

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
PUNJAB, CHANDIGARH.**

First Appeal No.798 of 2022

Date of institution : 16.09.2022
Reserved on : 03.10.2023
Date of Decision : 25.10.2023

Max Super Speciality Hospital, Near Civil Hospital, Phase-6, Mohali,
Punjab-160055, A Unit of Hometrail Buildtech Private Limited, A
Company Incorporated under the Companies Act.

....Appellant/Opposite Party No.1

Versus

1. Nishan Singh Kahlon S/o Sh. Surat Singh, R/o Kothi No. 74,
Phase-XI, SAS Nagar (Mohali), presently residing at Kothi No. 1027,
Block-B, Aerocity, SAS Nagar, Mohali, Punjab

....Respondent No.1/Complainant

2. Mr. Vivan Singh Gill, M.D. of Max Healthcare Pvt. Ltd. having
its Registered Office at N-110, Panchsheel Park, New Delhi-110017

3. Dr. T.P. Singh, Director, Cardiology and Tavi Services, Max
Super Speciality Hospital, Mohali.

....Respondents No.2&3/OPs No.2&3

**First Appeal under Section 41 of the
Consumer Protection Act, 2019 against the
order dated 05.05.2022 passed by the District
Consumer Disputes Redressal Commission,
SAS Nagar (Mohali).**

Quorum:-

Hon'ble Mrs. Justice Daya Chaudhary, President
Ms. Simarjot Kaur, Member

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| 1) Whether Reporters of the Newspapers may be
allowed to see the Judgment? | Yes/No |
| 2) To be referred to the Reporters or not? | Yes/No |
| 3) Whether judgment should be reported in the Digest? | Yes/No |

Present:-

For the appellant : Sh.Yoginder Nagpal, Advocate
For respondent No.1: Sh.Chandan Singh, Advocate with
Sh.N.S. Kahlon, in person
For respondent No.2: None
For respondent No.3: Dr. T.P. Singh, in person

SIMARJOT KAUR, MEMBER :

Appellant/Opposite Party No.1 (OP No.1) i.e. Max Super Speciality Hospital, Mohali has filed the present appeal to challenge the impugned order dated 05.05.2022 passed by the District Consumer Disputes Redressal Commission, SAS Nagar (Mohali) (in short, "the District Commission"), whereby the complaint filed by the respondent No.1/complainant-Nishan Singh Kahlon has been allowed.

2. It would be apposite to mention here that hereinafter the parties will be referred, as have been arrayed before the District Commission.

3. Briefly, the facts of the case as made out by the respondent No.1/complainant in the complaint filed before the District Commission are that the complainant had applied for immigration/PR with Canadian Embassy. As communicated by the Embassy, a medical fitness certificate was required for seeking PR. Complainant along with his wife approached OP No.1 Max Hospital, which was empaneled hospital for Canadian Embassy where he had deposited Rs.6,300/- on 21.09.2020 as prescribed by the Canadian Authorities. Dr. Sumit Khetarpal at Max Hospital had examined him. The complainant had informed the said Doctor that in the year 2003, his coronary angioplasty was done at Fortis Hospital, Mohali and stenting was done in one vessel of his heart. After stenting he had been taking the prescribed medicines. The complainant had informed the Doctor that he was not having any kind of physical complaint, breathlessness or chest pain and had got his medical check-ups conducted regularly

as per the advice of the concerned Doctor. Dr. Sumit Khetarpal after listening to him and on going through his medical test reports had declared the complainant fit. However, thereafter he was unnecessarily referred him to Dr. T.P. Singh for Cardiology opinion. The said Doctor had asked him to get his ECG and ECHO conducted whereas he had approached him to obtain Medical Fitness Certificate. However, the report of said test was found normal but still Dr. T.P. Singh had directed him to get his TMT test conducted. The complainant had spent Rs.1,200/- as consultation charges and Rs.5,301/- for tests of ECG, ECHO and TMT and had spent a total of Rs.6,501/-. On examining the test reports, Dr. T.P. Singh-OP No.3 had changed his mind and told the complainant to undergo for Stress Thallium Test. He had tempered his own remarks on the prescription slip whereas he had earlier referred his case to the Immigration Department. The complainant had told the Doctor that when no problem was detected in the said tests, then what was the need to go for Stress Thallium Test. He asked him to issue the medical fitness certificate. The Doctor told him that the said test was necessary and asked the complainant to deposit the fee for the said test. The complainant had deposited a fee of Rs.13,725/- for the said test. He faced pain due to effects of radiation and was administered injections during the Stress Thallium Test. In the report only a mild problem was found in his test but still Dr. T.P. Singh had advised him to undergo Coronary Angiography. It was stated by the complainant that he had informed the Doctor that he had also sought the opinion of other doctors, who advised him that there were only mild symptoms in the

