was cross examined as RW.4. Ex.B6 marked on behalf of the opp.party no.3. Mr.I.Bhavani Shankar , Sr.Div.Manager of opp.party no.4 filed evidence affidavit.

6. The District Forum based on evidence adduced and pleadings put forward allowed the complaint partly directing opposite parties 1 and 2 jointly and severally to pay the complainant a sum of Rs.60,000/- towards medical expenses incurred for the second surgery and to pay Rs.5 lakhs towards compensation and Rs.3000/- towards costs. Case against opposite parties 3 & 4 was dismissed.

7. Aggrieved by the above said order, appellants/opposite parties 1 and 2 preferred this appeal with the following grounds:

i). The District Forum failed to consider that the surgery undertaken by appellant/opposite party no.2 Doctor was a very complicated one and the respondent/complainant has failed to establish any negligence on the part of the appellants/opposite parties.

ii). The District Forum did not consider the crucial aspect on the plea of limitation raised by appellants/opposite parties.

iii). The allegation that a MOP was found in the abdomen of the respondent/complainant at the time of second surgery

which was conducted 3 years after the surgery conducted by appellant/opposite party no.2 doctor at appellant/opposite party no.1 hospital is without any basis and not corroborated by any evidence on record.

iv). The respondent/complainant has not adduced any evidence that the MOP was found in her abdomen either by way of preoperative imaging tests or an operative photograph or video.

v). The ultra sound report does not show that there was a foreign body – like a surgical MOP in the abdomen. A C.T. Scan would have clinched the evidence since all the MOPs used at NIMS have a radio opaque thread embedded in them.

vi). Records of the hospital where the second surgery was conducted are totally confusing – not authenticated by doctor identities, signatures & misrepresentation of CT Scan findings.

8. The admitted facts are as follows:

a). The respondent/complainant Smt.A.Mallikamba underwent Pylorus Preserving Pancreatico Duodenostomy on 3.11.2009. Surgery was conducted by opposite party no.2 at opposite party no.1 hospital.

b). She was discharged on 10.11.2009 as evidenced vide Ex.A6.

c). She claims to have continued to experience pain, even after the surgery and consulted Madhu Neuro Care on 12.5.2012 and was advised to undergo MRI, Cervical Spine. Report is filed as Ex.A9.

d). In the impression recorded on Ex.A9 – it was noticed that :

“1.Early degenerative changes in C-spine.

2.Large mass lesion like appearance in pelvis – Adv  
USG correlation” .

9. The respondent/complainant underwent ultra sound of the abdomen on 15.5.2012, where another cystic lesion was noted and CECT abdomen was suggested vide Ex.A11. She has consulted Dr.Sailasree on 15.5.2012 and the Doctor has noted a suspicion of ovarian tumor on her prescription Ex.A12



Besides consulting Madhu Neuro Care and Dr.Sailasree the respondent/complainant has not filed any medical evidence to support her complaint of continuous pain in the abdomen after having undergone the surgery on 3.11.2009 at appellant/opposite party no.1 hospital.

The appellants/opposite parties have raised the issue of limitation in their grounds of appeal, stating that for a surgery conducted on 3.11.2009, the respondent/complainant has submitted that she was suffering continuous pain but has failed to support this by adequate material evidence, therefore, the period of limitation was never properly considered by the Forum below.

The respondent/complainant underwent a second surgery on 22.7.2012 at Sakhamuri Narayana Memorial Nursing Home for the suggestions of cystic lesion arising from the pelvis leading to a suspicion of ovarian tumor. During the second surgery, the operation notes recorded state that "when the cyst was relieved from flimsy adhesion from parieties, it ruptured out along with plenty of pus coming out nearly 300 ml. of pus came out along with MOP". The fact that a Mop was left behind during the first surgery came within the knowledge of the respondent/complainant only on 22.7.2012. Therefore the law of limitation has to be applied, prima facie, from 22.7.2012 onwards. The complaint was filed on 19.11.2012. There is no delay in filing the complaint and the point is accordingly answered.

10. The main case that requires our consideration is whether there has been a case of medical negligence by appellants/opposite parties 1 & 2. The Forum below has relied on the operation notes filed vide Ex.B6 . It is evident that upon the second surgery, the 'surgical MOP' was found that was left behind during the first surgery. This is further supported by the evidence submitted by Dr.H.Sandhya Rani as RW4. She conducted the 2<sup>nd</sup> surgery on the respondent/complainant and her recorded statements are reproduced below :

a)." I found a well defined cystic mass completely occupying the pelvic region, few loops of small intestine adherent to the cystic mass, when the cyst was released from flimsy adhesions from parieties, it ruptured out with plenty of puss coming out nearly 300 ml along with MOP (Cotton)".

b). "Ex.A7 discharge summary dated 28-07-2012 was issued by me. The patient must have suffered with pain and agony from the date of surgery in NIMS hospital till the 2<sup>nd</sup> surgery done in our hospital. Pus was formed on account of the presence of MOP in the abdomen."

