

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION
THIRUVANANTHAPURAM**

**Complaint Case No. CC/09/12
(Date of Filing : 18 Jul 2009)**

1. Anitha Raghavan
Kerala

.....Complainant(s)

Versus

1. Edappal Hospital
Kerala

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. JUSTICE SRI.K.SURENDRA MOHAN PRESIDENT
HON'BLE MR. SRI.AJITH KUMAR.D JUDICIAL MEMBER
SRI.RADHAKRISHNAN.K.R MEMBER**

PRESENT:

Dated : 20 May 2024

Final Order / Judgement

KERALA STATE CONSUMER DISPUTES REDRESSAL COMMISSION

VAZHUTHACAUD, THIRUVANANTHAPURAM

C.C.No.12/2009

JUDGEMENT DATED: 20.05.2024

PRESENT:

**HON'BLE JUSTICE SRI. K. SURENDRA MOHAN : PRESIDENT
SRI. K.R. RADHAKRISHNAN : MEMBER**

COMPLAINANT:

Anitha Raghavan, Puthiyavalappil House, Pilicode, Kasaragod

(by Advs. Vipindas T.K. & Sreevinayakan K.V.)

Vs.

OPPOSITE PARTIES:

1. The Director, Edappal Hospitals Pvt. Ltd., Edappal, Malappuram
2. Dr. Mukundan G. Menon, Consultant Feto Maternal Medicine, CIMAR Genetics, Edappal Hospitals Pvt. Ltd., Edappal, Malappuram

(by Adv. Sheji P. Abraham)

JUDGEMENT

HON'BLE JUSTICE SRI. K. SURENDRA MOHAN : PRESIDENT

This is a complaint filed under Section 12(1) of the Consumer Protection Act, 1986 (hereinafter referred to as the Act for short).

2. According to the complainant, she was under the observation and treatment of the 2nd opposite party for her pregnancy related complications. She had earlier delivered two babies through caesarean surgeries but both the babies were born with 'down syndrome' and the babies died within few days after they were born. So the third delivery was the last hope for the complainant even though the same was advised to be a very risky one by various other doctors. With a view to avoid such complications, the complainant proceeded to take the advice and treatment from the 2nd opposite party's hospital on the advice of their well wishers.

3. According to them as advised by the opposite party, the complainant and her husband went for a 'Chromosome Analysis' and the result showed that no abnormalities were detected. Hence, as per the advice of the doctor, the complainant became pregnant. After her conception at each stage, the complainant had made enquiries about the status of the foetus so that an abnormal foetus could be aborted at the earliest stage. According to the complainant, that was her last chance to undergo a caesarean surgery for delivery as both her earlier deliveries were through caesarean sections. During the tenth, sixteenth and twenty first weeks of her pregnancy, the complainant underwent scanning at the 1st opposite party hospital and the result was stated to be normal. No abnormalities were reported in the scanning of the complainant. On 09.02.2007 the 2nd opposite party and his team of doctors conducted a Chromosome Analysis for the foetus and in the result, it is stated that no abnormalities were detected.

4. The complainant was again advised by the 2nd opposite party to undergo scanning and in the twenty sixth, thirtieth and thirty fifth week of pregnancy and she scrupulously underwent the scanning. All the results were to the effect that the foetus was normal and without any abnormalities. The complainant was pleased with the advice of the opposite parties and she decided to opt for a caesarean operation so as to ensure a safe delivery as no complication or abnormality whatsoever was ever detected by the opposite parties or communicated to her.

5. However, to the utter shock and surprise of the complainant, on 13.04.2007 she delivered a baby boy with abnormally formed limbs. Neither of the opposite parties nor any responsible person had even given her any indication regarding the abnormality of the child before delivery in spite of repeated scans. Though the opposite parties were questioned by the complainant and her relatives, the hospital authorities had no proper answer or explanation for the above turn of events. As a result, the final hope of the complainant to become the mother of a normal healthy child was lost forever. The said consequence was only due to the gross negligence and deficiency in service of the doctors who treated the complainant. The opposite parties then promised the complainant that she would be adequately compensated by the payment of a lumpsum amount or an annual payment, if the child survived for one year, towards the expenses of bringing him up. The misfortune of the complainant was caused due to the sheer negligence and wrong advice of the opposite party. The child has survived for more than one year and the agony of the complainant has multiplied seeing the child struggling. The child requires the constant attention and care of an attendant. The prospect of the complainant to take up some employment has also been shattered. The life of the complainant has become miserable. All the misery of the complainant could have been avoided had the opposite parties shown due care and diligence in managing her pregnancy. Had the deformity of the foetus been detected at an early stage, the complainant could have undergone an abortion. On 05.05.2008 when the complainant approached the opposite parties to meet them, her request was turned down and she was not permitted to meet any of the persons concerned. According to her, the opposite parties have deliberately and negligently acted to the detriment of the complainant during the treatment and also thereafter in refusing even to honour the promise given to her, of financial assistance.

