

Date of Filing : 07.03.2022

Date of Disposal : 29.04.2024

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,**  
**KANCHIPURAM DISTRICT @ CHENGALPATTU**

**PRESENT: THIRU. U.KASIPANDIAN, B.A., M.L., ..... PRESIDENT**  
**THIRU.M.JAWAHAR, B.A. L.L.M., ..... MEMBER-I**  
**TMT.K.A.VIMALA, B.PT., ..... MEMBER-II**

**CC.No.20/2022**  
**THIS MONDAY THE 29<sup>th</sup> DAY OF APRIL 2024**

A.Ramkumar,  
S/o.Mr.Aunamoorthy,  
No.SR 1/7, Tamilnadu Police  
Housing Corporation,  
Melakottaiyur,  
Chennai - 600127.

:: **Complainant.**

*//Vs.//*

The Tagore Medical College and Hospital,  
Rep. by the Dean,  
Tagore Medical College and Hospital,  
Vandalore – Kelambakkam Road,  
Rethinamangalam, Chennai – 600 127.

:: **Opposite party.**

**Counsel for the complainant : M/s.A.R.Sindhu, Advocates.**

**Counsel for opposite party : M/s.Premkumar, Advocates.**

This complaint having came up for final hearing before us on 22.04.2024, in the presence of M/s. A.R.Sindhu, Advocates for the complainant, M/s. Premkumar, Advocates for the opposite party and having perused the documents and evidences of both and this Commission delivered the following:

**ORDER**

**PRONOUNCED BY THIRU. U.KASIPANDIAN, PRESIDENT.**

1. This complaint is filed by the complainant under Sec.35 of the Consumer Protection Act, 2019, against the opposite party seeking direction, directing the

opposite party to remit a sum of Rs.89,431/- which was paid by the complainant to the opposite party as medical bill and subsequent medical expenses of Rs.24,25,819/-; to pay a sum of Rs.7,00,00,000 (Rupees Seven Crore) as damages towards monetary losses and mental agony suffered by the complainant; and to pay a sum of Rs.40,000/- towards the cost of proceedings;

**2. ALLEGATION OF THE COMPLAINANT AND CORRESPONDING RESPONSE BY OPPOSITE PARTIES ARE AS FOLLOWS:**

The complainant in his complaint enumerated certain allegations suggesting negligence and deficiency of service on the part of the opposite party. The averments made by the complainant and the corresponding reply by THE DEAN, Tagore Medical College and Hospital, the opposite party are extracted hereunder

<b>The complainant's side case</b>	<b>The opposite party's side case</b>
<p>1. The complainant states that on June 25th, 2021, he went to Tagore Medical College and Hospital along with his mother Mrs. Sivagami as she had a Urinary infection. After registration, she informed her medical history and condition, particularly about her allergy and the same was noted down in the Patient OP Card Further, the complainant's mother Mrs. Sivagami took treatment for COVID in the same hospital for 18 days.</p>	<p>1. The Opposite party submits that the complainant's mother Mrs. Sivagami and the complainant visited the hospital on 25-06-2021, complaining about burning sensation while passing urine. She was treated as Out-Patient (OP) and was advised to give urine sample for culture and sensitivity test , at our hospital. The asseveration given by the complainant regarding complainant's mother's allergy to drugs and same reported in the patient's OP card speaks otherwise. The OP card of complainant's mother clearly mentions that there is no history of drug allergy, asthma, wheezing, etc.</p>
<p>2. The complainant states that, after registration Sivagami was advised to visit gynecologist the doctor prescribed Soframycin ointment but the complainant and his mother stated that the complainant's</p>	<p>2. The Opposite party submits that after registration as out patient, she was advised to visit the gynecologist and the advisor prescribed an Ointment namely Soframycin [to treat bacterial skin Infection) and informed</p>

<p>mother had already been using Candid V. 80, the Gynecologist said that both can be used. After which Gynecologist advised the patient to do a blood test and urine culture test for the complainant's mother. They were informed to come back next day, as the blood test needs to be done before and after food.</p>	<p>to come back on next day Le. 26-06-2021 for blood test and urine culture test.</p>
<p>3. The complainant states that on 26. 06-2021, around 8 AM, the blood test and urine culture test were taken and the lab technician informed them to come back after 2 hours of breakfast for next blood test. The lab technician informed to collect the report on 30. 06-2021, as it takes time for observing the bacterial growth.</p>	<p>3. The Opposite party submits that the blood test and urine culture test were taken and the lab technician informed the complainant and his mother to collect the report on 30-06-2021 for both blood and urine culture and sensitivity test [test that can identify the antibiotic most likely to kill those particular bacteria) as the test requires time for observing the bacterial growth and thus has been agreed.</p>
<p>4. The complainant states that on 30 June, 2021, the complainant's father and mother went to collect the reports. The hospital management advised Mrs. Sivagami to get admitted immediately for 3 days as it was showing higher level of sugar in blood test report. After informing about this to the complainant through his father, they agreed to admit her in a Specialty Care Ward.</p>	<p><b>Opposite party submits that the test report revealed Urinary Tract Infection (UTI) and the causative bacteria was Escherichia coli (E.coli). The test report also indicates sensitive and resistive drugs to the above bacteria and the sugar level was very high i.e. 439 (Biological range is 80-120 mg/dl). The complainant's mother was advised for admission and after fulfilling the formalities, she was admitted in the hospital on 30-06-2021 at 1.40 PM by General Medicine Faculty Dr.Balaji..M.D., later the complainant's mother was received in Speciality Ward by Dr.Thenmozhi on the same day @ 2.00 PM. The Complainant's mother was diagnosed with giddiness and feet burning sensation. After admitting the</b></p>

	<p><b>complainant's mother in speciality ward blood samples was taken from her for further testing.</b></p>
<p>5. The complainant states that there were no admission formalities don due diligently on June 30<sup>th</sup> , 2021 on June Only after she was shifted to the ICU ward on July 1, 2021, Complainant was asked to pay for admission into the specialty word His further allegation mentions about basic details, contact number of the patients were not recorded by the hospital for admission on June 30 2021.</p>	<p>5. The Opposite party submits that the allegations made by the complainant are false and unsubstantiated. The complainant's mother was admitted in specialty ward by duly following the admission formalities. On 30-06-2021 at 5.20 PM, a test dose of Inj Ceftriaxone la class of anti-biotic - e works by killing bacteria and preventing their further growth) was administered to the complainant's mother whether she was allergic to the said drug. As per the accepted medical practice/procedure, the patient was observed for allergic symptoms for the above medicine for more than 15 minutes. Since the patient did not show any allergic symptoms for the above said drug, at 5.45 PM, complainant's mother was again reviewed. After checking her vitals were stable, she was administered with the remaining quantity of the above said drug. In fact the complainant was well aware of the above developments and there was full cooperation from his side. The same has been recorded in the Doctor's orders.</p>
<p>6. The complainant states that on 30- 6. 06- 2021, the complainant went to meet his mother and provided her lunch in the noon and he went again at 5.30PM to give her coffee. On both the occasion, she saw his mother in hale and healthy state. The only complaint she was made that the nurse took lot of blood for testing after struggling to find the vein. The complainant also stated that</p>	<p>6.The opposite party submits that averment made by the complainant stating that except for the blood samples taken for testing no other medication or injection was given to the complainant's mother is nothing but an imaginary tale The above para clearly mentions about the date and time of administration of test dose of the above said drug and followed up with reactionary time of</p>

<p>there were no other medication or injection was given to her except the blood taken for testing.</p>	<p>the test dose. As per medical protocol only after the confirmation of no symptoms of reaction for the test dose administered her, remaining dose was administered to the complainant's mother @ 5.45 PM, since her vitals were normal and stable.</p>
<p>7. The complainant states that he went out for a coffee around 6.15 PM to 6.18 PM leaving his father's mobile also with her mother, so that she can reach him in case of necessity. As the complainants brother Mr.Subramanian is States of America so just to make him understand the real scenario about his mother, complainant sent a picture of the sitting on the bed and watching TV the special ward No. 1006</p>	<p>7. The Opposite party submits that averment made by the complainant that the complainant's mother was sitting on bed and watching TV around 6.15 PM is totally false and erroneous, as she became semi-conscious and disoriented at 5.55 PM itself [fact can be well checked vide page no 214. In the typed set of papers] and she was shifted the to Emergency Room (ie, ICU) as her BP and pulse rate were dropping And simultaneously CPR [Cardio Pulmonary Resuscitation] was started was well known to the and it was Complainant.</p>
<p>8. The complainant states that his sister-in-law from United States of America called her mother-in-of Sivagami 6.42 PM. Where in, one of the hospital Nurse attended the call and said that Mrs. Sivagami felt giddy and had fallen in the bathroom of the hospital and some attender had to come up.</p>	<p>8. The Opposite party submits that the made by the allegations complainant's mother had fell down in rest room us she felt giddiness can neither be proved as oral or as documentary as the complainant himself was the eyewitness for the treatments given to the complainant's mother and there was neither objection nor any regret from his side at any point of time.</p>
<p>9.The complainant's sister-in-law 9 called complainant's wife and informed the same to the complainant after which he went to the hospital back and ran towards the Specialty ward No 1006. On his way. seeing him running towards the specialty ward one the resident student informed that his mother</p>	<p>9.The Opposite party submits that the averments made by the complainant is totally false, groundless and motivated as the complainant's mother was already shifted to Emergency Room Ply self for giving CPR as she suddenly had cardiac arrest.</p>

<p>Mrs. Sivagami has been moved to the casualty ward in the building.</p>	
<p>10. The complainant states that he ran to the casualty ward, and saw his mother was surrounded by two doctors and group of medical students. The complainant saw his mother was unconscious with intubation tube in her mouth and two doctors were attending her Dr.Ganesh informed him that she had a heart attack and mentioned that luckily, she was in the hospital and they were able to revive her by performing CPR. Dr.Ganesh then admitted the fact that she has gone into an anaphylaxis shock [life threatening allergic reaction] due to the injection administered to her.</p>	<p>10. The Opposite party submits that the averment made by the complainant partially true that the complainant's mother was surrounded by 2 specially skilled doctors namely Dr. Gokul and Dr. Ganesh and group of medical students in the casualty ward but it was a team comprised of not only Doctors but Doctors, nurses and interns, who were attending the complainant's mother to revive her vitals as she was unconscious and with intubation tube [artificial ventilation tube into the tracheal and the complainant's mother was shifted to Emergency Room immediately and then later to the ICU on the same day. The routine procedural formalities for shifting the patient to ICU were done and there were no lapses on the part of the doctors or in the administration of the hospital at any point of time. The Opposite party also submits that the complainant's mother suffered <b>anaphylaxis shock</b> after she was administered with Inj.Ceftriaxone. It was totally unfortunate and only in rarest of rare cases, the anaphylaxis shock would affect the patient without exhibiting allergic symptoms to the test dose of the medicine after the test dose time.</p> <p>What is not medical negligence? - <b>As long as a doctor acts in a manner which is acceptable to the medical profession and the court finds that he has attended on the patient or suffers a permanent ailment, it would be difficult to hold the doctor to be guilty of negligence:</b></p>

