

Date of Filing 14-12-2021  
Date of Order 14-11-2023

**IN THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, MADURAI**

**PRESENT : THIRU. M. PIRAVI PERUMAL, B.Com., B.L., ADCL – PRESIDENT**

**TMT. P.SHANMUGAPRIYA, M.SC., D.L.L.A.L – MEMBER - I**

**C.C. NO. 143/2021**

**TUESDAY THE 14<sup>th</sup> DAY OF NOVEMBER 2023**

R.Raju,  
S/o.Rafel,  
R/o.Achamthavirthan Village,  
Srivilliputhur Taluk,  
Virudhunagar District – 626137.

.. Complainant

.. Vs ..

1. Shri Andal Hospital,  
Represented by its Manager,  
17-B, Kamaraj Nagar,  
Rajapalayam – 626117.

2. Dr. Premalatha, MD, DGO,  
Physician,  
17-B, Kamaraj Nagar,  
Rajapalayam – 626117.

3. Dr.Rajaram, M.B.B.S.M.D.  
Physician,  
17-B, Kamaraj Nagar,  
Rajapalayam – 626117.

4. Dr.Sailesh Kumar, M.S,  
General Surgeon,  
Government Hospital,  
Virudhunagar.

5. Rajaji Government Hospital,  
Represented by its Dean,  
Madurai – 20.

.. Opposite parties

This complaint is coming for hearing before us on this 8<sup>th</sup> day of November, 2023 in the presence of Thiru.B. Narayana Ram, Counsel for the complainant and M/s.AAV Partners, Counsel for 1<sup>st</sup> to 3<sup>rd</sup> opposite parties, Thiru.V.Ezhilarasan, Counsel for 5<sup>th</sup> opposite party, 4<sup>th</sup> opposite party Set-exparte, perused the documents filed by both sides and the case having stood over to this day for consideration, this Commission passed the following :

**ORDER**

**THIRU M. PIRAVI PERUMAL, B.COM, B.L. ADCL - PRESIDENT**

**1. The crux of the complaint is :-**

The complainant is the husband of deceased Kaleeswari aged about 39 years. He on 18-11-2020 at around 8-30 PM along with his relatives took his wife Kaleeswari to the 1<sup>st</sup> opposite party for her abdomen pain. The 3<sup>rd</sup> opposite party had admitted his wife Kaleeswari as inpatient. On 19-11-2020 the 2<sup>nd</sup> opposite party attended his wife and perusal of the past history she informed that a cyst is found in his wife's uterus and she has to undergo the operation immediately so that her life will be saved otherwise it will be risk. He had hesitation but on being persuaded by the 2<sup>nd</sup> opposite party he agreed for his wife to undergo the surgery. She demanded Rs. 80,000/- for the surgery but she agreed to do the same for Rs. 40,000/- and the complainant has paid Rs. 10,000/- immediately at the 1<sup>st</sup> opposite party. The 2<sup>nd</sup> opposite party on 21-11-2020 at 6-30 PM did the surgery and during the course of surgery she informed that complication had arisen and to rectify the same specialist has to be called and that additional expenses of Rs.1,00,000/- will have to be paid. The complainant agreed for the same and again the complainant paid Rs. 10,000/- at the office. The services of 4<sup>th</sup> opposite party was requested and at that point juncture the complainant came to know that the surgery was performed negligently without conducting pre-operative tests. The 2<sup>nd</sup> opposite party having come to know that that she had performed the surgery negligently had forced the complainant and his relatives to shift the patient to Government Rajaji Hospital, Madurai for further treatment. The 1<sup>st</sup> opposite party did not provided any medical records and simply gave a referral letter addressing to the Madurai GH. That on reaching 5<sup>th</sup> opposite party on 22-11-2020 night around 12-30 am they refused to admit her on seeing her condition with half baked surgery and severe blood flow but later she was admitted as

inpatient and she had paid Rs. 606/- for scan and blood tests. The deceased Kaleeswari already had come with half bake colostomy operation and therefore the 5<sup>th</sup> opposite party struggled to give treatment and the complainant wife Kaleeswari died on 28-11-2020. On obtaining medical records from the 5<sup>th</sup> opposite party he came to know that the antecedent cause of death is due to injury with colostomy. The complainant states that abdominal adhesion cannot be suspected with MI scan and the 1<sup>st</sup> opposite party performed the operation with money minded without bothering to conduct pre-operative investigations and had punctured the intestine and thereby caused sever adhesion in bowel. Had the 1<sup>st</sup> opposite party doctors diagnosed by conducting proper pre-operative investigation like MRI, the life of his wife could have been saved. The complainant had issued lawyer notice to the opposite parties. The complainant had lodged the complaint alleging negligence and deficiency in service on the part of the opposite parties and had sought compensation among the other reliefs.