6. In the above circumstances, the complainant caused the issue of a registered notice dated 10.10.2008, calling upon the opposite parties to pay a compensation of Rs.50,00,000/- (Rupees Fifty Lakhs only) to the complainant to which the opposite party issued a reply raising false and frivolous contentions. However, a message was thereafter conveyed to the complainant by the

opposite parties that the matter could be settled. Though the complainant approached the opposite parties on 21.04.2009, they evaded meeting her.

7. According to the complainant, the opposite parties have jointly and severally committed gross and unpardonable negligence which has resulted in irreparable loss, injury and mental agony to her. Therefore, the complainant has claimed compensation from them jointly and severally for the losses caused to her. The cause of action, according to the complainant arose on 27.02.2006, 27.03.2006, 13.10.2006, 24.11.2006, 05.01.2007, 09.02.2007, 19.02.2007, 24.03.2007, 04.04.2007, the dates on which the various diagnostic procedures were conducted on the complainant by the opposite parties, on 13.04.2007 when the complainant delivered an abnormal child and the opposite parties had promised to compensate the complainant adequately, on 05.05.2008 when her request to meet the opposite parties was declined, on 10.10.2008 the date on which the lawyer's notice was issued and 21.04.2009 when the last attempt to meet the opposite parties was turned down and subsequently at Edappal, Malappuram district.

8. The complainant has therefore claimed an amount of Rs.40,00,000/-(Rupees Forty Lakhs only) as compensation for the deficiency in service and negligence, a further amount of Rs.10,00,000/-(Rupees Ten Lakhs only) for the mental agony and sufferings of the Complainant, apart from the costs of this litigation.

9. The complaint was admitted and notices were issued to the opposite parties.

10. The opposite parties have entered appearance through Advocate Sheji P. Abraham and have filed a common version contesting this case. According to them, this complaint is not maintainable either in law or in fact and the complaint is barred by limitation. According to them, the Complainant had delivered the baby on 13.04.2007 but the complaint was filed only in July 2009. There is no explanation for the delay from the side of the Complainant. Therefore, it is contended that this complaint is barred by limitation. It is further contended that, the complaint does not reveal any cause of action to attract the jurisdiction of this Commission. No provision of the Consumer Protection Act could be invoked against the opposite parties since there was no negligence or deficiency in service on their part in treating the complainant. It is admitted that the 2nd opposite party was working at the 1st opposite party hospital at the relevant time. The 2nd opposite party is an expert doctor in foetal medicine having wide experience. The 2nd opposite party left the 1st opposite party hospital on 04.07.2007.

11. According to the opposite parties, the complainant with her husband had approached the 2nd opposite party at the 1st opposite party hospital in February 2006 with a reference letter from Dr. K.V. Syam Kumar, Gynaecologist, Government Hospital, Payyannur with a bad Obstetrics history (BOH) for genetic counselling. While on consultation, the complainant and her husband explained to the 2nd opposite party doctor that the couple had lost their previous two babies immediately after their birth. It was further informed that both the babies were suspected to have been born with 'down syndrome'. They had been referred to the 2nd opposite party as an expert, to rule out the chances of down syndrome by advanced medical and scientific methods. The 2nd opposite party advised the complainant and her husband for Karyotype as an accepted method to rule out chromosomal problems that can cause recurrent down syndrome. Accordingly, Karyotype was done and found to be normal. The 2nd opposite party then

informed them that they could try for conception. Thereafter, they were sent back to the earlier doctor with the chromosome analysis report.

12. The intention of reference to the 2nd opposite party as an expert was to rule out the chances for down syndrome by advanced medical/scientific methods. The 2nd opposite party advised the complainant and her husband for Karyotype as an accepted method to rule out chromosome problems that can cause recurrent down syndrome. Accordingly, Karyotype was done and found to be normal. The 2nd opposite party then informed them that they could try for conception and they were sent to the earlier doctor along with the chromosome Analysis.

