

THE PRESIDENT  
DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION  
WEST TRIPURA : AGARTALA

CASE No. CC- 75 of 2018

1. Sri Raju Das,  
S/O- Sri Dulal Das,
2. Smt. Tumpa Sarkar(Das),  
W/O- Sri Raju Das,
3. Sri Ayush Das (minor),  
S/O- Sri Raju Das,

Represented by his parents,  
the Complainant No.1 & 2,  
being his natural guardian.

All are residents of Jatanbari,  
P.O. & P.S.- Jatanbari, Amarpur,  
Gomati District. ....Complainants.

-VERSUS-

1. Agartrala Nursing Hospital and Research Centre Pvt. Ltd.,  
Represented by its proprietor,  
Dr. Alekhya Dasgupta,  
Having its office at 9, A Mantribari Road,  
Post office Chowmuhani,  
Agartala, P.S. West Agartala, Tripura West,  
Pin- 799001.

2. Dr. Alekhya Dasgupta,  
Agartala Hospital & Research Centre Pvt. Ltd.  
having its office at 9, A Mantribari Road,  
Post office Chowmuhani,  
Agartala, P.S. Wet Agartala, Tripura West, pin- 799001,

3. Sri Rajat Bhowmik, on duty Medical Officer,  
C/O- Dr. Alekhya Dasgupta,  
Having its office at 9, A Mantribari Road,

Post Office Chowmuhani,  
Agartala, P.S. West Agartala, Tripura West, Pin- 799001.

4. Dr. Kajal Kumar Das,  
Grade- II, Medical Officer,  
Tripura Health Service,  
Tripura Sundari Hospital, Udaipur,  
Gomati Tipura. ....Opposite Parties.

\_\_\_\_PRESENT\_\_\_\_

SRI RUHIDAS PAL  
PRESIDENT,  
DISTRICT CONSUMER  
DISPUTES REDRESSAL COMMISSION  
WEST TRIPURA, AGARTALA.

Dr (SMT) BINDU PAL  
MEMBER,  
DISTRICT CONSUMER  
DISPUTES REDRESSAL COMMISSION  
WEST TRIPURA, AGARTALA.

C O U N S E L

For the Complainant : Sri Gouri Sankar Bhattacharjee,  
Learned Advocate.

For the O.Ps. : Sri Sankar Bhattacharjee,  
Advocate.

JUDGMENT DELIVERED ON : 08.01.2021

J U D G M E N T

The Complainants Sri Raju Das and Smt. Tumpa Sarkar (Das) have filed the complaint for themselves as well as on behalf their minor son U/S 12 of the Consumer Protection Act, 1986 against Opposite parties(in short O.Ps) namely Agartala Hospital and Research Centre Pvt. Ltd. and Others seeking relief for negligence and deficiency of service by the O.Ps.

