

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**CONSUMER CASE NO. 2447 OF 2019**

1. CHANCHALI NARENDRA .....Complainant(s)  
Versus  
1. CONTINENTAL HOSPITALS & 4 ORS. .....Opp.Party(s)

**BEFORE:**

**HON'BLE MR. ANUP K THAKUR, PRESIDING MEMBER  
HON'BLE DR. S.M. KANTIKAR, MEMBER**

**For the Complainant :**

**For the Opp.Party :**

**Dated : 18 Jun 2020**

**ORDER**

**APPEARED AT THE TIME OF ARGUMENTS**

For the Complainant : Mr. Akshat Chaitanya, Advocate

**PRONOUNCED ON: 18<sup>th</sup> June 2020**

**ORDER**

**PER DR. S. M. KANTIKAR, MEMBER**

The complainant Mr. Chanchali Narendra is a software engineer working in IT firm in Hyderabad. He had symptoms of yellow discharge from left nostril. He approached the Continental Hospital (OP-1) on 02.01.2018, also took the yellow liquid with him. Dr. MRC Naidu (OP-2) asked the complainant to undergo CT Cisternography and the test for the liquid. The complainant alleged that unless the liquid to be identified as CSF by the test on Beta-2 transferrin, the CT Cisternography was not necessary. The OP-2 at first instance did not advise to undergo Beta-2 transferrin test prior to the invasive CT. However, the OP-2 himself took the decision to go ahead with the CT Cisternography. The complainant signed the consent form for the procedure.

As per the consent form, there was mention of only pain and side effects. The complainant was kept in dark about the spinal tap as a part of CT Cisternography test and risk. It was also mentioned that the complainant can go home after the procedure. During procedure, Dr. B. Raj Kumar (OP-3) (the Radiologist) inserted a long needle in his spine, without explaining anything about the procedure. However, complainant did not object at that point of time. After procedure, the complainant was asked to leave the hospital. The complainant alleged that according to the expert opinion any person who undergo spinal tap (lumbar puncture) must lie flat for at least four hours to seal the spinal leak. Same was not informed to him. Thus it was a negligence and deficiency of the OPs.

2. The complainant further averred that on the same night of 02.01.2018 he felt neck stiffness, headache dizziness and loss of balance while walking. Therefore, on next day 03.01.2018, he rushed to Dr. Kailash Mirche working in the same hospital. He opined that the injection given on 02.01.2018 in the spine has created the CSF leak and therefore, he suffered the side effects. Dr. Kailash Mirche suggested four days rest and accordingly complainant was admitted in the hospital for four days. The complainant approached CTO Mukesh Singh of the OP Hospital and made a complaint in writing about his ill experience. Complainant enquired after two days, but he was kicked out of hospital with the help of police. The CTO Mukesh Singh did not make attempt to meet the patient. Being aggrieved and left with no alternative, the complainant filed a complaint before the Medical Council of India on 25.04.2019. He has sent the legal notice to the OP, but received bare denial reply from the OP.

3. The complainant being aggrieved by the sufferings due to alleged negligence and omission in the treatment from the OP, it was the deficiency in service and unfair trade practice, he filed the consumer complaint before this Commission with the following prayer:

- i) To Direct the Opposite Party to pay an amount of Rs. 3,00,00,000/- (Rupees Three Crores Only) as compensation for surgery to repair the damages caused by Opposite Party.
- ii) To Direct the Opposite Party to pay an amount of Rs. 2,00,00,000/- (Rupees Two Crores Only) towards damages caused due to negligence by Opposite Party.
- iii) To Direct the Opposite Party to pay an amount of Rs. 1,00,00,000/- (Rupees One Crore Only) for mental agony caused due to deficiency of services by Opposite Party.
- iv) To Award costs of Rs. 1,00,000/- of these proceedings

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4. Heard the learned counsel for the complainant. Perused the entire material on record including the medical of the OP hospital. The consent form clearly mentions the CT Cisternography was for diagnostic purpose and the risks explained were pain and bleeding. We note the consent form was signed by the complainant. The due procedure was described to him with the inherent risk and complications also. We find is to be an informed consent. On 02.01.2018 the CT Cisternography was performed.

5. It is pertinent to note reply dated 16.05.2019 filed by Dr. Raj Kumar B., the consultant Radiologist at Continental Hospital before the Telangana State Medical Council (TSMC). He categorically stated that the patient was counselled repeatedly and reassured by him and Dr.

Kailash Mirche (Neurologist). Mr. Mukesh Singh, the CTO of the hospital reassured to look into the incident, however, the patient repeatedly threatened the doctor and staff of dire consequences. He also sat on protest at Hospital entrance (lobby) causing hindrance to other patients. Therefore, not being able to convince him and control his aggressive behaviour, the hospital sought the help of local police.

