

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
ROOM NO. 323, 3RD FLOOR, DISTRICT ADMINISTRATIVE
COMPLEX, CHANDIGARH ROAD, HOSHIARPUR.**

**CC No. 202 of 2020
Instituted on : 12.10.2020
Decided on : 06.02.2024**

Mukesh Dheer son of Sh. Ved Parkash r/o H.No. 234/13, Central Town,
Sutheri Road, Hoshiarpur.

..... Complainant

Versus

1. Dr. Amit Handa MD Cardiologist, IVY Hospital Super Specialty Health Care, Ram Colony Camp, Chandigarh Road, Hoshiarpur.
2. IVY Hospital Super Specialty Health Care, Ram Colony Camp, Chandigarh Road, Hoshiarpur through its MD.
3. The Oriental Insurance Co. Ltd. 4E/14 Azad Bhawan Jandewalan Ext, New Delhi 110055.
4. The Oriental Insurance Co. Ltd., Divisional Officer, above Yes Bank, near Mini Secretariat, Chandigarh Road, Hoshiarpur.

..... Opposite parties

(Complaint u/S 35 of the Consumer Protection Act, 2019)

**Quorum : Sh. Naveen Puri, President,
Sh. Prem Singh Salaria, Member,
Mrs. Harvimal Dogra, Member.**

**Present : Sh. Amandeep Singh, counsel for the complainant.
Sh. DDS Nayyar, Cl.for the OP No.1.
Sh. Rajeev Kataria, Cl.for the OP No.2.
Sh. V.K. Prashar, Cl.for the OPs No.3&4.**

**ORDER:
(Naveen Puri, President)**

1. The titled complainant Sh. Mukesh Dheer, the Senior

Citizen (Hoshiarpur Resident), has filed the present complaint against the titled opposite parties seeking compensatory/ monetary relief of Rs.5.0 Lac (including Rs.1.44 Lac paid as medical/ hospitalization fees) against the captioned opposite parties alleged to have subjected him to the one immature /hasty Coronary POBA procedure that had to be abandoned incomplete causing much pain discomfort, worry and monetary loss to him and his other attending family members.

Brief Facts (Complainant's Version):

2. The complainant was admitted to the OP2 Hospital at 11:30 PM on 06.03.2020 with chest pain and sweating etc where the Attending Specialist Dr Amit Handa had opined and prescribed an immediate POBA (Percutaneous Old Balloon Angioplasty) Procedure to be conducted upon him carrying a cost of Rs.1.50 Lac (approximately). The complainant and his attending family members tamely agreed/ opted for the same and deposited the initial payment of Rs.25,000/- at the instance of the OP1 Doctor. Further, the complainant/ patient was shifted to the O.T. (Operation Theatre) at 12:30 AM for correctional surgery purposes and at 3:30 AM the OP1 Doctor stated that the operation has been successful but soon thereafter the complainant complained of severe (critical) chest pain and at this the OP1 Doctor declared that the patient urgently needs the life-saving stent-pacing in blocked artery carrying an additional cost of Rs.3.0 Lac to which the complainant/ family members disagreed and sought discharge from the OP2 Hospital for second opinion/ treatment and were made to pay Rs.1,44,000/- at the OP2. The complainant had to undergo many further medical treatments @

Rs.2.0 Lac to recover/ regain normalcy etc., hence filed the present consumer complaint seeking the hereinabove sought reliefs.

Listed Documents (in evidence) by the complainant:

3. The present complaint is duly accompanied by the mandatory Affidavit (Ex.C1/A); Ex.C1 legal notice; Ex.C2–OPD Treatment Chart/Prescriptions (Shrimann Super-specialty Hospital, Jalandhar); Ex.C3 – Discharge Clearance/ LAMA Summary (the OP1/ OP2 Hospital).
4. The titled opposite party Doctor (the OP1 Doctor) and the opposite party Hospital (the OP2 Hospital), in response to the commission’s summons appeared through their counsel and filed their separate written replies stating therein preliminary as well as the other (on merits) objections as:

The OP1 Doctor’s/ OP2 Hospital’s Version/ Reply to the Complaint:

Preliminary Objections:

5. The complainant has been preliminary alleged to have not come to the commission with clean hands as the present complaint has been filed just to harass the OP Hospital/ Doctor through unwanted litigation by concealing the material facts, therein. There’s no specific, scientific and justified allegations indicating/ proving negligence etc. No Cause of Action arising out of negligence/ deficiency in service on the OP’s part has been neither stated nor proved vide the text as well as exhibits accompanying the present complaint.
6. On merits, the OP1 Doctor has objected to non-joinder of

the necessary party i.e., the insurers (Policy by 'The OIC Limited, New Delhi' – Ex.OP1/2); Being qualified, registered and experienced medical practitioner – Ex.OP1/3 and Ex.OP1/4). Affidavit Ex.