13. The complainant again reported to the OP department of the opposite party hospital on 13.10.2006 after about eight months from the previous visit. On examination as well as on the basis of the information given by the complainant, her last menstrual period was on 30.07.2006. The complainant was subjected to clinical examination as well as ultra sound scanning. From the report it was found that the complainant was having a single intra-uterine gestation corresponding to ten weeks and five days. On examination, the growth of the foetus was found normal and the complainant's expected date of delivery was found to be 06.05.2007. The aim of the dating scan on 13.10.2006 was to establish whether the growth of the baby was corresponding to the menstrual period or not, and if not to assign an ultra sound estimated date of delivery. The dating scan helps the doctor to know whether the baby was growing normally in pregnancy. As per the information given by the complainant as well as from the scan report, the Crown Rump Length (CRL) of the foetus was found to be normal and was satisfactory to the corresponding age of the foetus, all pointing to the fact that the foetus was growing properly and the size of the baby was appropriate for the gestational age.

14. According to them, the complainant again reported to the OP department on 24.11.2006 and was subjected to a foetal biometry and in that report also the growth of the baby was satisfactory corresponding to the gestational age of sixty weeks and five days. In the said biometric foetal scan bi-partial diameter (BPD), head circumference (HC), abdominal circumference (AC) and femur length (FL) were also measured. All measures were within the parametres corresponding to the age of the foetus and well accepted within medical standards. The procedure adopted and followed by the 2nd opposite party is an accepted one as per the medical law, rules and practice.

15. On 24.11.2006 during the second visit of the complainant the opposite party informed the complainant about the growth of the foetus as per the previous two scan reports and further informed her that to rule out any other abnormalities other than down syndrome, the complainant had to appear for an anomaly scan which was available in the 1st opposite party hospital and advised that such scan could be done within 18 to 22 weeks of gestation. But the complainant did not turn up for the anomaly scan. On discussion with the complainant about the anomaly scan, she expressed that she only wanted to rule out chances of down syndrome since she believed that her previous two babies were lost due to down syndrome.

16. According to the opposite parties, there are two types of scans available at the opposite party hospital – (i) Biometry scan (ii) Anomaly scan

(i) Biometry scan: - This scan is only to assess the growth of the baby. It

also checks whether the baby is alive and localises the placenta.

(ii) Anomaly scan: - This scan checks for the structural abnormalities in the foetus and has to be done between 18 to 22 weeks of gestation as this is a period when all the organs of the foetus are clearly seen and there would be sufficient fluid around the foetus to enable proper visualisation.

A report of this type of scan is long, comprising of a number of pages and lists, the various organs visualised. If any of the organs could not be visualised, the said fact is also stated with reasons if any like unfavourable positions, maternal obesity etc.

17. It is further contended that, the second scan was done on 24.11.2006 within sixteen weeks and five days of gestation. The opposite party offered and informed the complainant about anomaly scan but the complainant did not turn up for the anomaly scan.

18. According to the opposite parties, the complainant again reported to the OP department on 05.01.2007 to rule out down syndrome. On examination through clinical as well as ultra sound method it was found that the gestation age was twenty two weeks and five days. In the said foetal biometry scan bi-partial diameter (BPD), head circumference (HC), abdominal circumference (AC) and Femur length (FL) were also measured. All the measurements were within the parametres corresponding to the age of the foetus and within the well accepted medical standards. Down syndrome can be categorically ruled out by sampling the foetal tissue by chronic villus sampling or Amniocentesis foetal blood sampling depending on the gestational age. The complainant offered to do foetal blood sampling as the procedure was appropriate corresponding to the gestational age of 22 weeks and 5 days. The opposite party on 05.01.2007 adopted the procedure under ultra sound guidance with due care and diligence.

19. The procedure was done successfully and the biometry of the foetus was taken to ensure that it was growing properly. The complainant was scanned later to ensure that there was no complication from the procedure. The karyotype report from the foetal blood sample was ready after four days and it was found to be normal. The complainant was informed that the baby did not have down syndrome and a letter dated 19.02.2007 and the report were given to the complainant referring her back to the referred doctor.