**2. The 5<sup>th</sup> opposite party had filed written version contending as follows :-**

The 5<sup>th</sup> opposite party contended that the complaint is not maintainable as they are Government Hospital and treatment was given by Government Doctors and as such the complainant is not entitled to any relief as against them. The 5<sup>th</sup> opposite party had contended that on 22-11-2020 the complainant's wife Kaleeswari was brought to them with Salaphingo-Oopherectomy with colostomy done at a private hospital and the patient was received in SICU on 22-11-2020. On 24-22-2020 stoma was not functioning and serious discharge was present. All requisite specialist doctors at the 5<sup>th</sup> opposite party had examined the patient and appropriate treatment was given as per their advise. On 28-11-2020 the patient condition worsened and she became unconscious and on 28-11-2020 at 7 PM she was under the mechanical ventilator unconscious not responding to any stimuli drugs and on 28-11-2020 at 7-10 PM due to sudden cardiac arrest, secondary to traumatic signmod injury with colostomy she was declared dead. The 5<sup>th</sup> opposite party contended that that they had provided proper treatment procedure and hence there is no negligence on their part and prayed for dismissal of the complaint.

3. The complainant to prove his case had filed proof affidavit along with 22 documents and the same has been marked as Exhibit A-1 to A-22. The 5<sup>th</sup> opposite party had filed proof affidavit along with 2 documents and the same has been marked as Exhibit B-1 and B-2

**4. The points for consideration are :-**

1. Whether the consumer complaint against the 5<sup>th</sup> opposite party Government Hospital is maintainable ?
2. Whether the opposite parties have committed any deficiency in service “
3. If so to what relief the complainant is entitled for ?

**5. POINT NO. 1**

On cursory glance of the written version of the 5<sup>th</sup> opposite party it can be evidenced that that they had raised preliminary objection regarding maintainability of the consumer complaint against Government Hospital.

6. At this juncture it would be appropriate and apposite on our part to decide the maintainability of the consumer complaint filed by the complainant against the 5<sup>th</sup> opposite party-Government Hospital before delving into the merits of the case as against the 5<sup>th</sup> opposite party.

7. Admittedly there is no dispute regarding the fact that the 5<sup>th</sup> opposite party is a Government Hospital. It can be seen from the records that no consideration was paid to the 5<sup>th</sup> opposite party, mere payment of scan charges by the complainant to the 5<sup>th</sup> opposite party cannot be under any stretch of imagination construed as consideration for treatment. In terms of Section 2(7) of the Act, a consumer is the one who hires or avails of any services for a ‘consideration’ which has been paid or promised or partly paid or partly promised. In the case in hand the complainant has not paid any consideration for availing the services of the 5<sup>th</sup> opposite party doctors and the nurses, he would not be covered under the definition of consumer to avail the remedies under the Act.

8. We would like to refer to the judgement of the HON'BLE SUPREME COURT in the case titled as

**NIVEDITA SINGH**

**Vs**

**DR. ASHA BHARTI & ORS.**

vide its order dated 07-12-2021 in Civil Appeal No. 103/2012 it was observed that Government Hospital does not fall within the ambit of 2(1)(0) of the Consumer Protection Act as the services are being provided free of charge. The above said judgement is squarely applicable to the case in hand.

9. Sequel to the above deliberations we are of the considered opinion that the present complaint filed as against the 5<sup>th</sup> opposite party-Government Hospital is not maintainable as they are rendering free service and the complainant has not paid any consideration for the treatment provided and therefore the complaint as against the 5<sup>th</sup> opposite party deserves to be dismissed. Accordingly we answer Point 1 against the complainant.