2. Complainant's case, in brief, is that the Complainant No.1 and 2 are the father and mother of their minor son Sri Ayush Das and all are the residents of Jatanbari, Amarpur, Gomati District. That after conceiving by the complainant no.2 she used to attend physician at Udaipur. Dr. G.K. Debnath, MD. (Specialist of OBS & Gynae) who used to provide all medical support to the complainant no.2 from her initial stage of conceive. During her advanced stage she was advised to go to Agartala for better medical support and to avail better medical facility as he opined that the delivery operation is required(Caesarean), as at Gomati District such facility is not upto the mark. Getting advise from her physician Dr. G.K. Debnath complainant no.1 has taken the complainant no.2 to the Agartala Hospital and Research Centre Pvt. Ltd., Post Office Chowmuhani, Agartala for better facility and better medical supervision and treatment under the supervision of the medical officer/doctors of the O.P. No.1 i.e., the O.P. No.2 & 3. After arrangement of money, the complainant no. 2 was admitted at Agartala Hospital & Research Centre Pvt. Ltd. as per advise of the O.P. No.2 & 3 on 22.10.2017 and a major operation was held and the complainant no.2 has given birth of a male child on 23.10.2017. It was observed by the complainant no.2 and all her relative that the new born baby was continuously crying and whenever his right leg is touched his crying is loud. On calling ,the O.P. No.2 and 3 attended the complainant no.2 and her baby and informed that during operation and delivery and due to accident the fracture happened of shaft of right femur of the new born baby during manipulation of EmLSCS, and the femur bone is in broken condition of the baby and it is in delicate position. Bandage or any plastering cannot be done to the new born baby and no orthopedic specialist is available with the O.Ps and such service can not be provided to the complainant. Whenever the complainant no.1 and her family members raised their voice for the proper treatment of the baby for his broken bone of the right femur the O.Ps asked the complainants and their family members that the O.Ps are lacking the facility for orthopedic treatment of such newly born baby. The complainant raised objection that due to serious negligence and deficiency of service by the O.Ps the right femur bone of the newly born baby has been broken and the O.Ps are liable for the same. Had been the O.Ps are careful and provided proper care the bones of the right femur of the baby could be protected and safe delivery can be done. That the complainant no.2 on 23.10.2017 issued certificate referring the new born baby to the Medical Officer of the Department of Orthopedics of the I.G.M. Hospital, Agartala, Tripura with detailed history of the the patient i.e., the new born baby of the complainant no.2. After that the complainants approached to the I.G.M. Hospital along with their baby on 23.10.2017. the Medical Officer of the IGM Hospital checked up the baby and also diagnosed that the baby had fracture shaft of femur of right leg. On 23.10.2017 the complainant no.2 along with her baby(Ayush Das) was discharged from the I.G.M. Hospital as there is no orthopedic surgeon and referred to Agartala Medical College & G.B.P. Hospital. Then the complainants brought the baby(Ayush) to the Agartala Medical College & G.B.P. Hospital where the baby(Ayush) was examined and several tests and X-rays also done and the complainants were advised to attend the pediatric department of the hospital as they found the baby is suffering from fracture of the right femur bone and serious discomfort. After getting information from the website the complainants took the baby to the Tropical Orthopedics & Research Centre situated at Kamarpukur Par, Agartala on 31.10.2017. and there the baby was treated from 31.10.2017 to 04.12.2017. But after X-ray it was found that there was no improvement and it was detected that the bones has not been joined. Again on 17.01.2018 the complainants took their baby to AGMC & GBP Hospital. The doctors advised for operation of the right femur. Dr. Ashim Roy, pediatrics also treated Ayush Das from 26.03.2018 for one month but no improvement was detected. As such the complainant in the

month of March, 2018 took the baby (Ayush) to Kolkata for proper and better treatment. On 03.04.2018 the complainant has taken their son to the Child Health Institute situated at Kolkata wherein various tests have been done on Ayush Das and bones of the fractured leg have been set on their process and also wherein proper medical care and appropriate treatment has been provided to the baby and advised the complainant no.1 and 2 that no further orthopedic intervention is required and the bones of the right femur would join normally if the medicines are provided and administered appropriately. There after they returned to their home where in the complainants properly followed the advise of the doctors of the Child Heath Institute, Kolkata and after one month it is observed that the baby is moving his right leg quite joyfully and laughing normally and whenever the right leg is touched he is not crying and giving response. It is also stated that due to the fracture of femur bone from the delivery date the complainant no.1 and 2 had to incur expenditure more than 4 lacs. Moreover, complainant suffered serious financial loss and severe mental agony, harassment and also complainant no.3 suffered from physical discomfort, sufferings and pain due to the deficiency of service of the O.Ps as well as the medical negligence. Hence, they filed the complaint seeking compensation of Rs.5 lacs.

3. After getting notice O.P. No.1, 2 and 3 contested the proceedings by way of filing their common written statements. In their written statement they have stated that the complainant had approached the O.P. No.2 with reference to Dr. K.K. Das, consultant OBS Gynecologist of Agartala who occasionally sends his patient to avail the OT for gynecologist operation on payment. The O.P. No.1 provided the OT facilities with OT staff. The O.P. No.3 was on duty medical officer of O.P. No.1. Accordingly Dr. K.K. Das had informed the O.P. No.1 that he would need to undertake emergency LSCS of the patient namely Tumpa Sarkar. As the baby's position was transversely(abnormally presentative) and time was fixed at 12.00 in the intervening night of 22/10/2017 and 23/10/2017. At about 12.05 A.M. on 23.10.2017 a male baby of 2.5 kg weight was delivered with accidental injury over the right femur. Dr. K.K. Das carried out the operation along with his surgical team including Anesthetist Assistant Surgeon etc. and in the entire operation the O.P. has no role to play except providing the OT and office staff. But surprisingly the complainants have not made Dr. K.K. Das as a party in this case. And as such the case is absolutely bad for non-joinder of necessary parties. The O.Ps are not responsible for any complain regarding the birth of the baby of the complainants no.2. It is also mentioned that the complainant no.2 was a regular patient of Dr. K.K. Das and Dr. K.K. Das was not made a party. The payment was also made by Dr. K.K. Das for using the OT and OT staff. Ultimately O.P. No.1, 2 and 3 in their written statement made prayers for rejection of the complaint and also for a direction to compensate them adequately for causing damage to their reputation and also causing mental pain by making false defamatory allegations against them.

