

Shri. Prafulla Manohar Shende vs Jupiter Hospital on 6 February, 2024

Cause Title/Judgement-Entry

STATE CONSUMER DISPUTES REDRESSAL

(Delivered on 06/02/2024)

PER SHRI A. Z. KHWAJA, HON'BLE JUDICIAL MEMBER

1. Complainant Nos. 1 to 3 who are the legal heirs of deceased Smt. Varsha Shende has preferred the present complaint under Section 17 of the Consumer Protection Act, 1986.

2. Short facts leading to the filing of the present complaint may be stated as under, Complainant No.1- Mr. Praful Shende and complainant No. 2- Mr.Kashyap Shende are the sons of deceased Varsha Shende. Complainant No. 3- Mr. Manohar Shende is the husband of Varsha Shende who died on 24/07/2017 at Nagpur on account of medical negligence and lack of correct advised as well as delayed diagnosis on the part of O.P. No. 1- Jupiter Hospital and O. P. No. 2- Dr. Rajendra Bhalavat, Chief Oncologist, Jupiter Hospital. The complainants have contended that the Jupiter Hospital is a multi-speciality hospital having expert doctors who are having expertise in different branches of medicine including the Cancer as well as Surgery. Complainants were the consumers within the meaning of Section 2(1)(d) of the Consumer Protection Act, 1986. The O.P. No. 1- Jupiter Hospital as well as O.P. No. 2-Dr.Rajendra Bhalavat, Chief Oncologist, Jupiter Hospital were the service provider. The complainant Nos. 1&2 have contended that their mother Varsha Shende was referred by Dr. Ashutosh Ajgaonkar of Trupti Hospital to Jupiter Hospital for undergoing MRI of abdomen and Pelvis of. Varsha Shende by reference letter dated 06/08/2016. As per reference letter Varsha Shende was suffering from post menopausal bleeding and suspected CA Cervix. On 08/08/2016 Dr. Ashutosh Ajgaonkar after having read the MRI report will referred the patient to Dr. Naveen Bhambani (Oncologist) who was attached to Jupiter Hospital and he diagnosed the condition of patient as stage II A level of Cancer and so referred the patient -Varsha Shende to Dr. Rajendra Bhalavat, Chief Radiation Oncologist and Dr. Chetna Bakshi. The complainants have contended that on 08/08/2016 the patient Varsha Shende was examined by Dr. Rajendra Bhalavat, Chief Oncologist of Jupiter Hospital and he diagnosed the same to be stage II B of Cancer and advised a treatment of 25 rounds of Radiotherapy, 5 sessions of Chemotherapy and 4 sessions of Brachytherapy. The complainants have contended that the O.P. should have advised the whole body PET Scan which was necessary for a complete logical diagnosis to find out if the Cancer cells which were detected in the earlier medical examination were also present in any other parts of the patient's body apart from the Cervix. The complainants have contended that it was necessary to advise a Whole Body PET Scan to rule out presence of cancer cells in any other part of the body but doctors attached to Jupiter Hospital have failed to take this basic action at inception and consequently, the mother of the complainant Nos. 1&2

lost her life due to utter medical negligence on the part of the Jupiter Hospital. The complainants have contended that the patient Varsha Shende had undergone the sessions of Radiotherapy, Chemotherapy and Brachytherapy between the period from 08/08/2016 to 20/10/2016 and had also incurred huge expenses for the treatment. On 20/10/2016, the last round of Brachytherapy was administered in Jupiter Hospital as advised by Dr. Bhalavat. Dr Bhalavat was expected and duty bound to advise whole body PET CT Scan of the patient to ascertain whether the treatment was successful and whether there were any other places which were affected by the Cancer cells but this was not done. On 19/12/2016, patient Varsha Shende was examined by Dr. Bhalavat and he gave opinion that no disease could be found in the Cervix area and it was completely free of the Cancerous cells. He also advised the patient to visit after three months with report of CBC, Chest X-ray, USG abdomen and pelvis, stool routine and microscopy. On that visit the patient was complaining of a severe backache for which no advise was tendered by the Jupiter Hospital or by Dr. Rajendra Bhalavat. The complainants have contended that subsequently, patient -VarshaShende was required to be taken for treatment to Dr. Smruti Ramteke and Dr. Kasushik Chatterjee at Nagpur and she was suffering from severe backache and she was advised whole body bone scan and in the report dated 09/03/2017, Dr. Kaushik Chatterjee of Rainbow Medinova Diagnostic Services, Nagpur reported possibility of Skeletal Metastases. The patient was thereafter referred on advice to Dr. Anand Pathak (Medical Oncologist) for treatment and he advised a course of six Chemotherapy cycles. On 18/03/2017 after going through the report of Bone scan done at Nagpur, Dr. Bhalavat, for the first time advised whole body PET CT Scan and on 20/03/2017, the whole body PET CT Scan was conducted by Dr. Nikhil Kamat, Consultant Radiologist. The complainants have contended that after going through the report of PET CT Scan Dr. Bhalavat gave opinion that the cancer cells had spread in the bone and in multiple skeletal Metastases and this was stage IV of Cancer from which the recovery of the patient was impossible. The complainants have contended that there was serious and gross medical negligence committed by Jupiter Hospital as well as Dr. Rajendra Bhalavat in not advising the whole body PET CT Scan at the initial stage itself. The complainants have contended that the patient should have been advised to undergo Brain Scan in addition to the whole body PET Scan to ascertain whether the cancer cells had also spread in this area and on 24/06/2017 when the patient suffered paralytic attack she was admitted in Neuron Hospital and report of Brain MRI showed that the cancer had also spread in the patient's brain and ultimately the patient who is mother of complainant Nos. 1&2 succumbed on 24/07/2017.

