

**BEFORE THE TELANGANA STATE CONSUMER DISPUTES REDRESSAL
COMMISSION:HYDERABAD**

C.C.64/2014 ✓

Between :

1. Bandarai Ramesh Goud,
S/o.Shankar Goud,
Aged 54 years, Presently working as Tahsildar,
Valagatur, Karimnagar District.
R/o. H.No.1-15-65/3, Yellagoud Tota,
Siripur Kagaznagar,
Adilabad District - 504 296.

2. Bandari Madhavi, W/o.Ramesh Goud,
Aged - 48 years, Housewife,
Valagatur, Karimnagar District .
R/o.H.No.1-15-65/3, Yellagoud Tota,
Siripur Kagaznagar,
Adilabad District - 504 296.

... Complainants

Vs.

1.Lazarus Hospitals, Rep. by its Managing Director,
Dr.Varma Vegesna, S/o.not known, aged 45 years,
Lakdikapool, Hyderabad - 500 004.

2. Dr.K.S.Naik, S/o.not known, aged 54 years,
Chief Nephrologist, at Lazarus Hospital,
Lakdikapool, Hyderabad - 500 004.
Presently working at Deccan Hospital,
6-3-903/A & B, Somajiguda, Hyderabad - 500 082.

3. Dr.B.Sambasiva Rao, S/o.not known,
Aged 50 years, Consultant Kidney Transplant
Surgeon, Lazarus Hospital, Lakdikapool,
Hyderabad - 500 004.
Presently at Sai Sri Kidney Center, 7-1-59/4/8,
Lal Bunglow, Ameerpet, Hyderabad - 500 016.

...Opposite parties

Counsel for the Complainants : M/s.V.Gowrisankar Rao

Counsel for the opposite parties : O.P.No.1- Notice served.
M/s.S.Sharath Kumar -OP.2.
M/s.A.Rajendra Babu -OP.3.

CORAM : Hon'ble Sri Justice M.S.K. Jaiswal, President.

And

Hon'ble Smt. Meena Ramanathan, Lady Member

**THURSDAY, THE FOURTEENTH DAY OF OCTOBER,
TWO THOUSAND TWENTY ONE .**

Oral Order:

1. This is a complaint filed by the Complainants under Section 17(1)(a)(i) of the Consumer Protection Act, 1986 alleging deficiency in service on the part of the opposite parties and to direct them to :

- a) pay a sum of Rs.40 lakhs towards compensation for loss of earnings and income of their son, Phani Kumar on his death on account of the deficiency in service of opposite parties 1 to 3;
- b) pay Rs.25 lakhs towards the amount spent by the complainants for the procedures, treatment and medicines of their son Phani Kumar;
- c) pay Rs.30 lakhs towards mental agony, pain and suffering caused to the complainants and for loss of love and affection on account of the death of their son Phani Kumar;
- d) pay a sum of Rs.50,000/- towards legal expenses; and
- e) pay interest @ 24% p.a. from the date of the complaint till the date of realisation on the amounts claimed in (a) to (d).

2. The brief facts of the case are as follows:

The complainants have filed the present complaint stating that their son aged 26 years old and having a brilliant academic career was diagnosed with a kidney problem when he was only 14 years old. They took him to opposite party no.2 doctor (who was then working with Apollo Hospital, Hyderguda) for treatment and since then he has been under his care only.

It is their submission that whenever the opposite party no.2 doctor changed his place of work, they followed him reposing faith in him. During the course of treatment at Global Hospital, Hyderabad in the year 2008 - he was advised to undergo dialysis. Subsequently, opposite party no.2 joined Lazarus Hospitals as Chief Nephrologist and Director in January 2011. They were convinced that their son would benefit from bilateral nephro ureterectomy and renal transplantation and agreed for the surgery.

Initially, the complainants were told that both kidneys of their son would be removed during the key hole laproscopic surgery, but later only the left kidney was removed as he suffered severe internal bleeding. This first surgery was performed on 29.8.2011 and second nephrectomy for the right kidney on 5.9.2011. They contend that performing two separate surgeries has caused great stress and complications to their son. The opposite party no.2 doctor did not assess the condition of the patient and the location of the organs/kidneys before subjecting him to two separate procedures. Complainant no.2 agreed to donate her kidney for her son and this surgery for transplantation was done on 3.2.2012. At first they were informed that it was removal of the complainant's left kidney but later it was changed to the right kidney.