Stress Thallium Test. Therefore, Coronary Angiography was not required. But OP No. 3 had forced him to perform angiography. The complainant did not give his consent for angiography. Upon this, OP No.3 Doctor i.e. Dr. T.P. Singh wrote to the Canadian Embassy that coronary angiography was required in the case of the complainant. Thereafter, the complainant got the 2nd opinion of Cardiologist at Fortis Hospital, Mohali, who after examining him had reported that **no further cardiac evaluation was required at this time in view of no symptoms related to CAD** and also mentioned in the report **medically fit to pursue a long distance air travel**. Thereafter, the complainant had submitted the said report to Doctor of OP No.1 i.e. Dr. Sumit Khetarpal for consideration and for taking further necessary action. Dr. Sumit Khetarpal had shown this report to Dr. T.P. Singh. The complainant had also approached Punjab State Govt. Medical College and Rajindra Hospital, Patiala on 28.09.2020 and the opinion of the said Hospital is as under:-

“CV Status stable on medical management. Pt. is asymptomatic.
Therefore, no further cardiac evaluation / investigation required as he is stable on treatment.”

4. OP No.1 did not send the said reports to the Canadian Embassy. The complainant had sent the said reports to OP No.1 on 28.09.2020 and also sent an email to OP No.2 intimating the wrong committed by OP No.3. He was requested to take action against him but of no use. Further it was alleged that Canadian Embassy had fixed the medical examination fee as Rs.6,300/- but Dr. T. P. Singh had unnecessarily conducted the tests of ECG, ECHO and TMT and charged Rs.1,200/- and Rs.5,301/- extra whereas there was no

requirement for conducting the same. On 24.09.2020 Rs.13,725/- the fee of Stress Thallium Test was deposited whereas there was no necessity for the same.

5. The complainant was aggrieved by the act of opposite parties as unnecessary tests were conducted by charging huge amounts. They had compelled the complainant to take second opinion from Fortis Hospital. The opposite parties had forced the complainant to undergo Coronary Angioplasty or Bypass Surgery to grab huge amount. It was also alleged that Dr. T.P. Singh had indulged in malpractices in the Hospital run by the opposite parties. It was an act of 'unfair trade practice' by not sending his reports of Fortis Hospital and Punjab State Govt. Medical College, Rajindra Hospital, Patiala to the Canadian Embassy. The TMT and Stress Thallium Test tests were conducted on 21.09.2020 and 24.09.2020, respectively unnecessarily. The complainant had to suffer pain during these tests and they had left him with weakness, body ache in legs & arms and chest pain.

6. Stating the act of the opposite parties to be unfair trade practice, it was prayed in the complaint that the opposite parties be directed to refund Rs.26,526/- paid unnecessarily and Rs.1,240/- he had to pay to Fortis Hospital as well as to Rajindra Hospital, Patiala and also had to pay consolidated compensation of Rs.10,00,000/- towards negligence.

7. On issuing notice in the complaint, the appellants/ opposite party No.1 and OPs No.2&3 had filed their joint written statements raising certain preliminary objections that the complainant

had no cause of action; no case of medical negligence or malpractice was made out; the complaint was false, baseless and was filed to get cheap publicity and to extract money. It was also stated that the treating Doctor had examined the complainant as per medical protocol and with best of their ability and skills, being the specialist in his field. The Doctor had taken all the necessary steps which were in the interest of the complainant and had also guided/helped the complainant about his queries. The complainant had approached the opposite party Hospital for conducting his immigration medical check-up and evaluation of cardiac status. The said check-up was not only related to just travelling by air but was also relevant for his health condition by considering the period of 10-15 years in mind. Therefore, the complainant was advised ECG and Echocardiography test. The complainant was suffering from the problem of diabetes since long. He had a past history of coronary artery disease with angioplasty and stenting, which was done a few years back so due to said reasons, the complainant was also advised for Stress Thallium Test to rule out any possibility of cardiac complications in the future. The said test of the complainant was **found positive for Inducible Ischemia**. It was mentioned that after the confirmed findings of Stress Thallium Test, the Coronary Angiography was necessary to look into the blockages in the coronary arteries. On finding the report of positive Stress Thallium, the complainant was merely advised for Coronary Angiography. However, the complainant was reluctant to get it done. Only after the positive report of TMT, another alternative investigation i.e. Stress Nuclear Test was done as stress test has 30% false

positivity. It was further mentioned that these tests were advised to rule out any false positive TMT, which can happen in some of the cases, where pre-test probability is low. Due to long standing of diabetes and pre-existing CAD, a pre-test probability was quite high in the case of the complainant. The Stress Thallium Test/Stress Nuclear Test could have helped the Doctor further to evaluate the Cardiac condition of the complainant without the necessity of Angiography i.e. this test has less chances of false positivity. However, the report of Stress Nuclear Test came positive for **Inducible Ischemia**. Therefore, there was no other option except to go for coronary angiography to diagnose/evaluate any blockages in the coronary arteries. Punjab Medical Council had found the complaint of the complainant as baseless. In the case of the complainant, the test reports had clearly reflected the heart problem. Opposite Party No.3-Doctor was not bound to send the opinions of other Doctors to the Canadian Embassy. All other allegations were denied and the prayer was for dismissal of the complaint.