3. The complainants have contended that Jupiter Hospital as well as Dr. Bhalavat had acted with utmost negligence right from the date of initial diagnosis by not giving the right advice at the right stage which could have helped her survive and recover from the disease. The complainants have also contended that Jupiter Hospital which was a reputed and renowned Hospital had charged heavy and exorbitant fees from the complainants but had failed to save the life of patient Varsha Shende who was the mother of the complainant Nos. 1&2. The complainants have contended that due to ill advise and wrong treatment the complainants were compelled to incur expenses of Rs. 10,00,000/- apart from having suffered mental as well as physical agony and distress. The complainants have contended that though their mother was cured of cancer in her

Pelvic area. The cancer in the spinal code could have been detected earlier but Doctors at Jupiter Hospital had acted in a negligent manner. Dr. Rajendra Bhalavat who was working as Chief Radiation Oncologist and was working with Jupiter Hospital had also shown utter negligence which also amounted to deficiency in service as defined under Section 2(1)(g) of the Consumer Protection Act, 1986. The complainants have contended that they had suffered great financial and personal loss as well as mental agony for which they were entitled to compensate of Rs. 50,00,000/- and same was recoverable from the Jupiter Hospital (O. P. No. 1) and Dr. Rajendra Bhalavat (O. P. No. 2) and so the present complaint.

4. After filing the complaint due notices were issued to the O.P. No.1- Jupiter Hospital as well as O.P.No. 2- Dr. Rajendra Bhalavat and they have appeared and also filed written version thereby strongly contesting the case of the complainants.

5. At the outset O.P .No.1 - Jupiter Hospital has taken a preliminary objection contending that the State Consumer Commission, at Nagpur has no territorial jurisdiction to entertain the complaint filed by the complainants. The O.P. No.1 has particularly contended that Jupiter Hospital (O.P.No. 1) as well as Dr. Rajendra Bhalavat (O.P.No. 2) were carrying on business and profession at Thane and not at Nagpur. The O.P.No. 1 had contended that as per section 17(2) of the Consumer Protection Act, 1986 a complaint shall be instituted in a State Commission within the limits of which the O.P. actually and voluntarily resides or carries on business or has a branch office or has personally work for gain. As per contention of the O.P. No. 1, Jupiter Hospital was situated at Thane and O. P. No. 2 namely Dr. Rajendra Bhalavat is appointed as Radiation Oncologist at Jupiter Hospital and he is also carrying on business and profession at Thane and so the State Consumer Commission, Bench at Nagpur has no territorial jurisdiction to deal with or decide the complaint. Further the O.P.No.1 has contended that the complainant was also not tenable as the complainants have suppressed the material facts. The O.P.No. 1 Jupiter Hospital has contended that it was a tertiary care hospital run by dedicated with main objective to render effective medical care and medical relief to all persons. The O.P.No. 1- Jupiter Hospital is a 350 bedded hospital with a full-fledged 24 hours Casualty Department, ICU, ICCU and all other facilities and also has a Diagnostic Center having the latest Pathology facilities, X-ray units, MRI Scan facility, CT Scan equipment. The Jupiter Hospital catered to all types of high risk patients from all specialties including cancer. The Jupiter Hospital is fully equipped to manage any kind of problem or complications and department of Radiation Oncology is equipped with the state of the art machines. It also has Super Specialty Centres dealing with all types of ailments and diseases. The O.P.No. 1 has contended that the patient Varsha Shende was referred by Dr. Ajagaonkar with complaint of blood stained white discharge per vagina (WDPV) and backache and suspected diagnosis of carcinoma cervix stage IIA with MRI (abdomen & pelvis) and was referred to Dr. Navin Bhambani for further management. On 08/08/2016, Dr. Navin Bhambani saw the patient and referred her to Dr. Bhalavat (O.P.No. 2) and Dr. Chetna Bakshi for radical concurrent radio chemotherapy. On 08/08/2016 the patient was diagnosed to be suffering from Cancer Cervix