After the kidney transplantation, the opposite parties did not secure all the bleeding points (sic) and this caused severe bleeding and poor

circulation and lack of oxygen causing ATN. The surgeries were performed by specialists without due care and diligence and ultimately resulted in the death of their son on 16.3.2012. They have filed the present complaint against the carelessness and medical negligence on the part of the opposite parties and that they should be accorded the justice due to them.

3. Opposite party no.2 Doctor filed his Written Version submitting that the deceased Phani Kumar has been his patient for about 15 years. He came to him as a 9 year old and was diagnosed as suffering from Vesicoureteral Reflux Nephropathy and this, over time leads to end stage kidney failure. He was put on follow up therapy - as an out patient. At that time it was noticed that the patient had had repeated bladder surgeries for reimplantation of the ureters. The patient had also suffered 'fulminant urosepsis' with (shock) and needed Continuous Renal Replacement Therapy (CRRT). All these facts have been suppressed by the complainants.

The Opposite Party no.2 doctor further adds that he has always been candid while disclosing the health status of the patient to the complainants and he has endeavoured to impress upon them the need for an early kidney transplantation and video counselling was afforded to them on several occasions.

The advise and opinions of Dr.A.V.Ravi Kumar, an eminent Urologist was obtained by the complainants prior to transplant surgery. The mother (complainant no.2) of the patient was also explained the consequences of kidney donation. All prompt and immediate care was always provided to the patient. The deceased had absence of urine output which was opined to be due to acute renal failure.

After surgery, the patient was continuing as out patient on haemodialysis but was irregular and the family made no attempt to ensure his food intake was reasonable. The patient's condition steadily deteriorated and he ultimately died because of pneumonia and its complications. The complainants have not produced any evidence to suggest the opposite parties did not provide the required care to the patient. With the above submissions, he seeks the complaint be dismissed with costs.

4. Opposite party no.3 filed his Written Version stating that he is a specialist Surgeon, whose services were requested by the other opposite parties. Despite the best of treatment the patient expired and the complainants are well aware of this fact yet chose to file this present complaint with malafide intentions.

He further adds that the patient was previously diagnosed with vesicoureteric reflux and underwent bilateral nephrectomy in order to avoid

infection to the transplanted kidney. All the methods and procedures used during the course of treatment are widely accepted and after several sessions of counselling - complainant no.2 came forward as a renal donor. The counselling given to the complainants is recorded and stored as a compact disc and is available for examination.

The opposite party no.3 Doctor further submits that the surgery was uneventful and after one hour the Doppler repeat showed the blood flow was normal. ATN is a very common occurrence and there is no specific treatment for it except to undergo dialysis. He adds that the son of the complainants died due to pneumonia and irregularity in hemodialysis and non compliance of dietary advice. Finally he adds that the treatment given to the complainants' son was a team effort and the best possible treatment was given to the patient to save his life. There has been no negligence or deficiency in service as alleged in the complaint and as such the complaint cannot be entertained.

5. Evidence Affidavit of the complainant no.1 as PW.1 filed. Exs.A1 to A32 are marked on behalf of the complainants. Evidence affidavits of opposite parties 2 and 3 are filed. Written arguments of the complainant, opposite parties 2 and 3 are filed.

6. Heard both sides and perused the material available on record.

7. The points that arise for consideration are:

1. Have the opposite parties been deficient and negligent in performing the surgeries as challenged by the complainants?
2. If yes, are the complainants entitled to the reliefs claimed for ?