	<p><b>[Achutrao Haribhau Khodwa -Vs- State of Maharastra, 1996 ACJ 505 (SC) = AIR 1996 SC 2377] and [Vinitha Ashok - Vs- Lakshmi Hospital, AIR 2001 SC 3218].</b></p>
<p>11. The complainant was told that the CPR was performed for the last 45 minutes and they had revived her by putting lot of efforts as a special case although usually 45 minutes CPR is not done. He was wondering because he left his mother for just 20 to 25 minutes and before that, she was normal and speaking with him.</p>	<p>11. The Opposite party submits that the available complainant was very much during the course of treatment and the complainant was informed about the status of his mother now and then. The averment of the complainant about performing CPR for 45 minutes is highly a presumptive one as the complainant's mother got sudden cardiac arrest, she was treated with CPR simultaneously with inj. adrenaline from 6.35 PM to 7.10 PM till her ROSC [Return of Spontaneous circulation] was achieved [i.e., CPR was given for 35 minutes. Medical negligence Presumption of negligence: <b>Negligence must be established and not presumed [Kanhaiya Kumar Singh -Vs- Park Medicare and Research Centre, 2000 CCJ 249 (NCDRC)].</b></p>
<p>12. The complainant further states that when he further questioned as to what had happened to her, he was told that she suffered a heart attack leading to a cardiac arrest and that due to which she suddenly became unconscious.</p>	<p>12. The Opposite party submits that the complainant was very much her, he was present in all circumstances and he was informed by the hospital staffs then and there but the reason for making averments with twisted facts is best known to him.</p>
<p>13. When asked about what medicine was given, the complainant was informed by Dr. Ganesh that he only administered with Xone 1GM, Pan 40, Citralka Syrup, Actrapid Insulin, Glimestar 1 Mg and IV fluid. Dr. Ganesh also mentioned that it can also be checked with his mother's previous file that</p>	<p>13. The Opposite party submits that the allegations leveled by the complainant are false as Dr. Ganesh was not treating the complainant's mother was only following up the complainant's mother he already treated the Complainant's mother for COVID. The complainant did not question anyone in the</p>

<p>these were given previously as well.</p>	<p>hospital regarding any of the allegations mentioned in the complaint and the complainant was fully cooperating with the doctors. The allegations made are concocted and motivated with some ulterior motive for the reason best known to him.</p>
<p>14. The complainant further states that he questioned the doctors as to why they had to administer something that is potentially life-threatening to her, having already informed the gynecologist about her allergies and having been in the same hospital. The complainant further submits that the complainant's mother declaring her allergies, the hospital has administered her antibiotic, without providing a proper allergy test and without explaining the risk and consequence of the medicine administered to the complainant's mother.</p>	<p>14. The Opposite party submits that at no point of time, neither the complainant nor the complainant's mother spoke about her allergies to the doctors or anyone in the hospital. The above true facts can be inferred from the complainant's mother's OP card. Even when the complainant's mother was treated for COVID on 18-04-2021 and there was no information from the complainant or the complainant's mother about her allergies which can be seen in the previous records of the complainant's mother. The Opposite party also submits that the averment said by the complainant about the administration of test dose is utter false as the <b>test dose was administered to the complainant's mother @ 5.20 PM on 30-06-2021. Since her body condition didn't show any allergic symptoms, the remaining dose was administered @ 5.45 PM to the complainant's mother.</b></p>
<p>15. The complainant was also informed by Dr. Ganesh that as ideal practice that she should have given a test dose and the treating physician has to wait for a while to provide the complete dose. The complainant states that <b>the hospital neither gave the test dose not waited for the medicine to react in her body.</b></p>	<p>15. The Opposite party submits that the complainant's mother's medical records would speak in detail about the administration of test dose and the subsequent medications given to the complainant's mother from the hospital side (i.e. team of doctors). The detailed record for test dose can be adopted from the above</p>



	paragraph.
16. The complainant further states that after reaching the casualty complainant ward, the Complainant touched his mother's feet and sensed that her body temperature was too cold. Unstill, the complainant shouted at the doctors over therefore not taking any note of her body temperature. The doctors also failed to check the fact that the heart rate was not detected at that instant.	16. The Opposite party submits that allegation about not noticing the complainant's mother's body temperate and heart rate was absolutely false and concocted. As the complainant's medical records would show up the time and date of which she was Checked with body temperature and heart rate. The Opposite party also submits that the complainant mother's temperature ranges between 97°C - 102° C till her time of discharge and there were no sign of lower temperature which fact can be seen in the complainant mother's medical records.
17. The complainant submits that only after the complainant shouted at the doctors and repeatedly raised several questions, as to "what sort of medical treatment the hospital was providing", complainant was sent out of the casualty room and was told they need to do CPR again.	17. The Opposite party submits that the allegations leveled are not only false and concocted but contrary to his own statements. The medical treatment records of the complainant's mother and timeline of treatment would establish the falsity of the complainant's allegations.
18. The complainant further states that Dr.Gokul informed him, that his mother must be immediately shifted to ICU, and the complainant was asked to make a signature in the consent form. The doctor added that the signature was just a formality for the CPR and intubation that has been already completed as a part of the treatment.	18.The Opposite party submits that the averment Dr.Gokul informed the complainant that his mother must be shifted immediately to ICU and the complainant's consent was asked and to sign the consent form was correct. It is a routine procedure to obtain consent from the kith and kin of the patient for shifting to ICU. But, the averment that it is a formality for CPR and intubation that had already been completed is false one, as the a complainant's mother was already given CPR and after the achievement of

	ROSC, the complainant's mother was shifted to ICU. In the field of Medical Practice, it is true that doctors would not wait for getting consent when the patient is critical and struggling for life but in this case, the complainant was very much available 24*7 in the hospital and has given his consent then and there needed as the case may be.
19. The complainant states that he sensed the fact that despite Dr.Gokul's instruction to shift her to ICU, complainant's mother was not shifted to the ICU from the Casualty ward for almost 2 and half hours.	19. The Opposite party submits that averments given by the complainant are false and absurd as the complainant's mother was already being treated in the Emergency Room (EICU) in a critical condition. After reviving her vitals, she was shifted to the Medical ICU. The treatment records of the complainant's mother would falsify the allegations of the complainant.
20. The Complainant states that despite Dr.Gokul's complainant advice mother's on critical condition, the hospital did not take the necessary steps to arrange to move the patient to ICU.	20.The Opposite party submits that the mentioned allegations are nothing but a redundancy averments of the same facts of mentioned supra (para no. 19) and those are simply sheet of lies.
21. The complainant states that he shouted at the hospital management and the doctors for not shifting his mother to ICU from casualty ward. The complainant further adds that the duty doctors, staff nurses and medical students were too lethargic in handling his mother despite critical health condition.	21. The the averments stated by the complainant are false and a andy with undisclosed motive to threaten the hospital management and the doctors.
22. The complainant states that when he asked Dr.Gokul, whether he could shift his mother to some other hospital, Dr.Gokul said it was a huge risk at this time to shift her	22. The Opposite party submits that there was no such enquiry or request made from the part of complainant at that point of time. This shows the false attitude of the

<p>Hence, believing his words to be true, the complainant dropped his plan of shifting his mother to another hospital on 30-06-2021.</p>	<p>complainant and thus if it is mentioned to be true in the sense, it can be taken as the complainant had expressed high confidence and trust on the doctors and hospital.</p>
<p>23. The complainant states that his mother was shifted to ICU after 2 and half hours and was kept under observation for Doctors several hours. informed the complainant that his mother was given sedation and muscle arrest injection so slowly her consciousness will return.</p>	<p>23. The Opposite party submits that the complainant's mother was sent to ICU from Casualty ward as prescribed by the doctors and thus the treatment given to her was continued till the time of discharge from the Tagore Medical College and Hospital and the timeline of medications would show that there was no delay or lapses on the side of doctors or hospital management while treating the complainant's mother.</p>
<p>24. The complainant further states that the hospital, doctor and staffs started calling the complainant to give him multiple prescriptions at different times throughout the night till early morning. The complainant was given another prescription of the same medicine at around 10.30 PM, later he finally procured the required medicine from the nearby hospital and handed over the medicine to the staff nurse.</p>	<p>24. The Opposite party submits that the allegations that on the night of 30-06-2021, that the staff nurse in the ICU has asked the complainant to get several medicines and medical equipment for the ICU staff several times is incorrect. The usual practice in the hospital is that the medicines and other medical equipments in the ICU will be used for the patients and later the materials used in the ICU for the patient has to be replaced. The hospital management has informed about this to the complainant about the usage of medicines and medical equipments for the complainant's mother and was asked to replace the same later. It is utter falsehood to allege that the complainant was sent out to get it on the night of 30-06-2021 itself.</p>
<p>25. The complainant states that the hospital staff continued to send him out for different reasons, the complainant was again asked to</p>	<p>25. The Opposite party submits that the averments stated are utterly false to say that the ICU staffs pressurized the complainant</p>

go and make payments for 4 different teats.	for various reasons to send him out.
26. The complainant states that the pharmacist Hospital at Tagore Medical College confirmed Vecuronium Bromide that was the not available in their pharmacy and must be procured from outside and ICU staff pressured him to get the same anyhow. The complainant, who had no clue about this medicine tried contacting all the nearby hospitals and three pharmacies overnight. Yet all his efforts went in vain.	26. The Opposite party submits that the averments stated are utterly false to say that the ICU staffs pressurized the complainant for various reasons to send him out. said medicine in the nearby pharmacy. The Opposite party would like to strongly indicate that the above mentioned medicine was already used for the patient in ICU and since it is an emergency life saving drug, the complainant was asked to procure the drug for replacement.
27. The complainant states that it was told by some pharmacists, that these particular medicines are not easily sold over the counter rather is usually kept at the hospitals for emergency usage, that too only in ICU.	27. The Opposite party submits that the averment said in this para is true from the complainant side that it will not be sold outside the hospital and it is used in case of emergencies.
28. The complainant states that after tremendous struggle, he did manage to get 5 vials of Vecuronium Bromide from Rasi Medicals inside Kathir Memorial Hospital, he was again given another prescription, which included getting another 20 vials of the same along with other medicines within 20 minutes.	28. <b>The Opposite party submits that the complainant went outside Tagore Medical College to get 5 vials from Rasi Medicals inside Kathir Memorial Hospital is not within the knowledge of them and another 20 vials of the same was again by the ICU staffs is a gigantic lie and that was needed within 20 minutes was a dramatized statements.</b> The Opposite party accepts that they asked the complainant to keep 20 vials as a reserve so that they can be used if necessary but the same was not asked to procure within 20 minutes.
29. The complainant states that the Pharmacist at the Tagore Medical College Hospital was surprised to see that the same medicine which is not complainant available	29. The Opposite party submits that it is false to state that pharmacist at Tagore Medical College Hospital was surprised to see that the same medicine which is not available in

