

**KARNATAKA STATE CONSUMER DISPUTES REDRESSAL COMMISSION
BASAVA BHAVAN, BANGALORE.**

**Complaint Case No. CC/65/2011
(Date of Filing : 06 Apr 2011)**

1. Smt.Padmavathi

w/o Muniraju, Hindu,aged about 35 years, R/at No.625, 1st B
Main Road,Jayanagar, 7th Block,Bangalore-560062 .

.....Complainant(s)

Versus

1. Deepak Hospital

No.259,33rd Cross,Kanakapura Main Road, 7th
Block,Jayanagar,Bangalore-560082 by its Administrator .

2. Dr.Shiva Kumar

No.259,33rd Cross,Kanakapura Main Road, 7th
Block,Jayanagar,Bangalore-560082 .

3. Dr.H N Nagaraj

No.259,33rd Cross,Kanakapura Main Road, 7th
Block,Jayanagar,Bangalore-560082 .

4. Dr.Mohan S N

No.259,33rd Cross,Kanakapura Main Road, 7th
Block,Jayanagar,Bangalore-560082 .

.....Opp.Party(s)

BEFORE:

HON'BLE MR. Ravishankar PRESIDING MEMBER

HON'BLE MRS. Smt.Sunita Channabasappa Bagewadi MEMBER

PRESENT:

Dated : 17 Jun 2024

Final Order / Judgement

**BEFORE THE KARNATAKA STATE CONSUMER DISPUTES REDRESSAL
COMMISSION, BANGALORE. (ADDL. BENCH)**

CONSUMER COMPLAINT NO.65/2011

DATED THIS THE 17th DAY OF JUNE, 2024

PRESENT

SRI RAVI SHANKAR, JUDICIAL MEMBER

SMT. SUNITA C.BAGEWADI, LADY MEMBER

Smt.Padmavathi

W/o Muniraju,

Hindu, aged about 35 years,

Residing at No.625,

... Complainant/s

1st B Main Road, Jayanagar,

7th Block, Bengaluru-560 062

(By Sri.A.V.Srinivas, Advocate)

-Verses-

1. Deepak Hospital,

No.259, 33rd Cross,

Kanakapura Main Road,

7th Block, Jayanagar,

Bengaluru -560 082

By its Administrative

... Respondent/s

2. Dr.Shiva Kumar,
No.259, 33rd Cross,
Kanakapura Main Road,
7th Block, Jayanagar,
Bengaluru – 560 082

3. Dr.H.N.Nagaraj
No.259, 33rd Cross,
Kanakapura Main Road,
7th Block, Jayanagar,
Bengaluru – 560 082

4. Dr.Mohan.S.N.
No.259, 33rd Cross,
Kanakapura Main Road,
7th Block, Jayanagar,
Bengaluru – 560 082

5. The New India Assurance Co. Ltd,
DO-1, No.40, Lakshmi Complex,
Opp. Vanivilas Hospital,
KR Road, Bengaluru

By its Divisional Manager,

6. Oriental Insurance Co. Ltd,

DO XV Jayalakshmi Marbles,

3rd floor, No.100/96,

Dr.Rajkumar road, Rajajinagar,

Bengaluru – 560 010

By its Divisional Manager,

(OP No.1 to 3-By Sri.Imran Pasha & Co., Advocate)

(OP No.4-By S.B.Mukkannappa, Advocate)

(OP No.5 & 6-By Sri.S.Maheswara, Advocate)

ORDER

BY SRI.RAVISHANKAR, JUDICIAL MEMBER

This complaint is filed by the complainant against the Opposite Party Nos.1 to 4 alleging medical negligence and claimed compensation to the tune of Rs.80.00 lakhs with interest @10% p.a. Subsequently the Insurance Companies brought on record after amendment and claims were made against the Insurance Companies also.