stage II B. The O.P. No.1 has contended that from 22/08/2016 to 28/10/2016 the patient was treated with radical concurrent radio-chemotherapy as per protocol. Subsequently, clinical evaluation was done and same revealed no gross visible disease and so was asked to follow up after six weeks. The patient had come for first follow up on 19/12/2016 and as no significant findings were observed, the patient was asked to see orthopaedic surgeon for backache to evaluate cause other than malignancy. The O.P.No. 1 Jupiter Hospital has denied that the services rendered by Jupiter Hospital or by O.P.No. 2 Dr. Bhalavat were deficient or substandard. The O.P. No. 1 has contended that the O.P. No. 1- Jupiter Hospital had done whatever was in the best interest of the patient and had also given best possible medical services. The O.P.No. 1 has denied that whole body PET Scan was mandatory investigation. The O.P. No. 1 has contended that there was no cause of action for filing the complaint as the complainant ought to have been filed on or before 27/08/2018. The complainant has filed the present complaint within an oblique motive to extract money from the O.P. No. 1- Jupiter Hospital. There was no negligence and deficiency in service rendered by the Jupiter Hospital which was having most modern oncology unit managed by the best medical and Surgical oncologists. The O.P.No. 1 has also contended that the burden to prove medical negligence as well as deficiency in service was on the shoulder of the complainants but the complainants have not discharged the said burden cast upon them by law. The complainants were also not entitled for monetary compensation as sought. The complainants have also come with unclean hands and so the complaint filed by the complainant Nos. 1 to 3 was devoid of any substance and deserves to be dismissed with cost.

6. O.P. No. 2- Dr. Rajendra Bhalavat who is Chief Oncologist has also resisted the complaint by filing separate written version on record. O.P. No. 2 has also taken objection to the tenability of the complaint on the ground of lack of territorial jurisdiction as well as other grounds. O.P. No. 2 - Dr. Rajendra Bhalavat had admitted that the patient -Varsha Shende was referred by Dr. Ajgaonkar with complaint of blood stained white discharge per vagina (WDPV) and backache suspected diagnosis of carcinoma cervix stage II A. The O.P. No. 2 had categorically denied that he had examined the patient in causal or routine manner. The O. P. No. 2 has contended that after being referred the patient Varsha Shende was thoroughly examined both clinically and with necessary investigations as per standard treatment protocols. The O.P. No. 2 has contended that the clinical examination revealed that the disease in the cervical region was extending to parametrium medially. After confirmation with histopathology report and available investigations, the disease was staged as Cancer Cervix FIGO stage IIB. The O.P.No. 2 has contended that there was no negligence in correctly diagnosing the disease. The O.P. No. 2 has contended that he has discharged his duties in responsible manner as per standard protocols and there was no negligence much less medical negligence on his part. The O.P.No. 2 has contended that whole body PET scan has nowhere been mentioned as a mandatory investigation at the initial stage of diagnosis in medical literature and same is part of optional investigation all over the world and same was in accordance with guidelines laid down by Indian Council of Medical Research (ICMR). The O.P. No. 2 has contended that MRI of abdomen & Pelvis was done before treatment and same did not report bone metastasis in lumbar region. No oncology doctor would recommend PET Scan when not needed. The O.P.No. 2 has contended that he had examined the patient on the complaint of backache and

incidence of bone metastasis in a case of carcinoma cervix is less than 5%. The O.P. No. 2 has contended that the complaint of the patient relating to spread of disease in brain was on June-2017 i.e. three months after discharge from the Jupiter Hospital. The O.P.No. 2 is a highly qualified oncologist and he had undertaken the radical radiation therapy with concurrent chemotherapy followed by brachytherapy for cancer cervix stage II B. The O.P. No. 2 has contended that he had treated the patient of cancer Cervix Stage IIB by established techniques followed by radiation Oncologist all over the world and as per standard protocols issued by ICMR there was no violation of treatment of protocols. The O.P. No. 2 has contended that the cancer in the human body has an inherent ability to spread and in spite of taking all precaution cancer spreads but it is not signify negligence or deficiencies in the services. For the forgoing reasons the O.P. No. 2 has contended that there was no medical negligence or gross negligence and so complainants were not entitled for any compensation. On the contrary the complaint filed by the complainants alleging deficiency in service deserves to be dismissed with cost.

7. Complainant thereafter tendered his evidence affidavit and also placed reliance upon several documents which are filed along with list of documents. Complainant has relied upon copies of medical reports from Trupti Hospital, Jupiter Hospital as well as copies of bills regarding expenses incurred for treatment of the deceased. The complainant has also placed reliance upon copy of income tax return and copy of legal notice. On the other hand, the O.P. No. 1 - Jupiter Hospital has also tendered affidavit of Dr. Ankit Thakker, Executive Director and CEO of Jupiter Hospital, The O.P. No. 2 namely Dr. Rajendra Bhalavat, Radiation Oncologist has also placed his affidavit on record. Further the O.P. No. 2 has also placed reliance upon several documents namely copies of medical papers consisting of admission history, diabetic chart, medication sheet and discharge summary. The O.P. No. 2 has also placed on record other medical papers. The O.P. No. 2 has also placed reliance upon copy of Consensus documents for the management of Cancer Cervix prepared by Indian Council of Medical Research (ICMR). Both the complainants as well as O.Ps. have also placed on record written notes of arguments and we have gone through the same. The O.P. has also relied upon clinical practice guidelines.