8. Point nos.1 & 2 : The complainants have submitted that their son Phani Kumar had a kidney problem when he was 14 years old and he was diagnosed as having chronic renal failure by opposite party no.2 Doctor. Their son has been under the care of opposite party no.2 Doctor for the last 12 years. In the evidence submitted by P.W.1 it is categorically stated that the opposite party no.2 joined Lazarus Hospitals (Opposite party no.1) in January, 2011 as Chief Nephrologist & Director and thereafter lured them for undergoing new procedures and they agreed for Bilateral Nephro Ureterectomy and subsequent renal transplantation. The complainants have further claimed that their son was also examined by the eminent Urologist Dr.A.V.Ravi Kumar and he opined that the patient was fit to undergo renal transplant surgery. The mother (complainant no.2) came forward to donate her kidney to her son with compatible HLA tissue typing and there should not have been any

complication. Owing to the improper assessment by opposite parties 2 and 3, their son suffered a premature death. It is their contention that their son could have survived for long on dialysis but on account of the negligence exhibited by opposite parties 2 and 3, their son did not live for long and complainant no.2 lost her healthy kidney and went into depression. Under these circumstances, they have filed the present complaint and supported their claim by filing the following exhibits:

Ex.A1 - dated 17.1.2011 is a prescription given by opposite party no.2 doctor.

Exs.A2 to A16 - are Lab Reports of opposite party no.1 hospital and prescriptions issued by opposite party no. 2 Doctor.

Exs.A8 & A9 - are the prescriptions issued by opposite party no.2 Doctor dt.25.7.2011 and 2.8.2011 respectively.

In these prescriptions he has advised the candidate (Phani Kumar) for renal transplant and to seek clearance from Dr.Ramesh Ramayya. It is also noted that Dr.Ravi Kumar -Consultant Urologist needs to be informed.

Ex.A17 - is the report given by the Dr.A.V.Ravi Kumar of Hyderabad Institute of Urology, Hyderabad Nursing Home, Basheerbagh. The Patient's history is clearly recorded as known case of 'ckd on dialysis' underwent 'ureteric reimplantation in 1992' and 'underwent b/l Nephrectomy 3 months back no urine out put now'. This report is dated 12.10.2011 and the deceased-Phani Kumar had already undergone the B/L Nephrectomy on 5.9.2011.

In their evidence affidavit, the complainants have stated that all along opposite party no.2 Doctor has been treating their son and on his advise and guidance they were convinced that prior to renal transplantation, Bilateral Nephro Ureterectomy was to be undergone. It is their contention that removal of both kidneys before the transplantation of donor kidney is not the normal practice world over.

Ex.A19 - dated 9.1.2012 is the prescription given by opposite party no.2 Doctor to Dr.Sambasiva Rao to kindly see Mrs.Madhavi (Complainant no.2) prospective donor for Son - Phani Kumar.

Ex.A20 - is the lr.dt.9.2.2012 from Dr. Rohith Kumar addressed to the NTR Trust Blood Bank, Hyderabad requesting to issue two units of B +ve blood.

Ex.A21- is the Discharge Summary after Nephrectomy was done on 3.2.2012 on Complainant no.2.

Ex.A22 - is the Discharge Summary of the deceased dt. 23.2.2012 after renal transplantation. He was discharged on 23.2.2012 and advised to come as out patient 3 times a week for Haemodialysis. Soon after discharge, on 26.2.2012 the deceased was doing very poorly and was constrained to be admitted in opposite party no.1 hospital and the report filed as Exs.A23 & A24 reveal that he was diagnosed to have Hematemesis Melena. His stay at the hospital was fairly long and he was discharged only on 6.3.2012 with an advise to attend Haemodialysis three time a week as evidenced vide Ex.A25.. Again on 10.3.2012 their son was readmitted with the same complaints and was also diagnosed as having jaundice. He was treated accordingly and discharged with an advice to attend Haemodialysis three time a week vide Ex.A26.

Ex.A28 - is the newspaper report.

Ex.A31 - is the Discharge Summary dated 14.3.2012 - wherein their son was readmitted with severe complaints of breathlessness, fever and blood in stool. Clinical diagnosis revealed that the patient had features of pneumonia, Sepsis with Leucopenia. Despite all efforts, patient developed intermittent hypotension and arrhythmia and was declared dead on 16.3.2012.

9. The defence raised by the opposite parties is that the patient Phani Kumar was not taken for kidney transplantation all of a sudden. He was under peritoneal dialysis for 1½ years and later shifted to Haemodialysis. The opposite party no.2 Doctor also admits in his Evidence Affidavit and Written Arguments that the deceased was his patient for more than 15 years. As a young child, the patient was suffering from 'Vesicoureteral Reflux Nephropathy' and that the complainants have wantonly suppressed the material facts pertaining to his health status.