8. After considering the contents of the complaint and the reply thereof filed by the opposite parties and also on hearing the oral arguments raised by the complainant, the complaint filed by the complainant was allowed by the District Commission vide order dated 05.05.2022. The relevant portion of the said order as mentioned in Paras No.12 & 13 are reproduced as under:-

“12. From the above discussions, we are of the view that all the OPs had adopted an unfair trade practice by giving false reports about the ailment of the CC and further by not explaining the cutting done in Ex. C-3 probably in order to extract more and more money from the CC. We,

are of the view that the CC was subjected to physical discomfort, mental harassment and agony by the OPs.

13. Accordingly, the present complaint is allowed and the OPs are jointly and severally directed to pay a consolidated amount of Rs.5.00 lakhs towards compensation for harassment, mental agony and costs of litigation.....”

9. The aforesaid order dated 05.05.2022 passed by the District Commission has been challenged by the appellant/opposite party No.1 by way of filing the present appeal by raising a number of arguments and grounds.

10. During the course of oral arguments before this Commission, Mr. Yoginder Nagpal, Advocate, learned counsel for the appellant had submitted that the District Commission had not considered that the Doctor of **Fortis Hospital had also recorded on the top of his prescription slip that the respondent No.1/complainant had cardiac stress and to control the blood pressure level and blood thickening, the complainant was required to start medicines.** He had further pleaded that the observation of Rajindra Hospital, Patiala was wrongly observed by the District Commission that the line of treatment as adopted by Dr. T.P. Singh was wrong and not as per medical protocol. In the said prescription only the findings were recorded of ECG and Echo Test whereas no findings of TMT and Stress Thallium were there, which were recorded positive for **Inducible Ischaemia** while the said tests were conducted. It was pleaded that in the findings of none of the tests done by the opposite parties were found to be wrong and any Doctor had mentioned in 2nd and 3rd opinion regarding the same. **The**

complainant had undergone the tests, which were necessary as per the opinion of Dr. T.P. Singh, so that on examination the complainant may remain medically fit for a longer period in his life. The test was not only conducted only for providing him medical certificate by considering the fact of going to abroad but also to identify his medical problem in general. The appellant(s) were not bound to send any references to any other authority in the case of the respondent No.1/complainant without the asking/recommendation of the Canadian Embassy. The complainant had initially approached them being the empaneled Hospital for the purpose of said medical certificate at his will. It was pleaded that the appellant was advised ECG, Echo, TMT and Stress Thallium Test as the complainant was a known case of diabetes, hypertension and coronary artery disease, which were necessary, as the complainant himself had volunteered to divulge to Max Hospital Authorities that he had earlier suffered with the cardiac problem. Whereas the observation made by the District Commission was wrong that these tests were advised only to extract more money from the complainant. It was further pleaded that the District Commission had wrongly held that the appellant/opposite parties had given false/contrived reports about the ailment of the complainant whereas in the reports of other hospitals the complainant was found fit to travel. The said observations were not as per the record as mentioned in the prescription/report of Fortis Hospital wherein the Doctor had given an opinion that the complainant/respondent No.1 had cardiac stress and to control the blood pressure and blood thickening, he should start medicines as

advised. The tests so conducted were as per medical requirements and also by considering his previous medical history. The District Commission had wrongly held that the services of the opposite parties were falling within the domain of 'unfair trade practice'. The District Commission had awarded a huge amount of Rs.5,00,000/- as compensation for causing harassment, mental agony and litigation expenses, which was wrong and illegal. Respondent No.3 (the concerned Doctor) had appeared in person and had submitted that he had **taken only those steps which were in the interest of the complainant** and the tests were prescribed as the complainant was having the past history of Coronary Artery Disease and Angioplasty and stenting had also been done in his case few years back.

11. On the other hand, learned counsel for respondent No. 1 had submitted that the District Commission had considered all the reports of different Hospitals and had rightly held that the appellant/opposite parties had indulged in unfair trade practice and had also unnecessarily forced the complainant to go for Coronary Angiography whereas he had approached only to obtain medical certificate. All his tests were found to be normal. Firstly Dr. T.P. Singh had found all the reports as normal and had referred the file to the Immigration Department but immediately thereafter, he had changed his mind and had advised him to go for Stress Thallium, which was advised only to extract huge amount from the complainant. While undergoing the unnecessary tests, the complainant had to bear the pain, effects of radiation and 8-10 injections were administered. In the Stress Thallium Test, a mild problem was found/observed in the

Heart but there was no need to go for Coronary Angiography. There was opinion of other Doctors as well, who had opined that there was no need to go for Coronary Angiography as he was fit to travel by air the long distance. It was pleaded that Dr. T.P. Singh had not sent the opinions/prescriptions of other Doctors of Fortis Hospital, Mohali and Rajindra Hospital, Patiala to the Canadian Embassy. His only intention was to grab huge money from the complainant by forcing him to undergo Coronary Angiography. All these facts have clearly shown that malpractices were adopted by the appellant/opposite parties with their patients. The order of the District Commission is detailed one, elaborating the factual position and malpractices of the opposite parties, therefore, it was prayed for dismissal of the appeal with costs.