8. We have carefully gone through the evidence as well as medical papers tendered by the complainants as well as O.P. Nos. 1&2. We have also gone through the written notes of arguments filed by the complainants as well as O.P. Nos. 1&2. We have also heard Sakina Daud, advocate along with Mrs. Gauri Venkataraman, advocate appearing for the complainants. Similarly we have also heard Dr. Shenoy, learned advocate appearing for the O.P. Nos. 1&2. On the basis of the facts stated above only point that arises for our determination is as under, with our findings recorded against the same and reasons to follow.

Sr. No. Points for determination Findings.

Whether the complainants proves that the O.P.Nos. 1&2 have committed medical negligence amounting to deficiency in service as well as unfair trade practice as defined under the Consumer Protection Act, 1986 ?

No What order ?

As per final order.

9. At the outset, it is necessary to deal with the preliminary objection taken by the O.P. Nos. 1&2 in their written version. It was argued by Dr. Shenoy, learned advocate appearing for the O.P. Nos. 1&2 that the Bench at Nagpur of State Consumer Commission had no territorial jurisdiction to deal with the complaint of medical negligence as both the O.P. No. 1- Jupiter Hospital as well as O.P. No. 2- Dr. Rajendra Bhalavat were carrying on business at Thane and so in view of the provisions of the Section 17(2) of the Consumer Protection Act, 1986, the State Consumer Commission, Bench at Nagpur had no territorial jurisdiction. On this aspect argument came to be advanced on behalf of the O.P. Nos. 1&2 by Dr. Shenoy as well as by Mrs. Gauri Venkatraman, learned advocate appearing for the complainants and a detailed order came to be passed on 19/09/2019 holding that the Bench at Nagpur had no jurisdiction to deal with the complaint and so the complaint came to be returned for proper presentation before the Bench of State Consumer Commission, at Mumbai. It appears that the complainants challenged this order dated 19/09/2019 before the Hon'ble High Court, Bench at Nagpur by filing Writ Petition No. 7664/2019. The Hon'ble High Court thereafter set aside the said order and came to the conclusion that as the part of the cause of action arose at Nagpur, the Circuit Bench at Nagpur also has jurisdiction. As such we feel that it is no longer necessary to go into this aspect and it can be safely concluded that the State Consumer Commission at Nagpur has territorial jurisdiction to deal with the complaint.

10. Sakina Daud, learned advocate appearing for the complainants has raised several contentions before us so as to demonstrate that there was gross medical negligence on the part of Jupiter Hospital as well as Dr. Rajendra Bhalavat while providing medical treatment to the patient deceased - Varsha Shende. She has submitted that as the patient was ill, preliminary tests were done in the Trupti Hospital on 06/08/2016 and report was given and after investigation it was found that there was clinical diagnosis of Cervix Cancer II A and findings of Fungating Growth, Menopausal bleeding and complaint of backache was noted. She has submitted that specific findings of backache was made and recorded at the first stage of diagnosis and MRI of Abdomen and Pelvis was suggested by Dr. Ashutosh Ajgaonkar and same is placed on record. It appears that thereafter patient Varsha Shende was referred to Jupiter Hospital and MRI of Abdomen and Pelvis was done by the Jupiter Hospital. It is also clear that on 08/08/2016 the patient -.Varsha Shende was examined by Dr. Rajendra Bhalavat,(O.P. No. 2) who diagnosed the patient with Stage II B of Cancer and advised a treatment of 25 rounds of Radiotherapy, 5 sessions of Chemotherapy and 4 sessions of Brachytherapy. Admittedly, the patient had undergone all this treatment as suggested by

Dr. Rajendra Bhalavat (O.P.No. 2). It is also clear that the patient underwent the Radiotherapy, Chemotherapy and Brachytherapy sessions during the period between 03/08/2016 till 20/10/2016. There is also no dispute regarding these aspect and also the treatment provided by Jupiter Hospital(O.P.No.1) and also provided by Dr. Rajendra Bhalavat(O.P.No. 2).