<p>in their pharmacy in being repeatedly asked. The went back to the ICU and also to re confirm with the ICU doctor on the fact that does he really need 25 vials of the same for that night. The nurse came back with a confirmation that the said quantity is required as soon as possible in another 20 minutes and the vials should be given to her throughout the night. Left with no other option, the complainant again rushed to Kathir Memorial Hospital to get the said medicine.</p>	<p>the pharmacy is being repeatedly asked. In fact, there is no need for the complainant to go the pharmacy of Tagore Medical College Hospital to procure the same medicine, when he has already gone there and has knowledge that the said medicine was not available. Therefore, the complainant's allegation is concocted.</p>
<p>30. The complainant states that this time, he was told that any patient would not vials of require these many Vecuronium Bromide overnight and added that the Kathir Memorial Hospital refused to give the said vials to the complainant. Then he pleaded to them and they denied saying that they are out of stock.</p>	<p>30. The Opposite party submits that the there is no chance that complainant approaches the pharmacist in Tagore Medical Hospital as the complainant knows that vials were not available in the pharmacy of Tagore Medical Hospital</p>
<p>31. The complainant state that it was also given to understand that 25 vials of Vecuronium Bromide are not required to treat any patient overnight. The complainant states that even the pharmacists in Tagore Hospital was shocked to see the requirement of 20 vials of Vecuronium Bromide.</p>	<p>31. The Opposite party submits that the allegations are false and concocted. Since, the above mentioned drug was not available in the pharmacy of Tagore Medical Hospital, the complainant was asked to procure and keep the same for any emergency situations if arises.</p>
<p>32. The complainant states that he was called time and time again by the nurse and doctors from ICU to get medicine from their own pharmacy. In addition, the complainant was asked to bring the health insurance card and Aadhar card of his mother for a parallel process from his home.</p>	<p>32. The Opposite party submits that this is again a cooked up story, knowing that there is non-availability of the above said medicine in the pharmacy of Tagore Medical College Hospital, how can the nurse and doctors ask the complainant to procure the same from their own pharmacy? The allegation about bringing of Insurance card and Aadhar card of his mother from his home immediately for</p>

	<p>parallel process is again a fabricated one. The complainant was asked to bring the Insurance card and Aadhar Card on next day morning for processing claim and other than that no pressure was given to the complainant at any point of time during the treatment of his mother to bring the above said documents.</p>
<p>33. The complainant states that when he requested whether he could bring the insurance and aadhar cards in the morning and can pay right now as he was already doing at the pharmacy, they were asked to bring the same immediately.</p>	<p>33. The Opposite party submits that as stated in para no.32, the same answer can be adopted here as the allegations related in two paras are more or less one and the same.</p>
<p>34. The complainant further states that he paid Rs.19,415 (Rupees Nineteen thousand four hundred and fifteen only) for the medicines during 30-06-2021, whereas his friend had to pay Rs.2,022 (Rupees Two Thousand twenty-two only) and another Rs.15,000 (Rupees fifteen thousand) was collected from him on the next day (i.e., 01-07-2021). When the complainant asked why to pay at the Speciality ward, he was informed that, they forgot to complete the admission process on 30-06-2021.</p>	<p><b>34. The Opposite party submits that the complainant paid Rs.17,000/- towards medicine on 30-06- 2021 and another Rs.15,000/- was Collected on 01-07-2021 relates treatment given in the speciality ward prior to her shifting to ICU which was not asked for. The Opposite party also submits that the allegation about that the hospital management had forgotten to complete the admission process on 30-06-2021 is again a sheet of lies. It is to recapitulate that there was no lapses in completing the billing process for the complainant's mother. The Hospital Management did not force the complainant to pay the due while the treatment process was going on.</b></p>
<p>35. The Complainant states that the hospital continued to keep his mother in an unconscious state for the whole night and had not taken any effort to cure her properly.</p>	<p>35. The Opposite party submits that the complainant's mother was not given proper treatment and she was kept in unconscious state for whole night is nothing but blowing</p>

<p>They only told him that they are investigating and suspecting a stroke or heart problem but there was no cardiologist or neurologist who visited her for the next 3 days at the hospital, till 03-07-2021.</p>	<p>smoke of lies. The allegation that the complainant was told that they are investigating and suspecting a stroke or heart problem but there was no cardiologist or neurologist visited her for the next 3 days till 03-07-2021 morning is nothing but a lie through his teeth as the Cardiologist and Neuro- surgeon can be inferred from pg. no. 248 and pg. no.233 respectively in the Typed set of Papers) were attending the complainant's mother to save her life.</p> <p><b>Medical Negligence Onus to prove that there was negligence/deficiency in service was on "Complainant" - No allegations in complaint or evidence as to in which manner services rendered by opp. parties were lacking or deficient : Ghisa Ram -Vs- Dr.P.K.Bansal, 2004 (1) CPR 24 (Del-SCDRC).</b></p>
<p>36. The complainant states that he went to the ICU doctor to know who was the treating physician who caused the medical negligence to his mother and the hospital management refused to disclose the name of the doctor and said those are under investigation. One of the staff nurse was informed that Mrs.Sivagami was administered without the test dose since she knew the patient before while admitted for COVID. The complainant from thereon started sensing the medical negligence and requested the hospital to fix the same as the mistake was done by them.</p>	<p>36. The Opposite party submits that the complainant was very much available and interacting with doctors about his mother's condition. The allegation that one of the staff nurses at the reception in the speciality ward had admitted that the nurse who gave the injection informed that the complainant's mother was administered injection informed that the complainant's mother was administered without the test dose since she knew the timeline of treatment was nothing but a fish tale. The allegation that the complainant started sensing the medical negligence and requested the hospital to fix the same as the mistake was done from hospital side is absolutely false as there medical negligence. Was Medical negligence</p>

	<p>Importance of proving the negligence: <b>In cases of medical negligence, specific act of negligence has to be alleged and then proved and also as to show that amounts to negligence: K.S.Bhatia - Vs- Jeevan Hospital, 2003 (3) CPR 110 (NCDRC).</b></p>
<p>37.The complainant states that he wanted to know what exactly happened, in order to find a solution to cure his mother. Therefore, he wanted to meet the nurse who said that there was no test dose done. To his surprise, he was informed that she was on leave the next day. In specialty ward reception, nobody was aware of the name of the staff nurses who was on duty on the previous day at the specialty ward.</p>	<p>37. The Opposite party submits that the allegation made by the complainant was nothing but a sheet of lie as no nurse had informed that no test dose was administered to the patient and there was no enquiry about it by the complainant.</p>
<p>38.The complainant states that on 01-07-2021 night, he asked for a copy of the medical reports for a second opinion and Dr. Harish who was on duty refused to give the report and stated that report would be given only in the morning and he himself need to talk to the doctor over the phone with whom the second opinion will be sought.</p>	<p>The Opposite party submits that there is no need of refusal to give the report of the complainant's mother to get second opinion. In fact the complainant was provided with all the papers pertaining to the treatment of the complainant's mother at the time of discharge.</p>
<p>39. The complainant states that, the issue had escalated and become serious, he asked about the swelling, he was told that it was normal and due to the muscle arrest injection this is happening. Both the complainant and his brother [Mr.Subramanian who came from US on 02-07-2021] was asking about the reason being given as kept in sedation and muscle arrest for 3 days.</p>	<p>39. The Opposite party submits that the swelling was due to the muscle arrest injection was totally wrong and false. It is true that there was swelling in the foot of the complainant's mother and for which she was treated with iv.albumin infusion, limb elevation and compression stockings. There were no complaints from the complainant in this regard when the complainant's mother was treated in the Tagore Medical College Hospital. The complainant's mother had</p>



	swelling of foot due to bedridden condition and it was not as alleged.
40. The complainant further states that he was informed that the swelling was due to the muscle arrest i injection given to her. Dr.Gokul informed that it is because the albumin level is dropping down, and an injection will be given to stabilize the same.	40. The Opposite party submits that it is true that Dr.Gokul informed the complainant that it was because of the drop in the albumin level and an injection will be given to stabilize the same and accordingly iv.albumin infusion was given to the complainant's mother.
41. The complainant further states that Dr.Gokul advised the nurse to administer an injection to stabilize his mother's albumin level. However, the injection was not administered for more than 7 hours. However, the injection was administered later in the evening when Dr.Ganesh had taken the shift, that too after several followups.	41. The Opposite party submits that the allegations made against them are absolutely false. The Opposite party also submits that regular follow up by the doctors and nurses that can be revealed from the documentary evidence to show that albumin infusion was given in time as per the advice of the doctors.
42.The complainant states that on 02-07-2021 evening, the complainant had discussed with Dr.Gokul to understand the current health condition of his mother. The doctor explained by showing the ECG graph and CT scan that the complainant's mother has no cardiac issues nor brain stroke whatsoever. He also advised that she needs an EEG and MRI scan for her brain for further diagnosis to check for any blocks or brain damages.	The Opposite party submits that all the averments made by the complainant in para no.42 are wholly untrue and the complainant is trying to mislead and suppress the facts which are true in the case of complainant's mother.
43. The complainant states that there is no right person with the expertise t to operate the EEG and MRI scan machines and equipment at the s hospital. He also advised the " complainant to take her to SRM SIMS t hospital were Dr.Mahendran may help or any	The Opposite party submits that the allegations are false and baseless. The Opposite party also submits that they have qualified and well trained operators/ technicians who can operate the medical equipments. The patient was attended by

<p>other place where proper treatment and better care could be given to his mother as he was going on leave from the next day and cannot guarantee about other doctors coming in the forthcoming shifts.</p>	<p>specialists.</p>
<p>44. The complainant states that based on Dr.Gokul's advice and referral, and the unpreparedness hospital's to handle the emergency situation, lack of adequate skills, lack of emergency medicines and given wrong prognosis at different times, the complainant's mother was shifted to SRM SIMS and consulted an expert, named Dr. Mahendran During shifting, there was an enormous intentional delay and it seemed to be purposeful and focussing on getting the letters signed to cover up facts.</p>	<p>The Opposite party submits that Dr.Gokul never gave any such advice to the complainant and getting letters signed from the complainant is false. <b>When the complainant's mother was referred on requested to a higher care, the referral formalities were completed with utmost efficiency and the complainant came forward to settle the bills by way of cash in total for Rs.67,995/- (Rupees Sixty seven Thousand nine hundred and Ninety Five only).</b></p>
<p>45. The complainant states that at the time of discharge the hospital tried to get his signature stating that he brought his mother to the hospital with cardiac arrest in a hospital letter pad. The complainant refused to do so and he was given one page discharge summary and a letter in writing for his signature stating that the process of shifting was happening against the advice of the doctors.</p>	<p>45. The Opposite party submits that the allegations are absolutely false except that the shifting process was initiated against the advice of the doctors and the fact that complainant's the averment doesn't support any evidence to his complaint and those are concocted allegations.</p>
<p>46. The complainant stated that the reason for shifting his mother from the Tagore hospital to SIMS is due to the lack of the right expertise, deficiency in services and adequate facilities. To maintain an ICU, a hospital should have skilled experts to operate the equipment. After which, Dr.SivaKumar understood the fact and</p>	<p>46. The Opposite party submits that the discharge of complainant's mother was on the insistence of the complainant even after explaining the risk of the transportation since the patient was unconscious at the time of discharge. The further allegation about the lack of right expertise and adequate facilities to maintain the ICU, EEG and MRI scan</p>