2. The brief fact of the complaint is that, the complainant with a history of abdominal pain had visited the 1st Opposite Party hospital where it was noticed that she was suffering from Hernia and the Opposite Party Nos.1 to 4 advised surgery. Accordingly on 24.9.2004 with consent of complainant the surgery was conducted and she was inpatient for 5 days. The surgery was conducted by the 2nd Opposite Party and at the time of surgery the 2nd Opposite Party also noticed that the complainant had Appendix and suggested for removal of the same. Accordingly the Appendix was also removed and the sent for biopsy. Subsequently the 2nd Opposite Party noticed that the complainant's small intestine was infected and required for clean. The complainant during the hospitalization had spent Rs.70,000/- towards surgery and other tests as suggested by the 2nd Opposite Party. Even after the discharge from the hospital, the complainant suffered some stomach pain, whenever she visited the 1st Opposite Party hospital, the 2nd Opposite Party continued to prescribed tablets and medicine. Subsequently in the year 2006, the complainant has experienced acute pain and also noticed the medicines are not working further, immediately she was admitted to the hospital in the month of April, 2006, after examination she was advised some tablets and discharged from the hospital. Even hospitalization was not fruitful and she suffered continuous acute pain.

The complainant further submits that, in the month of September, 2006 she again admitted to hospital for examination as she has suffered severe back pain. The Opposite Party Nos.2 to 4 examining the complainant thoroughly and medicine was prescribed on discharge, even thereafter the back pain was not cured. The complainant periodically visited the Opposite Party No.1 hospital complaining a severe pain, but without treating the Opposite Party and prescribed medicines on oral examination only and assured that the acute back pain is going to subside. Believing the words, the complainant had taken the medicine but the complainant still suffered the pain throughout the year 2007-2008. By that time the Opposite Party Nos.2 to 4 started neglecting the complainant for nuisance and further they have not shown much more importance in treating the complainant. Subsequently, she was received an information that, the 2nd Opposite Party/doctor had went to foreign country in the month of October, 2008. Due to non-availability of the doctor, she visited the BGS Hospital where the scan was conducted and scan report reflect that there was a foreign body in the area between stomach and back bone of the complainant and the complainant was advised to undergo operation for removal of foreign body.

The complainant admitted to Chord Road Hospital Private Limited, Bengaluru and underwent surgery on 2.3.2010 for removal of the foreign body found in the stomach. The said foreign body is a surgical needle measuring about 3.2 cms long and had got lodged into her vertebral column. Due to the said foreign body the complainant suffered such a huge and acute pain, after discharge from the hospital, the complainant completely relieved from back pain. It is only due to negligent operation done by the Opposite Party Nos.2 to 4 in the Opposite Party No.1 hospital, the foreign body i.e. a surgical needle was left in the body negligently which resulted in acute pain. Fortunately the said foreign body was traced out in the year 2010 and successfully removed, it is only due to negligence on the part of the Opposite Party Nos.2 to 4, the complainant suffered such a acute pain, it is clear case of negligence on the part of the Opposite Parties in not conducting the surgery carefully. Hence, filed the complaint before this commission and sought for compensation to the tune of Rs.80.00 lakhs.

The Opposite Party No.5 is the Insurance Company who insured the 1st Opposite Party hospital covering the professional and medical negligence. The Opposite Party No.6 is the insurance company which issued policy in force of the Opposite Party No.4. Hence, all the Opposite Parties are jointly and severally liable to pay compensation, hence prays to allow the complaint, in the interest of justice and equity.

3. After service of notice, the Opposite Party Nos.1 to 3 appeared through their counsel and filed version and contended that, the complaint so filed is without there being any cause of action and the cause of action so alleged is imaginary and concocted. The complaint is liable to be rejected on the ground of the fact of cause of action.

There is huge delay on the part of the complainant in approaching/seeking redressal of her alleged medical negligence. The complaint is liable to be dismissed as barred by time. Since the complainant had underwent surgery in the 1st Opposite Party hospital in the year 2004 seven years back, whereas the present complaint was filed in 2011. There is no reason assigned for such a long and inordinate delay. Hence the complaint is liable to be dismissed.

The Opposite Parties Nos.1 to 3 further contended that there is no consumer dispute arose in the complaint and the complaint cannot be termed as complaint as per provision of the CP Act. Further the complaint is liable to be dismissed as the same involves a complicated question of law and fact, which is not practically possible to be tried by this Commission in a summary proceedings. The points in dispute as alleged by the complainant are very complicated in nature and the same requires perusal and verification of voluminous documents, which can be done only through a proper and detailed trial, which may not be possible before this Commission. Hence prays for dismissal of the complaint.

The Opposite Parties No.1 to 3 further contended that, the complainant has not approached this Hon'ble Commission with clean hands and has suppressed material facts and also filed the present complaint with a frivolous allegation in order to gain wrongfully, hence prays for dismissal of the complaint.