12. We have heard the arguments raised by learned counsel for the appellant, respondent No. 1 and respondent No.3-Doctor, who remained present in person in the Court and have also carefully perused the impugned order passed by the District Commission, written arguments submitted by the respondent No.1/complainant and all other relevant documents available on the file. We have also gone through the judgments cited by the counsel for the appellant.

13. It is not disputed that the complainant had approached the opposite parties for obtaining medical fitness certificate, which was required for immigration purposes, for going to Canada. The said Hospital was empaneled by the Canadian Embassy.

14. The entire sequence of events in the present case is as under:

i) The respondent No.1 and his wife had visited the appellant Hospital on 21.09.2020 to get their medical examination done as per the rules and the requirements of Canadian Embassy. As prescribed the complainant had deposited the fee for such examination with the said Hospital.

ii) The complainant while getting his medical examination as per the Immigration Medical Protocol had gone through all the regular tests as advised. Subsequently, he informed the treating Doctor, Dr. Sumit Khetarpal that in the past he had gone through angioplasty in the year 2003 from Fortis Hospital, SAS Nagar (Mohali) and he was a known case of Diabetes and Hypertension. However, at that time he was not carrying any reports of his medical history.

iii) After considering the facts of the past medical history of the complainant, Dr. Sumit Khetarpal referred the complainant to the Cardiologist Dr. T.P. Singh of the same Hospital for further examination. Based on the previous medical history of the complainant, Dr. T.P. Singh had got done his ECG, Echocardiography and Treadmill Test (TMT).

iv) The TMT of the complainant was found to be positive for **Inducible Ischemia**. Pursuant to TMT, the Cardiologist had made the complainant to undergo for Stress Thallium Test (done on 24.09.2020). The report of the TMT as well as the Stress Thallium Test of the complainant found to be **positive** concerning his Heart condition. Accordingly, the Cardiologist had **advised** the complainant to undergo **Coronary**

Angiography. Apparently, the Cardiologist had also made a cutting on the words “**referred back to Immigration Deptt.**” (Ex. C-3) on his prescription slip. After this cutting on the said prescription slip dated 21.09.2020, the Doctor had advised him for ‘**Coronary Angiography**’ (Ex.C-5) on the another prescription slip on 24.09.2020, which was in continuation to the earlier prescription slip.

v) The complainant/respondent No. 1 was dissatisfied with the advice of Angiography by the Cardiologist and as per his sweet Will, he refused to go by the advice given by the said Doctor. He telephonically complained to the M.D. of the Hospital in this regard. He was advised to get a second opinion from the other Hospital.

vi) Thereafter, the complainant had visited Fortis Hospital, SAS Nagar and got himself examined from the Cardiology Department of the said Hospital on 25.09.2020 (Ex.C-6). The Cardiologist of the said Hospital had opined on the prescription slip “**no further cardiac evaluation required at this time in view of no symptoms related to CAD, medically fit to pursuing a long distance air travel**”. However, on the same slip, the Doctor had advised him medications and had also made observations pertaining to the cardiac condition of the complainant i.e. “**SPECT mild inducible isch**” (Ex. C-6). The complainant had shared the opinion of Fortis Hospital with the M.D. of Max Hospital through email. In the said email to Max

Hospital, the complainant had levelled certain allegations against Dr. T.P. Singh and the appellant Hospital also.

vii) On 28.09.2020, the complainant/ respondent No.1 got himself checked from Cardiology Department of Rajindra Hospital, Patiala and as per the prescription slip (Ex.C-9) of the Doctor of the said Hospital had observed “**no further cardiac evaluating required investigation as he is stable on treatment**”.

viii) The Canadian Embassy cleared the medical examination of the complainant/respondent No.1.

The above sequence of events are not in dispute.

15. Now the following issues are to be considered which are necessary for reaching to the conclusion.

- a) As to whether the act in advising the Angiography by a Specialist of the empaneled Hospital of Canadian Embassy/Immigration Services, after evaluating the test reports is an act of ‘**unfair trade practice/deficiency in service/medical negligence**’ or not?
- b) Whether the concerned Hospital should have forwarded a factual report regarding the refusal of the complainant to undergo further investigation into his Cardio Vascular Health or not?
- c) Whether it was a case of any deficiency in service on the part of the appellant in not sending the reports of Fortis/Rajindra Hospital procured by the complainant from the concerned quarters?

- d) Whether the complainant/respondent No.1, who is not the person for the purpose of medical diagnosis, could say that he was not required to go for any further medical investigation after being found positive for Mild Ischemia in TMT/Stress Thallium Test?
- e) Why/on what basis the Canadian Embassy/Immigration Department cleared the medical exam of the complainant for PR/Immigration to Canada?

