

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

**Consumer Complaint No.114 of 2020**

**Date of Institution : 16.03.2020**

**Reserved on : 07.03.2022**

**Date of decision : 19.04.2022**

Satbir Goyal S/o Late Sh.Prem Chand R/o House No.2351, Sector 45,  
Chandigarh.

.....Complainant

**Versus**

1. Max Super Specialty Hospital, Mohali, near Civil Hospital, Phase-6,  
Mohali, Punjab, through its Director/Chairman/Managing  
Director/Director/Authorized Signatory.
2. Dr.R.S.Rai, Surgeon, Max Super Specialty Hospital, Mohali, near  
Civil Hospital, Phase-6, Mohali, Punjab.

.....Opposite Parties

**Consumer Complaint under  
Section17(1)(a)(i) of the Consumer  
Protection Act, 1986.**

**Quorum:-**

**Hon'ble Mrs. Justice Daya Chaudhary, President  
Mrs. Urvashi Agnihotri, Member**

- 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

**Argued by:-**

For the complainant : Sh. Sandeep Bhardwaj, Advocate  
For the OPs : Sh. Saurabh Dalal, Advocate

**MRS.URVASHI AGNIHOTRI, MEMBER**

Complainant-Satbir Goyal has filed the present complaint under  
Section 17 (1)(a)(i) of the Consumer Protection Act, 1986 (in short "The  
Act"), against the opposite parties i.e. Max Super Specialty Hospital and

Anr. (in short "OPs"), alleging that the complainant suffered pain in the right side of abdomen and approached Shri Dhanwantry Ayurvedic College and Hospital, where USG was conducted on 16.05.2019. A stone was found in his ureter on right upper side and impressions of Bilateral renal concretions and Grade II fatty infiltration of liver were also mentioned in the said USG report. Thereafter, he approached OP No.1 Hospital, wherein he was admitted and various tests were conducted. He was diagnosed with Upper Ureteric Calculus. The complainant further averred that OPs did not conduct any test to locate the position of the stone in the ureter. OP No.2 performed Retrograde Pyelogram (RGP) + Ureteroscopy (URS) surgery upon the complainant on 22.05.2019. The physician injected a radio contrast agent into the ureter in order to visualize the ureter and kidney with fluoroscopy or radiography in a urologic procedure i.e. Retrograde Pyelogram. The complainant also alleged in his complaint that OPs recorded that the ureteroscope could not be negotiated beyond mid-ureter, so on withdrawing back the scope from ureter, which suddenly gave way and suspected to be avulsed. His ureter was injured from two sides while withdrawing the scope from the ureter. The OPs abandoned the procedure due to said reasons and performed nephrostomy and wound was closed leaving the tube drain. Complainant was informed that for repair of the damaged ureter, an attempt was required to be made, if possible. However, no corrective surgery was performed and the complainant was discharged on 28.05.2019 with urine collection bag. He was told to come for follow up after 7 days. It was mentioned in

discharge summary that “a plan would be for ileal ureter replacement after 3 months”, which was a reconstruction of urinary tract. Meaning thereby, it was case of damage of ureter during the procedure, which required another corrective surgery. The complainant has also alleged that before conducting the said surgery, no X-ray of abdomen and USG was conducted by the OPs, which has resulted into injury. The complainant paid an amount of Rs.1,88,397/- for the said treatment through the Insurance Company.

2. Thereafter, the complainant approached Postgraduate Institute of Medical Education and Research, Chandigarh (PGIMER) on 04.07.2019. The record of the Out Patient card from 04.07.2019 to 23.10.2019 is on the record as Annexure C-5. The complainant was admitted in PGIMER on 09.11.2019 and thereafter his operation was performed on 18.11.2019. His injured ureter was recreated after taking a piece from small intestine of the complainant. Thereafter, he was discharged on 14.12.2019.

3. The complainant not only suffered physically, mentally but monetary loss was caused as he spent huge amount on corrective surgery due to medical negligence on the part of the OPs. Alleging deficiency in not performing the proper procedure with care and caution, the complainant has claimed compensation of Rs.20,00,000/- for deficient medical services and an amount of Rs.20,00,000/- for mental agony, harassment and financial loss and also litigation expenses to the tune of Rs.1,00,000/-.