#### **10. POINT NO. 2**

It has been averred in the complaint that the complainant is the husband of deceased Kaleeswari aged about 39 years. He on 18-11-2020 at around 8-30 PM along with his relatives took his wife Kaleeswari to the 1st opposite party for her abdomen pain. The 3rd opposite party had admitted his wife Kaleeswari as inpatient. On 19-11-2020 the 2nd opposite party attended his wife and perusal of the past history she informed that a cyst is found in his wife's uterus and she has to undergo the operation immediately so that her life will be saved otherwise it will be risk. He hesitated but on persuaded by the 2nd opposite party he agreed for the surgery. She demanded Rs. 80,000/- for the surgery but she agreed to do the same for Rs. 40,000/- and the complainant has paid Rs. 10,000/- immediately at the 1st opposite party. The 2nd opposite party on 21-11-2020 at 6-30 PM did the surgery and during the course of surgery she informed that complication had arisen and to rectify the same specialist has to be called and that additional expenses of Rs. 1,00,000/- will have to be paid. The complainant agreed for the

same and again the complainant paid Rs. 10,000/- at the office. The services of 4th opposite party was requested and at that point juncture the complainant came to know that the surgery was performed negligently without conducting pre-operative tests. The 2nd opposite party having come to know that that she had performed the surgery negligently had forced the complainant and his relatives to shift the patient to Government Rajaji Hospital, Madurai for further treatment. The 1st opposite party did not provided any medical records and simply gave a referral letter addressing to the Madurai GH. That on reaching 5th opposite party on 22-11-2020 night around 12-30 am they refused to admit her on seeing her condition with half baked surgery and severe blood flow but later she was admitted as inpatient and she had paid Rs. 606/- for scan and blood tests. The deceased Kaleeswari already had come with half bake colostomy operation and therefore the 5th opposite party struggled to give treatment and the complainant wife Kaleeswari died on 28-11-2020. On obtaining medical records from the 5th opposite party he came to know that the antecedent cause of death is due to injury with colostomy. The complainant states that abdominal adhesion cannot be identified without MRI scan and the 1st opposite party performed the operation with money minded without bothering to conduct pre-operative investigations and had punctured the intestine and thereby caused severe adhesion in bowel. Had the 1st opposite party doctors diagnosed by conducting proper pre-operative investigation like MRI, the life of his wife could have been saved. The complainant had issued lawyer notice to the opposite parties. The complainant had lodged the complaint alleging negligence and deficiency in service on the part of the opposite parties.

11. On perusal of the records it can be evidenced that in the instant case the opposite parties 2 to 4 have conducted proper pre-operative investigation prior to commencing the surgery. We are of the view that pre-operative assessment is necessary prior to surgical procedures, in order to ensure that the patient is fit to undergo surgery, to highlight issues that the surgical or anaesthetic team need to be aware of during the peri-operative period, and to ensure patients' safety during their journey of care. In addition, unnecessary complications due to inappropriate

surgery may be avoided. In the above circumstances we find force in the contention of the complainant that the opposite parties 1 to 4 have failed to take MRI scan to assess the condition of the patient prior to performing the surgery. We are of the considered view that non-carrying out of pre-operative investigations including MRI Scan for assessing abdominal adhesions in the case in hand amount to gross negligence coupled with deficiency in service on the part of the 2<sup>nd</sup> and 3<sup>rd</sup> opposite party.

12. Moreover the complainant has averred and affirmed that the 1<sup>st</sup> opposite party has not even provided the case sheet/medical records while referring his wife to Government Hospital, Madurai and provided only a referral letter. As far non-providing of case sheet is concerned we would like to recollect and refer to the judgement of the **HON'BLE NATIONAL COMMISSION** in the cases title as

**DR. (MRS) INDU SHARMA**

**VS**

**INDRAPRASTHA HOSPITAL**

In Consumer Complaint No. 104/2002 vide its order dated 22-04-2015 has held as follows : - 36. Medical record maintenance has evolved into a science of itself and form an important aspect of the management of a patient. It is important for the doctors and hospitals to properly maintain the records of patients. It will help the doctor to prove that the treatment was carried out properly. The proper medical record it will help them in the scientific evaluation of their patient profile, helping in analysing the treatment results, and to plan treatment protocols. It is wise to remember that "Poor records mean poor defence, no records mean no defence". The above said judgement is squarely applicable to the case of the complainant in hand. We are of the view that the 1<sup>st</sup> opposite party act of not providing the case sheet to the complainant at the time of discharging the patient with referral to Government Hospital is an negligent act.