4. Thereafter, an application was filed by the complainants under Order 1 Rule 10 CPC praying for addition of party namely Dr. Kajal Kr. Das and that petition was allowed vide order dated 19.02.2019 and notice was issued upon the newly added O.P. Sri kajal Kr. Das. After getting notice Mr. Das appeared and filed his written objection and in his written objection he stated that complaint petition is not maintainable in its present form and nature and it is misconceived one. It is further submitted that O.P. No.4 adopts the written statement filed by the O.P. No.1, 2 and 3 and he may be allowed to rely upon the written statement filed by the O.P. No.1, 2 and 3. The facts which is narrated in the written objection of the O.P. No.4 is that on 22.10.2017 the complainant No.1 approached the O.P. No.4 and after consultation he requested the O.P. No.1 to admit the complainant no.2 since she was having severe complications relating to her pregnancy and needs immediate medical intervention and ultimately on the intervening night of 23.10.2017 the O.P. No.4 under took the emergency surgery upon the complainant no.2 wherein the complainant no.2 delivered a male baby at about 12.05 A.M. of 23.10.2017. It is further stated that during caesarian

operation it is found that the baby is in left transverse lie(obstructive) position and this complication needs proper management to save the child as well the mother. Ultimately the baby was removed but during removal there was fracture of femur at the right side of the baby during delivery. After completion of the procedure and the out come of the caesarian operation duly noted in the O.T. Note, the said fact also was narrated properly to the complainant no.1 and other relatives/friends present in the hospital. Since Agartala Hospital is not related to child care so on 23.10.2017 at about 1.05 A.M. it was advised to take the baby to IGM Hospital for better and proper treatment. It is also submitted that the O.P. No.4 has passed MBBS and joined services in the year 1996. Thereafter, he passed M.D. (obstetrics and gynecology) from the Regional Institute of Medical Science, Imphal in the year 2007. He also gathered sufficient skill, knowledge and experience in the field of Obstetrics and gynecology. He also performed numerous caesarian operation and thereby gathered sufficient knowledge & experience in the field of obstetrics and gynecology. In the instant case O.P. No.4 exercised the reasonable degree, competence and care while performing the procedure as required to save the life of the baby and the mother. As such the complaint petition filed by the petition is liable to be dismissed.

#### 5. EVIDENCE ADDUCE BY THE PARTIES:-

The complainants' side adduced evidence by filing examination in chief on affidavit of complainant no.1 and 2, they were also cross examined by the O.Ps. Some documents comprising 21 sheets filed under a firisti and 4 original X-ray plates of minor son Ayush Das which are marked as Exhibit- 1 Series.

6. On the other hand examination in chief on affidavit is submitted by Sri Ashis Das on behalf of the O.P. No.1, 2 and 3 and documents comprising 50 sheets which is filed by the O.P. No.1, 2 and 3 are marked as Exhibit- A Series. This O.P.W. 1 is also cross examined by the complainant.

7. The O.P. No.4 himself submitted his examination in chief on affidavit. He also submitted 2 documents under firisti which is marked as exhibit- B. O.P. No.4 was also cross examined by the complainant.

#### 8. POINTS TO BE DETERMINED:-

- (i) Whether there is deficiency of service on the part of the O.Ps towards the Complainant?
- (ii) Whether the complainant is entitled to get compensation/ relief as prayed for?