20. The complainant again reported to the opposite party hospital on 09.02.2007 for an antenatal check up and pregnancy related complications. The complainant and her husband expressed their desire to continue the follow up treatment in the opposite party hospital. she was admitted on 09.02.2007 and was discharged on 17.02.2007 after curing all her pregnancy related complications and was subjected to an ultra sound scan on 09.02.2007. In the said foetal biometry scan, bi-partial diameter (BPD), head circumference (HC), abdominal circumference (AC) and Femur length (FL) were also measured. All the measurements were well within the parametres corresponding to the age of the foetus and well within medical standards.

21. She was again admitted on 24.03.2007 and was subjected to an ultra sound scan. In the said foetal biometry scan bi-partial diameter (BPD), head circumference (HC), abdominal circumference (AC) and Femur length (FL) were also measured. All the measurements were

well within the parametres corresponding to the age of the foetus and well within medical standards. The same procedure was adopted on 04.04.2007 also.

22. According to the opposite parties, the procedure adopted by them are the standard procedure accepted by medical science. All the treatment procedures adopted were in consultation with the seniormost doctors in the hospital including Dr. K.K. Gopinathan, Director of the hospital. On all the visits biometry scans were done to ensure that the baby was growing properly and being a case of previous caesarean section, it was also necessary to monitor the placenta for any invasion to the uterus as it could produce serious problems during the repeated caesarean section (to rule out placenta accreta and percreta). In all these check ups the complainant did not want to rule out any problem other than down syndrome. According to the opposite parties, in the advanced stage of pregnancy, it becomes progressively more difficult to detect abnormalities as the amount of fluid in the uterus reduces in proportion to the foetus and hence ultra sound visualisation is compromised. Further, the foetus adopts a position of universal flexion later in gestation whereby limbs are folded onto themselves and so proper visualisation of limbs would not be possible. Apart from the above, MTP Act, 1971 does not permit termination of the pregnancy beyond twenty weeks of gestation.

23. It is contended by the opposite parties that even though the complainant's expected date of delivery was 06.05.2007 because of other complications she was subjected to caesarean section with consent on 13.04.2007, after completing the pre-operative investigations. Unfortunately, the baby was born with Trevor's limb reduction (both limbs). It was not possible to suggest medical termination of pregnancy as alleged in the complaint after twenty weeks as the baby was having life and it was against medical science and ethics.

24. The opposite parties further contended that the ultra sound scanning is unlike a photograph where all the limbs are seen at the same time. In ultra sound scan only, sections are seen and not as whole. So anomalies are not readily evident as in photographs, but have to be sought for. The Eurocat study conducted using the data of 709030 birth and 77758 cases across Europe detected only thirty percent limb reduction (the same abnormality the complainant's baby suffered from).

25. The treatments adopted by the opposite parties are in accordance with the accepted procedure in the medical fields. The opposite parties never offered or promised any compensation to the complainant as alleged in the complaint as there was no negligence or deficiency in service on the part of the opposite parties. While the complainant was treated in the hospital as an outpatient and inpatient, care and attention was given by the doctors as well as the staff. Without knowing the true facts of the case alleging negligence against the opposite parties cannot be sustained. The complainant's baby was born with traverse limb not due to any negligence or carelessness on the part of the opposite parties. There is no deficiency in service on the part of the opposite parties in treating the complainant. The opposite parties therefore sought for the dismissal of the complaint with costs.

26. The parties went to trial on the above pleadings. Evidence both oral and documentary have been let in by both sides in support of their respective pleadings. Exhibits A1 to A15 documents have been marked on the side of the complainant. The complainant examined herself as PW1. The 2nd opposite party tendered evidence as DW1. DW2 is one Dr. Mohanan who is stated to be an expert, Professor and Head of the Department of Radio diagnosis, Medical

College, Thrissur. As per the direction of this Commission in order dated 18.11.2009 a medical board was constituted to peruse the treatment records and to examine the baby of the complainant. Thus, the baby was examined on 30.09.2009 and the treatment records were also examined. The report submitted by the medical board is marked as Exhibit C1. After the close of evidence, the counsel on both sides were heard in detail. Extensive submissions were made on behalf of both parties. Detailed notes of arguments have also been submitted. We have considered the contentions put forward before us, carefully. We have given our anxious consideration to the contentions advanced by both sides. The following points arise for consideration in this case:

- i. Whether the complaint is barred by delay?
- ii. Whether there is any deficiency in service on the part of the opposite parties as alleged by the complainant?
- iii. Whether the complainant is entitled to the compensation that is claimed in the complaint?
- iv. Reliefs and costs?