13. Moreover the learned Counsel for the complainant argued that this is a case of res ipsa loquitor. The medical records obtained by the complainant from the 5<sup>th</sup> opposite party supports the case of the complainant. As far the doctrine

of *res ipsa loquitor* is concerned we would like to recollect and refer to the judgement of the **HON'BLE MADRAS HIGH COURT** in the case titled as

**SONI HOSPITAL**

**VS**

**BALAKRISHNAN IYER**

In para 24 held that : in a case where an act was done by a doctor which he is otherwise not supposed to do and such an act was done in a negligent manner resulting in a substantial injury to the patient, then he cannot escape the liability. When a doctor who performs a surgery is in possession of certain facts and the factum of surgery has not been disputed, coupled with the fact that, the complications have arisen in pursuant to the surgery not correctly done then the onus is on him to prove that the negligence is not on his part. When the accident is such that in the ordinary course of action is not likely to happen if the person in-charge has not taken proper care then, the consequential liability will be on him. In such a case the principle of *res ipsa loquitor* can be applied and this judgement is squarely applicable to the case in hand. Furthermore the opposite parties 1 to 4 have failed to discharge their burden on the facts and circumstances of the present case and therefore the complainants are entitled compensation for the damages for the careless and negligent treatment.

14. In auxiliary in the case in hand the complainant had proved and established his case by filing proof affidavit and marking requisite documents and in the absence of any evidence in contra being produced and placed before us by the opposite parties 1 to 4 are inclined to accept the case of the complainant that the opposite parties 1 to 4 are guilty of gross negligence and deficiency in service. Accordingly we answer Point 2 in favour of the complainant.

15. Let us examine in the law laid down by **HON'BLE SUPREME COURT** on medical negligence. In the

**KUSUM SHARMA AND ORS**

**V.**

**BATRA HOSPITAL AND MEDICAL RESEARCH CENTRE & ORS.**



reported in (2010) 3 SCC 480 , it was discussed the breach of expected duty of care from the doctor, if not rendered appropriately, it would amount to negligence. It was held that, if a doctor does not adopt proper procedure in treating his patient and does not exhibit the reasonable skill, he can be held liable for medical negligence.

16. Similarly, we would like to refer to the judgements of the **HON'BLE SUPREME COURT** in the cases tiled as

**DR. LAXMAN BALAKRISHNA JOSHI**

**VS.**

**DR. TRIMBAK BAPU GODBOLE & ANR**

reported in AIR 1969 SC 128 .

**AND**

**A.S. MITTAL**

**VS.**

**STATE OF U.P**

reported in (1998) 4 SCC 39 wherein it was held that certain duties of the doctor have been laid down. The doctor owes to his patient certain duties which are (a) a duty of care in deciding whether to undertake the case; (b) a duty of care in deciding what treatment to give; and (c) a duty of care in the administration of that treatment. A breach of any of the above duties may give a cause of action for negligence and the patient may on that basis recover damages from his doctor. The judgements of the Hon'ble Supreme Court stated supra are squarely applicable to the case in hand.

17. Sequel to the above deliberation we hold that the opposite parties 1 to 4 are guilty of negligence coupled with gross deficiency in service. Accordingly we answer Point 2 in favour of the complainant.

### **18. POINT NO. 3**

In the case in hand negligent act and utter lack of devotion to duty and non-chalant attitude of the opposite parties 1 to 3 in observing even minimum

professional ethics and principles had resulted in death of the complainant's wife which would have definitely resulted in caused acute mental agony, pain and anguish to the complainant and his family members posing a great question mark of the entire family's future.

19. We are of the view that the *sine qua non* for entitlement of compensation is proof of loss or injury suffered by the consumer due to the negligence of the opposite party. Once the said conditions are satisfied, the Consumer Commission would have to decide the quantum of compensation to which the consumer is entitled. That there cannot be any dispute that the computation of compensation has to be fair, reasonable and commensurate to the loss or injury. There is a duty cast on the Consumer Commission to take into account all relevant factors for arriving at the compensation to be paid. That while awarding compensation, a Consumer Commission has to take into account all relevant factors and assess compensation on the basis of accepted legal principles, on moderation. It is for the Consumer Commission to grant compensation to the extent it finds it reasonable, fair and proper in the facts and circumstances of a given case according to the established judicial standards where the claimant is able to establish his charge and compensation has to be worked out after looking into the facts of each case and after determining the loss that has been caused to the consumer.

20. Now coming to the quantum of compensation in the case in hand we would like to refer to the judgement of the **HON'BLE SUPREME COURT** in the case titled as

**NATIONAL INSURANCE CO. LTD.**

**V.**

**KUSUMA**

reported in (2011) 13 SCC 306 has held that payment of compensation to parents for the death of a child, including a stillborn, in an accident must be just and not be a pittance. Thus, in our view, no amount can be just and adequate in an

absolute sense. By no stretch of imagination, we should award a paltry sum for gross negligence.

21. Based on the discussion above, having medical negligence conclusively attributed to the treating doctors at the 1<sup>st</sup> opposite party hospital and having regard to that the complainant has lost his wife aged around 39 years, in the ends of justice, we are of the considered view the compensation of Rs. 10,00,000/- is just and fair in the instant case.