<p>agreed that the shifting was based on the referral and corrected the facts indicating the lack of skills at the hospital to handle the case.</p>	<p>machines are false and baseless. The Opposite party further submits that the complainant never raised the above issues either during the treatment or at the time of discharge of his mother and there was no such advice or reference from Dr.Gokul. All the above said allegations are imaginary and lack proof. Medical Negligence <b>No expert evidence to prove negligence on the part of opposite parties No deficiency in service in treating the patient: [Mrs. Kiran Bala Rout -Vs- Christian Medical College and Hospital, 2003 CCJ 257 = 2003 (1) CPR 238 (NCDRC)].</b></p>
<p>47. The complainant states that the suppression of facts from the hospital management is so apparent, and it is clearly evident that the hospital try to cover up all the medical negligence that took place.</p>	<p>47. The Opposite party submits that all the leveled up allegations are false and lacks basement of evidence as those are frivolous statements made for the case. Medical negligence <b>No Medical negligence if the doctors who treated the patient where qualified persons : Rani Devi -Vs- Dr.S.R.Agarwal, (2002) (2) CPR 174 (NCDRC).</b></p>
<p>48. The complainant states that the 20 vials of Vecuronium Bromide which he got for the 2nd time on 30. 06-2021 were not all used and at the time of discharge, 15 out of 20 vials of the same were returned to him, stating that it was not required.</p>	<p>48. The Opposite party submits that the complainant was asked to buy only 5 vials of vecuronium bromide for the night in case of any emergency as a safety measure. But, an additional 15 vials of Vecuronium bromide bought by the complainant on the same day night itself was not within our knowledge and the hospital management has not pressurized the complainant to get it overnight for the treatment, in case of any necessity they can be used for treating the complainant's mother.</p>

<p>49. The complainant states that on 02-07-2021 night, the complainant requested the duty doctor Ganesh to keep the discharge records ready and close all the discharge formalities to enable him to complete the discharge procedure on time without any delay. The hospital was lethargic to provide any proper reports of the patient even after ambulance had arrived at 8.50 AM on 03-07-2021. However, the hospital was also delaying stating insurance process, report readiness etc.</p>	<p>49. The Opposite party submits that the mentioned allegation against them lacks with evidence and proof. The real facts are that the complainant informed to the staff nurse the he wants to take his mother to a higher centre on 03-07- 2021 @ 10.30 AM and this was informed to Dr.Sivakumar, billing and insurance departments. Then without any delay in timeline @ 11 AM on the same day the complainant's mother was shifted to outside hospital as premeditated by the complainant. Medical negligence Proof: <b>incumbent upon complainant to prove negligence on the part of opposite party: Savitri Singh -Vs- Dr.Ranbir Pd. Singh, I (2004) CPJ 25 (Bihar- SCDRC).</b></p>
<p>50. The complainant states that the person who is incharge of the 1 insurance desk came late to duty and other staff told that the insurance 1 approval takes its own time and while SRM SIMS hospital ambulance has already arrived based on the confirmation from Dr. Sivakumar.</p>	<p>50. The Opposite party submits that the averments are false and fabricated. The complainant settled the bills of the hospital by way of cash as per his convenience and not due to the reasons alleged. The discharge was insisted by the complainant only on the morning of 03-07-2021 and the formalities were swiftly completed and the complainant's mother was discharged against the advice of the doctor's @ 11 AM on the same day itself.</p>
<p>51.The complainant states that it! was evident that the hospital t was delaying the process 1 intentionally by citing different reasons such as report readiness, insurance process etc. complainant was given only a one page bill summary and asked for the complete breakup, the hospital said to come back and collect if any discrepancies or they can email it to the complainant. The hospital gave only ECG Report, CT Scan report and</p>	<p>51. The Opposite party submits that the allegations that the hospital management took time to complete the procedure for delivering the reports with intentional motive is absolutely false one and all the reports pertaining to the treatment of complainant's mother were delivered at the time of discharge. The complainant is wantonly suppressing the facts in order to gain undue advantage. The discharge summary and</p>

<p>a one page discharge summary to the complainant only at 10.55 AM on 03. 07-2021.</p>	<p>investigation reports were handed over at the time of discharge covers all the details regarding treatment given at the hospital.</p>
<p>52. The complainant stated that he was approached by different people prompting for his signature in different letters including a white paper, which is not even a hospital letter pad. When he asked the reason, he was told that it is to fill his details to contact him, and he can write the reason as he finds appropriate.</p>	<p>52. The Opposite party submits that the allegation that the complainant was approached by different persons for getting his signature are not only false but those are fabricated tale to disrepute the hospital and gain out of it.</p>
<p><b>53. The complainant states that the hospital has withheld the complete medical records and bills breakup details despite several followups untill 08-12-2021. At the time of discharge, the hospital gave a one-page bill summary with lot of discrepancies. However, the hospital has not shared the complete medical reports and detailed breakup of the bills despite severl followups untill the direction of the Tamilnadu Medical Council.</b></p>	<p>53. The Opposite party submits that all reports were delivered to the complainant and there are no OPD notes with the hospital and it is only with the patient. Normally IP notes are available and retained in the hospital which on requisition in writing only will be given to the complainant (i.e., patient or patient's attender).</p>
<p><b>54. The complainant further states that he had filed a formal complaint to Tamilnadu Medical Council on 16- 07-2021 and subsequently submitted the details as requested and was asked to appear for an inperson enquiry on 01-12-2021 by the Tamilnadu Medical Council, Chennai.</b></p>	<p>54. The Opposite party submits that the reports were delivered to the complainant and the complainant didn't request for IP notes in writing till he files complaint to the Tamil Nadu Medical Council and the opposite party further submits that the complainant went to Tamil Nadu Medical Council for the records was not within their knowledge.</p>
<p>55. The complainant states that the complainant's mother fell in the restroom was misleading information. When the staff</p>	<p>The Opposite party submits that the allegation that the patient fell in the restroom which was informed by staff nurses to the</p>

<p>nurses were asked about how long she had been laying in the restroom after falling down, and why the hospital management didn't fix the slippery floor in the restroom, that too in a specialty ward. The treating staff in the special ward delivered the truth that, she had not fallen in the rest room and she was administered an antibiotic drug only after which she fell unconscious in the bed.</p>	<p>complainant is nothing but the heights of imagination. As stated above, the unconsciousness of the patient was due to the anaphylactic shock and nothing else.</p>
<p>56. The complainant further states that he saw an ink impression on the thumb in his mother's right hand in the ICU and when questioning the doctors about the same, the doctors had no idea about it. There were no updates regarding the same, despite several enquiries.</p>	<p>56. The Opposite party submits that allegation that the complainant has seen ink impression on the thumb of his mother and he questioned the doctors about the same is nothing but a figment of imaginations</p>
<p>57. The complainant states that in addition to this, neither a permission slip nor an intimation were given to the complainant, with regard to any antibiotic injection or an allergy test to be performed on his mother. Untill 6.15 PM, the only pain she did mention was due to the injection which resulted in taking out a lot of blood for the tests, causing her the pain in the injected area.</p>	<p>57. The Opposite party submits that it is a routine practice that if the complainant's mother or the complainant does not give any history of allergies can be proved vide OP card in pg no.3 in the Typed Set of Papers of the complainant), there no requirement to get consent from the complainant's mother or complainant for administering antibiotic on the complainant's mother. It is a protocol to administer test dose to the patient and observe the patient for 15 minutes to look out for any reaction. In this case, the complainant's mother was administered with test dose at 5.20 PM on 30-06-2021 and the remaining dose of Ceftriaxone was administered to the patient at 5.50PM after review by duty doctors at 5.45 PM and the above timeline is very well available in the treatment records of the complainant's mother. The timeline recorded for the</p>

	treatment of the complainant's mother would falsify the complainant's allegation that no injection was administered till 6.15PM.
<p>58. The complainant states that on various occasions he was sent out of the hospital on purpose and was not allowed to be with his mother at night. At a point of time, he was informed by the pharmacist, that a patient's attender need not pay during the treatment as she is admitted as an inpatient in specialty ward, they can pay at the time of settling the bills.</p>	<p>The Opposite party submits that the allegations regarding the payment of bill mentioned by the complainant are false. Only during emergency resuscitation i.e. on 30-06-2021 night, the complainant was asked to replace the drugs used since it is emergency drug which might be required for upcoming patients and subsequently at no time the complainant was asked to pay for the drugs. In respect of the drugs used for the complainant's mother, the complainant was asked to settle the bill only at the time of discharge. The complainant volunteered to assist and he was very cooperative and helpful to the discharge of the patient. After a month of discharge of complainant's mother from the hospital, the complainant has turned topsy-turvy.</p>
<p>59. The complainant states that the hospital did not have the required medicines readily available for the treatment. Moreover, the patient's attenders were pressurized to make all arrangements for the medicines which were not available at the hospital.</p>	<p>59. The Opposite party submits that the Vecuronium bromide was very much available in the ICU and the same was administered to the complainant's mother. The complainant was asked to procure the said medicine only to replace the medicine used for the complainant's mother from the ICU stock. It is true that the said medicine was out of stock in the pharmacy attached to the hospital. The complainant was asked to procure 20 vials of the said medicine by way of abundant caution to avoid any shortage during the treatment of the complainant's mother. At no point of time, the complainant was pressurized to procure the above</p>

	medicine that too on the same night itself.
60. The complainant states that the hospital was not equipped with properly trained nurses and senior doctors for in the treating a patient ICU. The complainant had to followup multiple times with the nurses and staffs for something as simple as an ice pack. Moreover, there was no senior doctors to attend the patient in critical care.	60. The Opposite party submits that the hospital has been equipped with high standard of medical equipment, qualified and specially trained professionals round the clock. Dr.Sivakumar, Dr.Gokul and Dr Rafson, who are all well qualified anesthetists and are specially skilled and trained to handle ICU and they were in-charge of the ICU on shift basis All other allegations are motivated to tarnish the image of the hospital
61. The complainant states that no admin/manager or a senior consultant/chief doctor visited the complainant's mother. Even after 3 days and knowing that the complainant's mother's brain was affected, the hospital failed to take any effort to perform the EEG and MRI tests.	The Opposite party submits that the complainant's allegations are false and frivolous as the complainant's mother was treated by seniors and specialist. These doctors were assisted by duty doctors and house surgeons and the specialist doctors in all branches of medicine available in the hospital monitor each and every patient as per the requirement and advice the duty doctors accordingly. All other allegations are motivated to tarnish the image of the hospital.
62. The complainant further states that the hospital had kept his mother in a sedative state for whole 3 days and had given wrong prognosis about her condition. However only at the time of shifting, the complainant gained knowledge that the complainant's mother was purposefully kept on a sedative state for all 3 days through one Dr.Sivakumar.	62. The Opposite party submits that the entire averments are false and baseless as there are medical reports of the complainant's mother that proves that when and how she was taken care of and the medication given to her by the hospital management from the time of admission till discharge.
63. The complainant further states that his mother's admission process was not completed properly by the hospital and	63. The Opposite party submits that the allegation mentioned in this para is again false, repetitive and the same has been