Point No.(i)

27. According to the opposite parties, the cause of action for filing the complaint arose on 13.04.2007, on which date the complainant gave birth to a baby suffering from a deformity of its limbs, referred to as traverse limbs. Therefore, it is contended that, the period of limitation stipulated by Section 24-A of the Consumer Protection Act, 1986 should commence from the said date. Since the complaint was filed only on 13.07.2009 it is contended that the complaint is barred by limitation. Immediately after the delivery, in view of the deformities that were present, it is contended by the complainant that the opposite parties had promised to adequately compensate her if the child survived for more than one year. It was for the said reason that the complainant had waited, it is alleged.

28. According to the complainant, the child has survived for more than one year and the agony of the complainant has multiplied manifold. The child is seen struggling and demands the constant attention of a responsible person. The hope of the complainant to take up some employment has also been shattered. According to the complainant, on 05.02.2008 when the complainant approached the opposite parties, they were unwilling even to meet her. In view of the contention raised, the complainant had filed an Interlocutory Application I.A.No.54/2012 seeking condonation of the delay, if any. According to her the petition was filed as a measure of abundant caution. The petition was contested by the opposite parties by filing detailed counter affidavit. However, this Commission felt that evidence was necessary to be adduced before the question of delay could be decided. Therefore, this Commission directed the opposite parties to raise the question of delay at the time of final disposal of the complaint after both parties had adduced evidence. The said order was challenged by the opposite parties in Revision Petition No.4745/2012 before the National Commission, New Delhi. The said Revision was dismissed as per Exhibit B1 order keeping open the contention of the opposite parties regarding delay and permitting them to adduce evidence on the said aspect. It was thereafter, the parties had gone to trial.

29. According to the counsel for the opposite parties, since the delivery of the baby by the complainant was on 13.04.2007, the period of limitation would commence from the said date.

However, according to the complainant soon after the delivery the opposite parties had promised the complainant that they would compensate the complainant adequately, if the child survived for more than one year. According to the complainant, the child has survived for more than one year and the agony and suffering of the complainant has multiplied manifold. The child is seen to be struggling and requires the constant care, attention and assistance of a responsible person. The complainant is thus not in a position to take up any employment or pursue a career. Therefore, it is submitted that the suffering of the complainant is continuous and has been continuing ever since the birth of the child. For the above reasons, according to the learned counsel, this is a case in which the cause of action is continuous. It is still continuing.

30. Though the National Commission has in Exhibit B1 order observed that the opposite parties could let in evidence on the aspect of delay absolutely no evidence has been adduced by them in support of their contention regarding delay. As rightly contended by the counsel for the complainant, though the child was born on 13.04.2007 the suffering of the complainant has been continuing ever since. Therefore, this is a case of continuing cause of action where the complainant is continuing to bear the consequences of the complained deficiency even to this date. In view of the above, the contention that the complaint is barred by limitation cannot be sustained. The said contention is rejected. It is found that the complaint is maintainable and not barred by time. Point No.(i) is thus found in favour of the complainant.

Point Nos.(ii) & (iii).

31. For the sake of convenience, these two points are considered together. The essential facts in this case are not in dispute. The opposite parties do not dispute the fact that the complainant had consulted them in connection with the complications that she was facing, during her pregnancy. She had had two babies earlier, delivered by way of caesarean sections. Both the babies were born with 'down syndrome' and both babies died within few days of delivery. Therefore, the complainant and her husband wanted to avoid such a consequence and for the purpose they had approached the opposite parties for advice and treatment. They wanted to have another baby only if there was no possibility of any such deficiency. The opposite parties advised the complainant to undergo a chromosome analysis. The result showed that no abnormalities were detected. Therefore, the complainant and her husband were advised to try for another baby. After conceiving, according to the complainant she had enquired about the status of the foetus so that if there was any defect, she would be able to undergo a termination of the pregnancy at an early stage. It was for the purpose that the complainant had consulted the opposite parties immediately after she had become pregnant. During the tenth, sixteenth and twenty first week of pregnancy scanning was done on the complainant at the 1st opposite party hospital and the result was stated to be normal. No abnormalities were detected in the scanning of the complainant. Thereafter, the 2nd opposite party and his team of doctors conducted a chromosome analysis of the foetus and the said result also was to the effect that no abnormalities were detected. Scanning was done even thereafter, in the twenty sixth, thirtieth and thirty fifth week of pregnancy. The results of the said scans also were to the effect that, the foetus was normal, without any abnormalities. In view of the above, in order to ensure a safe delivery the complainant wanted a caesarean operation to be conducted. But, on 13.04.2007 the complainant gave birth to a baby boy with abnormally formed limbs. Despite the best efforts of the complainant, the various tests that were conducted and the repeated scans done at the different stages of her pregnancy, the abnormality of the baby was not detected by the opposite parties.