11. It is argued by Sakina Daud, learned advocate appearing for the complainants that the patient -Varsha Shende was complaining of severe backache and uneasiness from beginning but the same was not taken seriously by Dr. Rajendra Bhalavat and he advised to consult an Orthopaedic doctor. Secondly, it is argued by Sakina Daud, learned advocate for the complainants that the possibility of Cancer spreading to the other organs was not at all considered by doctors of Jupiter Hospital and the casual approach was evident which amounted to gross negligence. In order to support these contentions, Sakina Daud, learned advocate appearing for the complainants has drawn our attention specifically to the medical papers. The learned advocate has also drawn our attention to the document dated 06/08/2016 issued by Trupti Hospital and also the document dated 09/09/2016 which is copy of Discharge Card issued by Jupiter Hospital. Further, the learned advocate has also drawn our attention to the document dated 19/12/2016 at page No. 47 of compilation and 16/03/2017 at page No. 51 as well as report dated 18/04/2017. On the basis of these documents issued by Trupti Hospital as well as Jupiter Hospital it is submitted that the patient Varsha Shende was suffering from continuous and immense backache but this was not taken into consideration. It is argued by the learned advocate that even after knowing that the patient - Varsha Shende was suffering from Cancer of Cervix stage II B, they in most negligent manner ruled out the possibility of cancer spreading to other parts of the body and without undertaking any further tests. Sakina Daud, learned advocate appearing for the complainants submitted before us that the O.P.No.2 had shown gross negligence by not suggesting whole body PET CT Scan so as to check the spread of cancer. In the light of the fact that, the cancer spreading to other body parts is a very common phenomenon. It is vehemently argued by Sakina Daud, learned advocate for the complainants that it was not only necessary but mandatory on the part of O.P.No. 1- Jupiter Hospital 1 as well as O.P.No. 2 - Dr. Rajendra Bhalavat to refer the patient for whole body PET Scan and by not doing the same, the complainants lost the precious life of their mother and equally the O.P. No. 1 and 2 had indulged in gross medical negligence amounting to deficiency in service. It is also contended by the learned advocate for the complainants that the O.P. No.2 had not only acted in violation of standard protocol by not ordering whole body PET Scan but had also committed negligence by declaring the patient -Varsha Shende as cancer free in the month of December-2017. It is argued that the cancer had spread in the Skelton region by month of June-2017 and patient succumbed in the month of July-2017 more particularly on 24/07/2017.

12. It is specifically submitted by the learned advocate for the complainants that the O.P.Nos. 1&2 continued to neglect the complaint of backache right from the beginning and their approach was extremely callous and same ultimately resulted in spreading of cancer from the backache to her brain leading to her death. Secondly, the negligence as well as deficiency in not

taking the appropriate care was also on account of not suggesting the whole body PET Scan so as to eliminate the possibility of cancer spreading other parts of the body. In order to support this contention, Sakina Daud, learned advocate for the complainants has drawn our attention to various documents namely copies of medical papers and reports of patient -Varsha Shende. Further, the learned advocate for the complainants has also placed reliance upon several citations including the landmark judgment in the case of Jacob Mathew Vs. State of Punjab, reported in 2005 (6) SCC 1 as well as another judgment in the case of Vinita Ashok Vs. Lakshmi Hospital and others, reported in (2001) 8 Supreme Court Cases 731 and other judgments. But we shall deal with the same subsequently.

13. During course of argument Sakina Daud, learned advocate appearing for the complainants has also submitted that in the present case looking to the allegations relating to medical negligence there was necessity of seeking expert opinion and so report was also called from Dr. Anand Pathak, Cancer specialist who has also filed his expert opinion. The learned advocate for the complainants has submitted that though the opinion of expert Dr. Anand Pathak was called but the same was vague and inconclusive as no definite opinion was given by Dr. Anand Pathak and so the same cannot be any of assistance to the case of the complainants. Finally it is argued on behalf of the complainants that there was gross medical negligence shown by O.P.Nos. 1 and 2 and therefore, the same amounted to deficiency in service under the Consumer Protection Act, 1986.

14. Dr. Shenoy, learned advocate appearing for Jupiter Hospital (O.P.No. 1) and Dr. Rajendra Bhalavat (O.P.No.2) have strongly rebutted and challenged all the contentions made by the complainants relating to medical negligence on the part of the O.P. Nos. 1&2. Dr. Shenoy, learned advocate has initially admitted the fact that patient-Varsha Shende was referred to Jupiter Hospital for complaints relating to Cancer of Cervix. Dr. Shenoy, learned advocate has also fairly admitted that the Jupiter Hospital has provided medical treatment as prescribed and suggested by Dr. Rajendra Bhalavat who was working with Jupiter Hospital and was Radiation Oncologist but Dr. Shenoy, learned advocate has rebutted this contention that there was any negligence much less medical negligence on the part of either Jupiter Hospital or on the part of Dr. Rajendra Bhalavat. On the contrary it is submitted by Dr. Shenoy, learned advocate that Dr. Rajendra Bhalavat as well as Jupiter Hospital had followed and undertaken standard treatment protocol as per guidelines laid down by the statutory body namely Indian Council of Medical Research (ICMR) as well as standard practices. Dr. Shenoy, learned advocate has submitted that the patient -Varsha Shende was in fact suffering from stage II B of Cervix Cancer when she was referred to Jupiter Hospital as well as to Dr. Rajendra Bhalavat. It is submitted that after the patient was admitted in Jupiter Hospital and Dr. Rajendra Bhalavat and other medical staff immediately attended to the patient and not only extensive investigation was conducted but proper and required medical treatment was also provided as per the standard protocol expected from Radio Oncologist. In order to support this contention Dr. Shenoy, learned advocate appearing for the O.P.Nos. 1&2 has drawn our attention to various medical papers as well as medical reports issued by