4. In support of his pleadings, the complainant has filed his affidavit

along with documents i.e. copy of Ultrasound Report dated 16.05.2019 conducted at Shri Dhanwantry Ayurvedic College and Hospital as Ex.C-1, prescription-cum-admission slip dated 21.05.2019 of Max Hospital as Ex.C-2, discharge summary dated 28.05.2019 of Max Hospital as Ex.C-3, bills of Max Hospital as Ex.C-4, copy of OPD card of PGI, Chandigarh as Ex.C-5 (Colly), discharge summary of PGI showing date of admission as 09.11.2019, date of operation 18.11.2019 and date of discharge i.e. 14.12.2019 as Ex.C-6, discharge and follow up card of PGI, Chandigarh as Ex.C-7, copy of medical expenses bill during admission in PGI, Chandigarh as Ex.C-8, copy of Income Tax Return of complainant and Assessment for the Year 2017-2018, 2018-2019 and 2019-2020 as Ex.C-9 (colly).

5. Notices of the complaint were sent to OPs No.1 and 2. Despite service none appeared and they were proceeded against ex-parte vide order dated 02.09.2020. Thereafter, counsel for OPs appeared on 26.10.2020 and he was allowed to join the proceedings.

6. Sh.Sandeep Bhardwaj, Advocate counsel for the complainant has reiterated that complainant had suffered pain on the right side of abdomen and approached Shri Dhanwantry Ayurvedic College and Hospital where he was subjected to USG. Report as Ex.C-1 indicating bilateral renal concretions and grade II fatty infiltration of liver besides calculus measuring 6.1mm in the upper ureter, 2.5cm from PUJ causing grade II hydronephrosis and proximal hydroureter. Complainant approached OP No.1 stated to be a Super Specialty Hospital for further treatment on 21.05.2019, where he was operated

upon by OP No.2 on 22.05.2019 without conducting any fresh test. Learned counsel also submits that the operation was not successful due to negligence on the part of OP No.2. While conducting surgery there was rupture of ureter at two places. Learned counsel further submits that OPs just to get rid of from the complainant and to save their skin the patient was left in pain and discharged with catheter. He further submits that the complainant had to approach PGI, Chandigarh for further treatment where he was operated upon and thereafter only, he was able to live a normal life. Complainant has referred to the medical record of PGI as Ex.C-5, Ex.C-6 and Ex.C-7.

7. On the other hand, OPs filed their joint written arguments on 07.12.2020 as well as additional written arguments on 07.03.2022. In their written arguments, it has been mentioned that the complainant had no cause of action, and did not fall within purview of Consumer Protection Act. OP No.2 is a skilled Urologist and an alumni of PGI was having experience of 35 years. OPs adopted/followed the proper procedure with all diligence. It was further submitted that complainant was admitted with OP No.1 with pain and chill high fever for the last 4 days. USG report reflected position of stones; therefore, no investigation was required. It has also been submitted that the OPs performed retrograde pyelogram to confirm stones and the patient was operated with utmost safety and all precaution by adopting URSL or Uretoscopic lithotripsy, which is most effective by adopting minimal procedure for the patient. It was further submitted that the complainant and accompanying relatives were also informed about the procedure

and complications if any, including avulsion.

8. Learned counsel for OPs have also submitted that the unfortunate situation had arisen, not due to lack of any skill or competence of the Doctor/s or proper care but because of inflammation, which had occurred due to chill fever and pain for days. The report also reflected that stones were tightly encapsulated due to inflammation and granulation issue and as such, while retracing the said avulsion had occurred, for which complainant was advised for follow up. Lastly, it has been submitted that even in PGI Laparoscopic Surgery was planned but it was converted into open surgery. Therefore, the procedure adopted by the concerned doctor was not contrary to any medical journal.

9. We have heard the learned counsel for the parties and have also gone through the record of the case as well as written arguments submitted by both the parties.

10. Undisputedly, the complainant was suffering from abdominal pain on the right side, when he approached Shri Dhanwantry Ayurvedic College and Hospital, and in ultrasound report **Ex.C-1**, he was found having stone in the kidney. The impression of USG is reproduced below:

- *Right upper ureteric calculus causing proximal obstructive changes. (Advised: X-RAY KUB)*
- *Bilateral renal concretions.*
- *Grade II fatty infiltration of liver (adv: correlation with Lipid Profile).*

11. The sequence of events clearly proves that the complainant had approached OP No.1; by relying upon the report of USG Exhibit C-1, OPs proceeded to operate the complainant. On the basis of Exhibit

C-2, the complainant was advised CBC (Complete Blood Count) besides other tests. However, the OPs handed over all the reports to the complainant except CBC (Complete Blood Count). If the OPs had produced the CBC report, it would have exposed them that there was infection coupled with inflammation due to which, there were possibilities of complication. Due to inflamed issues, there were chances of manipulation intervention and that enhances the risk of complication. It was incumbent upon the OPs that if there was infection and inflammation, to have treated the patient conservatively to control the infection and inflammation first, before proceeding to operate upon the patient. This appears to be the only reason why OPs have withheld the CBC report. Though avulsion is a rare complication; however, this could have been avoided. The fact that the patient had infection and consequent inflammation finds support from the discharge summary Exhibit C-3, prepared by OPs where they specifically mentioned that the complainant -