10. The fact that the opposite party no.2 Doctor was carefully monitoring the patient for many years is not in dispute. The fact that the patient was suffering from 'Vesicoureteral Reflux Nephropathy' is also not in dispute. The fact that the patient had repeated bladder surgeries for reimplantation of the ureters and had suffered serious setbacks requiring admission in the ICU centre is also not disputed.

Given the patient's history - it is necessary to understand the complications of 'Vesicoureteral Reflux Nephropathy'. This occurs when urine in the bladder flows back into one or both ureters and often back into the kidneys. The disorder is usually diagnosed in infants and children. If left untreated, it can lead to kidney damage. It is a relatively common disease.

which can be benign if appropriately treated but can have significant consequences if ignored. Kidney damage is the primary concern with Vesicoureteral Reflux.

In the present case the patient Phani Kumar had been in the care of opposite party no.2 Doctor for 15 years prior to his demise and the complainants have also adhered to treatment given by opposite party no.2 during this long period. The main question that requires to be satisfactorily answered is whether the patient required transplantation and why was the renal transplant unsuccessful.

11. In his evidence, the opposite party no.2 Doctor has stated that video counselling was initiated on several occasions, but no evidence is placed on record to impress the need for early renal transplantation for Phani Kumar. The patient was already under peritoneal dialysis and later shifted to haemodialysis. Given the background and medical condition of the patient, was it necessary to advise B/L Nephrectomy as preparation for renal transplantation?

The opposite parties have not provided any material information on whether the deceased was a candidate for kidney transplantation. Not everyone is a candidate for kidney transplantation. You may not be eligible if you have had:

- a). current or recurring infection that cannot be treated effectively.
- Or
- b). other risks depending on the patient's medical condition.

In the present case, the opposite party no.2 Doctor has stated that he obtained an independent opinion from Dr.A.V.Ravi Kumar- an eminent Urologist prior to the renal transplant. The point that arises here is that the opinion was taken after the B/L nephrectomy and the patient nor the complainants were given any choice for the transplant surgery. The opinion would have played an important role had it been obtained prior to the patient undergoing native kidney nephrectomy.

12. The donor was the deceased's mother aged only 48 years. The standard procedure was claimed to be followed by opposite party no.2 Doctor in thoroughly verifying her renal health & compatibility. The renal transplantation was conducted on 3.2.2012 and the patient did not survive for long. He passed away after numerous complications on 16.3.2012-barely after 40 days. This period was fraught with complications and numerous admissions to the opposite party no.1 hospital. We have perused the Ex.A30-C.D. which reiterates the submissions of the complainants. Obviously, the

transplant surgery cannot be termed as successful by any stretch of imagination. When the opposite party no.2 Doctor was fully aware of the patient's medical history, convincing the complainants to agree to the renal transplantation amounts to deficiency and negligence. This is further compounded by the opposite party no.2 Doctor's statement that the patient was irregular as an outpatient for Haemodialysis. Where is the question of having been irregular?

- i. Surgery occurred on 3.2.2012. He was discharged on 23.2.2012.
- ii. He was readmitted on 26.2.2012 and discharged on 6.3.2012.
- iii. Readmitted with complaints of fever, breathlessness on 10.3.2012 and expired on 16.3.2012.

A close perusal of the dates only proves that the deceased was in hospital for almost the entire duration and the question of being irregular in haemodialysis or non compliance to dietary advice cannot be construed as the cause of his death. For all purposes, the opposite party no.2 Doctor should have assessed his patient with more care and caution before impressing the need for renal transplant. He has needlessly placed complainant no.2 in a high risk bracket for a futile reason. The opposite party no.2 Doctor has also admitted to the fact that the complainants are lay persons and have unduly raised wild allegations against him. Although they may have been financially constrained and without much awareness, they have definitely trusted the opposite party no.2 Doctor and been under his care and guidance for 15 years plus. This definitely has compromised their trust. It was the advice given by the opposite party no.2 Doctor that was followed by the complainants. That advice was certainly lacking in strength and has caused the complainants great suffering and for that they should be adequately compensated.

