

**IN THE CONSUMER DISPUTES REDRESSAL FORUM  
KANNUR**

**Complaint Case No. CC/09/178  
( Date of Filing : 01 Jul 2009 )**

1. V Jayesh, S/o Jayachandran, Vettukattil house,  
Mundayad post, Kannur.

V Jayesh, S/o Jayachandran, Vettukattil house,  
Mundayad post, Kannur.

.....Complainant(s)

Versus

1. 1. Dr Vivek Venugopal, Com Trust Eye Hospital,  
Thalassery.

1. Dr Vivek Venugopal, Com Trust Eye Hospital,  
Thalassery.

2. 2. Dr Simi Manoj Kumar, Com Trust Eye Care  
Hospital, Thalassery.

2. Dr Simi Manoj Kumar, Com Trust Eye Care Hospital,  
Thalassery.

Kannur

Kerala

3. 3. Managing Director, Com Trust Eye Care Hospital,  
2nd Floor, Thalassery City Centre, Co-op Hospital  
Junction Junction, Thalassery.

3. Managing Director, Com Trust Eye Care Hospital, 2nd  
Floor, Thalassery City Centre, Co-op Hospital Junction  
Junction, Thalassery.

Kannur

Kerala

.....Opp.Party(s)

**BEFORE:**

**HON'BLE MRS. RAVI SUSHA PRESIDENT**

**HON'BLE MRS. Moly Kuttty Mathew MEMBER**

**HON'BLE MR. Sajeesh. K.P MEMBER**

**PRESENT:**

**Dated : 20 Jan 2021**

**Final Order / Judgement**

**SMT. RAVI SUSHA : PRESIDENT**

This complaint is filed under Sec.12 of the Consumer Protection Act 1986 claiming compensation of Rs.11,00,000/-

The facts of the complaint are that the complainant Sri.v.Jayesh who is a mechanic by profession, on 4/12/2008 while he was working, tiny part of the metal tool broken and penetrated into his right eye. Immediately he went to Oommen eye care Hospital, Kannur. The doctor in that hospital advised him that better treatment is required since there is metallic foreign body penetration and referred to 3<sup>rd</sup> Op's hospital. So he went to 3<sup>rd</sup> OP hospital as out patient. The 1<sup>st</sup> OP, examined him, diagnosed that the injury is simple in nature and he applied medicine, dressed the eye and let the complainant to go home. But after reaching home, he felt severe pain in the eye and started vomiting. On the same day at about 7.p.m he again went to 3<sup>rd</sup> Op hospital. Since doctor was not available in the hospital, complainant went to the residence of the 1<sup>st</sup> Op doctor who was examined him in the morning. From there the complainant was examined by 2<sup>nd</sup> Op doctor and admitted in the 3<sup>rd</sup> Op hospital. Due to the continuous vomiting at about 11.p.m the complainant was shifted to co-operative hospital, Talassery at the instance of 2<sup>nd</sup> OP. On 5/12/2008 at about 10.am he was again shifted to 3<sup>rd</sup> Op hospital and after examination 1<sup>st</sup> OP expressed unwillingness to retain there and 1<sup>st</sup> Op has referred the patient to Amrita Institute of Medical Science, Ernakulam. It is alleged that since it was highly belated advice from the Ops, and due to the delay, there was severe infection and the doctors at AIMS were constrained to do surgery for removal of right eye of the complainant. It is further alleged by the complainant that since the 1<sup>st</sup> OP treated him initially without due care and caution and without considering the gravity of injury, he lost his vision of right eye. According to complainant it is the duty of the Ops to examine the patient and decide what treatment is to be given and there is gross negligence on the part of Ops1&2. Complainant submitted that due to loss of vision, he cannot do his mechanic work. He has spent over Rs.1,00,000/- at AIMC Ernakulam for treatment. Hence he filed this consumer complaint for getting Rs.10,00,000 +1,00,000/- ie total 11,00,000/- as compensation from Ops 1 to 3.