The Opposite Parties No.1 to 3 further contended that, in between 2004 to 2011, the 1st Opposite Party hospital has undergone a lot of changes such as construction of the hospital and renovation of infrastructure, equipments etc. the administrative block of the hospital was made computerized and further the case file/surgical file of the patients are maintained for a period of 5 years and thereafter the same was treated as closed. The complainant file/surgical file due to lapse of 5 years and also on account of the hospital being reconstructed and renovated it could not be traced out the case sheet and file of the complainant. They are not in a position to put forth their case in entirety. However on the basis of the records so produced by the complainant along with the complaint, the Opposite Parties have traversed and filed the version.

The Opposite Parties No.1 to 3 further contended that, the 1st Opposite Party hospital was established in the year 1971 catering services in the field of medical sciences to the needy persons and presently having a Multi Specialty Facilities. The hospital is well equipped with all medical requirements and had earned good reputation in terms of hospitality, quality treatment, hygienic conditions and nursing care etc. The complainant aged about 35 years when she was admitted to this hospital in the month of September, 2004 and as per the record the surgery was conducted for Hernia and but it is false that she had followed up and also approached these Opposite Parties with history of severe pain subsequent to the surgery.

The Opposite Parties No.1 to 3 further contended that, during the month of September, 2006 the complainant approached the 3rd Opposite Party who upon examining, advised the complainant to undergo CT Scan of Lumbo Sacral Spine and the complainant underwent the same at Clumax Diagnostic Centre. The report of which produced by the complainant herself which clearly goes to show that there was no any such foreign body was found. Primarily lateral topogram of Lumbosacral Spine was obtained. Continuous helical sections were performed starting from L1 vertebra down to the level of S1 segment. (L1 to L5 test is carried out by passing through all the organs of abdomen and pelvis). Sagittal and Axial reconstructions were also performed. The test revealed nerve roots, neural foramina and spinal canal normal and further it was noticed that the back pain was due to slip of disc and no foreign body is either seen during the CT scan nor it was reflected in the CT Scan report dated 11.9.2006 issued by Clumax Diagnostic Centre. As on the date of admission to the 1st Opposite Party hospital, the complainant was thoroughly checked and examined by the team of doctors as admitted by the complainant herself, it was

noticed that the complainant has some psychiatric problem and accordingly the medicines were prescribed for pain.

The Opposite Parties No.1 to 3 further contended that they have no knowledge the complainant had visited BGS hospital for check-up and merely basing on the documents related to BGS hospital the complainant cannot allege medical negligence. The report which reflects a foreign body was noticed between stomach and back bone and the complainant was advised for operation to removal of the foreign body requires strict proof of the same.

The Opposite Parties No.1 to 3 further contended that, the MRI of Lumbar Spine (Body Scan) conducted on 5.10.2009, no foreign body seen and the report dated 5.10.2009, the said reports are produced by the complainant. The complainant was underwent CT-Scan before reputed diagnostic centre namely Clumax Diagnostic Centre in the year, 2006 and BGS hospital in the year, 2009. There was no foreign body noticed/detected. The report produced by the complainant between 11.9.2002 and 5.10.2009 clearly discloses that no foreign body was detected. Even the various other tests which were conducted on the complainant did not reveal any presence of foreign body in the complainant. Such being the case, the allegations made against these Opposite Parties are false, baseless and frivolous. Further she was admitted to Chord Road Hospital Private Limited, Bengaluru where she was operated by Dr.Jaganath Dixit and Dr.Prabu on 2.3.2010 for removal of the surgical needle measuring about 3.2 cms long is not known to these Opposite Parties. As such the same has to be rejected as false. Further the complainant without any valid reason and supportive documents alleges medical negligence against these Opposite Parties. The surgery conducted in the year, 2004 for Hernia was successful and they have taken due care and caution and the surgery was successful. If at all any surgical needle left out would have been seen earlier scan which was obtained in the year 2006 itself. The scan towards Lumbar Sacral spine and 2009 scan which was done at Clumax Diagnostic Centre. The foreign body noticed only when the complainant admitted to Chord Road Hospital Private Limited, Bengaluru in the year, 2010. The Opposite Parties have not left any such needle in the complainant's body at the time of surgery. The complainant might to have swallowed any needle which might have resulted in pain; the same was removed as per the report. There is no any reason to believe that the teams of doctors have negligently conducted the surgery by knowing the needle in the body of the complainant. The complainant failed to establish a medical negligence on their part. Hence prays for dismissal of the complaint and they are not liable to pay any compensation as claimed.

