

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION: NORTH-EAST**GOVT. OF NCT OF DELHI****D.C. OFFICE COMPLEX, BUNKAR VIHAR, NAND NAGRI, DELHI-93****Complaint Case No.65/20****In the matter of:**

Sh. Ashish Sharma,
S/o Sh. S.K Audichya Rajpal,
R/o H.No. F 103, St. No. 10,
West Jyoti Nagar, Rishi Kardam Marg,
Shahdara, Delhi-110096

Complainant***Versus***

1. Max Super Specialty Hospital
Through Its Chairman,
2. The Management
Max Super Specialty Hospital
3. Dr. Sunil Dhar
(Head & Associates Director)
Max Super Specialty Hospital
4. Dr. Abhishek Goyal
Max Super Specialty Hospital

All at:-

Max Super Specialty Hospital,

W 3, Near Radisson Blu Hotel, Sector 1,
Vaishali 201012 Ghaziabad, UP

Opposite Parties

DATE OF INSTITUTION: 24.11.20

JUDGMENT RESERVED ON: 12.07.24

DATE OF ORDER : 13.09.24

CORAM:

Surinder Kumar Sharma, President

Ms. Adarsh Nain, Member

ORDER

Ms. Adarsh Nain, Member

The Complainant has filed the present complaint under Section 35 of the Consumer Protection Act, 2019.

Case of the Complainant

1. The case of the Complainant as revealed from the record is that on 16.02.20 Complainant met with a road accident and received internal injuries. On 17.02.20, Complainant was taken to Opposite Party No.1 hospital with complaints of severe bodily pain especially in right shoulder, rib and head and after consultation with Opposite Party No. 3 and 4, Complainant got admitted in hospital. Thereafter, Opposite Party No. 2 and 4 conducted medical tests of Complainant and Opposite Parties revealed that all reports were normal, and got treatment accordingly in Opposite Party No.1 hospital and got discharged on 20.02.20 vide discharge summary dated 20.02.20. It is alleged that despite fact that Complainant was going through severe pain in his right shoulder, Opposite Party No.2 and 3 further advised to take complete rest for two weeks and also prescribed medicines. At time of discharge, Opposite Party No.2 and 3 raised bill of Rs. 63,000/- and as Complainant is having medical insurance he was asked to pay Rs. 23,000/- out of said total bill amount, which was duly paid by Complainant. After discharge from hospital and taking rest there was no improvement in his health condition so he decided to get second opinion from other hospital. Accordingly, on 03.03.20 Complainant approached Apollo Hospital and fresh medical tests were conducted and found that right shoulder has been dislocated i.e. dislocated acromio clavicular joint with superiorly displaced clavicle and Complainant has been suffering from edema and has not been treated properly. The Complainant has also stated that the injury of Complainant is 3rd level injury and advised for the surgery, which cost Complainant around Rs. 2.5 to 3 Lacs. The Complainant further approached AIIMS Hospital for third opinion on 04.03.20 and doctors revealed the same problem and Complainant is taking further treatment from AIIMS Hospital. The Opposite Parties failed to comply with their duties as a service provider and their negligent attitude not only gave Complainant financial loss but also causes him mental trauma and utter shock. The Complainant had also sent legal notice to Opposite Parties dated 24.06.20 but Opposite Parties did not pay any heed to the request of Complainant. Hence this shows deficiency in service on behalf of Opposite Parties. The Complainant has prayed for Rs. 12,50,000/- i.e. Rs. 10,00,000/- towards mental agony and harassment, Rs. 2,00,000/- towards breach of trust and Rs. 50,000/- towards further medical expenses. The Complainant has further prayed for Rs. 50,000/- towards legal expenses or litigation charges.

Case of the Opposite Parties

2. The Opposite Parties contested the case and filed common written statement. While admitting that the complainant remained admitted and received treatment in the Opposite Party hospital, Opposite Party has raised preliminary objection that there has been no negligence as the Trauma Protocol of the Hospital was strictly followed and all necessary investigation was done as per Patient's clinical symptoms. On merits, it has been contended that as the patient complained of pain in Right Shoulder, he was advised X Ray of Right Shoulder. However, X Ray Right Shoulder did not show any fracture/dislocation/abnormality. There was no obvious bony deformity seen. There were no signs of fracture (crepitus/ecchymosis) warranting any further investigation at that stage and hence he was managed conservatively by giving pain relieving medication along with Arm sling pouch and Ice packs. Opposite Party also contends that as a protocol, in cases of acute life threatening injury such as Rib fractures & Pneumothorax, it is not advisable to subject the patient for unnecessarily and unwarranted investigations unless and until there is significant issue needing further investigation immediately. However, the patient was advised for follow up to further evaluate his shoulder injury after 5 days (25/2/2020) in Orthopedic OPD. The Right Shoulder injury was to be examined once patient's pain and swelling had subsided with stress view X Ray and CT/MRI subjected to the progress report of the patient and subjected to the clinical findings of the patient. However, as per the records of the Hospital, the patient neither turned up for follow up as advised nor did he attempt to either inform or get in touch with the treating doctor/unit, in spite of his alleged claim of persistent severe pain and non-resolution of his complaints. Since there was no lapse or alleged medical negligence on the part of

Medical Team of the Hospital who thoroughly followed the medial protocol, the complaint is liable to be dismissed.

Rejoinder to the written statement of Opposite Parties

3. The Complainant filed rejoinder to the written statement of Opposite Parties wherein the Complainant has denied the objection raised by the Opposite Parties and has reiterated the assertion made in the complaint.