<p>details were not collected properly from the hospital on record on 30-06-2021. When asked about the same he was told that the reception admin would have forgotten to add up the admission details.</p>	<p>counted in the previous paragraphs.</p>
<p>64. The complainant states that for 3 whole days, he was misled by the doctors of the hospital that the Cardiologist were on their way to treat his mother. However, the complainant was informed by Dr.Gokul that there was no cardiologist required for his mother's ailment as she has no problem with her heart and neither with her brain based on the brain scan, CT scan, and moreover, two doctors were in quarantine and cardiologist shall check the ECG remotely over a whasapp and confirmed that there was no cardiologist available with the hospital for those 3 days.</p>	<p>64. The Opposite party submits that the averments are false and as explained in previous paragraphs the Cardiologist was attending the complainant's mother and as per his advice ECG was taken repeatedly and he was monitoring the patient closely.</p>
<p>65.The complainant states that at present his mother is being treated at SRM SIMS hospital and the hospital has diagnosed her with Ischemic Hypoxia Encephalopathy [brain dysfunction that occurs when brain doesn't receive enough oxygen] with irreversible brain damage, which requires long-term medical care and support care. Due to the medical negligence by the staff hospital. doctors and hospital, its in the</p>	<p>65. The Opposite party submits that <b>the present status of the complaint's mother is not within our knowledge as the complaint's mother was referred on request from our hospital on 03-07- 2021 @ 11 AM.</b></p>
<p><b>66. The complainant states that in SRM SIMS, the expenses for his mother treatment had amounted to Rs. 13,12,676 for the complainant's mother's treatment and they were not sure how long they</b></p>	<p>The Opposite party submits that the amount alleged to have been spent at SRM SIIMS is not within our knowledge.</p>

need to take care of her in special home.	
67. The complainant states that in addition to the above, he also had to spent 24*7 bed side nurse care, daily physiotherapist fee, one time medical equipment and ongoing monthly fee has costed them Rs.24,25,820/-.	67. The Opposite party submits that they were extremely dejected to hear the condition of the complainant's mother which is most unfortunate, but, for the reasons mentioned above neither our doctors, staffs nor our hospital could be held liable or responsible for the same as there was no negligence on our part.
68. The complainant further states that his mother Mrs.Sivagami and his father Arunamoorthy had a dream and plan to settle down in Canada after settling both his sons.The entire family's future has turned upside down by the negligence caused by the Tagore Medical College and Hospital.	68. The Opposite party submits that they extremely felt bad for the present state of the complainant's mother but the hospital management gave fair and required treatment to the complainant's mother and there was no medical negligence caused from the part of the hospital side.
69. The complainant states that, the plans were on and everything was kept ready for his father and mother to live and lead their dream life. All this has now totally been destroyed by the medical negligence exhibited by Tagore Medical College & Hospital.	69. The Opposite party submits that the mentioned allegations are not within our knowledge and thus <b>they cannot be held responsible for medical negligence as they have provided proper medical treatment to the complainant's mother as prescribed by the medical practice.</b>
70. The complainant further states that it has also impaced the personal life of all the family members mental peace and life quality in a disastrous way.	70. The Opposite party submits that the said averment was not within their knowledge and the alleged hurt caused to the complainant's family was not due to the medical negligence of the doctors as they have taken utmost care of the complainant's mother.

4. In order to prove the case, proof affidavits and additional proof affidavits have been filed by both parties as their evidence and Ex.A1 to Ex.A38 & Ex.B1 to Ex.B8

were marked. Written arguments of both sides filed. Oral arguments of both parties heard.

**5. At this juncture, the point for consideration before this Commission are:-**

1. Whether there is any specific allegation of medical negligence in the complaint?
2. Whether conduct of the doctors of the Opposite parties fell below that of the standards of a reasonably competent practitioner in his field.
3. The burden of proof lies with the complainant or opposite party?
4. Whether the complainant is entitled to the relief sought for?
5. To what other reliefs?

**6. Point No.1 to 5 :-** Heard Both sides. Considered the documents available on records. The complainant had filed Ex.A1 to Ex.A38 and the Opposite parties had filed Ex.B1 to Ex.B8.

6.1 According to the complainant complainant's counsel, the complainant's mother had approached the Opposite party hospital with giddiness, urinary infection and burning sensation in foot on 25.6.2021. The Opposite party hospital has taken blood and urine samples for test on 26.6.2021. The Opposite party advised complainant's mother to come on 30.6.2021 for collecting the reports and accordingly on 30.6.2021, the complainant and his mother went to collect the reports. At that point of time, the Opposite party hospital advised the complainant's mother to get admitted as if the sugar level was high. The patient was admitted at 1.40 PM on 30.6.2021. According to complainant, till 6.00 PM on 30.6.2021, his mother was alright, and at about 6.00 PM, he went to have a cup of tea. In the meantime, the Opposite party administered Xone an anti-biotic (steroid) without test dose and consequently, the complainant's mother had lost consciousness and shifted to ICU. The Complainant and his family were shocked and there was no improvement in the condition of his mother. The complainant

was made to run pillar to post for procuring 25 vials of vecuronium bromide and among 25 vials of vecuronium bromide 15 has been returned. But there was no doctors order nor nursing record nor drug chart for administering the same to complainant's mother. According to the complainant, the Opposite party refused to provide any medical records and after much struggle the complainant was able to get the single sheet discharge summary and single sheet bill without any break up on 03.07.2021. The medical records pertaining to his mother were furnished only at the direction of the Tamilnadu Medical Council on 8.12.2021. Therefore the entire medical records furnished to the complainant was rewritten to suit the case and not actual medical records. A comparison of Ex.B2 with Ex.B3 to 8 would expose the manipulation in Medical records.

- 6.2 The counsel for complainant further contended that the complainant saw an ink impression on the thumb in his mother's right hand in the ICU and when he questioned the doctors of opposite party about the same, the doctors had no idea about it. There were no updates regarding the same, despite several enquiries. The complainant states that no admin/manager or a senior consultant/chief doctor visited the complainant's mother. Even after 3 days and knowing that the complainant's mother's brain was affected, the hospital failed to take any effort to perform the EEG and MRI tests.
- 6.3 The counsel for the complainant also contended that from 03.07.2021 his mother was being treated at SRM SIMS hospital and the hospital has diagnosed her with **Ischemic Hypoxia Encephalopathy [brain dysfunction that occurs when brain doesn't receive enough oxygen]** with irreversible brain damage, which requires long-term medical care and support care. It is due to the medical negligence by the staff and doctors of opposite party hospital. The complainant states that in SRM SIMS, the expenses for his mother's treatment had amounted

to Rs.13,12,676/- and they were not sure how long they need to take care of her in special home. The complainant states that in addition to the above, he also had to spent 24 x 7 bed side nurse care, daily physiotherapist fee, one time medical equipment and ongoing monthly fee has costed them Rs.24,25,820/-.

6.4 According to the complainant's counsel, among bacteria causing UTI, E. coli is considered as the most predominant cause of UTIs. The complainant's counsel further contended that according to accepted medical practice, Antibiotics commonly recommended for treatment of UTIs include co-trimoxazole (trimethoprim/sulfamethoxazole), nitrofurantoin, ciprofloxacin and ampicillin. While facts being so, the doctors in the opposite party hospital administered Xone, that too without test dose. Oral options for treating UTIs due to E-coli include **nitrofurantoin, fosfomycin, pivmecillinam, amoxicillin-clavulanate, finafloxacin, and sitafloxacin.**

6.5 The counsel for complainant further contended that the Opposite parties in para 4 of their response to complaint averments contended that E.Coli was sensitive and drug resistant. But, the medical records prove that the Opposite parties come to such conclusion, without any medical / clinical / blood / urine report, test report and without trying any empirical treatment. Without administering any drugs to heal the infection, the opposite party cannot conclude that the E.Coli infected the patient was drug resistant. Such act of opposite party prescribing Ceftriaxone, a steroidal antibiotic which can be prescribed only after ensuring that other antibiotics did not subsidise the infection, or there was no response to 1<sup>st</sup> line antibiotics.

6.6 The counsel for the complainant contended that the complainant made a complaint to Tamilnadu Medical Council which is still pending, except an interim direction to the opposite party hospital to furnish the medical records pertaining

to the complainant's mother. Ex.A21, the enquiry report of Joint Director Public Health Kanchipuram District would expose that the Opposite party has not sent any Medical records to the complainant till 8.12.2021. Ex.A21 would further corroborate that the enquiry officer had recorded the statement of one Doctor Balaji and passed a one line order. Ex.A21 would prove that the enquiry officer has not even perused the clinical records pertaining to the complainant's mother. Above said facts would prove that the conduct of opposite parties fell below that of the standards of a reasonably competent medical practitioner in his field.

- 7.1 The Counsel for opposite party contended that the complainant's mother Mrs. Sivagami and the complainant visited the hospital on 25-06-2021, complaining about burning sensation while passing urine. She was treated as Out-Patient (OP) and was advised to give urine sample for culture and sensitivity test, at the opposite party hospital. The blood test and urine culture test were taken on 26.06.2021 and the lab technician informed the complainant and his mother to collect the report on 30-06-2021 for both blood and urine culture and sensitivity test [test that can identify the antibiotic most likely to kill those particular bacteria) as the test requires time for observing the bacterial growth. The test report is marked as Ex- B6 & B8. The test report revealed Urinary Tract Infection (UTI) and the causative bacteria was Escherichia coli (E.coli). The test report also indicates sensitive and resistive drugs to the above bacteria and the sugar level was very high i.e. 439 (Biological range is 80-120 mg/dl). The complainant's mother was advised for admission and after fulfilling the formalities, she was admitted in the hospital on 30-06-2021 at 1.40 PM in General Medicine Faculty by Dr. Balaji..M.D., Later, the complainant's mother was received in Speciality Ward by Dr. Thenmozhi on the same day @ 2.00 PM. The doctors order admitting Complainant's mother on 30.6.2021 is marked as Ex-B3. The

Complainant's mother was diagnosed with giddiness and feet burning sensation. After admitting the complainant's mother in speciality ward, blood samples was taken from her for further testing.