***"HE HAS H/O FEVER WITH CHILLS SINCE 4 DAYS"***

12. Despite this, the OPs instead of adopting conservative treatment to control the infection, rushed to operate the patient to avoid losing patient. The OPs admitting inflammation to be the cause of narrowing the passage of ureter which further led to avulsion while retracting. This complication could have been avoided, had the OPs instead of rushing to operate initially adopted, conservative treatment. This conclusion the discharge stands confirmed from the summary recorded as under: -

*"URSL WAS ATTEMPTED WITH #6 URS*

*WHILE MANIPULATING THE SCOPE THE URETEROSCOPE COULD NOT BE NEGOTIATED BEYOND MID-URETER, SO ON WITHDRWING BACK THE SCOPE FROM URETER, THE URETER SUDDENLY GAVE WAY AND WAS SUSPECTED TO BE AVULSED.*

*THE PROCEDURE WAS ABANODONED.*

*(THE SAME WAS TOLD AND EXPLAINED TO PATIENTS YOUNGER BROTHER, WIFE WAS NOT AVAILABLE. IT WAS ALSO TOLD THAT AN ATTEMPT WILL BE MADE TO REPAIR THE DAMAGED URETER, IF POSSIBLE.)*

*POSITION OF PATIENT WAS CHANGED TO RT RENAL POSITION WITH RT FLANK INCISION THROUGH THE BED OF 12TH RIB, WAS RETROPERITONEUM WAS EXPLORED THERE WAS GROSS EXTRAVASATION WITH COMPLETE AVULSION OF URETER AT TWOENDS LEADING TO COMPLETE DEVASCULARISATION, THE SEGMENT WAS NOT VIABLE.*

*IN VIEW OF THIS, A NEPHROSTOMY WAS DONE, POSITION OF NEPHROSTOMY WAS RE-CONFIRMED AND WOUND WAS CLOSED LEAVING BEHYIND A TUBE DRAIN.  
COUNT CORRECT"*

13. The OPs withheld the pre-operative investigations and conservative management record, which was required before operation. OPs had also withheld this pre-operative consent of the complainant or his family members and only brother was informed about the complication, as wife was not available. It is mandatory requirement of medical procedure that unless the situation is so emergent that there is threat to the life of the patient and it is not possible to wait for the consent that the doctor can operate without waiting for the consent. Otherwise, pre-operative consent is mandatory which has not been obtained by the OPs for reasons best known to them, as to why the



OPs had to proceed with the surgery without pre-operative consent as well as high risk consent. From this, the negligence of the respondent stands fully established.

14. The law on the subject is settled by the ***Hon'ble Supreme Court of India in Civil Appeal No. 2641 of 2010, (Arising out of SLP(C) No. 15084/2009) D/d 08.03.2010 in case titled as V. Kishan Rao v. Nikhil Super Specialty Hospital.*** It has been held therein that in a case where negligence is evident, the principle of res ipsa loquitur operates and the complainant does not have to prove anything as the thing (res) proves itself - In such a case it is for the respondent to prove that he has taken care and done his duty to repel the charge of negligence. This onus, the OPs have miserably failed to discharge in the present case before us and negligence on their part stands fully proved.

15. Hence, we allow the complaint and keeping in view the pain and mental agony suffered by the complainant during the period of treatment starting from 21.05.2019 and also the amount spent by him on payment of bills and medicines etc., and the loss of business shown by him in his Income Tax Returns, we consider it reasonable and most appropriate to award him the following amounts by way of compensation. **Accordingly, we allow the complaint with the following directions against OPs 1 and 2:-**

- i) to pay an amount of Rs.1,00,000/- by way of compensation for the medical negligence and deficiency in service rendered by the OPs,

- ii) to pay an amount of Rs.1,00,000/- on account of mental agony, pain and the financial loss suffered by him in his business during the period of treatment and
- iii) to pay an amount of Rs.15,000/- as litigation expenses.

16. The complaint could not be decided within the stipulated period due to heavy pendency of Court cases and non-sitting of this Commission due to pandemic of Covid-19.

**(JUSTICE DAYA CHAUDHARY)  
PRESIDENT**

**(URVASHI AGNIHOTRI)  
MEMBER**

**April 19, 2022**  
*(Rupinder 2)*