7. Putting forth his reply paragraph-wise, at the very out-right, the OP1 doctor has categorically denied each and every allegation unless specifically admitted therein the reply. Further, the attending relatives of the complainant had consented for angioplasty in writing (Consent Form – Ex.OP1/5) that appeared as the medical urgency/necessity qua the clinical reports and the symbolic signs of ailment. The contents of paragraph 2 have been denied in totality but it is admitted that Angioplasty could not be successfully done on account of the effected condition of the patient's arteries/ veins etc., Ex.OP1/6 (OT Notes at OP2), so CABG (Bye Pass Surgery) was opined/ to be performed on the next day (07.03.2020) but the complainant had firmly opted for discharge so LAMA (Left Against Medical Advice) was issued and the patient complainant was moved out of the OP2 Hospital for other opinion/ treatment etc., of his choice (Ex.OP1/7 & Ex.OP1/8). The other facilities/ charges etc fall under the purview of the OP2 Hospital and they shall be in a better position to rebut the related allegations etc. Lastly, the OP1 Doctor has affirmed that it has been the complainant's health status cum deteriorated conditions of his related arteries/ veins that failed Angioplasty Procedure and not any sort of negligence/ deficiency in service on their part and thus the complaint need be dismissed.

8. The OP2 Hospital has repeated and relied upon the preliminary objections on similar lines and in similar tones. In the

paragraph-wise reply on merits the OP2 Hospital has simply denied all the allegations on account of knowledge and also otherwise as raised in the body of the complaint. They have simply added that the OP1 Doctor has been one of the best Cardiologists in the country and labeling the allegations in the complaint as false have prayed for the dismissal of the same. The reply has been duly accompanied by the self-attested affidavit (Ex.OP2/1) of Sh. Mayukh Chaudhary the OP2 Facility Director along with the some other unmarked documents, in evidence.

9. The OP3 insurers along with their counter-parts the OP4 Branch have also filed their joint written reply through the counsel denying any of the liability towards the present complainant as their contract of insurance has been with the OP1 Doctor only and that too in terms of the related insurance policy that stood expired on 20.03.2020 whereas they were first apprised of the present matter only on 21.12.2020. Thus, they (OP3 and OP4) have nil-liability towards any of the present litigants and thus the present complaint has been prayed to be dismissed against them. The reply has been duly accompanied with the mandatory affidavit (Ex.OP1) and copy of the related policy (Ex.OP2).

10. We have thoroughly examined the available documents/evidence on the records so as to statutorily interpret the meaning and purpose of each document and also the scope of adverse inference on account of some documents ignored to be produced by the contesting litigants against the back-drop of the arguments as put forth by the learned counsels for their respective litigants. We appreciate the

sincere endeavor on the part of the learned counsels in assisting this commission to deliver justice to all the parties to the present Lis Penden (contested law-suit).

11. We find that the present dispute has arisen on account of the two major issues

I) Patient mechanically subjected to the Angioplasty Procedures that had to be admittedly abandoned in-between (mid-way) the same on account of technical non-suitability to the subject on account of narrowing down of the arteries/ veins due to 66 years of aging and cholesterol/ calcium deposits etc., so as to necessitate CABG (Bye-Pass) Surgery. We find no evidence on the records so as to say in medical terms/ prove that it's the one failed attempt to Angioplasty that necessitates Bye-Pass Heart Surgery that could have been first opted by the experienced (as claimed in the written-reply) cardiologist so as to rule out the avoidable procedure associated with pain and expense. We take notice of the argument as put forth by the learned counsel for the complainant that even if we somewhat believe the defense for arguments sake that there's been no stark negligence/ deficiency in service on the OP's part it stays on records that the OP had not been vigilant as was desired of him while performing/ deciding of the human-life saving procedure.

II) Also, a sum of Rs.1.44 Lac were got deposited by the OP at the time of LAMA discharge of the complainant at the face of an admittedly unsuccessful attempt to Angioplasty.

12. We further find that the OP1 and the OP2 have failed to

- rebut the above allegations with evidence on records and that places them on the receiving end of the statute. Also, the complainant has not produced complete records of his stay at the OP2 Hospital but that was presumably not made available to him and that was neither produced by the OP who have failed even to rebut some of these allegations through cogent evidence. Finally, in the matter pertaining to the present complaint and in the light of the all above, we conclude/ deduce that the OP 1 and the OP2 have caused an unintentional loss to the complainant through lack of care, caution and vigilance that had been their prime professional as well as legal duty but somehow are not inclined to penalize them harshly in wider prospective of the situation and thus ORDER for the one moderate compensation in the fairness and righteousness of the matter, in hand.
13. The insurance cover situation between the OP1 Doctor and the OP3 & OP4 insurers have been their inter-se matter hence no orders/ adjudication is warranted to the same.
14. Lastly, we are of the considered opinion that the complainant deserves to be moderately compensated and thus we partly allow this complaint and ORDER the OP1 Doctor & the OP2 Hospital to pay an amount of Rs.2.0 Lac, in lump-sum as cost and compensation with interest @ 9% PA with effect from the date of filing of the complaint till realization within 45 days of receipt of the copy of these orders, otherwise the entire awarded amount shall attract additional interest @ 6% PA form the date of the orders till realization.
15. Copy of the order be communicated to the parties free of

charges. After compliance, file be consigned to records.

Announced.
06.02.2024

(Naveen Puri)
President

(Harvimal Dogra)
Member

(Prem Singh Salaria)
Member

vs