Ops 1&2 filed written version jointly. 3<sup>rd</sup> Op separately filed version. Contents of both the written versions are more or less the same, resisting the complaint. Ops contended that as a preliminary objection this complaint is to be referred to a civil court, because some times complicate questions requiring recording of evidence of experts may arise about deficiency in service based on the ground of negligence in rendering medical services by a medical practitioners. After that it is submitted that the complainant came to the 3<sup>rd</sup> OP hospital on 4/12/2008 at about 12.25 pm as op patient and consulted 1<sup>st</sup> OP doctor. The complainant gave a history of sustaining injury to his right eye two days prior to the date of consultation and also he took treatment for the injury from another eye hospital at Kannur and came to 3<sup>rd</sup> OP hospital with complaints of severe pain, watering and reduces right eye with defective vision. It is submitted that ocular examination revealed "lid oedema with partial thickness corneal wound and severe iritis and fundal examination showed no view. So the 1<sup>st</sup> OP sought the expert opinion of a senior consultant Dr.N.P.Mohammed and differential diagnosis at that time was either intraocular foreign body with endophthalmitis or penetrating ocular trauma with endophthalmitis or severe post traumatic iritis. Suspecting intra ocular foreign body(IOFB), the complainant was informed and explained that he required B scan and X ray orbit for detailed evaluation and for a conclusive diagnosis. Since the facilities such as X ray orbit and B scan were not available in the third OP hospital at that time, the complainant was advised to go to either Dhanalakshmi hospital Kannur or to attend any higher centre at Kozhikode. A request for

the above investigations was also issued to the complainant. He was also informed that both facilities of USG and emergency IOFB removal was available only at Little Flower Hospital Angamally, Coimbatore and Kochi. It is also contended that considering the seriousness, emergency treatment was given with topical antibiotics and anti inflammatory drugs and applied pad and bandage. But the complainant instead of doing the investigations and going to the higher centre came back to the 3<sup>rd</sup> Op hospital in the same night with complaints of pain, headache and vomiting. Since the hospital has only daycare facilities and take night shifts only on camp surgery days, the duty sister sent the complainant to the residence of the 2<sup>nd</sup> OP, at about 8.p.m and on examination the 2<sup>nd</sup> Op had also diagnosed as IOFB with panophthalmitis( R ) eye and informed the complainant and his bystanders that immediate attention of a retinal surgeon is required and since the complainant was too sick to travel, they insisted for treatment at 3<sup>rd</sup> Op hospital. He was started on IV fluids and IV Augmentin and IV magnamycine antibiotics to avoid septicemia and cerebral infection. On the next day morning he was referred to AIMS Hospital Kochi. Hence there is no negligence or deficiency in service on their part for the treatment of the complainant. The Ops further contended that the complainant sustained injury to the right eye on 4/12/2008 is not correct and from the records submitted by the complainant, it is seen that the patient was referred from Oommen eye care hospital Kannur to Vasan eye care hospital from where some medicines were prescribed and the complainant subsequently attended the 3<sup>rd</sup> OP hospital and the complainant has suppressed the facts regarding the treatment to cook up his own story. The complainant was given emergency first aid treatment to prevent further deterioration and specifically instructed to go to higher centre for expert management as the required facilities such as X ray orbit and B scan were not available in the 3<sup>rd</sup> Op hospital. It is falsely stated that the Ist OP examined the complainant at his residence at 7 p.m on 4/12/2008. Since the 1<sup>st</sup> OP was residing at Kozhikode at that time and not having a residence at Thalassery, there was no occasion to consult him at night. The Ops further contended that the allegation of the complainant that there was highly belated advice from the Ops and due to the delay there was severe infection is not tenable or sustainable and hence denied. On 4/12/2008 itself the complainant was asked to consult doctors at higher centre and on that day itself the injury was two days old. The Ops 1&2 stated that we are qualified and experienced Ophthalmologists. There is no negligence or deficiency in service on the part of Ops 1&2 and also there is no vicarious liability on 3<sup>rd</sup> Op and so they are not liable to pay any amount as compensation to the complainant. Hence prays for dismissal of the complaint.