13. The opposite parties 2 and 3 ought to have been fully aware of the high chances of complications after the transplant and the common occurrence of ATN. The patient underwent the transplant with a hope that the quality of life would improve marginally by the treatment accorded and advised by opposite party no.2 Doctor. He was brought on several occasions in the short period after surgery with numerous complications and the opposite parties have failed to establish that the deceased patient was irregular in attending dialysis. Since there is no other allegation against opposite party no.3 Doctor, we do not find any cause in directing him to pay compensation to the complainant.

A living donor kidney functions on an average for 12 to 20 years and a deceased donor kidney from 8 to 12 years. A live donor kidney transplant is considered the best option for people with kidney disease but transplant is not

an option for everyone. Medical conditions affect the risk of transplant and in the instant case, the transplant candidate was already undergoing treatment for many years and was the patient of opposite party no.2 doctor for almost 15 years.

There are relative contradictions that preclude a patient from undergoing kidney transplant procedure, depending on the particular patient or the degree of illness. They include

- Active or chronic untreated infections
- A urinary tract that isn't intact/functional and lacks a viable urine diversion.
- A proper evaluation needs to be completed with the transplant team for a decision to be made.

Active systemic infections are potential reasons of excluding transplant recipients. Original kidneys are not usually removed unless they are causing severe problems. In this case the patient underwent B/L. nephrectomy 3 months prior to the transplant procedure. A nephrectomy simultaneous to kidney transplantation would have reduced the total number of procedures. The patient was very vulnerable and indications that he was not a candidate for transplant surgery are not ruled out. We further rely upon the precedents from the Hon'ble Supreme Court in *Dr. Laxman Balkrishna Joshi v. Dr. Triimbak Babu Godbole & Anr.* 1968 (SLT Soft) 411 = AIR 1969 SC 128 wherein it is held:

“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.”

In the instant case, we find a conspicuous breach of this duty in providing the medical advice.

14. In view of the above stated discussions and circumstances, we hold the opposite party no.1 hospital and opposite party no.2 doctor liable for the acts of omission and commission as committed by opposite party no.2 Doctor. The Hospital (Opposite party no.1) is vicariously liable for the acts of negligence and deficiency committed by the Doctor/s engaged or empanelled to provide the proper care and guidance. Hence for the loss and grievous damages suffered by the complainants, we award a sum of Rs.3 lakhs as compensation with a view to provide a modicum of comfort to the parents.

15. In the result, the complaint is partly allowed. Opposite parties 1 and 2 are directed jointly and severally to pay a sum of Rs.3 lakhs to the complainants. Time for compliance six weeks, failing which, the said amount will attract an interest at 7% p.a. till realisation.

 
PRESIDENT **LADY MEMBER**

Dated : 14.10.2021

APPENDIX OF EVIDENCE

Witnesses Examined

For the Complainants

Evidence Affidavit of complainant
as PW.1 filed.

For the opposite parties

Evidence Affidavit of opp. parties
2 and 3 filed.

Exhibits marked on behalf of the complainants :