4. Evidence of the Complainant

The Complainant in support of his complaint filed his affidavit wherein he has supported the averments made in the complaint.

5. Evidence of the Opposite Parties

In order to prove its case Opposite Party has filed affidavit of , wherein the averments made in the written statement of Opposite Parties has been supported.

Arguments & Conclusion

6. We have heard the Ld. Counsels for the parties. We have also perused the file and the written arguments filed by the parties.
7. The case of the Complainant is that the complainant got admitted in the Opposite Party hospital for treatment and Opposite Parties (hospital and its doctors) conducted medical tests and gave treatment accordingly and discharged. It is alleged that despite fact that Complainant was going through severe pain in his right shoulder, Opposite Parties advised to take complete rest for two weeks and also prescribed medicines. As his situation was not improved, the complainant received second opinion from Apollo Hospital and fresh medical tests were conducted and found that right shoulder has been dislocated i.e. dislocated acromio clavicular joint with superiorly displaced clavicle and Complainant has been suffering from edema and has not been treated properly. The complainant was allegedly advised surgery for which the cost was around Rs. 2.5 to 3 Lacs. The complainant further sought third opinion from another hospital AIIMS and the doctors of that hospital also revealed the same problem and Complainant is taking further treatment from AIIMS Hospital. The grievance of the complainant is that the Opposite Parties failed to comply with their duties as a service provider and their negligent attitude and casual approach not only gave Complainant financial loss but also caused him mental trauma and utter shock.
8. On the other hand, the case of the Opposite Parties is that there was no lapse or alleged medical negligence on the part of Medical Team of the Hospital who thoroughly followed the medial protocol and as per protocol, in cases of acute life threatening injury such as Rib fractures & Pneumothorax, it is not advisable to subject the patient for unnecessarily and unwarranted investigations unless and until there is significant issue needing further investigation immediately. It is also contended that X Ray Right Shoulder did not show any fracture/dislocation/abnormality. There were no signs of fracture (crepitus/ecchymosis) warranting any further investigation at that stage and hence he was managed conservatively by giving pain relieving medication along with Arm sling pouch and Ice packs. It is alleged that it was the complainant who is at fault as despite advice given at the time of discharge, he did not turn up to follow up after his discharge.
9. The complainant has relied upon inter alia the copies of Medical records, discharge summary of Max Hospital (Opposite Party), copy of Medical reports and prescription of Apollo Hospital, copy of prescription of AIIMS Hospital etc. in support of his case.
10. Perusal of the medical record filed by the complainant such as Medical prescription by Doctor from Apollo hospital, MRI report etc. that second opinion was sought from Apollo hospital and it was found out that right shoulder of the complainant has been dislocated. It is also clear from the record that the complainant sought third opinion from AIIMS and is still undergoing treatment from AIIMS for the same injury.

11. It is an admitted fact that Opposite Party hospital that the complainant was managed conservatively by giving pain relieving medication along with Arm sling pouch and Ice packs. It is contended by Opposite Parties that as per protocol, in cases of acute life threatening injury such as Rib fractures & Pneumothorax, it is not advisable to subject the patient for unnecessarily and unwarranted investigations unless and until there is significant issue needing further investigation immediately. It is also contended by Opposite Party that the X ray chest of the complainant showed right sided pneumothorax, hence he was managed conservatively. Opposite Parties also argued that the treatment was given as per the Orthopedician's referral was taken and his advice was followed.
12. Opposite Parties in paragraph no. 4.5 of their reply, clearly stated as follows "...Patient had also complained for pain in the right shoulder region and right side of chest wall. Hence, Orthopedician's referral was taken and his advice was followed. Appropriate investigations were done. While examining the patient, it was observed that patient had L/E- tenderness (+) at lateral end of clavicle, 2nd /3rd rib, ROM was restricted and painful, abrasion over face and neck. General surgery opinion was taken in view of rib fracture. Patient was advised X Ray of Right Shoulder since he had complained of pain in Right Shoulder...."
13. However, Opposite Parties have not led any cogent and substantive evidence showing that Orthopedician's referral or general surgery opinion were sought and followed. Opposite Parties have also not filed any affidavit of the concerned doctors to the effect that any such advice was given in response. Hence, the defence of the Opposite Parties cannot be believed as true as they have not produced a single evidence whatsoever in support of their contentions.
14. Since, perusal of the evidence led by the complainant shows that his case is well substantiated and from the bills & invoices it is also clear that he had to incur further expenses in his further treatment and investigations. On the other hand, Opposite Parties have miserably failed to establish their case that medical protocol was followed in managing the complainant's case conservatively. They have not led any cogent evidence in support of their defence.
15. In view of above facts and discussion, we are of the considered view that the Opposite Parties have been deficient in services towards the complainant causing him mental, physical as well as financial loss.
16. Thus the present complaint is allowed and the Opposite Party No.1 i.e. Max Super Specialty Hospital is directed to pay to the complainant Rs. 1,00,000/- towards compensation and Rs. 25,000/- towards medical expenses. The Opposite Party No.1 is further directed to pay Rs.50,000/- towards litigation expenses. The awarded amount shall carry interest @ 9 % from the date of this order till its recovery.
17. Order announced on 13.09.24.

Copy of this order be given to the parties free of cost

File be consigned to Record Room.

(Adarsh Nain)
(Member)

(Surinder Kumar Sharma)
(President)