The complainant filed his affidavit evidence reiterating the facts stated in the complaint and relied on Exts.A1 to A9. The Op doctors filed separate affidavit evidence and relied Ext.B1 and X1. Ext.B1 is the case sheet of the complainant from 3<sup>rd</sup> OP hospital and Ext.X1 pertaining to the treatment given to the patient at Thalassery co-operative hospital as inpatient. Ext.A6 is the emergency room case record from AIMS Hospital Kochi of the complainant.

At the initial stage of this case before starting proceedings, this Forum forwarded the complaint to DMO to refer the matter to a competent doctor/committee of doctors specialized in the field relating to which medical negligence attributed, with all available documents from both sides and direct to submit a report whether there is prima facie case of medical negligence.

As per the direction of this Forum, Department of Ophthalmology Medical College Calicut after examined in the department by a team of specialist doctors submitted two reports dtd.20/10/2009 and 12/8/2010.

After taking evidence by this Forum from both sides, the learned counsel for the complainant filed written argument note and the learned senior counsel for the Ops argued the matter before us. We have gone through the submissions of both counsels and the available material evidences brought before us.

There is no dispute that complainant came to Comtrust Eye care Hospital Thalassery(OP.3) as out patient on 4/12/2008 and Dr.Vivek Venugopal(OP.1) initially examined the complainant. According to the complainant immediately after penetrating tiny part of the metal tool into his right eye, he went to Oommen Eye care hospital Kannur and from there he was referred to 3<sup>rd</sup> OP hospital on the same day without any prior treatment and 1<sup>st</sup> OP after examined the complainant diagnosed that the injury happened to the eye is simple in nature and 1<sup>st</sup> OP applied medicine, dressed the eye and let the complainant to go home. It is also contended by the complainant that after reaching home, the complainant felt severe pain in the eye and started vomiting and at about 7.p.m he again went to the 3<sup>rd</sup> OP hospital. Since doctor was not available he went to the 1<sup>st</sup> OP's residence who had examined in the morning. 2<sup>nd</sup> OP admitted him in 3<sup>rd</sup> OP hospital and from there at 11.p.m due to continuous omitting, shifted co-operative hospital and on the next day at 10.a.m he was again shifted to 3<sup>rd</sup> Op hospital and 1<sup>st</sup> OP expressed unwillingness to retain the complainant and was referred to AIMS hospital Ernakulam. It is alleged that due to the gross negligence and without due care and caution in treating the complainant lead to do surgery for removing the right eye of the complainant at AIMS hospital and in such circumstances the complainant claimed Rs.11,00000/- compensation against Ops 1to 3 alleging professional negligence and deficiency in service on the part of Ops 1&2. On the other hand it is the specific defense of the Ops that the complainant came to the hospital on 4/12/2008 at about 12.25 pm and consulted 1<sup>st</sup> OP with complaints of severe pain, watering and reduces right eye with defective vision. Then the complainant gave a history of sustaining injury to his right eye two days prior to 4/12/2008 It is further contended that from the records submitted by complainant revealed that the patient was referred from the Oommen eye care hospital to Vasan eye care hospital from where some medicines were prescribed and subsequently he approached OP.3. OP.1 had done ocular examination, which revealed lid oedema with partial thickness, corneal wound and severe iritis and fundus examination showed no view. As per the expert opinion of a senior consultant, suspecting intra ocular foreign body (IOFB), the complainant was informed and explained that he required B scan and X ray orbit to rule out the possibility of having IOFB. Since the facilities such as X ray orbit and B scan were not available in the third OP hospital at that time, the complainant was advised to go to either Dhanalakshmi hospital Kannur or to attend any higher centre at Kozhikode. It is also contended that considering the seriousness, emergency treatment was given with topical antibiotics and anti inflammatory drugs and applied pad and bandage. But the complainant instead of doing the investigations and going to the higher centre came back to the 3<sup>rd</sup> Op hospital in the same night with complaints of pain, headache and vomiting. The 2<sup>nd</sup> Op had also diagnosed as IOFB with panophthalmitis ( R ) eye and informed the complainant and his bystanders that immediate attention of a retinal surgeon is required and since the complainant was too sick to travel, they insisted for treatment at 3<sup>rd</sup> Op hospital. He was started on IV fluids and IV Augment- in and IV magnamycine antibiotics to avoid septicemia and cerebral infection. On the next day morning he was referred to AIMS Hospital Kochi and thus pleaded that there is no deficiency in service or professional negligence on their part.