7.2 The learned Counsel further contended that on 30-06-2021 @5.20 PM, a test dose of Inj.Ceftriaxone was administered to complainant's mother, to ascertain whether she was allergic to the said drug or not. As per the accepted medical practice/procedure, the patient was observed for allergic symptoms for the above medicine for more than 15 minutes. Since the patient did not show any allergic symptoms for the above said drug, at 5.45 PM, complainant's mother was again reviewed. After checking her vitals and the vitals of patient were stable, she was administered with the remaining quantity of the above said drug, Cetriaxone. The same has been recorded in the Doctor's orders, subsequent she became semi-conscious and disoriented at 5.55 PM itself.

7.3 The counsel for Opposite party also contended that the complainant went outside Tagore Medical College to get 5 vials from Rasi Medicals which inside Kathir Memorial Hospital is not within the knowledge of them and another 20 vials of the same was again prescribed by the ICU staffs is a gigantic lie and that was needed within 20 minutes was a dramatized statements. It is admitted by the counsel that the complainant paid Rs.17,000/- towards medicine on 30-06- 2021 and another Rs.15,000/- was Collected on 01-07-2021 relating to treatment given in the speciality ward prior to her shifting to ICU which was not asked for. The Opposite party also submits that the allegation about that the hospital management had forgotten to complete the admission process on 30-06-2021 is again a sheet of lies. The counsel contended that there was no lapses in completing the billing process for the complainant's mother. The Hospital

Management did not force the complainant to pay the due while the treatment process was going on.

- 7.4 The counsel for opposite party submitted that there was no need of refusal to give the report of the complainant's mother to get second opinion. In fact the complainant was provided with all the papers pertaining to the treatment of the complainant's mother at the time of discharge. It is true that there was swelling in the foot of the complainant's mother and for which she was treated with iv.albumin infusion, limb elevation and compression stockings. There were no complaints from the complainant in this regard when the complainant's mother was treated in the Tagore Medical College Hospital, that is the opposite party herein.
- 7.5 It was also contended by the counsel that When the complainant's mother was referred on request to a higher care, the referral formalities were completed with utmost efficiency and the complainant came forward to settle the bills by way of cash in total for Rs.67,995/- (Rupees Sixty seven Thousand nine hundred and Ninety Five only). (i.e., patient or patient's attender). The Opposite party submits that the reports were delivered to the complainant. The counsel for Opposite party also contended that the present status of the complaint's mother is not within our knowledge as the complaint's mother was referred on request from our hospital on 03-07- 2021 @ 11 AM. They cannot be held responsible for medical negligence as they have provided proper medical treatment to the complainant's mother as prescribed by the medical practice.
- 7.6 The counsel for opposite party further contended that as long as a doctor acts in a manner which is acceptable to the medical profession and the court finds that he has attended on the patient or suffers a permanent ailment, it would be difficult to hold the doctor to be guilty of negligence as held in Achutrao Haribhau



Khodwa -Vs- State of Maharashtra, 1996 ACJ 505 (SC) = AIR 1996 SC 2377] and [Vinitha Ashok - Vs- Lakshmi Hospital, AIR 2001 SC 3218].

- 7.7 Counsel for opposite party also contended that Negligence must be established and not presumed as held in Kanhaiya Kumar Singh -Vs- Park Medicare and Research Centre, 2000 CCJ 249 (NCDRC).
- 7.8 The counsel for Opposite party further contended that in Medical Negligence, Onus to prove that there was negligence/deficiency in service was on "Complainant" - as held in Ghisa Ram -Vs- Dr.P.K.Bansal, 2004 (1) CPR 24 (Del- SCDRC).
- 7.9 It was contended by the counsel that in cases of medical negligence, specific act of negligence has to be alleged and then proved and also as to show that amounts to negligence as held in K.S.Bhatia - Vs- Jeevan Hospital, 2003 (3) CPR 110 (NCDRC).

It was further contended that the complainant filed No expert evidence to prove negligence on the part of opposite parties. There fore there is no deficiency in service in treating the patient as held in Mrs. Kiran Bala Rout -Vs- Christian Medical College and Hospital, 2003 CCJ 257 = 2003 (1) CPR 238 (NCDRC)].

The counsel for opposite party also relied on the following authorities in support of his above contention:

1. 2022 SCC (SC) 481 Dr.(Mrs.) Chanda Rani Akhouri and Ors Vs. Dr.M.A. Methusethupathi and Ors.
2. 2010 (2) CTC 461 (SC) C.A.No.1385/2001 dt.10.02.2010 Kusum Sharma & Ors. Vs. Batra Hospital & Medical Research Centre & Ors.
3. (2024) 3 Supreme Court Cases 37, Kalyani Rajan Vs. Indraprastha Apollo Hospital and Ors.

4. (2019) 2 Supreme Court Cases 282, S.K. Jhunjhunwala Vs. Dhanwanti Kaur and Anr.
5. (2021) 10 Supreme Court Cases 291, Dr.Harish Kumar Khurana Vs. Joginder Singh and Ors.
6. (2024) 2 Supreme Court Cases 242, M.A. Biviji Vs. Sunita and Ors.
7. 2003 1 CLT(NC) 203; 2003 2 CPC(NC) 17 ; 2022 2 CPJ(NC) 131; 2003 1 CPR(NC) 238, Kiran Bala Rout Vs. Christian Medical College and Hospital.
8. 2002 3 CLT(NC) 178; 2002 2 CPC(NC) 463; 2002 3 CPJ(NC) 136; 2002 2 CPR(NC) 174, Rani Devi Vs. S.R. Agarwal.
9. 2003 2 CPC (NC) 523; 2003 4 CPJ (NC) 9; 2003 3 CPR (NC) 110, K.S.Bhatia Vs. Jeevan Hospital.

## ANALYSIS

- 8.1 A three judge Bench of the Apex Court in **Dr Laxman Balkrishna Joshi v Dr Trimbak Bapu Godbole(AIR 1969 SC 128)** stipulated that the standard to be applied by a medical practitioner must be of a “reasonable degree of care”:

*“11. The duties which a doctor owes to his patient are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties viz. a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient. The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a*

*very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires (cf. Halsbury's Laws of England 3rd Edn. Vol. 26 p. 17)."*

8.2 In **Jacob Mathew v State of Punjab((2005) 6 SCC 1)** , a three judge Bench of the Apex Court upheld the standard of the ordinary competent medical practitioner exercising an ordinary degree of professional skill, as enunciated in Bolam (supra). The Apex Court held that the standard of care must be in accordance with "general and approved practice":

*"24. The classical statement of law in Bolam has been widely accepted as decisive of the standard of care required both of professional men generally and medical practitioners in particular. It has been invariably cited with approval before the courts in India and applied as a touchstone to test the pleas of medical negligence. In tort, it is enough for the defendant to show that the standard of care and the skill attained was that of the ordinary competent medical practitioner exercising an ordinary degree of professional skill. The fact that a defendant charged with negligence acted in accord with the general and approved practice is enough to clear him of the charge. Two things are pertinent to be noted. Firstly, the standard of care, when assessing the practice as adopted, is judged in the light of knowledge available at the time (of the incident), and not at the date of trial. Secondly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that point of time on which it is suggested as should have been used."*

8.3 A three judge Bench of the Apex Court in **State of Punjab v Shiv Ram((2005) 7 SCC 1)** and in **Nizam's Institute of Medical Sciences v Prasanth S Dhananka ((2009) 6 SCC 1)** affirmed the judgement in Jacob Matthew.

8.4 A two judge bench of the Apex Court in **Martin F D'Souza v Mohd. Ishfaq((2009) 3 SCC 1 )** held thus:

*“37. The standard of care has to be judged in the light of knowledge available at the time of the incident and not at the date of the trial. Also, where the charge of negligence is of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that point of time.”*

8.5 A two judge Bench of the Apex Court in **Kusum Sharma (2010 (3) SCC 480)** laid down guidelines to govern cases of medical negligence. Justice Dalveer Bhandari, speaking for the Court, held:

*“89. On scrutiny of the leading cases of medical negligence both in our country and other countries specially the United Kingdom, some basic principles emerge in dealing with the cases of medical negligence. While deciding whether the medical professional is guilty of medical negligence following well-known principles must be kept in view:*

- I. Negligence is the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.*
- II. Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.*
- III. The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.*
- IV. A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.*

- V. *In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of other professional doctor.*
- VI. *The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence.*
- VII. *Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.*
- VIII. *It would not be conducive to the efficiency of the medical profession if no doctor could administer medicine without a halter round his neck.*
- IX. *It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessarily harassed or humiliated so that they can perform their professional duties without fear and apprehension.*
- X. *The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurising the medical professionals/hospitals, particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.*
- XI. *The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the*

*patients. The interest and welfare of the patients have to be paramount for the medical professionals.*

*90. In our considered view, the aforementioned principles must be kept in view while deciding the cases of medical negligence. We should not be understood to have held that doctors can never be prosecuted for medical negligence. As long as the doctors have performed their duties and exercised an ordinary degree of professional skill and competence, they cannot be held guilty of medical negligence. It is imperative that the doctors must be able to perform their professional duties with free mind.”*

8.6 In the practice of medicine, there could be varying approaches to treatment. There can be a genuine difference of opinion. However, while adopting a course of treatment, the medical professional must ensure that it is not unreasonable. The threshold to prove unreasonableness is set with due regard to the risks associated with medical treatment and the conditions under which medical professionals function. This is to avoid a situation where doctors resort to ‘defensive medicine’ to avoid claims of negligence, often to the detriment of the patient. Hence, in a specific case where unreasonableness in professional conduct has been proven with regard to the circumstances of that case, a professional cannot escape liability for medical evidence merely by relying on a body of professional opinion. In the present case Ex.A21 is expert opinion.

9.1 A bare reading of the complaint reveals that the complainant made specific allegation that the Opposite parties administered Xone an antibiotic without test dose. The Opposite Parties did not furnish medical records pertaining to complainant’s mother except a single sheet discharge summary at the time of discharge on 30.07.2021. Ex-A2 is the single sheet discharge summary

furnished to the complainant on 3.7.2021. Ex-A29 is the copy of the discharge summary provided as part and parcel of medical records provided on 08.12.2021, at the direction of TNML. Ex.A29 consists of 4 pages, including the discharge summary furnished to the complainant on 30.07.2021. (The doctor's order, drug chart, consultation request). A bare reading of both would prove that both Ex.A2 & Ex.A24 are written in two different manners and the contents are also different. The Counsel for the opposite party admitted that the discharge summary (Ex.A29) furnished to the complainant in response to the direction of the Medical Council was rewritten for the said purpose. The opposite party's counsel however, submitted that the contents of both discharge summaries are one and the same. But, a bare reading of Ex.A2 & Ex.A29 would prove the contrary. Hence, it is proved that the Medical records were made/rewritten for the purpose of the case.