4. The Opposite Party No.4 appeared through his counsel and also filed version and contended that the complainant was operated in the year 2004 by a qualified surgeon i.e. the 2nd Opposite Party for Hernia. The patient was referred to this Opposite Party in the year 2006 for fever and pain in the abdomen and she was referred by operating surgeon/R2 after all the surgical causes for pain abdomen and fever was evaluated with necessary investigations.

The Opposite Party No.4 further contended that since all the surgical causes were ruled out by the operating surgeon, this Opposite Party being a qualified physician looked into medical causes. This Opposite Party carried out necessary investigation including the radiological investigation which did not reveal any foreign body. Hence, the patient/complainant was treated by this Opposite Party for medical causes of fever and pain. This Opposite Party is only a qualified physician.

The Opposite Party No.4 further contended that this Opposite Party was expected to look into the medical causes for the symptoms since surgical causes were taken care by the 2nd Opposite Party. The patient/complainant was seen by this Opposite Party in 2006 i.e. two years after the preliminary surgery were done by the 2nd Opposite Party. However, all the investigations were done by this Opposite Party did not reveal the presence of the foreign body.

The Opposite Party No.4 further contended that under the circumstances, no any negligence much less the medical negligence can be attributed to this Opposite Party and in fact also this Opposite Party has not caused any negligence at all in treating the patient/complainant.

The Opposite Party No.4 further contended that the other averments and accusations made by the complainant in her complaint which are not specifically traversed herein and which are inconsistent with what is stated above are all hereby specifically denied. This Opposite Party is unnecessarily made to be a party to the case and he is made to be Opposite Party only with a view to harassing. All other averments made in the application and in the affidavit contrary to what is stated above are not true and are specifically denied. Hence prays for dismissal of the complaint.

5. The Opposite Party No.5 appeared through his counsel and filed version and contended that the complaint is not maintainable either in law or on facts and there is no cause of action for the complainant or to the Opposite Party Nos.1 to 3 against this Opposite Party. Hence, the complaint is liable to be rejected against this Opposite Party.

The Opposite Party No.5 further contended that the complaint is beyond period of limitation, hence on this ground along the complaint is liable to be dismissed. Without prejudice to above contention, it is submitted that this Opposite Party has issued the policy in favour of the 1st Opposite Party. However the liability of this Opposite Party to indemnify the Opposite Party Nos.1 to 3 is subject to the terms and conditions of the policy limit too liability and operative clause attached to the policy.

The Opposite Party No.5 further contended that under the operative clause of the policy, the insured has to take all reasonable technical or administrative management steps to prevent claims. However, the Opposite Party Nos.1 to 3 have failed to take administrative management steps to prevent this claim and thus failed to fulfill their part of the Contract of Insurance. It is respectfully submitted that from the averments of para 5 of the complaint, it is very clear that the alleged cause of action arose on 24.9.2004 when the complainant was said to have been operated upon for hernia and appendix.

The Opposite Party No.5 further contended that it is clear case of the Opposite Party Nos.1 to 3 as could be seen from para 13 and 13[iv] of their version that they are not in a position to put forth their case in entirety as the case file/surgical file could not be traced despite the best efforts put in by the concerned because of changes in the administrative block. There is an administrative failure on the part of the Opposite Parties No.1 to 3 to take reasonable steps to prevent this claim. Hence there is violation of the operative clause by the Opposite Party Nos.1 to 3. Hence, the above claim is liable to be dismissed as against this Opposite Party.

The Opposite Party No.5 further contended that without prejudice to the above contention it is respectfully submitted that the liability of this Opposite Party, even if any, is only to the limit of

indemnity undertaken under the policy including the defence costs. With regard to all other averments of the complaint regarding the illness of the complainant, treatment and investigations under taken in various hospitals, the alleged negligence on the Opposite Parties No.1 to 4 are all not within the knowledge of this Opposite Party and the complainant may be put to strict proof of the same. All other averments of the complaint, which are not here by traversed are here by denied and the complainant may be put to strict proof of the same. Hence prays to dismiss the complaint with cost, in the interest of justice and equity.

