

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION, AT ADILABAD

Date of Filing: 04.06.2019.
Date of Disposal: 24.09.2021.

Present :- Sri.Jabez Samuel, President.
Sri.Ch.V.Narasimha Rao, Member.
Sri. M.Rajashekar, Member.

C. C. No. 83 /2019.

Between:

Akbar Pasha Mohammad S/o.Hafeez Miya,
Age: 29 Years, Occ: Work Inspector on Outsourcing Basis,
RWS, Thiryani Mandal, present Nil,
R/o. H.No.16.3-108, No.2 Incline Basthi,
Bellampalli, Dist: Mancherial (Previously Adilabad).
... Complainant.

And

1. Dt. Praveen S/o. Not Known,
Age: Major, Occ:Consultant Orthopedic Surgeon,
Medilife Hospitals, Near Bellampally Chowrastha,
Beside IDBI Bank, Mancherial.
2. Managing Director, MediLife Hospitals,
Near Bellampally chowrastha,
Beside IDBI Bank, Mancherial.
...Opposite Parties.

Friday, the 24th Day of September 2021.

This C.C. coming up before us for final hearing on 24.08.2021 in the presence of Sri.G.Chandra Mohan & Ch.Devender Advocates, Adilabad for the complainant and Y.Vishnubhagawan Advocate, Adilabad for Opposite Party No.1 & 2 and the matter having stood over for consideration till this day, this Commission made the following.

O R D E R

(Sri. Ch.V.Narasimha Rao, Member)

This complaint is filed by the complainant U/s.12 of C.P. Act 1986 praying this Hon'ble Commission to direct the Opposite Parties jointly and severally to make payment of Rs.7,00,000/- (Rupees Seven Lakhs Only) towards negligent acts of Opposite Parties and towards pain suffering, hospital and medical expenses, loss of income and Rs.2,50,000/-(Rupees Two lakhs fifty thousand only) towards compensation for mental agony, physical loss and permanent disability sustained by the complainant for

the negligent acts of Opposite Parties along with interest @ 18% p.a. from the date of admission till realization in favour of the complainant and also award costs of the petition in the interest of justice.

1. The averments of the complaint:-

It is stated in the complaint that the complainant is R/o. Bellampally town and working as work inspector on out sourcing basis at RWS, Tiryani Mandal and on 27.11.2018 after completing his duty while proceeding to his house at Bellampally on his motor cycle on the way when he reached near Govt.Hospital, he fell down due to skid of his motor cycle. As a result he sustained grievous injuries i.e., fracture of both bones left fore-arm, immediately complainant was shifted to Govt.area hospital, Mancherial where first aid was provided and the duty doctor advised the complainant to consult Orthopaedician and referred the patient to higher centre for better treatment. Then the complainant was shifted to Med Life hospital, Mancherial and admitted as in patient on 28.11.2018 there the complainant was underwent surgery to the fractured both bones of right fore-arm by inserting implants by Dr.Praveen/Opposite Party No.1 and he was discharged on 02.12.2018. It is further stated that the complainant deposited Rs.10,000/- towards hospital and other charges and later total amount of Rs.94,907/- was paid by TATA AIG insurance company as the complainant had Group Medi claim Policy. After some days bleeding was started from fracture side, then the complainant visited Opposite Party No.1 and the Opposite Party No.1 examined the complainant said that bad blood was oozing, not to worry about the bleeding. Complainant remained under the treatment of Opposite Parties till 23.01.2019. On 23.01.2019 due to oozing of blood complainant visited the Opposite Party No.2 hospital and consulted Opposite Party No.1 as outpatient and as per his advice one X-Ray was taken and Opposite Party No.1 stated that, no problem with the wound, but discharge of sinus from fracture site was not stopped. On 25.01.2019 the complainant consulted Dr.Ravikanth Kolluri, Orthopaedic Surgeon of Unnati Hospital at Karimnagar and the said doctor after examining the complainant after seeing the X-Ray taken at Opposite Parties hospital stated that bone was infected as such not united properly and requires further surgery to remove the infected implant and to replace new implant, otherwise fracture bone size would be decreased and required bone grafting and that would result of shortening of left fore-arm. That is nothing but negligence of Opposite Parties 2 doctor i.e., Opposite