16. Before dealing with the above issues, it is necessary to go through the meaning of **Ischemia** in ordinary course. As per “Dorland’s Illustrated Medical Dictionary”, ‘**Ischemia**’ means “**deficiency of blood in a part, usually due to functional constriction or actual obstruction of a blood vessel**”. In the said case, the complainant was suffering from **Ischemia of Heart**. The complainant had undergone Angioplasty in the year 2003 from Fortis Hospital. The Cardiologist at Max Hospital/appellant Hospital had diagnosed on the basis of **TMT** and **Stress Thallium Test** as **Inducible Ischemia** i.e. while resting, the heart is likely getting enough blood supply. When the heart is put under stress, such as the treadmill test, the demand for oxygen by the heart is more than the supply which is receiving.” It means that when the heart is not functioning OK, the heart requires more oxygen vis-à-vis in general condition. The Cardiologist of the Fortis Hospital, while giving second opinion had also confirmed **SPECT mild inducible isch**”. The meaning of SPECT in the said term is “**single-photon emission computed tomography**” i.e. a type of **Nuclear Imaging Test**.

Meaning thereby this observation was made after seeing the Stress Thallium Test report of the complainant by the said Doctor at Max Hospital, which is apparent from this fact that the Doctor at Fortis Hospital too identified the same problem. **In fact the Doctor at Fortis Hospital recommended 4 medications for his treatment (Ex. C-6).**

Subsequently, he was still not satisfied with the report of Fortis Hospital, the complainant decided to consult Govt. Medical College and Rajindra Hospital, Patiala on 28.09.2020 (Ex.C-9) for obtaining the 3rd opinion for seeking Cardiac evaluation from the concerned Department. The opinion given by Rajindra Hospital, Patiala was **“Pt. is asymptomatic therefore no further Cardiac evaluating investigation required as he is stable on treatment”**. The Doctor concerned had also mentioned about his previous medical history. Moreover, they just got his ECG and ECHO done. There is a probability that the complainant might have not shared the reports of his TMT/Stress Thallium Test conducted at Max Hospital with the Doctors of Rajindra Hospital, Patiala.

17. On receiving such reports, the complainant had sent the complaint to the Canadian High Commission, New Delhi on 29.09.2020 (Ex. C-11) under the observation of *“the malpractices done by Cardiologist Dr. T.P. Singh, Max Healthcare Hospital, SAS Nagar Mohali and request for acceptance of opinion report by Cardiologist at Fortis Hospital and Government Medical College/Rajindra Hospital, Patiala, Punjab”*. The Canadian Embassy had also accepted the said reports submitted by him as per the

version of the complainant and had cleared the medical exams on 01.10.2020.

18. In the light of the above reasons and observations, it is clear that in Cardiac evaluation of Dr. T.P. Singh, being the Specialist of Max Hospital had initially referred his case to the Immigration Department but on the same prescription slip (Ex. C-3) he had also advised for **TMT**, the result being **positive**. Moreover, there is a cutting apparent on the said prescription slip where the Consultant Doctor had written "**referred back to Immigration Department**", bearing his signatures just underneath the cutting and on the same prescription slip, on the left side date of 24/9/20 has been mentioned. Meaning thereby the Doctor wanted to evaluate the patient for Stress Thallium Test on 24/9/2020. On the next prescription slip (Ex. C-5), as per the note of the Doctor while referring to **TMT positive** for **Inducible Ischemia** and against **Stress Thallium**, date 24/9/2020 has been mentioned. Further it has been mentioned Stress SPECT Myocardial Perfusion Scan shows Mild Inducible Ischemia involving Anterior and Distal Inferior Wall only. In layman's terminology it means *that it was a problem of blood flow in his different parts of the Heart*. Accordingly, Coronary Angiography was advised. It has also been mentioned in the same prescription slip that the patient was suffering from DM (Diabetic Mellitus)/HT (Hypertension)/Paroxysmal AF (i.e. erratic Heart Rate begins suddenly and then it stops on its own without an obvious trigger). Then in the next line the Heart condition was referred as CAD (Coronary Artery Disease)/PTCA (Percutaneous Transluminal Coronary Angioplasty) to LAD (Left

Anterior Descending Artery) (2003). As per these observations of the Doctor as mentioned in the prescription slip Ex. C-5, it clearly emerges that **it was an exhaustive/thorough evaluation of his health condition.** It is apparent from the said evaluation of the Doctor that the complainant was a known case of Cardiac History and **Cardiac issues were there even at the time of TMT and Stress Thallium Test.** Regarding the allegation of cutting on the previous prescription slip i.e. Ex. C-3 allegations of an unfair practice does not hold correct as **it was the foremost duty of the Doctor to give the factual report of the health condition of the patient (complainant) as required by the Canadian Embassy/Immigration Department.** Moreover the Doctor had checked the complainant to the best of his ability and skill while following the Standard Medical Procedure and condition of safety of the complainant. He had taken all possible due care and caution while giving his opinion for angiography. Since the complainant had applied for PR to Canada, the medical check-up was required to cover a period of at least 10-15 years/ longer period and it was his bounden duty to ascertain any long term health implications. Regarding the allegation of the complainant that his ECG and ECHO were found fine and accordingly, he did not wish to go ahead for further investigation. We cannot comment anything upon this aspect, whether he was having heart problem (illness) being asymptomatic at that time. The Doctor wanted to probe it further. As per the standard medical procedure, the complainant had to go through TMT wherein the report of the complainant was found **“positive”**. To further assess his condition