#### ARGUMENTS:-

9. We heard arguments of both sides at length. At the time of arguments Mr. Gouri Sankar Bhattacharjee for the complainant submitted that the complainant no.1 and 2 are the permanent residents of Jatanbari, South Tripura having their temporary residents at Sonamura. When the complainant no.2 became pregnant she had been medically look after by Dr. G.K. Debnath. M.D.(Specialist of OBS and GYNEA). In the middle of September, 2017, Dr. Debnath advised the complainant no.1 and 2 that the passage is narrow as such caesarian delivery is proper for the complainant no.2 for the safe and good delivery of the child. As such Dr. Debnath advised to take medical advise from any nursing home from Agartala. Thereafter, on the first part of September, 2017 complainant no.2 was taken to Udaipur, Tripura Sundari Hospital for medical checkup wherein Dr. K.K. Das Medical officer checked up the complainant no.2 and advised to go for caesarian delivery from Agartala for the safe delivery of the child. Complainant no.1 then along with parents approached Agartala Hospital and Research Centre Pvt. Ltd. on 22.10.2017. The attending doctors of O.P. No.1 after pursuing the previous medical prescriptions done the medical check up of the complainant no.2, asked the complainant no.1 that the stage is matured and delivery can be done within 1 or 2 days. The attending physicians of the O.P. No.1 then has taken

the complainant no.2 in the ward and at about 11 P.M. night all on a sudden the attending physicians asked the complainant no.1 and other relatives of them that in that night caesarian operation would be done. Attending physicians of the nursing home had taken all the signatures of the O.P. No.1 and 2 in the admission form and asked the complainants to deposit money in the office as the admission fees and other costs including operation charges and complainant No.2 was admitted. Thereafter the complainant No.2 was taken to O.T. and anesthesia was injected and thereafter on that night the operation was done. Mr. Bhattacharjee further submitted that it was unknown to the complainants who has done the caesarian operation but they came to know that a male child was given birth by the complainant no.2 and the attending physicians never disclosed that during delivery the right femur leg of the baby has been fractured. When the screaming is not stopped of the baby and whenever his light leg is touched the screaming became louder. Thereafter complainant and their relatives asked the attending doctors of the nursing home about the fact. On 23.10.2017 at about 9.00 A.M. O.P. No.1 and his medical officers referred the baby to the IGM Hospital and issued the certificate that the right femur bone of the baby has been fractured accidentally during the delivery, prior that no medical advise and treatments was provided to the baby. O.Ps never provided any medical support to the newly born baby after delivery. They never called any orthopedic physician or pediatric surgeon to provide the medical support to the newly born baby and due to the serious negligence of the O.P. the right femur leg of the baby heavily fractured and the fractured bones of the femur leg elevated one after another by the said fracture. It is further argued that the right leg of the complainant no.3 has been deshaped and deformed. For getting better treatment the complainants no.1 and 2 had taken their baby at Kolkata where his treatment was done and for that purpose they had to incur heavy amount. Mr. Bhattacharjee in support of his arguments relied upon some decisions of the Apex Court which are as follows:

1. (2018)12 SCC 699,
2. (2010) 5 SCC 513,
3. (2017) 3 SCC 115,
4. (2015) 9 SCC 388,
- (2015) 11 SCC 423,

10. On the other hand, Mr. Sankar Bhattacharjee for all the O.Ps in his argument submitted that the complainant filed the complaint suppressing the materials fact. In their complaint they did not mention the name of the Dr. K.K.Das who performed the caesarian operation. When the O.P. No.1, 2 and 3 filed their written statement only thereafter complainant filed application for addition of the party to Dr. K.K. Das. So, it is very much clear that they did not come with clean hands. In the instant case, there is admitted fact that the condition of the patient and the baby while in the womb was not conducive. In the written objection submitted by the O.P. No.1, 2 and 3 it was clearly mentioned that operation was done by Dr. K.K. Das and he used the O.T. facility with staffs and all the incidents is mentioned in the O.T. Note. There is no hide and seek and ultimately complainant added Dr. K.K. Das as a party. Dr. K.K. Das also supported the written statement of O.P. No.1, 2 and 3. From the written statement as well as the evidence of Dr. K.K. Das it is proved that K.K. Das had undertaken emergency surgery upon the complainant no.2 in the intervening night of 22.10.2017 and 23.10.2017 wherein complainant no.2 had delivered a male baby at about 12.05 A.M. It was also proved that during the caesarian operation it was found that the baby is in left transversely lie(obstructed) and this complication needed proper management to safe the life of the child and mother and with great difficult the baby was removed and during the removal of the baby from the womb there was fracture of femur in the right side of the baby. Dr. K.K. Das in his evidence clearly stated that the complainant no.2 presented the case of 36 weeks pregnancy that transverse lie (abnormal presentation and position) in labour with hand prolapsed. In that case there was no mechanism for vaginal delivery and in such a case if it is delayed in management it can be led to fatal death due to cord prolapsed and increasing obstruction and some times maternal