Party No.1 who did not inform about the infection in spite of several follow-up visits for treatment at Opposite Parties hospital. It is further stated that the complainant sustained mental stress and unable to lead normal life and feeling inconvenience, hardship, discomfort and disappointment, frustration in life due to the acts of Opposite Parties hence complainant is entitled for compensation. Complainant when questioned about negligent treatment Opposite Parties did not hear the words of complainant and threatened and warned, as such Opposite Parties liable. Due to unbearable pain and continuous discharge of sinus from the wound the complainant consulted Dr.Sanjiv Kumar Behera, consulted Orthopaedic surgeon at Yashoda Hospital, Secunderabad, and upon his advice X-Ray was taken and underwent surgery as the tenderness was found positive and surgical site not healthy and on 07.02.2019 complainant was discharged with an advice to follow up treatment and physiotherapy. It is further stated that the acts of the Opposite Parties nothing but negligent in providing treatment to the complainant. Due to such negligent treatment of Opposite Parties complainant became permanent disabled. The complainant completed his B.Tech with First Division and was working as work inspector in Softech Info Services and drawing salary of Rs.23,000/- per month and other perks. Hence the complainant is entitled for compensation from the Opposite Parties, contending so, prayed to allow the complaint.

2. Upon receipt of notices the Opposite Parties contested the case filed their counter by resisting the claim of the complainant. The contents of counter are as follows:- Opposite Parties denied that there was Medical Negligence in the treatment of the complainant. It is stated that according to the Opposite Parties, the surgery was done on 28.11.2018 at Opposite Party No.2 hospital and Opposite Party No.1 carried out the surgery to the complainant to his fractured both bones of his left fore arm by way of Open Reduction and Internal Fixation (ORIF) with dynamic compression plate (DCP) radius + Recon plating ulna, after explaining the complications of anesthesia and post operation complications to the complainant and his inmate Anwar, who in turn accepted to face the same. Till 02.12.2018 complainant was in hospital as inpatient and necessary treatment was provided to him. Since the condition was stable, he was discharged with an advice to take proper care of the wound and to review after 5 days and

required medicines also prescribed. During the stay of complainant as inpatient before after surgery, he was hale, conscious and coherent. Complainant consulted the Opposite Party No.1 on 08.12.2018 for regular check up. On observation it is noticed that the wound was almost healed and as such stitches were removed. On the following consultation, the complainant complained oozing of blood from wound site, in order to control the same proper dressing was done. Subsequently when the complainant visited he reported pain. The Opposite Party No.1 on examination found that one of the screws implanted to the (DCP) radius + recon plating ulna was loosened. As the complainant was so negligent did not take proper care in the movement, handled the wound in rough manner, oozing from the blood occurred and the screw would be displaced. However it was set right and complaint was advised to take proper care. While leaving hospital, complainant expressed satisfaction towards the services rendered by Opposite Parties and their staff.

It is further stated that the X-Ray taken before surgery, soon after surgery and on visits of complainant to Opposite Parties hospital would show that the surgery and the implantations were perfectly done. Because of negligent attitude of the complainant only after surgery, the post operative complications arose including infection; same cannot be attributed to the Opposite Parties. Post operative complications and infection are quite natural and common, which are to be treated properly in subsequent stages from time to time, the complainant without reporting the matter in time to Opposite Parties without further consultation, approached other medical practitioner and got replaced the (DCP) radius + recon plating ulna. It is further stated that no point of time complainant approached and questioned the so called negligent treatment; as such there would be no scope to the Opposite Parties to warn the complainant with dire consequences. It is further stated that Opposite Parties are not aware the educational qualification, employment and earnings of the complainant. Whatever the complainant alleged is post operative complications, infections which are quite natural and which may be arise due to the negligent handling of wound by the patient, but not otherwise, said complications cannot be attributed against the Opposite Parties, contending so, prayed to dismiss the complaint.

3. Findings and conclusion:-

During enquiry the complainant filed Proof Affidavit and marked Exhibits A1 to A14 to prove his case and reported the evidence of the complainant side closed. The Opposite parties filed Proof Affidavit no documents have been filed and reported no further evidence, hence their evidence is closed.

4. Now the point for consideration is whether the complainant is entitled for the claim, if so to what extent?

5. Case of the complainant is that there was non-union of the bones in the fractured arm clearly indicating that the surgery conducted by Opposite Party No.1 was not successful and it was only after the second surgery was done at Yashoda Hospital in Secunderabad that complainant got relief. Further the Discharge Summary of Yashoda Hospital clearly indicated that upon clinical examination tenderness was found positive, and surgical site not healthy with discharge, was proof of the medical negligence on the part of the Opposite Party No.1 in conducting the surgery.