and to rule out any complications, the Doctor asked him to undergo Stress Thallium Test keeping in view the reason that the TMT test sometimes can show up to 30% false positivity. **Moreover the duty of the Doctor was not only to give clearance for medical exam for immigration purpose but to give the proper report by considering his general health whereby he could help him to lead a qualitative life.** The complainant/respondent No. 1 had also sent two emails to M.D., Max Healthcare Mohali in which a lot of allegations/accusations had been made but nowhere in the documents the complainant had been able to prove that Dr. T.P. Singh had forced him to undergo angiography/angioplasty. Dr. T.P. Singh had **only advised him for Coronary Angiography.** The complainant had mentioned in email (Ex. C-8) that he was forced to undergo angioplasty/bypass surgery by Dr. T.P. Singh due to which he would have incurred an expense of Rs.4-5 lacs. However, nowhere in the documents/prescription slips, there is mention of angioplasty by Dr. T.P. Singh. It clearly shows that the patient being the layman did not know the difference between Angiography and Angioplasty. Angiography refers to a type of X-ray used to check blood vessels to rule out any blockages in the heart whereas Angioplasty is a minimal invasive procedure in which narrow arteries are made wide to treat the heart conditions. Thus, the main contention of the complainant was that the Doctor had made a cutting over the prescription slip and he forced the complainant to undergo angiography/angioplasty with the purpose to earn huge money from the Hospital. This fact **has not been proved** from any of the

documents available on the case file. Moreover, the complainant had himself admitted that he refused to undergo Angiography or Angioplasty as advised by the said Cardiologist on his own. The complainant had levelled certain allegations of 'unfair trade practice' upon the appellant. In this context, the definition of 'Unfair Trade Practice' in the Consumer Protection Act, 2019 is defined, which is as under:-

"2(47) "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:-

(i) Making any statement, whether orally or in writing or by visible representation including by means of electronic record, which

- (a) Falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
- (b) Falsely represents that the services are of a particular standard, quality or grade;
- (c) Falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;
- (d) Represents that the goods or services have sponsorship, approvals, performance, characteristics, accessories, uses or benefits which such goods or services do not have;
- (e) Represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;
- (f) Makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;**
- (g) Gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof;

Provided that where a defense is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

- (h) makes to the public a representation in a form that purports to be—
 - (A) a warranty or guarantee of a product or of any goods or services; or
 - (B) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

- (i) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;
- (j) gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation.—For the purposes of this sub-clause, a statement that is,--

(A) expressed on an article offered or displayed for sale, or on its wrapper or container; or

(B) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or

(C) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public,

shall be deemed to be a statement made to the public by, and only by the person who had caused the statement to be so expressed, made or contained;

- (ii) permitting the publication of any advertisement, whether in any newspaper or otherwise, including by way of electronic record, for the sale or supply at a bargain price of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

Explanation.—for the purpose of this sub-clause, “bargain price” means,--

(A) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise; or

(B) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;

- (iii) permitting—

(a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged, in the transaction as a whole;

(b) the conduct of any contest, lottery game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest, except such contest, lottery, game or chance or skill as may be prescribed;

(c) withholding from the participants of any scheme offering gifts, prizes or other items free of charge on its closure, the information about final results of the scheme.

Explanation.—For the purpose of this sub-clause, the participants of a scheme shall be deemed to have been

informed of the final results of the scheme where such results are within a reasonable time published, prominently in the same newspaper in which the scheme was originally advertised;

- (iv) permitting the sale or supply of goods intended to be used, or are of a kind likely to be used by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by the competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;
- (v) permitting the hoarding or destruction of goods, or refusal to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services;
- (vi) manufacturing of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services;
- (vii) not issuing bill or cash memo on receipt for the goods sold or services rendered in such manner as may be prescribed;
- (viii) refusing, after selling goods or rendering services, to take back or withdraw defective goods or to withdraw or discontinue deficient services and to refund the consideration thereof, if paid, within the period stipulated in the bill or cash memo or receipt or in the absence of such stipulation, within a period of thirty days;
- (ix) disclosing to other person any personal information given in confidence by the consumer unless such disclosure is made in accordance with the provisions of any law for the time being in force.”

In context of unfair trade practice in above terms, it has also been observed that **two out of three opinions** of his Cardiac evaluation had indicated his heart condition of **Ischemia**. In one case after the evaluation, angiography was advised while in the other case the medicines were prescribed. The further investigation of angiography was advised just to rule out any heart related complication. Therefore, the said act of the Doctor, which is based upon medical condition/tests of the complainant, **is by no mean fall into the category of ‘unfair trade practice’** especially with respect to making any statement, whether orally or in writing or by any visible representation including by means of electronic record, as the Doctor had advised a factual follow up investigation, based on his cardiac

medical tests, which could save him from any complications in future.

Therefore, we do not find any unfair trade practice on the part of the appellant/Dr. T.P. Singh (Respondent No.3).