6. The Opposite Party No.6 appeared through his counsel and filed version and contended that the Opposite Party No.6 has issued a professional Indemnity DR (IMA) policy in favour of Opposite Party No.4 Dr.S.N.Mohan for a period from 6.6.2004 to 5.6.2005 that the liability of this Opposite Party is as per the terms and conditions of the policy.

The Opposite Party No.6 further submits that the policy issued to the Opposite Party No.4 it is clearly mentioned that address of business premises is Sri.Vinayaka Clinic, BSK 1st Stage, Bengaluru-50. However the alleged incident took place in Deepak Hospital, Kanakapura Main Road, Jayanagar, Bengaluru. Under these circumstances indemnifying the risk of insured does not arise, s the incident was not taken place in the address of business premises mentioned in the policy. The Opposite Party No.5 is neither necessary nor the proper party for the adjudication of the above complaint. On this ground alone the complaint is liable to be dismissed. The complainant has not made out minimum required averments to make out a case of deficiency of service owing to negligence, incapacity and like. Under these circumstances the complaint is not maintainable.

The Opposite Party No.6 further contended that the contention of the complainant is that in the year 2004 in the month of August she started experiencing acute abdominal pain for that she has visited the 1st Opposite Party hospital and she examined as outpatient and prescribed for course of medicine she was no relief from the said medicine and she admitted in the 1st Opposite Party hospital after thorough investigation she was diagnosed that she has suffering from hernia and advised for surgery. The complainant was operate don 24.9.2004 and she was hospitalized for 5 days. During the time of surgery by the 2nd Opposite Party doctor he noticed that the complainant had appendix and the appendix was also removed and the same was sent to laboratory for biopsy, the complainant has spent Rs.70,000/- towards hospitalization, tests surgeons fee etc. However the complainant was suffering from the problem, she continuing visiting the 1st Opposite Party hospital as an outpatient. In the month of February/March, 2006 the complainants pain became acute the complainant admitted to the Opposite Party No.1 hospital for thorough examination in April 2006 after examination she was advised tablets and discharged from the hospital again in the month of September, 2006 the complainant was admitted to the hospital for examination. Once again the Opposite Party Nos.2 to 4 examined the complainant thoroughly and prescribed medicines, the complainant visited BGS hospital and thoroughly checked up and body scan was done and the report showed that there was a foreign body in the area between stomach and back bone of the complainant. The complainant admitted to Chord Road Hospital Pvt. Ltd, Bengaluru and operated on 2.3.2010 and found a surgical needle about 3.2 cms long that had got lodged into her vertebral checkup that foreign body was causing all the back pain to the complainant are all not within the knowledge of this Opposite Party and eh complainant is called upon to strict proof of the same by cogent and convincing evidence.

The Opposite Party No.6 further contended that the complainant was operated in the year 2004 by a qualified surgeon i.e. the 2nd Opposite Party. The Opposite Party No.4 was not a surgeon and being a qualified physician and he has not conducted any surgery to the complainant. The complainant has referred to the Opposite Party No.5 in the year 2006 for fever and abdomen pain by operating surgeon and all the necessary investigation were conducted by the Opposite Party No.4 and he did not notice the foreign body. This Opposite Party submits that the Opposite Party No.4 is no way responsible for the alleged incident as such this Opposite Party is not liable to pay any compensation to the complainant.

The Opposite Party No.6 further contended that the allegations made by the complainant in para 10 to 15 of the complaint are all false and baseless and the same are not admitted. The complainant is called upon to prove and substantiate the same by producing cogent and convincing evidence. This Opposite Party cannot be made liable to pay any compensation much less Rs.80.00 lakhs as claimed in the complaint by the complainant, this Opposite Party submits that the claim made by the complaint is imaginary, fanciful and has no basis what so ever.

The Opposite Party No.6 further contended that all other allegations made by the complainant in the complaint are not admitted. The complainant is called upon to prove the same by leading cogent and convincing evidence before this commission. There is no deficiency of service by this Opposite Party to the complainant as alleged in the complaint and the complainant is not entitled for any relief as sought for. All other allegations which are not specifically traversed herein and which run counter to the interest of this Opposite Party are hereby denied as false and baseless. The complainant is not approached this commission with clean hands and as such the complaint deserves to be dismissed.