11. Although the appellants/opposite parties have urged the plea that the MOPS were counted at the end of the surgery and found to be correct, we find this to be challenged in the face of the evidence and operation notes (Ex.B6) submitted by RW.4. There is no scope for the surgical MOP to be found at the site of surgery, unless appellants/opposite parties 1 & 2 had left it behind during the first surgery conducted on 3.11.2009.

Dr.H.Sandhya Rani-RW4 has stated in her evidence that the said material was sent to Histopathology Department for Examination. The necrotic material was foul smelling and covered by necrotic slough, but this report has not been filed and the counsel for the appellants/opposite parties 1 & 2 has raised this objection. While discussing this, we refer to the judgement **Shanti Thallapali & anr. vs. Surana Sethia Hospital & anr.** :

- "A foreign body i.e. a surgical sponge in the abdominal cavity of the complainant no.1 was found. Witness Dr.P.Radhakrishnan is a well qualified surgeon and he has no reason to make an incorrect submission in respect of surgical sponge in the abdominal cavity of complainant no.1."

There is no evidence in the present complaint that the complainant had undergone any other surgical procedure between the 1<sup>st</sup> surgery at the appellants/opp.parties hospital and 2<sup>nd</sup> surgery at Sakhamuri Narayana Memorial Nursing Home on 22.7.2012, where the foreign body -mop was detected.

12. The principle of what constitutes medical negligence is now well established in a series of judgements of the Hon'ble Supreme Court including in *Jacob Mathews vs. State of Punjab & anr.* (2005) 6 SCC 1 and *Achuthrao H. Khodwa vs. State of Maharashtra* (AIR 1996 SC 2377) wherein it has been inter alia observed that "a medical practitioner must bring to his task a reasonable degree of skill and knowledge and exercise a reasonable degree of care." In



the context of the case in hand, the presence of a foreign body left in the system/body during the surgery, clearly indicates that reasonable care was not taken and therefore it amounts to medical negligence. We further refer to the opinion as laid down by the Hon'ble Apex Court in the Case of *IMA vs. V.P.Shantha 1995 (2) CPC 602 = Ind. Law SC 132 (SC)*. In this case the sponge was left negligently in the abdominal cavity of the complainant during the operation by the opposite parties. There was no operation in between 26.12.1997 and 6.4.1998. Apparently, the old retained sponge was that of the opposite parties.

13. The appellants/opposite parties have also raised an objection contending that the Doctor/RW4 is not qualified to perform the surgery. This aspect has not been addressed by the Forum below in the impugned order. While relying wholly on the submissions of RW.4, we find that she has the following qualification: MBBS DGO as evidenced vide Ex.A7. The Doctor is qualified in Gynaecology and Obstetrics. This field relates to the study of female reproductive organs in pregnant and non pregnant condition. The programme incorporates scope for research study of clinical and surgical training in Gynaecology. Therefore, the objection urged cannot be sustained.

14. In the present appeal, the appellants/opposite parties have vehemently argued that the time lag is much too long to determine the veracity of the sponge/mop being found by the Dr.Sandhya Rani. They have also argued that the mop used by their doctors have radio opaque markers (most modern surgical sponges have this) and visualisation tends to be easier. The complainant underwent imaging test like MRI and CT Scan, but the surgical mop was not visualised during these imaging modalities.

Prevention hinges on ensuring that a correct sponge count is traditionally carried out. Retained mops/sponges are considered '**never**' events and to have a valid case four elements need to be established:

- Duty of the Doctors
- Breach of duty;
- Damages; and
- Causation.

A sponge/mop left for an extended period of time can create serious problems. The complainant underwent CT Scan and other investigative tests but the mop was not visualised. This imaging method is not helpful when these markers are disintegrated or fragmented. CT scan is the method of the choice for detecting gossypibomas and possible complications, but the reported C.T. appearances of gossypibomas are often not pathognomic and most of the times they are non-specific. In the instant case, the Doctor-RW.4 has not visualised this owing to lack of clinical suspicions and familiarity with imaging features as stated in her cross examination.

15. In general experience, accident in question does not happen without negligence. Mere allegations will not make out a case of negligence. However, in this case it is proved by reliable evidence and is supported by expert evidence. Doctor and hospital are liable for damages where foreign objects are left in the body after surgery. The principle of *Res-ipsa -Loquitor* comes into play and the burden is on the Doctor/opposite parties to explain how the incident could have occurred without negligence. We rely on the following decisions :

1. Judgement of Hon'ble NCDRC in N.Laxmi Vs. Mahesh Hospitals & Research Foundation & Others reported in 2015 (4) CPJ 555.
2. Judgement of Hon'ble Supreme Court in Kunal Saha's case reported in 2014 1 SCC 384 and 2013 VIII SLT 513.

16. In view of the afore said discussion, we see no reason to interfere with the well appreciated order of the Forum below. Hence the order of the District Forum stands confirmed.

17. In the result, appeal is dismissed and order of the District Forum is confirmed.

Time for compliance of the order of District Forum is 45 days, failing which the awarded amounts (Rs.60,000/-+Rs.5 lakhs+Rs.3,000/-) will carry interest @ 7% p.a. till realisation.