19. The contention of the complainant during the oral arguments was that Dr. T.P. Singh had sent the report to Canadian Embassy that the complainant had refused to undergo further investigation into Cardio Vascular Health and he had mishandled his case for PR to Canada. It is the bounden duty of any empaneled physician to give a factual report, which is on the basis of tests/examination, especially when sought by Immigration Department of any country on sensitive issues. The Visa seekers are referred to the empaneled Hospitals and Specialists for thorough medical examination as mandated by the Canadian Authorities. The Doctor would have failed in his duty if he had not advised the complainant for further investigation into his cardiac issues as his TMT and Stress Thallium Test report was positive. Then in that scenario it would have been a case of negligence or breach on his part in his duty leading to medical negligence. The Hon'ble Apex Court in the case of "**Jacob Mathew v. State of Punjab and another**", (2005) 6 SCC 1, while defining medical negligence, has observed in para No.11 as follows:-

*"The definition involves three constituents of negligence: (1) A legal duty to exercise due care on the part of the party complained of towards the party complaining the former's conduct within the scope of the duty; (2) **breach of the said duty**; and (3) consequential damage. Cause of action for negligence arises only when damage occurs; for, damage is a necessary ingredient of this tort".*

It was further observed in the said judgment that “it is the Doctor, who is giving the treatment **to see as to what treatment can be beneficial to the patient. The case of medical negligence can be only be found in case the treating Doctor has not followed the standard medical practice while giving the treatment to the patient.** The act of the Doctor in this case shows that he had followed **the proper standard medical procedure as per the tenants/principle of his profession.** The Hon’ble Supreme Court has also held in number of cases that **a medical practitioner would be liable only when his conduct falls below that of the standards of a reasonably competent practitioner in his field.** This fact in the present case has not been proved because after evaluation of the cardiac test/reports of the complainant, the Doctor had suggested him further investigation only to rule out blockages/serious condition of his cardiac issues. Therefore, there is no case of medical negligence on the part of the appellant and Dr.T.P. Singh. **Accordingly, this allegation of the complainant is also vague.**

20. The next issue before us is as to whether the said Doctor had not sent the reports of Fortis/Rajindra Hospital to the Canadian Embassy, and also as to whether the same could be stated as any kind of ‘deficiency in service’. The Max Hospital being the empaneled Hospital for Canadian Immigration was responsible for its own evaluation and reporting the same rather than sending the reports/opinion of the other said Hospitals to the concerned Embassy. They could have forwarded other two reports only in case the

Canadian Authorities had specifically asked them for any second opinion of the said patient/the complainant.

21. The 'deficiency' has been defined under Section 11 (1) of the CP Act, 2019, which is as under:-

*“(11) “deficiency” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and **manner of performance** which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes—*

- (i) **Any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and***
- (ii) **deliberate withholding of relevant information by such person to the consumer;”***

The act of sending the factual report to the Canadian Authorities on the basis of the tests of the complainant and the information that the complainant/respondent No. 1 had refused to undergo Angiography, is not an act of negligence or omission. It had caused no loss to him in terms of obtaining Visa for PR because he had been granted PR by the said Embassy. The Doctor had discharged his duty as per his medical responsibility. **The allegation of the complainant regarding 'deficiency in service' on the part of the appellant/Dr. T.P. Singh is not correct and we do not accept this contention of the complainant.**

22. The next issue before us as to whether the complainant being the layman could have decided for himself that he was fit and fine and all his reports were normal as he was having just a mild problem of heart (Ex.C/7). The complainant declared himself fit and fine and he has mentioned on the backside of medical examination

prescription, which he submitted to Dr. Sumeet Kheterpal at Max Hospital. The contents of which are as under:-

“I have consulted my doctor. As my ECG, ECHO are normal. Only Stress Thallium is having mild problem, my doctor has suggested me that there is no need for Angiography and further test are not required. As my doctor's advice, I do not want to go for further test. May kindly see my ECG, ECHO and Stress Thallium reports. I am very much fit and fine. Even Cardiologist Dr. Mr. T.P. Singh has given his opinion that I am doing fine.”

In spite of the fact, the complainant has levelled certain grave allegations of **unfair trade practice / deficiency in service** on the part of the Cardiologist Dr. T.P. Singh, who is Specialist in the said field and himself had described his condition **as fit and fine in spite of the fact that his Cardiology reports were not up to the mark**. As transpires from the test reports of the complainant, by no means the heart condition of the complainant was stated to be normal/fine. The Doctors could not have contrived/raised false reports of TMT/Stress Thallium Test because these are highly sensitive and accurate electronically/computerized conducted tests. **In said terms/settled law, the said Doctor neither indulged in any ‘unfair trade practice’ nor was ‘deficient in service’ or even ‘medically negligent’**. The writing/filing of the fact by the complainant being medically fit to the appellant Hospital, cannot be considered more valuable than the evaluation/diagnosis of a Specialist Doctor.