6. We further note, for the complainant / patient's reassurance MRI brain with contrast and MRI of lumbosacral spine was conducted on 02.02.2018 in OP hospital. It was done without any cost to the patient. There was no evidence of CSF leak at lumbar puncture site. For secondary opinion, if required, the report and CD of the scan was also handed over to the patient.

7. We have perused the additional documents filed by the complainants, i.e. CEMRI the test report from Vijaya Diagnostic done on 10.04.2019 i.e. after one year of previous episode. Nothing abnormal was reported therein and we do not see any significance to the instant case.

8. We further note complainant has not given any justification to his prayer made in this complaint. With regard to highly inflated claim, we would like to rely upon the few decisions of Hon'ble Supreme Court and this Commission. The Hon'ble Supreme Court in Civil Appeal No. 9453/2013, **Pesi Dady Shroff Vs. Boehringer Ingelheim Denmark & Anr.** disposed of the appeal with the following observation that:

Leaving the question of law open, as to whether in such a fact situation, provisions of Consumer Protection Act, 1986 are applicable, it is open to the appellant to approach the Civil Court for the simple reason that for the purchase price of Rs. 4-5 lakhs in 2003, he has claimed a sum of Rs. 73.35 crores. Such a claim can be adjudicated only after the assessment of evidence etc. before the Civil Court and, therefore, it is a fit case where, even if the Consumer Protection Act, 1986 is applicable, the appellant must approach the Civil Court for appropriate relief.

With these observations, the civil appeal is disposed of".

Similarly in another case **Sync Industries Vs. State Bank of Bikaner & Jaipur and Others** (2002) 2 SCC 1, the Hon'ble Apex Court has held as under:

3. Given the nature of the claim in the complaint and the prayer for damages in the sum of rupees fifteen crores and for an additional sum of rupees sixty lakhs for covering the cost of travelling and other expenses incurred by the appellant, it is obvious that very detailed evidence would have to be led, both to prove the claim and thereafter to prove the damages and expenses. It is, therefore, in any event, not an appropriate case to be heard and disposed of in a summary fashion. The National Commission was right in giving to the appellant liberty to move the civil court. This is an appropriate claim for a civil court to decide and, obviously, was not filed before a civil court to start with because, before the consumer forum, any figure in damages can be claimed without having to pay the court fees. This, in that sense, is an abuse of the process of the consumer forum.

9. Also, in the case of **Ramesh Kumar Vs. Dr. Akhil Saxena & Ors.**, Civil Appeal No. 7984 of 2016, the Hon'ble Supreme Court upheld the dismissal of Consumer Complaint No. 351/2012 as inflated claim observed by this Commission.

10. In our view though the complainant has right to value his claim reasonably with keeping in mind the principle of *res integra* . However, in the instant complaint, the complainant has made

grossly over valued claim. The Hon'ble Supreme Court in the case of **Tara Devi Vs. Sri Thakur Radha Krishna Maharaj** , (1987) 4 SCC 69 and in **Nandita Bose vs. Ratanlal Nahata** (1987) 3 SCC 705 discussed such issue. In the later case, the Hon'ble Supreme Court has held as under:

“The principles which regulate the pecuniary jurisdiction of civil courts are well settled. Ordinarily, the valuation of a suit depends upon the reliefs claimed therein and the plaintiffs valuation in his plaint determines the court in which it can be presented. It is also true that the plaintiff cannot invoke the jurisdiction of a court by either grossly over-valuing or gross under-valuing a suit. The court always has the jurisdiction to prevent the abuse of the process of law. But the question whether she was entitled to claim mense profits or damages in respect of the period subsequent to February 1, 1995 could not have been disposed of at a preliminary stage even before the trial had commenced. That question had to be decided at the conclusion of the trial alongwith other issues arising in the suit. Having regard to some of the decisions on which reliance is placed by the appellant in the course of the appeal, we are of the view that matter is not free from doubt?

11. Based on the foregoing discussion, in our view, the complaint is over-valued at about six crores. We also find that the complainant has filed the complaint being ignorant of medical procedures. The post lumber puncture headache is a known complication in a few patients and it is reversible. The procedure of CT cisternography was duly performed, after informed consent, by the OP-3 doctor. It was merely an assumption by the complainant that there was a leak at the site of lumber puncture. Such an assumption is not acceptable. Thus the instant complaint is vague, apart from being grossly inflated. Complaint is accordingly dismissed.

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**ANUP K THAKUR**  
**PRESIDING MEMBER**  
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**DR. S.M. KANTIKAR**  
**MEMBER**  
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