Jupiter Hospital and we will deal with them one by one. It is an admitted fact that on 06/08/2016, patient -Varsha Shende was referred by Dr. Ajgaonkar for undergoing MRI of abdomen and pelvis. It is also admitted fact that on 08/08/2016 after going through MRI report Dr. Navin Bhambani diagnosed the condition of patient as stage IIA level of Cancer of Cervix and patient was referred to Dr. Rejendra Bhalavat (O.P.No. 2) who was Chief Radiation Oncologist, at Jupiter Hospital. It is also admitted fact that subsequently, Dr. Rajendra Bhalavat, Chief Oncologist advised a treatment of 25 rounds of Radiotherapy, 5 sessions of Chemotherapy and 4 sessions of Brachytherapy. There is no dispute regarding this medical treatment provided at Jupiter Hospital to the patient- Varsha Shende. As referred earlier the main grievance of the complainant is that though the patient was complaining of backache since beginning no attention was paid to the same and no proper investigation was conducted. Secondly, it is contended that Dr. Rajendra Bhalavat did not initially direct whole body PET Scan to detect whether the cancer had spread in other parts of body including bone. Dr. Shenoy, learned advocate appearing for the O.P. Nos. 1&2 has vehemently submitted that the patient had arrived at Jupiter Hospital at late stage when she was already suffering from stage IIB of Cancer of Cervix and so immediate treatment was provided by adopting the technique of Chemotherapy as well as Brachytherapy as surgery was not possible at advanced stage. Dr. Shenoy, learned advocate appearing for the O.P. Nos. 1&2 has drawn our attention to the report of Jupiter Hospital which is at page No. 8 of the compilation which clearly shows that the Radiation Therapy as well as Brachytherapy was applied for the treatment of the patient. It is also submitted by Dr. Shenoy, learned advocate appearing for the O.P.Nos.1&2 that as a result of Chemotherapy and Brachytherapy as well as other treatment the hospital was able to cure the patient from Cancer of Cervix. The learned advocate for the O.P. Nos. 1&2 has also drawn our attention to one report of Jupiter Hospital dated 19/12/2016 which is at page No. 47 of compilation. If we go through the same, the same mentioned no visible gross residual disease and the impression is mentioned as loco regionally controlled. Further Dr. Rajendra Bhalavat had himself advised follow up after three months. Dr. Shenoy, learned advocate for the O.P.Nos. 1&2 has submitted that the best available treatment was provided by Jupiter Hospital to the patient and the same was as per standard protocol. Dr. Shenoy, learned advocate has submitted that though the patient was admitted at the stage of II-B of Cervix Cancer but patient was completely cured of cancerous cells from Cervix region. During the course of argument Dr. Shenoy, learned advocate has submitted that so far as the disease of cancer is concerned there is always a lurking possibility of spread of cancer through blood as well as lymph nodes or any other part of the body. Further, Dr. Shenoy, learned advocate has also contended that merely because patient was suffering from backache no direct inference can be drawn that there was negligence on the part of the O.P. Nos. 1&2 relating to investigation and proper treatment of the patient. Dr. Shenoy, learned advocate has drawn our attention to the documents to show that the Metastasis developed rapidly as the deceased was aggressive in nature. Dr. Shenoy, learned advocate has submitted that on 18/03/2017 there were no complaints from the patient suggesting brain metastasis.

15. Dr. Shenoy, learned advocate for the O.P. Nos. 1&2 has submitted that the standard treatment protocol was applied for treatment of patient -Varsha Shende as well as for investigation. It is submitted that investigation and treatment has to be carried out by the medical professional

as per guidelines laid down by the Indian Council of Medical Research (ICMR). Dr. Shenoy, learned advocate has submitted that after clinical examination of the patient, Dr. Rajendra Bhalavat in the best interest of the patient opted for MRI which was one of the Option as per the guideline of the ICMR. Dr. Shenoy, learned advocate has rebutted the contention of the complainant that after clinical examination of the patient and after knowing the complaint of backache it was mandatory for the O.P. No. 2 to referre the patient for whole body PET Scan which alone could have detected the cause of illness. Dr. Shenoy, learned advocate has submitted before us that whole body PET Scan was not at all mandatory but was Optional mode of investigation along with other modes namely Ultrasonography, CT Scan, MRI and PET-CT Scan. In order to support this contention, Dr. Shenoy, learned advocate has drawn our attention also to medical literature namely Consensus document for the management of cancer cervix issued by Indian Council of Medical Research (ICMR). On the basis of the same, it is submitted firstly that PET Scan ws only optional and that only because whole body PET Scan was not conducted and instead MRI was conducted, no inference can be drawn that there was negligence much less medical negligence on the part of Dr. Rajendra Bhalavat (O.P. No. 2). Further it is also submitted that on 18/03/2017 there were no complaints suggestive of Brain Metastasis and so no MRI was conducted for Brain Metastasis. We have therefore carefully gone through the medical literature as well as Consensus documents issued by ICMR and we do find much force in this contention.