9.2 It is pertinent to compare Ex-B2, the clinical records furnished by the Opposite party hospital, when the patient was admitted as an inpatient for COVID -19 (treatment between 18.4.2021 and 3.5.2021) with the clinical records provided in this case (Ex.B3 to Ex.B8). Ex.B2 contains 62 pages. Ex.B2 consists of a receipt for RT-PCR test taken on 15.04.2021 at the preadmission stage. In the present case, the Opposite party's counsel contended that the Outpatient test reports will not be available with the Hospital. Therefore, the contention of the opposite party has no merit because the Epidemiological case sheet consists of (page 5 to 8) of Ex.B2. The inpatient record pertaining to Covid-19 treatment is also a running sheet from page 9 to 18 of Ex-B2. The inpatient record of the complainant's mother pertaining to the present case is not furnished by the opposite party for the reasons best known to them. The drug chart in Ex-B2 is also a running record from page 19 to 22 and page 31 to 34 from 19.4.2021 to 03.05.2021. The opposite

parties filed Ex.B7 as the Drug chart pertaining to the present case. Ex.B7 prove that no drug was administered to the complainant's mother between 30.6.2021 and 03.07.2021 except the antibiotic Xone .The doctor's order is in page 23 to 26 and page 35 to 40 of Ex.B2 and again the doctor's order in Ex.B2 is also a running record. But the Doctor's order pertaining to the present case is marked as Ex.B3. Ex.B3 contains nothing but the recording of one Dr.Thenmozhi between 2.00 PM and 5.55 PM of 30.06.2021. Ex.B3 does not reveal the treatment given to the patient between 6.00 P.M. on 30.06.2021 and till her discharge. Therefore, Ex.B3 prove that it had been made for the purpose of this case. Page 27 of Ex B2 is the initial assessment –Nursing in respect of Covid-19 treatment given to complainant's mother between 18.4.2021 and 03.05.2021. The opposite party failed to file the Initial assessment –Nursing pertaining to the present case, for the reasons best known to them. Thus, there is merit in the contention of the complainant's counsel that the medical/clinical records were not furnished to the complainant at the time of discharge. The Opposite parties also failed to file any documents to prove that the clinical/medical records were furnished to the complainant at the time of discharge, or when the same was demanded by the complainant for obtaining second opinion. A comparison of Ex.B2 with Ex.B3, Ex.B4, Ex.B5 & Ex.B7 would prove that Ex.B3, and Ex.B8 are made for the purpose of this case.

- 9.3 The counsel for complainant contended that the hon'ble Apex Court in V. Kishan Rao v Nikhil Super Speciality Hospital & Anr.( [2010] 5 SCR 1) held that "In a case where negligence is evident, the principle of Res Ipsa Loquitur operates and the complainant does not have to prove anything as the thing (res) proves itself". In such a case it is for the respondent to prove that he has taken care and done his duty to repel the charge of negligence." Therefore the initial



burden of prove has been established by the complainant. Now it is for the Opposite parties to prove that the Opposite parties have taken care of and done their duty to repel the charge of negligence.

9.4 The Opposite party contended that a reading of Ex B6 (sugar test report) dated 30.6.2021 would reveal that blood sample was taken on 27.6.2021. According to Ex- B6, the sugar before food ( fasting Plasma Glucose ) was 220. Actually it should be in the range of 70 to 100. The sugar after food ( 2 hours post prandial plasma Glucose) was 496 which should be in the range of 80 to 140. Like wise a reading of Ex –B8 (urine culture report) dated 30.06.2021 would reveal that urine samples were taken on 27.6.2021 and the Urinary infection was due to E-Coli ( bacteria). The case was sensitive and drug resistant. It is pertinent to record that this commission could not read both Ex-B6 and B8. However the above data was orally submitted by the counsel for opposite party. It is admitted fact that the blood and urine samples were taken on 26.06.2021. Both Ex.B6 & Ex.B8 were not related samples taken on 26.06.2021. Ex.B6 is the report of alleged sample allegedly taken on 30.06.2021. Ex.B8 is the report of alleged sample taken on 27.06.2021. But, on 27.06.2021 the patient did not attend the hospital.

9.5 It is an admitted fact that the patient has given samples of urine and blood on 26.06.2021. If the patient had reported the hospital on 30.06.2021 and if the blood sample was taken again on 30.06.2021 as alleged in para 4 of response to complainant averments, it is the opposite party who should prove on whose prescription, the blood sample (ex.B6) was taken on 30.06.2021 at about 11.46 A.M. Ex.B6 as such would prove that the blood sample was collected on 30.06.2021 at about 11.46 AM and test report was ready at about 11.58 AM itself on 30.06.2021. According to the complainant, blood and urine samples were taken on 26.06.2021. The opposite party also admitted the same in the response field to

complaint averments in para 4. A perusal of Ex.B6 would prove that the sample was taken on 27.6.2021. Ex.B8 would reveal that sample was collected on 30.6.2021. Therefore, it is proved that both Ex-B6 and B8 were fabricated for the purpose of this complaint. Therefore there is merit in the contention of the complainant's counsel that manipulation of medical record amount to unfair trade practice.

9.6 Ex.B3 would prove that the patient Mrs.Sivagami was received as in patient No 21/11255 in the OP hospital at 2.00 PM on 30.6.2021 and examined by Dr.Thenmozhi. Ex – B3 comprised of two pages. Ex-B3 does not bear the name of the doctor who referred the patient, the complainant's mother to Dr.Thenmozhi. The first page of Ex.B7 contains vitals recorded at the time of receiving ( 2.00 PM ) he patient by Dr.Thenmozhi and the prescriptions prescribed by Dr.Thenmozhi. Further, Ex B3 reveals that till 5.20 PM no medicine has been administered / given to the patient Sivagami. As per Ex – B3, alleged test dose of Xone was given at about 5.20 PM and injection Xone was administered at about 5.45 PM. Ex-B3 also reveal that at about 5.55 PM, the patient was semi unconscious, disoriented, not responding, frothy discharge from mouth and nose. Handed over to the Emergency intensive care unit. But, Ex –B7, the drug chart would prove the contrary. Ex-B7 contain two entries. 1<sup>st</sup> Entry was recorded at 5.50 PM on 30.6.2021. 2<sup>nd</sup> entry was recorded at 5.20PM on 30.6.2021. If the test dose was given to the patient at 5.20PM of 30.6.2021, it should have been entered as 1<sup>st</sup> entry. Therefore it is proved that between 2.00PM and 5.50PM no drug except Inj-PAN was administered to the patient Sivagami till 5.50 and the said fact was entered in Drug Chart Ex-B7. The Inj.Xone was also administered without test dose and to cover up the said negligence Ex-B7 was manipulated and 2<sup>nd</sup> entry was made to show that test dose of Xone was administered at 5.20 PM on 30.6.2021. Further as we

have already discussed above, Ex-B7 is a drug chart which should contain the entries of medicines administered to the patient Sivagami from the time of admission on 30.6.2021 to till the discharge on 3.7.2021. In the present case, Ex-B7 alleged drug does not bear the details of drugs administered to the patient between 30.06.2021 to 03.07.2021 except the above two entries. Thus it is also proved that Ex-B7 was also created/fabricated for the purpose of this case.

- 9.7 Ex-B5 is alleged procedure consent, but, a reading of Ex-B5, reveals that it is a nurses record and the complainant denied his signature. A perusal of Ex-B5 reveal that beneath the signature, complainant's name is also written and his relationship is also written. The alleged consent has been obtained for admitting the patient in EICU for Intubation and central nervous catheterisation. Ex- B5 also speaks that there was no pulse and breathe at 7.00 PM on 30.6.2021. Therefore Ex-B5 is not an informed consent, but obtained by coercion between 6.00 P.M and 7.00 P.M. on 30.06.2021.
- 9.8 Ex-B4 is alleged consultation request form which would prove that the patient was referred to cardiologist on 1.7.2021 at about 11.00AM. There is no whisper about the treatment given to the patient Sivagami between 5.55 PM on 30.6.2021 and 11.00 AM on 1.7.2021. Thus Ex-B4 establish that the patient was not examined by any cardiologist between 5.55 PM on 30.6.2021 and 11.00 AM on 1.7.2021.
- 9.9 Ex-B7 is alleged drug chart. Actually, Ex-B7 should have the details of all medicines from the time of admission till the shifting of patient from Special ward to cardiology ward and also till her discharge on 03.07.2021. Surprisingly, Ex- B7 contains only two entries. That too first entry was made at 5.50 PM and the 2<sup>nd</sup> entry was made at 5.20 PM. Now a cursory view of Ex B3 and B7 would prove that the patient was received by Dr. Thenmozhi at 2.00 PM and till 5.50 PM no

medicine was administered to her and Ex B3 does not reveal why the said Dr. Thenmozhi prescribed X-one and why any medicine was not given to the patient between 2.00 PM and 5.50 PM. What was the purpose of admitting the patient as if there was an imminent danger to her life, when the hospital has not given any medicine between 2.00 PM and 5.50 PM.

9.10 Now let us examine the allegation that the complainant was constrained to purchase 20 vials of vecuronium bromide on 30.6.2021. Ex-A7 consists of several prescriptions issued by opposite party, prescribing a number of drugs and consumables. Two of them are prescribed for 25 Vecuronium Bromide. In both prescriptions the name of patient is mentioned as Mr.Sivagami MR No 21/71222 dated 30.6.2021. Ex.A7 also contains a Bill issued by Opposite party hospital mentioning the Patient Number MR21/71222 dated 30.06.2021. Ex.A7 would prove that Ex.B7 drug chart marked by opposite parties had been created/fabricated for the purpose of case. Either Ex.A7 or Ex.B7 is fabricated. Counsels for both side admitted that the vecuronium bromide is a muscle relaxant. The opposite party failed to explain why such huge volume of vecuronium bromide was prescribed and why the same was not administered. If Vecuronium Bromide was administered, why the same was not entered in drug Chart Ex-B7. Ex.A8 are the bills in proof of purchase of 25 vials of Vecuronium bromide. Why 15 vials of vecuronium were returned. What happened to other 5 vials of vecuronium bromide is unanswered by Opposite parties.

9.11 Ex A12 is the discharge consent written in Tamil. A reading of Ex-A7& A25 would show that it is a statement of complainant and signed by both the complainant and opposite party. A bare perusal of Ex-A7& A25 also raise a suspicion on the opposite party. Ex-A25 was furnished on 8.12.2021 by Opposite parties at the direction of Tamilnadu Medical Council and containing different versions of Ex.A7

with Additions and manipulations which are visible. There are visible over-writings and manipulations in E-A28 also.