complication even rapture uterus also occurs. In such condition the extraction of the baby from uterus even by caesarian saction was difficult as baby is deeply impact in a abnormal position and the liquor (water where baby moves) drained out completely. It was also mentioned by Dr. K.K. Das that the mechanism of extraction of the baby by internal manipulation and by pulling one leg at the ankle rotating the baby inside and delivery of the baby by breech(buttock) called breech extraction. Since the baby was deeply impacted due to absence of liquor and abnormal presentation manipulation becomes inevitable inspite of taking all the care during extraction of the baby from the womb(uterus). Dr. Das also mentioned that this is a accepted medical complication which can not be avoided in any way to save the life of the mother as well as the baby. Learned Counsel Mr. Bhattacharjee further submitted that the Agartala Hospital and nursing home is for the child care and O.P. No.2 Dr. Alekhya Dasgupta is himself as a child specialist. He also looked after the mother and he referred the child to the IGM Hospital timely. So it can not be said that there was any negligence on the part of the O.P. No.1, 2 and 3 as well as O.P. No.4. Mr. Bhattacharjee relied upon the following decisions of Apex Court also.

Dr. Jacob Mathew Vs. State of Punjab and another A IR 2005 SC Page- 3180.

Kusum Sarma & Others Vs. Batra Hospital & Others. AIR 2010 SC Page-1050. Dalbir Singh's Case- 2565 STPL(CL) 2142 NC Vinod Jain Vs. Santokba Durlabhji Memorial Hospital & Anr AIR 2019 SC Page- 1143.

He further submitted that the complainant failed to adduce expert evidence which is required in a case of medical negligence. The evidence adduced by the O.Ps are sufficient enough to come to a conclusion that the complainant had failed to prove their case and the complaint petition is liable to be dismissed with heavy costs.

#### 11. FINDINGS AND REASONS FOR DECISIONS:-

We have heard arguments of both sides.

We have carefully gone through the pleadings of both sides as well as the evidences adduced on their behalf. For the convenience both the points are taken up together for decision. Before appreciation of the evidences we like to reproduce the tests which had been laid down at para 94 of the judgment of Kusum Sarma Vrs. Batra Hospital and Medical Research Centre(2010)3 SCC 480. "94.On scrutiny of the leading cases of medical negligence both in our country and other countries specially the United Kingdom, some basic principles emerge in dealing with the cases of medical negligence. While deciding whether the medical professional is guilty of medical negligence following well known principles must be kept in view:

I. Negligence is the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

II. Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

III. The Medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.

IV. A medical practitioner would be liable only where his conduct fell below that of the standard of a reasonably competent practitioner in his field.

V. In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of other professional doctor.

VI. The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence.

VII. Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.

VIII. It would not be conducive to the efficiency of the medical profession if no doctor could administer medicine without a halter round his neck.

IX. It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessarily harassed or humiliated so that they can perform their professional duties without fear and apprehension.

X. The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurizing the medical professionals/hospitals particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.

The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals."

12. Now coming to the application of the aforesaid principles to the facts on hand. From the exhibited documents(Exhibit- 1 Series) submitted by the complainant side we find that earlier Tumpa Sarkar(Das) was being treated by Dr. G.Debnath who is a Gynecologist and as per advise of Dr. G.K. Debnath sonography was performed on Tumpa Sarka (Das) on the dates of 29th July 2017. and 23rd August 2017 and both the sonography reports speak that the pregnancy was in unstable presentation and lie. The reports are not conducive. In respect of those sonography report the complainants are silent and they suppressed the matter. From the evidence of Dr. K.. Das (O.P.No.4) we find that on 22.10.2017 the complainant no.1 and 2 approached him and after consultation he requested the O.P. No.1 to admit the complainant no.2, since she was having severe complications relating to the pregnancy and needs immediate medical intervention. On the same intervening night he undertaken emergency surgery upon the complainant no.2 wherein a male baby was delivered. In the examination in chief it is also stated that during the caesarian operation it was found that the baby is in left transverse lie(obstructed) and this complication needs proper management to save the life of the child and the mother. He with great difficult, removed the baby from the womb and during the removal there was fracture in the right side of the baby. He also recorded the procedure in the O.T. Note. He also narrated the entire procedure and the injury of the baby and the cause of the injury to the complainant no. 1 and his family members. He also requested the O.P. No.1 (Agartala Hospital) to do the needful for better and proper management of the child. At para 6 and 7 of the examination in chief on affidavit of the O.P. No.4 he vividly discussed about the mechanism which is to be adopted in such a case. According to Dr. K.K. Das the mechanism of extraction of the baby was by internal manipulation and by pulling one leg at the ankle rotating the baby inside and delivery of the baby by breech(Buttock) called breech extraction. The baby was deeply impacted due to absence of liquor and abnormal presentation manipulation inevitable inspite of taking all the care during the extraction of the baby from womb. Dr. Das also stated that it is accepted medical complication which can not be avoided in any way to save the mother as well the baby.