16. It is pertinent to note that complainant has also not placed on record any medical literature or medical text to support the contention that it was necessary to conduct whole body PET Scan instead of MRI or that whole body PET Scan was not optional as per standard medical protocol. So far as the contention regarding complaint made by the patient-Varsha Shende of backache is concerned, it is submitted on behalf of Dr. Rajendra Bhalavat that when the patient presented with post menopausal per vaginal bleeding and no other clinical symptom to suggest advanced metastatic disease elsewhere and hence as per established treatment protocols, PET whole body scan or other investigation were not advised. Dr. Shenoy, learned advocate for the O.P.Nos. 1&2 has also submitted that the patient had undergone MRI of abdomen and pelvis done before treatment which did not report bone metastasis in lumber region as reported on PET-CT at later date. Dr. Shenoy, learned advocate has submitted that no cancer specialist would requisition PET Scan when not needed and thus did not advice the same. It is also argued by Dr. Shenoy, learned advocate that though the patient complained of backache, the complainant visited the doctor from Nagpur namely Dr. Smruti Ramteke and Dr. Kaushik Chatterjee but they took about 3 months to meet the doctors in Jupiter Hospital after follow up was done on 19/12/2016.

17. Coming now to the legal position it is argued by Dr. Shenoy, learned advocate for the O. P. Nos. 1&2 that there was absolutely no violation of the treatment, protocol either by Jupiter Hospital or by Dr. Rajendra Bhalavat, Radiation Oncologist while providing medical treatment to the patient -Varsha Shende. It is contended that while providing medical treatment relating to cancer it is for the treating doctor to choose the line of treatment he deems fit for the patient and the treating

doctor has to exercise best discretion. Doctor cannot be faulted for adopting a particular line of treatment only when the regime adopted by him is palpably wrong. Secondly, it is submitted that law does not expect the highest standard nor does it expect low standard. The standard of care expected is the standards of any reasonable medical practitioner and so it cannot be said that there was any negligence much less medical negligence at the hands of O.P. Nos. 1&2. On this aspect relating to medical negligence, Dr. Shenoy, learned advocate has not only relied upon landmark judgment in the case of Jacob Mathew Vs. State of Punjab, reported in 2005 (3) CPR 70 (SC) (cited supra) but also on other authorities. It is needless to mention that law on the aspect of medical negligence has now been crystallized not only by the judgment in the case of Jacob Mathew Vs. State of Punjab, but also by several subsequent decisions delivered by the Hon'ble National Consumer Commission, as well as by the Hon'ble Supreme Court of India. It is now settled that medical practitioner cannot be held negligent merely because he has chosen to follow one procedure and not another. It is also well settled that despite best efforts the treatment of a doctor can fail, leading to death of the patient but the same cannot amount to medical negligence or deficiency in service. The learned advocate for the O.P. Nos. 1 & 2 has heavily relied upon following observations of Hon'ble Apex Court in the case of Jacob Mathew Vs. State of Punjab, "so long as it can be found that the procedure which was in fact adopted was one which was acceptable to medical science as on that date, the medical practitioner cannot be held negligent merely because he chose to follow one procedure and not another and the result was a failure".

18. During the course of arguments Sakina Daud , learned advocate for the complainant has also relied upon series of authorities including the case of Jacob Mathew Vs. State of Punjab, reported in 2005 (3) CPR 70 (SC). Further she has relied upon one judgment of the Hon'ble Supreme Court in the case of Vinitha Ashok Vs. Lakshmi Hospital and others, reported in (2001) 8 Supreme Court Cases 731 as well as judgment of the Hon'ble National Consumer commission in the case of Rajv Gandhi Cancer Institute and Research Centre and others Vs. Lt. Col (Retd) Zile Singh Dahiya, reported in (2014) 2 CPR 475(NC). It is needless to mention that the judgment in the case of Jacob Mathew Vs. State of Punjab(cited supra) is a landmark judgment on the aspect of medical negligence wherein detailed discussion as well as guidelines have been given relating to appreciation of the case regarding medical negligence. Sakina Daud, learned advocate for the complainant has submitted that the O.P.Nos. 1&2 have not exercised the standard of care which was expected from them and had not carried out investigations as expected from them in the serious case of cancer but we have already dealt with this aspect. Further, learned advocate for the complainant has also relied upon one judgment in the case of Vinitha Ashok Vs. Lakshmi Hospital and others (cited supra) . In that case also the Hon'ble Supreme Court was dealing with the case of cervical cancer. In that case it was observed that the doctor will be liable for negligence in respect of diagnosis and treatment if it is shown by evidence that the professional opinion given was not reasonable or responsible. In that case it was observed that the medical professional were not liable for medical negligence. As such the judgment in the case of Vinitha Ashok Vs. Lakshmi Hospital and others(cited supra) will not help the case of the complainants at all. Further, learned advocate for the complainants has also relied upon the judgment of the Hon'ble National Commission in the case of Rajv Gandhi Cancer Institute and Research Centre and others