- Ex.A1 : Photostat copy of the prescription dt.17.1.2011 issued by opposite party no.2.
- Ex.A2 : Photostat copy of Laboratory Report (Clinical Biochemistry Investigation) dt.19.1.2011 pertaining to Mr.Phani Kumar issued by opposite party no.1 Hospital.
- Ex.A3 : Photostat copy of Laboratory Report (Hematology Investigation Report) dt.19.1.2011 pertaining to Mr.Phani Kumar issued by opposite party no.1 Hospital.
- Ex.A4 : Photostat copy of Laboratory Report (Serology) dt.19.1.2011 pertaining to Mr.Phani Kumar issued by opposite party no.1 Hospital.
- Ex.A5 : Photostat copy of Laboratory Report (Clinical Biochemistry Investigation) dt.19.1.2011 pertaining to Mr.Phani Kumar issued by opposite party no.1 Hospital.
- Ex.A6 : Photostat copy of the prescription dt.28.3.2011 issued by opposite party no.2 in favour of Mr.Phani Kumar.
- Ex.A7 : Photostat copy of Laboratory Report (Clinical Biochemistry Investigation Report-Serum Iron Levels & Transferrin Saturation) dt.14.6.2011 pertaining to Mr.Phani Kumar issued by opposite party no.1 Hospital.
- Ex.A8 : Photostat copy of the prescription dt.25.7.2011 issued by opposite party no.2 in favour of Mr.Phani Kumar.
- Ex.A9 : Photostat copy of the prescription dt.2.8.2011 issued by opposite party no.2 in favour of Mr.Phani Kumar.
- Ex.A10 : Photostat copy of the prescription dt.23.8.2011 issued by opposite party no.2 in favour of Mr.Phani Kumar.
- Ex.A11 : Photostat copy of Laboratory Report (Clinical Biochemistry Investigation) dt.24.8.2011 pertaining to Mr.Phani Kumar issued by opposite party no.1 Hospital.
- Ex.A12 : Photostat copy of Laboratory Report (Hematology Investigation Report) dt.24.8.2011 pertaining to Mr.Phani Kumar issued by opposite party no.1 Hospital.
- Ex.A13 : Photostat copy of Laboratory Report (Hematology Investigation Report) dt.24.8.2011 pertaining to Mr.Phani Kumar issued by opposite party no.1 Hospital.
- Ex.A14 : Photostat copy of Laboratory Report (Dept. of Microbiology & Serology Investigation Report) dt.24.8.2011 pertaining

- to Mr. Phani Kumar issued by opposite party no.1 Hospital.
- Ex.A15 : Photostat copy of Laboratory Report (Hematology Investigation Report) dt.24.8.2011 pertaining to Mr. Phani Kumar issued by opposite party no.1 Hospital.
- Ex.A16 : Photostat copy of Laboratory Report (Hematology Investigation Report) dt.24.8.2011 pertaining to Mr. Phani Kumar issued by opposite party no.1 Hospital.
- Ex.A17 : Photostat copy of is the report dt.12.10.2011 issued by Hyderabad Institute of Urology, Hyderabad Nursing Home, Basheerbagh .
- Ex.A18 : Photostat copy of Laboratory Report (Immunology and Serology Report) dt.28.12.2011 pertaining to Mr. Phani Kumar issued by opposite party no.1 Hospital.
- Ex.A19 : Photostat copy of lr. dt.9.1.2012 from opposite party no.2 doctor Dr.Sambasiva Rao.
- Ex.A20 : Photostat copy of lr.dt.4.2.2012 from Dr.Rohith Kumar, Opposite Party no.1 hospital to the NTR Trust Blood Bank, Hyd.
- Ex.A21 : Photostat copy of Discharge Summary dt. 10.2.2012 issued by Opposite Party no.1 Hospital.
- Ex.A22 : Photostat copy of Discharge Summary dt. 23.2.2012 issued by Opposite Party no.1 Hospital.
- Ex.A23 : Photostat copy of prescription issued by Opposite Party no.1 Hospital
- Ex.A24 : Photostat copy of UGI findings dt. 28.2.2012 issued by Mediciti Hospitals.
- Ex.A25 : Photostat copy of Discharge Summary dt. 6.3.2012 issued by opposite party no.1 Hospital pertaining to Mr. Phani Kumar.
- Ex.A26 : Photostat copy of Discharge Summary dt. 10.3.2012 issued by opposite party no.1 Hospital pertaining to Mr. Phani Kumar.
- Ex.A27 : Photostat copy of note issued by opposite party no.1 hospital mentioning the names of blood banks.
- Ex.A28 : Enadu paper cutting dt. 24.5.2012 with the news of filing a complaint before Human Rights Commission by complainants.
- Ex.A29 : Photostat copy of First Information Report No.660/2012 Dt.20.12.2012.
- Ex.A30 : C.D.
- Ex.A31 : Photostat copy of Death Summary dt.16.3.2012 issued by Opposite Party no.1 Hospital pertaining to Mr. Phanikumar.
- Ex.A32 : Photostat copy of Death Certificate 31.3.2012 issued by Greater Hyderabad Municipal Corporation pertaining to Mr. Phanikumar .

Exhibits marked on behalf of the opposite parties : Nil


PRESIDENT


LADY MEMBER

Dated : 14.10.2021