7. The complainant filed affidavit evidence and marked documents as Exs.C-1 to C-288. The Opposite Party Nos.1 to 4 filed their affidavit and no documents produced. The 5th Opposite Party filed affidavit evidence and marked documents as Ex.R1 and R2. The 6th Opposite Party filed affidavit evidence and no documents produced. The Opposite Party Nos.1 to 4 filed their written arguments.

5. Heard arguments.

6. On perusal, the following points will arise for our consideration;

(1) Whether the complainant has proved medical negligence on the part of Opposite Parties?

(2) Whether the complainant is entitled to the reliefs as sought?

(3) What order?

7. The findings to the above points are;

- (1) In the affirmative
- (2) In the partly affirmative
- (3) As per final order

REASONS

8. **Point Nos.1 & 2:** On perusal of the contents of complaint, versions filed by the Opposite Parties, evidence affidavits of both parties and documents produced by the complainant and 5th Opposite Party, it is an admitted fact that, in the year, 2004 she underwent a surgery at the 1st Opposite Party hospital and the Opposite Party Nos.2 and 3 were conducted Hernia operation and further on the continuation of the surgery, the appendix also removed and she was taken treatment as an inpatient from 24.9.2004 and she was hospitalized for a period of 5 days. Immediately on the next day she complied with respect to severe pain for which the Opposite Party Nos.1 to 3 have prescribed some pain killer medicine and assured that it is post surgery pain it is going to be cured. But even after taken medicine the complainant not cured properly and she continuity suffered pain. Subsequently again she visited the 1st Opposite Party hospital for regular check-up when the Opposite Party No.4 in the year, 2006 referred to CT and MRI scan of Lumbar Spine (Body scan) where it was noticed no any complication found basing on the said report the Opposite Parties are prescribed certain medicine and also stated that she was suffering some depression but pain was not persisted subsequently the complainant approached the Chord Road Hospital Private Limited, Bengaluru and scan was done. Wherein it was noticed some foreign body was existed in the abdominal and back portion of the body of the complainant and suggested for removal of the said foreign body. Accordingly in the year, 2010 she was admitted to Chord Road Hospital Private Limited, Bengaluru on the said foreign body (surgical needle) removed and she has taken treatment post operative. Subsequently the complainant filed a complaint before this Commission alleging medical negligence and sought for compensation.

9. The Opposite Party Nos.1 to 4 have appeared and contended that the reports dated 11.9.2002 and 5.10.2009 so produced by the complainant and not disclosed any foreign body even the complainant had not revealed any presence of foreign body and further contended that the complainant might have swallowed the needle and fallen to depression. So that the said needle

was noticed in the subsequent scan but they have promptly provided due care and caution at the time of surgery for Hernia and Appendix, hence submits no negligence on their part.

10. The complainant produced case-sheet marked as Exs.C1 to 18 to show treatment given and prescription by the Opposite Parties doctors post operate. Further the complainant produced scan report submitted by the department of Radiology, BGS Global Hospital, Bengaluru marked as Ex.C19 which discloses that condition of the complainant was normal and the complainant also underwent Colour Doppler Echo Cardiograph Report at BGS Global Hospital, Bengaluru which is marked as Ex.C23 which discloses no abnormality and Exs.C24 to C51 are pertaining to test conducted in various aspects. As per the document No.49 i.e. discharge summary it was categorically mentioned there was a foreign body found in abdomen and which discloses that ***“CT Abdomen showed foreign body in the mesentry. (A well defined liner radio dense foreign body in mesentery). It is anterior to D3 segment of duodenum and uncinata process of pancreas and posterior to SMV) Right para ovarian cyst. Skin biopsy inconclusive and non specific dermal inflammatory changes.***

On detailed evaluation of this patient and opinion from other doctors we conclude that the present problem could be due to the foreign body in her abdomen. The present worsening of her symptoms could be due to recent MR Spine (Nov.2009). She requires removal of this foreign body by surgical team. The nature of the problem and the need for removal of this foreign body by surgical team. The nature of the problem and the need for removal of foreign body was explained to the patient and her husband in detail. They went to discuss among themselves and will consider surgical options at a later date.