Vs. Lt. Col (Retd) Zile Singh Dahiya (cited supra). We have gone through the said judgment. In that case the facts were quite similar and patient was suffering from cancer of cervix. In that case the medical professionals of Rajv Gandhi Cancer Institute and Research Centre had failed to diagnose the ailment suffered by patient. In that case the Hon'ble National Consumer Commission after dealing with the entire evidence had reached the conclusion that the medical professionals of Rajv Gandhi Cancer Institute and Research Centre had not exercised the medical skills as expected from them and so the medical professional of Rajv Gandhi Cancer Institute and Research Centre were liable for medical negligence. But in the present case before us the facts are quite different and the O.P.Nos. 1&2 have led evidence on record to show that they had carried out all investigations in prompt manner without any delay but the patient had come to Jupiter Hospital at late stage when she was suffering from stage II B of Cancer. Secondly, the O.P.Nos. 1&2 have also led evidence to show that the whole body PET Scan was only an Optional mode of investigation and not mandatory. As such we are of the view that both the above said judgments in the case of Vinita Ashok Vs. Lakshmi Hospital and others as well as Rajv Gandhi Cancer Institute and Research Centre and others Vs. Lt. Col (Retd) Zile Singh Dahiya will not go to help the case of the complainants.

19. As discussed earlier the complainant has not placed on record any material which could go to show that investigation with the help of whole body PET Scan was mandatory and was not optional and further that only whole body PET Scan could have detected spread of cancer in the bone or in the brain. Similarly, the complainant has also not placed on record any positive or unimpeachable material to show that Dr. Rajendra Bhalavat (O.P.No. 2) had not exercised the degree of care which was expected from him as a Radiation Oncologist or that there was any negligence on his part. On the contrary medical papers placed on record go to show that Dr. Rajendra Bhalavat had not only carried out investigation as per standard mode laid down by the statutory body namely Indian Council of Medical Research (ICMR) but had also provided Radiation Therapy, Chemotherapy and Brachytherapy to the patient and patient was also discharged from the Jupiter Hospital after which there was a spread of cancer cells in other part of the body leading to death of the patient. But there is no material even to show that the patient reported immediately to Jupiter Hospital on detection of cancer cells in other part of the body. As such we feel that neither Jupiter Hospital(O.P.No.1) nor Dr. Rajendra Bhalavat(O.P.No. 2) can be blamed for any negligence much less medical negligence.

20. Before proceeding further it would be relevant also to mention that in the present matter an application was also moved by the complainants themselves for seeking an expert opinion from medical expert in the field of Cancer and so Dr. Anand Pathak, Cancer Specialist came to be appointed as an expert and report was also called from Dr. Anand Pathak after sending all the medical papers relating to the patient -Varsha Shende. Accordingly, Dr. Anand Pathak from Cancer Care Hospital has also submitted an elaborate report which is also part of the record. If we carefully go through the report of Dr. Anand Pathak, he was also asked to give opinion whether

PET Scan of patient- Varsha Shende would have improve her survival and Dr. Anand Pathak has also given categorical opinion that PET CT Scan was only an optional investigation along with C.T. Scan, MRI and Ultra sonography. Dr. Anand Pathak has also not given categorical opinion that the PET Scan was necessary or would have improved survival of patient. On the contrary Dr. Anand Pathak has given conclusive opinion that the patient -Varsha Shende had received appropriate treatment as per the guidelines. Dr. Anand Pathak has also observed that there was rapid progression of deceased. From the report of Dr. Anand Pathak there is nothing to support the case of the complainant that the PET Scan would have held in the survival of the patient or was mandatory or better mode of investigation.

21. Sum and substance of the entire discussion is that the complainants have failed to establish that Dr. Rajendra Bhalavat and Jupiter Hospital had failed to exercise the standard care as was expected while giving treatment to patient. The complainants have also failed to establish that the cancer which had spread in the other parts of the body namely bone could have been detected at the initial stage itself when the patient-Varsha Shende was admitted in Jupiter Hospital in the month of August-2016. The complainant has also failed to establish that both O.P.Nos. 1&2 were negligent in not carrying out the investigation by PET Scan thereby amounting to medical negligence or deficiency in service. As such complainants have failed to establish that there was any deficiency in service as well as unfair trade practice on the part of Jupiter Hospital (O.P.No. 1) and Dr. Rajendra Bhalavat (O.P.No. 2) and so we proceed to pass the following order.

ORDER

- i. Complaint filed by the complainant Nos. 1 to 3 is hereby dismissed.
- ii. Both parties shall bear their own cost.
- iii. Copy of order be furnished to both the parties, free of cost.

[HON'BLE MR. A. Z. KHWAJA] PRESIDING MEMBER
[HON'BLE MS. S.D. WANDHARE] MEMBER
[HON'BLE MRS. K.S. KAPSE] MEMBER