According to the complainant, the lack of care and deficiency in service on the part of the opposite parties is writ large in the manner in which the case of the complainant was handled. Consequently, her son has been born with a disability that prevents him from doing anything on his own, and is the constant source of sorrow to the complainant and her family. It is contended that she has been burdened with a child who has to be cared for and looked after by a responsible adult person at all times. She has been prevented from taking up an employment or leading a peaceful and comfortable life. The life of the complainant has been turned upside down as a result of the deficiency in service on the part of the opposite parties. Therefore, it is contended that she is entitled to be compensated appropriately. The compensation that she has claimed is only a token, taking into account the magnitude of the damage that has been caused to her. Therefore, it is contended that, the complaint is only to be allowed.

32. The contentions of the counsel for the complainant are opposed by Advocate Sheji P. Abraham who appears for the opposite parties. According to the learned counsel, the complainant was not a regular patient of the opposite parties. She had been referred to them by another doctor because of the complications relating to her pregnancy. It was for the said reason that she was seen as an outpatient at all times. After the scan, she had been sent back to the doctor who referred her, for follow up medical treatment. According to the learned counsel, all due care and attention had been taken in the matter of providing treatment to the complainant and the standard medical practice and procedure had been adopted at all times. Therefore, the allegation regarding negligence and deficiency in service are baseless and without any foundation. According to the learned counsel, the complainant only wanted to rule out the possibility of down syndrome. She did not want an investigation with respect to any other defect or complication that may occur. Therefore, no other investigation was attempted. She had been advised to undergo an Anomaly Scan but, she did not do so. The learned counsel also places reliance on the evidence of DW2 who has been examined on the side of the opposite parties as an expert. His statement that the limbs of a foetus may suddenly stop growing after the foetus reaches a particular stage of growth, due to reasons unknown, which may be attributed to some genetic disorder. In such cases, it would not be possible to detect the defects and such deformities cannot be attributed as fault of the treating doctors. Therefore, it is contended that the said possibility as the reason for the deformities in the child born to the complainant cannot be ruled out. The counsel therefore seeks for the dismissal of the complaint. A few decisions have also been relied upon by the counsel to support his contentions.

33. As already noticed above the evidence on the side of the complainant comprises of Exhibits A1 to A15 documents and the oral evidence of PW1. Exhibit A1 is the original chromosome analysis report of the complainant and her husband. Exhibit A2, the prescriptions given by the opposite parties. Exhibit A3 is the report of the first tri-months scan. At that time the gestation age is shown to be ten weeks five days. Exhibit A4 is the scan report at gestation age of sixteen weeks five days. Exhibit A5 is the scan report at twenty two weeks five days. Exhibit A6 is the scan report at twenty seven weeks five days. Exhibit A7 is the report of the karyotype and chromosome analysis. Exhibit A8 is the scan report at thirty six weeks six days. Exhibit A9 is the scan report at thirty five weeks three days. Exhibit A10 is a photograph of the child and Exhibit A11 is the original discharge card issued by the opposite parties. It is clear from the above documents that, the complainant had been consulting the opposite parties regularly at the various stages of her pregnancy. It is also clear that she had been subjected to a number of tests and periodical ultra sound scans. Though it is contended that, the opposite parties had recommended the conduct of an anomaly scan and that the complainant had refused

to do so, records produced before us do not support the said contention. No documents recommending the conduct of an anomaly scan is available in the treatment records produced before us. Exhibit A12 is a copy of the lawyer's notice issued on behalf of the complainant. Exhibit A13 is the reply to Exhibit A12. Exhibit A14 is the unclaimed postal cover containing the lawyer's notice issued to the 2nd opposite party. Exhibit A15 is the disability certificate issued by the Department of Health Services, Government of Kerala dated 28.01.2010 which shows that the child of the complainant was having ninety percent loco-motor disability. The above documents clearly establish that the child born to the complainant was deformed and was suffering from an acute disability. Though Exhibits A3, A4, A5, A6, A8 and A9 ultra sound scans had been conducted at various stages of her pregnancy, the disability of the child was not detected. Therefore, the question arises as to whether the omission to detect the disability constitutes a deficiency in service for which compensation is payable to the complainant.