22. It is well established that a hospital is vicariously liable for the acts of negligence committed by the doctors engaged or empanelled to provide medical care. It is common experience that when a patient goes to a hospital, he/she goes there on account of the reputation of the hospital, and with the hope that due and proper care will be taken by the hospital authorities. If the hospital fails to discharge their duties through their doctors, being employed on job basis or employed on contract basis, it is the hospital which has to justify the acts of commission or omission on behalf of their doctors. Accordingly, we hold the 1<sup>st</sup> opposite party to be vicariously liable for the acts of omission and commission committed by the opposite parties 2 to 4 and therefore the 1<sup>st</sup> opposite party is liable to pay compensation the compensation of Rs. 10,00,000/- to the complainant.

**In the result the complaint is allowed in part and**

**(i). the 1<sup>st</sup> opposite party is directed to pay a sum of Rs. 10,00,000/- (rupees ten lakhs only) as compensation to the complainant.**

**(ii). the 1<sup>st</sup> opposite party is directed to pay a sum of Rs. 10,000/- (rupees ten thousand only) as cost of the complaint. The complaint as against the 5<sup>th</sup> opposite party is dismissed.**

**Time for compliance – 45 days from the date on which the copy of this order is made ready.**

This order is dictated by the President to the Steno-Typist, transcribed, typed by her and corrected, signed and pronounced by us in open Commission, today on this 14<sup>th</sup> day of November 2023.

**Sd/--**  
**(P.SHANMUGAPRIYA)**  
**MEMBER-I**

**Sd/--**  
**(M.PIRAVIPERUMAL)**  
**PRESIDENT**

**Complainant Witness PW1:R.Raju**

**Documents filed by the complainant:-**

Ex.A1	22.09.2020	Ultra Sound Study of the Abdomen	Xerox
Ex.A2	19.11.2020	Laboratory Report	Xerox
Ex.A3	24.11.2020	KJS Diagnostic Centre - Blood Test Report	Xerox
Ex.A4	25.11.2020	KJS Diagnostic Centre - Lab Investigation	Xerox
Ex.A5	25.11.2020	Institute of Micro Biology - Culture/Serology Report	Xerox
Ex.A6	26.11.2020	Madurai GH-CT/MRI Scan Registration cum Billing - Pelvis	Xerox
Ex.A7	26.11.2020	Madurai GH-CT/MRI Scan Registration Cum Billing - Pelvis	Xerox
Ex.A8	27.11.2020	Madurai GH-CT Scan Abdomen Plain & Contrast Report	Xerox
Ex.A9	27.11.2020	Final Test Report	Xerox
Ex.A10	28.11.2020	Mortuary Label	Xerox
Ex.A11	30.12.2020	Death Certificate	Xerox
Ex.A12	24.02.2021	RTI - REF No.21448/RTI/2021	Xerox
Ex.A13	14.07.2021	Legal Notice to Opposite parties No.1 to 3 & 5	Xerox
Ex.A14	19.07.2021	Reply for Legal notice from opposite parties No.2 & 3	Xerox
Ex.A15	22.07.2021	Reply for Legal notice from opposite party No.5	Xerox
Ex.A16	24.04.2021	Legal notice to Tamil Nadu Medical Council	Xerox
Ex.A17	12.08.2021	Reply for complaint Against opposite party no.2 from Tamil Nadu Medical Council	Xerox
Ex.A18	12.08.2021	Reply for complaint against opposite party no. 3 From Tamil Nadu Medical Council	Xerox
Ex.A19	24.08.2021	Reply from opposite parties No.2 &3 to Give Time to Reply	Xerox
Ex.A20		Reply notice from opposite parties No.1 to 3	Xerox
Ex.A21	10.12.2021	Complaint to Rajapalayam Inspector of Police	Xerox
Ex.A22	10.12.2021	CSR No.622 of 2020	Xerox

**5<sup>th</sup> Opposite party Witness RW1: Uma Maheswaran****Documents filed by the 5<sup>th</sup> Opposite party:-**

Ex.B1		Letter of authorisation issued by Uma Maheswaran Doctor to be a witness in the above case by the 5 <sup>th</sup> opposite party	Xerox
Ex.B2		Uma Maheswaran Identity Card	Xerox

Sd/--  
**(P.SHANMUGAPRIYA)**  
**MEMBER-I**

Sd/--  
**(M.PIRAVIPERUMAL)**  
**PRESIDENT**