It is seen that the complainant who gave affidavit deposing the case of the complainant did not admit that the injury happened two days before consulting with 1<sup>st</sup> OP and also the patient was referred from Oomen Eye care hospital Kannur to Vasan eye care hospital from where some medicines were prescribed and subsequently he attended 3<sup>rd</sup> Op hospital. On the other hand from Ext.A2 and A2(9) documents of complainant itself reveals that the patient on 4/12/2008 he firstly went to Dr.Oommen Eye hospital and the doctor of that hospital observed that Cornea perforated ie damage to the cornea which can cause decreased visual acuity . Further the patient was referred to Dr.Jayanth at Vasan eye care hospital and Ext.A2(a) medicine prescription of vasan eye care hospital shows that on the same day he went to Dr.N.Jayanth at Vasan eye care hospital and from there some medicines were prescribed. Further complainant's own document Ext.A3(a) reveals H/O 2 days back which usually written by the consulting doctor as per the history given by the patient. Further it is noted that there was severe infection affected at that time ie swelling of eye lid, GVP(guardic Prongrosis)etc and prescribed topical antibiotics and anti-inflammatory drugs for controlling further infection. In addition to this PW1 during cross-examination made by learned counsel of Ops deposed that in page 3 to 5 Dr. Jayanth I@pcnse \Ã tUmIvSdmWv. Rm³ hmk³ sF sIbdnÂ tJmbncp¶p. C¶v acp¶v I@nÂ Hgn`Xn\ptijw \msf t\m;mw F¶v Jd`ncp¶p. vasan eye care sâ prescription Rm³ lmPcm;nbncp-v.. AXnÂ I@v Jcnti#m[n`v F\ñv Bhiyamb acp¶v X¶n<p-v. F¶v FgpXnbn<p-v. Bân\_tbm<n;v X¶n<p-v. I@v sI<nbncp<nÂ sI<nbXmbn AhnsS FgpXnbn<p-v. H¶pw Jdbm\ñ. pad and bandage AhnsS FgpXnbn<p-v. I@ns\m¶pw sI<nbncp<nÂ . lmPcm;nb tcJbnÂ Review tomorrow F¶v Jd`n<p-v.. Jayanth Dr. s\ Rm³ I-n<nÂ. Cu hmk³ sF sIbdnÂ tJmb Imcyw JcmXnbnÂ JdbmXncn;phm³ ImcWw H¶panÂ. Ext. A2(a) bnÂ history of foreign body falling to right eye two days back Fs¶gpXnbn<p-v. 2 Znhkw IgnªmWv Comtrust Â tJmbsX¶v Jdbp¶Xv icnbÂ. JcmXnbnÂ C§s\ tcJbnÂ Ifhmbn Jdbp¶XmsW¶v Rm³ Jd`n<nÂ.”

Thus the material on records ExtsA2,A2(a)discloses and from PW1's deposition, the facts stated by the complainant in his affidavit that he immediately after the injury on his right eye, approached OP.3 hospital, could not be appreciated in his favour. Further H/o injury 2 day back' from 4/12/2008 is disclosed from Ext.A3(a) , Ext.A5 prescription s from OP.3 hospital and Ext.A6 case record of Amrita Institute of Medical Science reveals the portion of tiny part of the metal occurred into his right eye 2 days back from 4/12/2008 and he came to OP.3 hospital deteriorated condition of his right eye.