34. During the pendency of the complaint, as per orders issued by this Commission on 18.11.2009, a Medical Board was constituted. The Medical Board examined the medical records of the complainant as well as the child born to her. After examination, the Board has submitted its report which has been marked as Exhibit C1. No objections have been filed to the said report by the opposite parties. The Medical Board consisted of Dr. M. Roy, Professor & Head, Department of Radio Diagnosis, Medical College, Trivandrum, Dr. C. Nirmala, Professor & head of the Department of Obstetrics & Orthopaedics, SAT Hospital, Thiruvananthapuram, Dr. Lalitha Kailas, Professor and Head of the Department of Paediatrics, SAT Hospital, Trivandrum and Dr. Laila Raji N., Professor, Department of Pathology, Medical College, Trivandrum. After examining the child born to the complainant and her medical records as stated above, the Medical Board has arrived at the following conclusion:

“The Committee Members observed the baby on 30.09.2009 and found the following congenital anomalies. They are:

1. Absence of right forearm and right hand with a rudimentary nodule over the right medial aspect of right stump
2. Left forearm missing
3. Right leg appears short with talipes deformity of the rudimentary foot
4. Left leg marked by short with rudimentary foot

Except for the limb anomalies his growth and mental development is normal.

“The Committee observed that these anomalies should have been detected by the ultra sound scan done at sixteen and twenty two weeks gestation. The gross limb anomalies like absence of forearm and legs should have been detected by the ultra sound scans, if Dr. Mukundan G. Menon had exercised reasonable skill; especially since the liquor volume was normal.”

35. The above conclusion of the Medical Board categorically finds that the 2nd opposite party had not exercised reasonable skill while conducting the ultra sound scan. Had reasonable skill been exercised by the 2nd opposite party, the deformity could have been detected at the scan done when the gestation age was sixteen weeks.

36. The opposite parties have examined DW2 who is the Professor & Head of the Department of Radio Diagnosis, Government Medical College, Thrissur to mount a contention that, it is possible for the growth of the limbs of the foetus to stop suddenly, after having grown for some time as a result of some genetic disorder. In the case of such disorders, only the limbs formed till that stage may remain. He has no idea as to why such consequences are caused. He only answers vaguely that it may be due to some multifactorial genetic factor which may be difficult to detect. However, DW2 does not state that the deformities in the child born to the complainant was caused due to the result of such multifactorial anomalies or environmental insult anomalies referred to by him. Therefore, no conclusion one way or the other could be drawn on the basis of the possibilities to which he has adverted to in his deposition. Since the Medical Board had actually examined the child and the medical records of the case and concluded definitely that the deformities could have been detected at an early date, had reasonable skill been exercised by the 2nd opposite party while conducting the ultra sound scan, the actual causes of the deformities are not necessary to be enquired into, any further. The Medical Board having been constituted with eminent persons holding responsible positions and having expertise in their specialised fields were the best persons capable of evaluating the treatment provided, assessing whether reasonable skill had been exercised and identifying the lapses that were alleged to have occurred. Since they have categorically concluded that the deformities could have been detected, had the 2nd opposite party exercised reasonable skill while conducting the ultra sound scan, we accept the said conclusion.

37. In the light of the above, it is concluded that it was due to the omission on the part of the 2nd opposite party to exercise reasonable skill while conducting the ultra sound scan of the complainant that the deformities of the child born to her was not detected sufficiently early. As a consequence, a deformed child suffering from ninety percent loco-motor disability has been born to the complainant, completely upsetting her normal life. Since the child requires her constant attention and care, she has been prevented from taking up any employment. Her desire to have a normal healthy child was also shattered. The magnitude of the damage to her life is manifold and therefore she seeks compensation. The difficulty of looking after a child like that of the complainant, born with a severe loco-motor disability estimated at ninety percent cannot be overstated, as contended by the counsel for the complainant. The child would require assistance even for answering its calls of nature. As it grows up, the difficulties would only increase many fold. The prospect of educating the child or even looking after the child properly would be impossible without the assistance of a caring, trained and responsible person. The services of such a person would be difficult to obtain and would certainly entail substantial expenditure. The burden of looking after the child has been cast on the complainant in spite of all the efforts taken by her to obtain medical feedback with respect to the health condition of the child, solely because of the deficiency in service on the part of the opposite parties. Since the 2nd opposite party was at that time working with the 1st opposite party hospital, the 1st opposite party is also vicariously liable for the losses caused to the complainant.