23. Further as per the contention of the complainant/learned counsel for the complainant during the course of oral arguments raised that in case his medical tests were not up to the mark and he required further investigation/treatment into his medical condition, then why the Canadian Authorities had passed his medical exam

while processing his case for Permanent Residency to Canada. In this context, the rule cited in the information site for Canadian Immigration (Canada.ca/en/imm) has been perused wherein it has been specifically mentioned **“the panel physician doesn’t make the final decision about your medical exam, we make the decision. If there is problem with your medical exam we will contact you in writing.”** Therefore, it can be concluded that while giving Visa for PR/Immigration, the discretion of processing the case, lies with the Canadian Authorities. How the complainant got his Visa in spite of the report of Dr. T.P. Singh, upon which we cannot comment. These facts are never made public/conveyed even to the applicant, who has applied for such Visa. The Canadian Authorities did not assign any reason to the complainant/respondent No.1 as to how his medical exam was cleared. He has only placed on the record a printout (Ex.C-11, page 3) taken from Canadian Embassy portal (onlineservices-servicesenligne.cic.gc.ca) wherein it has been mentioned as under:-

“Review of medical results?

October 1, 2020 You passed the medical exam.”

It clearly shows that the Canadian Authorities had not communicated reasons for acceptance/rejection of medical exam. Moreover, there are two types of Immigration Medical Exams: i) the standard medical exam; ii) streamline medical exam. It is difficult to find out as to in which category the applicant was covered when his case was being processed for PR/Immigration Visa by the Canadian Authorities.

24. In fact the complainant had filed a complaint regarding unfair practices being indulged by Dr. T.P. Singh and the appellant

Hospital to the Canadian Embassy but it is nowhere available in the documents available in the case file, where it has been established that the Canadian Authorities had taken any cognizance of these allegations and had initiated any action against the appellant. Therefore, there is no deficiency in service or unfair trade practice found on the part of the appellant as per the averments/documents cited by the complainant.

25. In the light of the above discussions, we find merit in the contentions raised in the present appeal as in any manner any such laps of unfair trade practice, deficiency in service or even medical negligence of the Doctor/appellant Hospital has been proved by the complainant. Besides the allegations of the complainant regarding advice of angiography that he was forced to undergo angioplasty are mere presumptions/conjectures on his part, he himself never opted to undergo angiography, therefore, the question of subsequent angioplasty never arose. Moreover, the complainant/respondent No.1 was successful in obtaining Visa and he being the PR of Canada (as transpired during the course of oral arguments). Moreover, his main purpose regarding obtaining Visa had been fulfilled. His grouse that because of wrong reporting by Dr. T.P. Singh his case for Permanent Residency for Canada could have been effected is not substantiated by any evidence. In spite of the report of Dr. T.P. Singh that he refused to go for further cardiac investigation, still his case for the said purpose had been decided in his favour by the Canadian Authorities. He had not suffered in any manner due to the said report of the Doctor. His apprehension that his Visa could have been

rejected are mere assumptions / presumptions. **Thus, the complainant has not been able to prove his case of 'medical negligence', 'deficiency of service' and even 'unfair trade practice'.**

26. The contention of the appellant that the complaint registered by the complainant/respondent No. 1 with Punjab Medical Council had not been proved. It was only a passing reference during the course of oral arguments that the said complaint has not decided yet. Moreover, Punjab Medical Council is a separate forum/entity to address the grievance of the complainant/respondent No.1, therefore, the outcome of the said complaint will not change any material facts in the merits of the present appeal, which is to be decided under the provisions of Consumer Protection Act.

27. The observation of the District Commission that Dr. T.P. Singh had advised various tests to the complainant to earn huge amount and had tempered on his own initial recommendation on the prescription slip was a case of deficiency in service, unfair trade practice and negligence on the part of the appellant, is against the documents and circumstances as mentioned above. **Whereas no case is made out of deficiency in service, unfair trade practice or even medical negligence on the part of the appellant or Dr. T.P. Singh as the said over writing or cutting was done only due to Cardiac Test reports.**

28. Keeping in view the detailed discussion and reasons and the documents available on the file and also the judgment of the Hon'ble Apex Court as cited above, we find force in the arguments

raised by the counsel for the appellant that the Doctor had advised further tests/management on the basis of previous medical history of the complainant as well as current reports, which were found to be positive. As such, we deem it appropriate to **set-aside** the impugned order dated 05.05.2022 passed by the District Commission.

29. Accordingly, the present appeal is **allowed** and the impugned order dated 05.05.2022 passed by the District Commission is **set-aside**. Consequently, the complaint filed by the complainant is dismissed for the reasons as referred above. No order as to costs.

30. Since the main case has been disposed of, so all the pending Miscellaneous Applications, if any, are accordingly disposed of.

31. The appellant had deposited a sum of Rs.2,50,000/- at the time of filing of the appeal. The said amount, along with interest which has accrued thereon, if any, shall be remitted by the Registry to the appellant, after the expiry of period of appeal/revision before the Higher Court/Commission.

32. The appeal could not be decided within the statutory period due to heavy pendency of court cases.

**(JUSTICE DAYA CHAUDHARY)
PRESIDENT**

**(SIMARJOT KAUR)
MEMBER**

October 25, 2023.

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