9.12 Ex.A2 and Ex.A29 are discharge summary. A perusal of discharge summary in Ex-B2 would reveal that the Opposite party hospital was in the practice issuing computerised discharge summary. In the present case, the Opposite party issued manual discharge summary for the reasons best known to the opposite party. Ex-A2 is the discharge summary issued on 3.7.2021. Ex-A29 is the discharge summary which contains the copy of the discharge summary furnished on 8.12.2021 by the Opposite party in response to the direction of Medical Council as well as the copy of the discharge summary issued to complainant on 3.7.2021. It is visible that both are different.

9.13 Ex-A33 is series of emails sent by complainant to various authorities including opposite party for seeking clinical records pertaining to the treatment given by the Opposite parties between 30.6.2021 and 3.7.2021. The opposite party therefore cannot contend that the complainant did not request for medical records.

9.14 In the above facts and circumstances, a reading of Ex –B3 and B7 would prove that no medicine was administered to the patient between 1.40 PM on 30.6.2021 and 5.50 PM on 30.6.2021. The 1<sup>st</sup> entry in Ex-B7 would prove that inj-PAN was administered to the patient Slvagami at 5.50PM on 30.6.2021. If test dose of Xone was administered to the patient at 5.20PM on 30.6.2021, it should have been recorded as 1<sup>st</sup> entry in Ex-B7. Even though, Ex-B7 is alleged to be the drug chart of medicines administered to the patient, ExB7 does not contain the medicines administered to the patient between 30.6.2021 and 3.7.2021. Hence Commission concludes that the test dose of Xone was not administered to the patient as alleged in Ex-B7 at 5.20 PM on 30.6.2021 and Ex-B7 had been

manipulated/created/fabricated for the purpose of this case. Therefore, it is proved that Xone was administered without test dose. By such act of administering Xone, an antibiotic which should have been administered as a final choice to treat UTI caused by E.coli especially when the patient is with co-morbidities, it is proved that the conduct of the doctors and the hospital staff of opposite party fell below the standards of a reasonably competent practitioner in his field. As a result the patient had Anaphylaxis shock . Such act of the Opposite parties constitute medical negligence and deficiency in service as defined in section2(11) of Consumer Protection Act, 2019. Till date the patient had not recovered from her unconsciousness.

9.15 It is also proved that the Opposite party hospital has indulged in manipulating medical records to cover up the negligent acts of the doctors employed by it. The Opposite parties miserably failed to explain why 25 vials were prescribed and to whom 5 vials were administered. Such act of the opposite party amounts to unfair trade practice as defined in section2(47) of Consumer Protection Act, 2019.

10. It is now well settled by a catena of decisions of the Apex Court that the contribution made by a non-working spouse to the welfare of the family has an economic equivalent.

11. In **Lata Wadhwa v State of Bihar ((2001) 8 SCC 197)**, a three judge Bench of the Apex Court computed damages to be paid to dependants of deceased persons. The Court took into consideration the multifarious services rendered to the home by a home-maker and held the estimate arrived at Rs 12,000 per annum to be grossly low. It was enhanced to Rs 36,000 per annum for the age group of 34 to 59 years.

12. In **Malay Kumar Ganguly v Sukumar Mukherjee, ((2009) 3 SCC 663)** Justice S B Sinha held thus:

*“172. Loss of wife to a husband may always be truly compensated by way of mandatory compensation. How one would do it has been baffling the court for a long time. For compensating a husband for loss of his wife, therefore, the courts consider the loss of income to the family. It may not be difficult to do when she had been earning. Even otherwise a wife's contribution to the family in terms of money can always be worked out. Every housewife makes a contribution to his family. It is capable of being measured on monetary terms although emotional aspect of it cannot be. It depends upon her educational qualification, her own upbringing, status, husband's income, etc.”* Thus, in computing compensation payable on the death of a home-maker spouse who is not employed, the Court must bear in mind that the contribution is significant and capable of being measured in monetary terms.

13. In assessing the amount of compensation, this Commission is inclined to follow the principle which has been laid down by the Apex Court in **Malay Kumar Ganguly v Sukumar Mukherjee, ((2009) 3 SCC 663)**, a case involving medical negligence.

14. In the present case, because of the negligence of opposite party, the complainant's mother has become a vegetable. The complainant's family is constrained to manage their mother with 24X7 nursing assistant with requisite equipments. The complainant has filed purchase bill for the goods purchased to manage the disability caused due to the negligence of opposite party. The complainant has to engage atleast two trained nurses and one nursing assistant and one maid to manage their mother in addition to a doctor and physiotherapist. The minimum remuneration for nurses, nursing assistant maid, and consultant doctors would definitely cost a sum of Rs.75/- to one lakh per month. In addition the Patient has to put forth fee for visiting doctor. The complainants have been incurring the same from since 03.07.2021. Such recurring expenses may continue upto patient's life time or her recovering from present unconsciousness. Further, the complainant's father a

senior citizen also has lost the care and affection of his companion. Thus the complainant's family has been facing untold hardship since 03.07.2021 because of the above said negligent act of the opposite party. Therefore the complainant is entitled to refund of medical expenses incurred by complainant's family till date and also the recurring expenses. The recurring expenses are assessed as Rs.75000/- per month in addition to the expenses paid by the complainants family towards recurring the treatment charges paid to the Opposite party and SRM SIMS Chennai. The complainant is also entitled to compensation for mental agony, deficiency in service and unfair trade practice indulged in by opposite party.

**15. In the result, this complaint is partly allowed. The opposite party is directed**

**i) To pay a sum of Rs.89,431/- (Rupees Eighty Nine Thousand Four Hundred and Thirty one only) which was paid by the complainant to the opposite party as medical bill;**

**ii) To pay a sum of Rs.50,00,000/- (Rupees Fifty Lakh only) as damages towards monetary loss and mental agony suffered by the complainant;**

**ii) To pay a sum of Rs.75,000/- p.m. from 01.05.2024 to her life time of said patient namely Mrs.Sivagami - complainant's mother towards her recurring medical and maintenance charges;**

**iii) Further, to pay a sum of Rs.25,000/- (Rupees Ten Thousand only) towards cost of proceedings to the complainants within two months from the date of receipt of copy of this order.**

**Failing which, the above said amounts (Rs.89,431/- + Rs.50,00,000/- + 25,000/- = 51,14,431/-) shall carry interest @ 9% p.a. from the date of order till the date of realization.**



*Dictated by the President to the Steno-typist, transcribed and computerized by her, corrected by the President and pronounced by us in the open Commission on this 29<sup>th</sup> day of April 2024.*

**Sd/-  
MEMBER-II**

**Sd/-  
MEMBER-I**

**Sd/-  
PRESIDENT**

**List of document(s) filed by the complainant(s):-**

Sl.No.	Marked as	Date	Details	Remarks
1.	Ex.A1	26.06.2021	OP card.	Print out with 65B certificate.
2.	Ex.A2	30.06.2021	Admission and discharge record.	Original
3.	Ex.A3	30.06.2021	Photograph of Mrs.Sivagami before the complainant goes for Tea.	Original
4.	Ex.A4	30.06.2021	Screen shot of whatsapp conversation between complainant and his brother.	Print out with 65B certificate.
5.	Ex.A5	30.06.2021	Bank statement of the complainant paid to Pharma of Tagore Hospital.	Original
6.	Ex.A6	30.06.2021	Whatsapp screenshot of the complainant with Insurance officer at Tagore.	Print out with 65B certificate.
7.	Ex.A7	30.06.2021	Prescription by Tagore Hospital.	Original
8.	Ex.A8	30.06.2021	Bills of Vecuronium Bromide.	Original
9.	Ex.A9	01.07.2021	PCR Test Report.	Original
10.	Ex.A10	01.07.2021	Bill of Rs.15,000/-	Original
11.	Ex.A11	02.07.2021	Consolidated Bill.	Original
12.	Ex.A12	03.07.2021	Doctor's order.	Original
13.	Ex.A13	03.07.2021	Discharge summary.	Original
14.	Ex.A14	03.07.2021	Photo copy of left hand thumb impression of Mrs.Sivagami.	Original
15.	Ex.A15	04.07.2021	Lab Report – Tagore Medical Hospital.	Original
16.	Ex.A16	04.07.2021	CT Scan – SIMS Hospital.	Original
17.	Ex.A17	04.07.2021	Photograph showing condition of Mrs.Sivagami when moved to SRM SIMS.	Original
18.	Ex.A18	08.07.2021	Opinion of Dr.Mahendran, SIMS.	Original
19.	Ex.A19	17.07.2021	Petition given to National Medical Council.	Xerox
20.	Ex.A20	03.08.2021	Legal notice sent to Tagore Hospital with acknowledgement.	Xerox
21.	Ex.A21	12.08.2021	Representation sent to Additional Director of Health, Chengalpattu District.	Xerox
22.	Ex.A22	---	Invitation for permanent residence.	Xerox
23.	Ex.A23	---	Pendrive consist of video recordings.	---
24.	Ex.A24	---	Photograph of present condition of the complainant's mother.	Original
25.	Ex.A25	---	Contradictions in discharge consent.	Xerox
26.	Ex.A26	---	Nurse record.	Xerox
27.	Ex.A27	---	Inpatient record which has forged signature.	Xerox
28.	Ex.A28	---	Inpatient consent form which as forged	Xerox

			signature.	
29.	Ex.A29	---	Fabricated discharge summary.	Xerox
30.	Ex.A30	---	CSR and RTI of complaint before Talambur Police.	Xerox
31.	Ex.A31	---	Cover letter of medical records.	Xerox
32.	Ex.A32	---	Dean's reply to legal notice.	Xerox
33.	Ex.A33	---	Requesting E-mail confirmation of medical records.	65B petition
34.	Ex.A34	---	Aadhar card and family details of the complainant.	Xerox
35.	Ex.A35	---	Pen drive.	---
36.	Ex.A36	---	Bank statements.	65B petition
37.	Ex.A37	---	Medical bills.	Originals
38.	Ex.A38	---	Signature of Mr.Aruna Moorthy.	Xerox

**List of documents filed by the opposite party(s):-**

SI.No.	Marked as	Date	Details	Remarks
1.	Ex.B1	28.06.2022	RTI letter alongwith documents.	Xerox
2.	Ex.B2	15.04.2021	Case sheets relating to Covid-19 Treatment of the complainant's mother. (pages 62).	Xerox
3.	Ex.B3	30.06.2021	Doctors orders (4 pages).	Xerox
4.	Ex.B4	01.07.2021	Consultations request form (2 pages).	Xerox
5.	Ex.B5	30.06.2021	Procedure consent (1 page).	Xerox
6.	Ex.B6	30.06.2021	Laboratory report(1 page).	Xerox
7.	Ex.B7	30.06.2021	Drug chart (1 page).	Xerox
8.	Ex.B8	30.06.2021	Culture and sensitivity.	Xerox

**Sd/-  
MEMBER-II**

**Sd/-  
MEMBER-I**

**Sd/-  
PRESIDENT**