13. From the complaint petition as well as from the evidences of the complainant we find that the complainant totally suppressed the name of the Dr. K.K. Das who performed the caesarian



operation. We became astonished why complainant suppressed the name of Dr. K.K.Das. From the evidence of the O.P. No.1, 2 and 3 as well as O.P. No.4 we find there are corroborative evidences. On appreciation of their evidences we find that Dr. Das took all reasonable cares while doing operation as well as post operation. It is fact that O.P. No.4 is not a pediatric surgeon. So, when he found that during the removal of the baby from the womb there was fracture of femur in the right side of the baby he suggested the hospital authority to take the necessary measures in respect of the baby. Accordingly O.P. No. 2 ie., DR. Alekhya Dasgupta who is a child specialist attended the child in the intervening night at 01.05 A.M. (it is found from the documents of Exhibit A Series) and accordingly the baby was referred to the IGM Hospital as per the advise of Dr. Alekhya Dasgupta. From the evidences of both sides we find that the baby was taken to the IGM Hospital but IGM Hospital also referred the case to the AGMC and GBP Hospital for further treatment as there was no orthopediatrician in IGM hospital. In this regard there is no dispute. From the cross examination of P.W. 1 (Tumpa Sarkar (Das) we find that as per advise of Dr. G.K. Debnath she contacted with Dr. K. K. Das in his chamber at Udaipur and Dr. Das advised her to go for caesarian operation. Again she stated that she can not say who had conducted her caesarian operation at Agartala Hospital and Research Centre Pvt. Ltd.. Such type of statement of P.W. 1 can not be believable at all because they suppressed the fact at the initial stage who was the doctor and who conducted operation and subsequently they amended the complaint and made Dr. K. K. Das as a party. The conduct and behaviour of the complainants are not appreciable.

14. We have already mentioned the principles laid down by the Hon'ble Apex Court in respect of medical negligence. We have considered the pleadings as well as evidences of both sides very carefully. We have also gone through Dr. D. C. Dutta's text book of Obstetrics which is relied upon by the counsel of the O.Ps. From the text book we find that "Long bones – bones commonly involved in fractures - are the humerus, the clavicle and the femur. These occur in breech delivery. Fractures are usually of greenstick type but may be complete. Rapid union occurs with callus formation. Deformity is a rarity even where the bone ends are not in good alignment." So we find that medical science approves such nature of fracture which may occur in a breech delivery.

15. From the evidence of the O.Ps we find that the event was accidental in nature and there was no negligence on the part of the Opposite parties. Rather we can say that the hospital authority took the necessary measures for the treatment of the new born baby. It is unfortunate that the complainant had to incur huge amount for the treatment of the baby, but for which we can not say that the opposite parties are responsible and liable to compensate the expenditure. While we have appreciated the evidence of both sides, we kept the principles laid down by the Apex Court in respect of medical negligence which is mentioned above. On over all appreciation of evidences of both sides, we do not find that there is/was any negligence or any deficiency of service on the part of the opposite parties. Hence, we are in the opinion that the complaint is devoid of merit and liable to be dismissed. No costs. Supply free copy of the judgment to both the parties.

Announced.

SRI R. PAL  
PRESIDENT,  
DISTRICT CONSUMER  
DISPUTES REDRESSAL COMMISSION,  
WEST TRIPURA, AGARTALA.

Dr (SMT) B. PAL

MEMBER,  
DISTRICT CONSUMER  
DISPUTES REDRESSAL COMMISSION,  
WEST TRIPURA, AGARTALA.