The contention of Opposite Parties is that complainant was admitted in hospital and surgery was done and necessary treatment was provided. Since condition was stable, complainant was discharged from the hospital with an advice to take proper care of the wound. While leaving the hospital complainant expressed his satisfaction towards the service rendered by Opposite Parties and their staff. Again on 23.01.2019 the complainant visited the hospital just for consultation, on X-Ray the fracture was found to be set right, no abnormalities were found, thereafter he did not turn up to the hospital. Complainant could have taken the proper care on discharge from the hospital by restricting his hand movements. But complainant was so negligent and moved the fractured hand in rough manner as a result the stitches of the wound were opened, the screws affixed to the bone were loosened. Because of the negligent attitude only, after surgery, the post operative complications arose including infection, same cannot be attributed to the Opposite Parties. Post operative complications and infection are quite natural and common which are to be treated properly in subsequent stages from time to time. Complainant without reporting the matter in time to Opposite Parties and without further consultation perhaps simply approached other medical

practitioner and got replaced the (DCP) RADIOUS + RECON PLATING ULNA. There is absolutely no negligence in treatment provided by Opposite Parties and prayer for dismissal was made.

6. After going through the entire material, documents placed before the Commission by the parties and on careful consideration of the rival contentions of the parties we find that there is no dispute that first surgery was done at the Opposite Parties hospital on 28.11.2018 and discharged on 02.12.2018 and they informed the patient that review after 5 days, accordingly complainant followed the treatment on 08.12.2018 and several other times, Ex.A2 & Ex.A3 reveal the same. It is also not in dispute that the complainant got another surgery done at Yashoda Hospital Secunderabad when there was non-union of bones even after the first surgery. The best course for the concerned doctor was that the complainant ought to have been operated upon again to set right or in the alternative the complainant should have been told the correct position and would have been advised either to get him operated upon either from him or from some other doctor of his choice, but no such procedure was adopted by the Opposite Parties and instead he continued to assured the complainant even after two months of operation inspite of discharge of sinus from fracture side was not stopped.

7. In our view it is a clear case that falls in the category of medical negligence as it was only after the treatment at Yashoda Hospital that the complainant recovered fully and in view of the fact that reference has been made in the discharge summary that complainant went to Yashoda Hospital with complaints of pain and inability to supine and prone left arm. Above said circumstance shows that sufficient care was not taken while inserting DCP plate. Hence we are inclined to consider the contention of the complainant.

8. The complaint of the complainant is partly allowed and we think that if lumpsum compensation amount is to be given to the complainant which will be appropriate relief.

9. In the result, the complaint is allowed in part. The Opposite Parties are directed jointly and severally to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) in all to the complainant as compensation for mental

agony, harassment, cost of medical expenses, including medicines and legal expenses and Opposite Parties are directed to pay the afore said amount within one month from the date of receipt of copy of this order, failing to comply, complainant is further entitled to interest @ 12% p.a. on the total amount from the date of filing of complaint, till realization of the entire amount.

Dictated to Steno, transcribed by her, corrected by us and pronounced in the Open Commission on the 24th day of September 2021.

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
PRESIDENT

Appendix of Evidence
Witnesses Examined

Proof Affidavit of complainant.

Proof Affidavit of Opposite Parties.

Exhibits Marked

On behalf of Complainant

On behalf of Opp.Parties.

Ex.A1: Original Out Patient ticket
dt.27.11.2018.

Ex.A2: Copy of Discharge Summary of Med Life
Hospital, Mancherial.

Ex.A3: Original Prescription.

Ex.A4: Original Follow-up Prescriptions (10).

-Nil-

Ex.A5: Copy of Insurance Policy dt.02.07.2018.

Ex.A6: Original Medical Bills (3).

Ex.A7: Copy of Prescription issued by Unnati
Hospital Karimnagar, dt.25.01.2019.

Ex.A8: Copy of Cash Receipts (3) of Yashoda
Hospital, dt.30.01.2019.

Ex.A9: Copy of Discharge Summary of Yashoda
Hospital, dt.05.02.2019.

Ex.A10: Copy of Yashoda Hospital Bill with
receipts dt.07.02.2019.

Ex.A11: Copy of B.Tech Provisional Certificate of
Complainant, dt.24.06.2016.

-Nil-

Ex.A12: Copy of appointment letter
dt.24.10.2016.

Ex.A13: Copy of letter issued by Employer of
complainant dt.02.12.2018.

Ex.A14: Attested copy of Medical Bills (3).

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
PRESIDENT

//By Order//
//Certified true copy//