Ext.B1 out patient medical record of Comtrust eye care hospital(OP.3) shows that the complainant came to OP at 12.25 hours on 4/12/2008, Diagnosis-IOFB right eye, defective vision and senior consultant Dr.Mohammed advised to take X-ray orbit, B scan and going to higher centers for further management and prescribed antibiotic medicines also. Further page 4 shows that X ray and B scan not done. The learned counsel of complainant submitted that Ext.B1 case record is a manipulated or fabricated one. But mere making such a suggestion is not sufficient. The complainant did not place any other believable evidence on record or orally to come to a conclusion that the facts stated in the complaint and chief affidavit are correct. He could have even examined any of his co-workers or doctors who examined him at Oommen eye care hospital or vasan eye care hospital. So we are inclined to take Ext.B1 as an evidence on the OP's side.

The learned counsel of complainant submitted a decision of Hon'ble National consumer Disputes Redressal Commission 2008(20 CPR (NC) 399 in which the Hon'ble National

commission held that the OP doctor has been negligent and deficiency in service to the extent that he did not follow and adopt adequate normal procedure of obtaining the required test reports before arriving at a diagnosis.

Here in Ext.B1 case record it can be seen that the patient on the first day itself advised to take X ray orbit and B scan and given the choice of going to higher centers for further management. Ext.B1 further reveals that suspecting IOFB ie intra ocular foreign body. Ops submit that since the facilities such as B scan and X ray orbit were not available in the OP3 hospital at that time, the complainant was duly advised to go to other higher centre for the investigation. From Ext.B1 and other medical records of OP3 hospital show that Ops 1&2 are given topical antibiotic and anti inflammatory drugs to avoid septicemia and cerebral infection.

So we could not come to a conclusion that Ops 1&2 did not follow and adopt adequate normal procedure before arriving at a diagnosis. So the decision produced from the complainant's side cannot be taken into account.

The law is that if a medical practitioner is acted in accordance with the practice accepted by the profession he cannot be hold negligent.

In Dr. INS Malhotra vs. Dr.Kripalini and others(2009) 4 SCC 705 . The Hon'ble Supreme Court referred to the circumstances where liability of the doctors can be fastened and laid stress on that primary liability on doctors cannot be fastened on less negligence of the doctor is established. Further in Jacob Mathew vs state of Punjab(2005) 6 SCC I where the Apex court held that a simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional.

Further in this case there is an expert committee report dtd.12/8/2010 by Dr.K.V.Raju (Professor and HOD, Govt. Medical College Hospital Kozhikode) and Dr.Jyothis P.T Associate Professor did not agree with the allegations contained in this consumer complaint of the complainant. Experts committee opinioned that ' the complainant was treated with topical and systemic antibiotics and referred to AIMS, Kochi on the next day itself for expert management and as per the available documents, the complainant has received proper treatment and prima facie there is no obvious negligence". The expert committee did not find the Ops guilty of committing medical negligence. Since the opinion of the Expert committee is available on record, we have to go by the Expert committee report unless there are good enough reasons to disagree with the expert committee report. We cannot substantiate our own views over that of specialists because we are not expert in medical science."

In view of the above facts, circumstances and the legal position , the complaint fails and is hereby dismissed.

As a result, the complaint is dismissed. There is no order as to cost.

Exts:

A1-OP record

A1(a) prescription

A2 series Prescription(2 Nos.)

A3-Nurses record

A3(a) prescription dtd.4/12/08

A4- certificate issued by OP

A5- prescription

A6- Emergency room case record from amrita Hospital

A7- Physician progress report

A8-certificate issued from Amrita Hospital

A9-Bills from Amritha hospital (12 Nos.)

B1- case sheet of complainant from 3<sup>rd</sup> Op

X1- treatment records given by Co-op. hospital Thalassery.

PW1-Jayesh.V- complainant

DW1-Dr.Vivek-OP.1

DW2-Dr.Simi Manojkumar- OP.2

Sd/  
Sd/

Sd/

PRESIDENT

MEMBER

MEMBER

Ravi Susha

Molykutty Mathew.

Sajeesh K.P

eva

/Forwarded by Order/

SENIOR SUPERINTENDENT

**[HON'BLE MRS. RAVI SUSHA]  
PRESIDENT**

**[HON'BLE MRS. Moly Kutty Mathew]**  
**MEMBER**

**[HON'BLE MR. Sajeesh. K.P]**  
**MEMBER**