38. The complainant had claimed an amount of Rs.40,00,000/-(Rupees Forty Lakhs only) as compensation for the negligence and Rs.10,00,000/-(Rupees Ten Lakhs only) for the mental agony and sufferings of the complainant. We have been taken to the photographs of the child. We understand that the child even in the present condition requires the constant attention and assistance of a responsible person, which can only be provided by the complainant or her husband. We also realise the fact that the difficulties in bringing up a child suffering from such

deformities would only increase as the child grows up. The expenses of looking after a person with such deformities would no doubt be phenomenal. Taking into account all the above aspects, we are of the view that the compensation claimed in this case is only reasonable and would have to be allowed in full.

39. For the above reasons, the complainant is entitled to succeed. This complaint is accordingly allowed and ordered as under:

1. Both the opposite parties are directed jointly and severally pay to the complainant an amount of Rs.40,00,000/- (Rupees Forty Lakhs only) as compensation for the deficiency in service and negligence with interest thereon @8% per annum from 13.07.2009 the date of filing the complaint.
2. Both the opposite parties are held jointly and severally liable to compensate the complainant for the mental agony and sufferings caused to her by paying an amount of Rs.10,00,000/- (Rupees Ten Lakhs only) with interest thereon @8% per annum from the date of filing the complaint.
3. The opposite parties are directed jointly and severally pay a further amount of Rs.50,000/- (Rupees Fifty Thousand only) as the costs of litigation to the complainant.

All the above amounts shall be paid to the complainant within a period of one month from the date of receipt of a copy of this judgement failing which all the amounts, except the costs of litigation shall carry interest @9% per annum till the date of payment.

Dictated to my Confidential Assistant, transcribed by her, corrected by me and pronounced in the Open Court, this the 20th day of May, 2024.

JUSTICE K. SURENDRA MOHAN : PRESIDENT
K.R. RADHAKRISHNAN : MEMBER

SL

C.C.No.12/2009

APPENDIX

I. COMPLAINANT'S WITNESS

PW1 • Anitha Raghavan

II. COMPLAINANT'S DOCUMENTS

- P1 • Original Chromosome Analysis report dated 27.02.2006
- P2 • Original prescriptions given by the 2nd opposite party dated 16.03.2006 and subsequent dates
- P3 • Original scan report of 1st trimester scan dated 13.10.2006
- P4 • Original scan report of the 2/3 trimester scan dated 24.11.2006
- P5 • Original scan report of the 2/3 trimester scan dated 05.01.2007
- P6 • Original scan report of the 2/3 trimester scan dated 09.02.2007
- P7 • Original Chromosome Analysis report and Karyotype dated 09.02.2007
- P8 • Original scan report of the 2/3 trimester scan dated 24.03.2007
- P9 • Original scan report of the 2/3 trimester scan dated 04.04.2007
- P10 • Original photograph of the child
- P11 • Copy of the discharge card issued by the 1st opposite party
- P12 • Copy of the lawyer notice dated 10.10.2008
- P13 • Copy of the reply issued by the 1st opposite party
- P14 • Original unclaimed cover issued to the 2nd opposite party
- P15 • Certified copy of the disability certificate issued by the Government of Kerala, Department of Health Services dated 28.01.2010

III. OPPOSITE PARTY'S WITNESS

DW1 • Dr. Mukundan G. Menon

DW2 • Dr. Mohanan (Expert)

IV. OPPOSITE PARTY'S DOCUMENTS

- B1
- Original order of the National Commission in RP No.4745/2012 dated 11.01.2013

V. COURT EXHIBITS

- C1
- Report submitted by the Medical Board

PRESIDENT

**[HON'BLE MR. JUSTICE SRI.K.SURENDRA MOHAN]
PRESIDENT**

**[HON'BLE MR. SRI.AJITH KUMAR.D]
JUDICIAL MEMBER**

**[SRI.RADHAKRISHNAN.K.R]
MEMBER**