The skin lesion in this patient was inconclusive and patient's steroid dose was de-escalated. We planned to taper and stop steroids. The other medications were continued and patient received course of antibiotics as there was concern for local inflammation/infection at the site of foreign body. Advised to follow up with surgical team for removal of foreign body”.

11. The said existence of foreign body was confirmed at Chord Road Hospital Private Limited, Bengaluru while performing the same scan. The same was noted in the discharge summary issued by the Chord Road Hospital Private Limited, Bengaluru which is marked as Ex.C6. The said foreign body i.e. surgical needle was removed and it measures 3.2 cms.

12. We noticed after surgery of Hernia and Appendix in the year, 2004 and the complainant not underwent any surgery in between 2004 to 2010 when she was admitted for removal of the said foreign body at Chord Road Hospital Private Limited, Bengaluru. Therefore it is clear case that the surgical needle was left in the abdomen portion of the complainant while performing Hernia and Appendix surgery. It is a clear case of **Res ipsa loquitur**. The version and affidavit of the Opposite Parties No.1 to 3 does not provide any supportive facts that the Opposite Parties No.1 to 3 are not rendered any negligence while performing surgery for removal of Hernia and Appendix. Therefore, on perusal of the needle produced before this Commission which is marked as Exs.C1 and C2 was noticed in the body of the complainant. Due to presence of the

said surgical needle, the complainant suffered lot of pain and inconveniences for all these years i.e. from 2004 to 2010 and she spent huge amount for recovery from the said pain. Therefore, the Opposite Parties No.1 to 3 are liable to pay compensation for negligently performing the surgery in the year 2004. The 1st Opposite Party hospital had produced insurance policy issued by the 5th Opposite Party Company which covers the professional negligence and medical negligence during the course of surgeries by institution itself. When such being the case, being an indemnifier of all negligence, the Opposite Party No.5 is liable to pay compensation.

13. Further the claim against the Opposite Parties Nos.4 and 6 are not maintainable. As per the records produced the 4th Opposite Party is only physician who had treated the complainant as per the reference made by the 2nd Opposite Party doctor with respect to the alleged pain in abdomen and back in the year, 2006. The said 4th Opposite Party being a physician has taken note of the medical causes of pain and prescribed some medicines and he had not participated in the surgery which was conducted in the year 2004. Hence, we do not find any negligence on the part of the 4th Opposite Party in treating the complainant for post operative complications. At the same time, the 6th Opposite Party is the Insurance Company which issued a policy in favour of the 4th Opposite Party which covers a professional negligence that to particularly the policy was issued in favour of the 4th Opposite Party with address of the Vinayaka Clinic, BSK 1st Stage, Bengaluru and not to the 1st Opposite Party hospital, therefore liability what so ever is not binding on the alleged negligence by the complainant. Therefore, the complaint against these Opposite Parties No.4 and 6 are liable to be dismissed.

14. We are of the opinion that, the complainant was aged about 32 years, when she underwent all these surgeries and removal of the said surgical needle definitely she suffered severe pain and inconvenience till removal of the surgical needle. Hence, she is entitled to get global compensation of Rs.5.00 lakhs (Rs.Five lakhs) and the Opposite Party No.5 is being an Insurance Company of the 1st Opposite Party hospital is liable to pay the above said amount. Further the Opposite Parties No.1 to 3 are liable to pay litigation expenses of Rs.50,000/- to the complainant. As such the complaint is partly allowed.

14. **Point No.3:** In view of above discussion, we proceed to pass the following:-

O R D E R

The complaint filed by the complainant is partly allowed.

The Opposite Party No.5/New India Assurance Company Limited is directed to pay global compensation of Rs.5.00 lakhs (Rs.Five Lakhs) to the complainant towards medical negligence.

Further the Opposite Parties Nos.1 to 3 are liable to pay litigation expenses of Rs.50,000/- to the complainant.

Further the Opposite Parties Nos.1 to 3 and 5 is directed to comply the above order within 30 days from the date of receipt of this order. Failing which, the payable amount shall carry interest

@12% p.a. from the date of default till realization.

The complaint against the Opposite Parties No.4 and 6 is dismissed.

Send a copy of this order to both parties.

Lady Member

Judicial Member

**[HON'BLE MR. Ravishankar]
PRESIDING MEMBER**

**[HON'BLE MRS. Smt.Sunita Channabasappa Bagewadi]
MEMBER**