

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

**FA.NO.365 OF 2019
AGAINST ORDERS IN CC.NO.113 OF 2008, ON THE FILE OF
DISTRICT CONSUMER COMMISSION, KARIMNAGAR**

Between:

Smt.Thumu Latha, W/o.T.Chandra Shekar,
Aged: 38 Yrs, Occ: Dairy Parlour,
R/o.H.No.2-10-1182, Chaitanyapuri,
Karimnagar.

....Appellant/Complainant

And

1. Prathima Institute of Medical Sciences,
Rep. by its Managing Director,
Boinapally Srinivas Rao, Nagnur,
Karimnagar District.

2. Dr.Nanda Kumar Madekar, Urologist,
Prathima Institute of Medical Sciences,
Nagnur, Karimnagar District.

3. Dr.Ch.Ravinder Rao, Duty Doctor,
Prathima Institute of Medical Sciences,
Nagnur, Karimnagar District.

....Respondents/Opp.Parties

Counsel for the Appellant/Complainant: M/s.D.Mahesh Kumar
M/s.A.Naveen Kumar

Counsel for the Respondents/OPs : M/s.V.Gourisankara Rao-R1&R3
Notice served – R2

QUORAM:

**HON'BLE SMT.MEENA RAMANATHAN...IN-CHARGE PRESIDENT
&
HON'BLE SRI V.V.SESHUBABU....MEMBER-JUDICIAL**

**TUESDAY, THE TWENTY THIRD DAY OF JULY
TWO THOUSAND TWENTY FOUR**

Order : (Per Smt.Meena Ramanathan, Hon'ble I/c President)

1. This appeal is filed by the Appellant/Complainant under Section 15 of Consumer Protection Act, 1986 against the order passed in CC.No.113 of 2008 dated 26.04.2019 on the file of District Consumer Commission, Karimnagar.

2. For the sake of convenience, the parties are referred to as arrayed in the complaint.

3. The brief facts of the complaint are that – the Complainant Smt.Thumu Latha, aged 38 years was suffering from back ache and approached NIMS, Hyderabad on 26.07.2006. After undergoing all the necessary tests, it was diagnosed as Renal Calculi Lt. PCNL to be done. However, she was instructed to return after 15 days but her pain was unbearable, therefore, she approached Opposite Party No.1 hospital on 24.08.2006. Operation was conducted on 26.08.2006 but despite undergoing the surgery, her pain and suffering continued and an X-Ray was conducted on 02.09.2006 which revealed a foreign body in her left kidney.

4. It is her case that during the course of the operation, Opposite Party No.2 and 3 have conducted the surgery negligently and her suffering and pain has been immense. She approached other doctors and underwent CT Scan of abdomen which revealed a foreign body in the left kidney. She was advised to undergo another operation to remove the foreign body, but she is not in a financial position to undergo the surgery. The present complaint is filed against the negligence of the Opposite Parties in discharging their duty and seeking recompense for her continuous pain and suffering due to which she has also had to suffer business related loss.

5. The Opposite Party No.1 hospital filed their written version denying the averments made by the Complainant. Admittedly, the Complainant underwent the procedure on 26.08.2006 and Dr.Nanda Kumar-Opposite Party No.2 performed the procedure. The usual period for discharge in respect of PCNL operation is between 5 to 10 days, depending on the patient's constitution. In the present case, the Complainant was discharged on the 7th day excluding the day of operation.

6. The patient was discharged on 02.09.2006 and during the period the dressing was changed from time to time. Any surgery

which results in an incision will take time to heal and in the instant case, namely PCNL, a tube is inserted into the renal pelvis through the calyx and the tube is removed a few days after the operation. If there is any foreign particle in the body, there will be an immediate infection/ abscess warranting surgery.

7. The probe or guide wire used is made of a material which is non-reactionary and it is impossible to perform PCNL without the guide wire. What was informed to the patient/Complainant was that the particle remained in the body while removing the guide wire was harmless and compatible to the human body and that there is no danger or harm indicated. The small particle that accidentally stuck in the tissue of the kidney area is a small part of the guide wire which is made of inert or bio-compatible material and is therefore of no consequence. As mentioned supra, there is no necessity for removal of foreign body as alleged and hence there is no cause for complaint. Therefore, they pray to dismiss the complaint in limini.

8. The Opposite Party No.2 filed written version denying the averments made in the complaint. Admittedly, the Complainant underwent surgery for removal of kidney stone which was ensconced at the central renal area and the same was successfully removed. After surgery the usual post-operative care was taken and the patient was discharged after removal of sutures on healing of surgical incision. The Complainant appears to be under the impression that there would be no pain during and post operation. This 2nd Opposite Party honestly informed the Complainant about the retained particle in the kidney and from his extensive knowledge as an Urologist, assured the Complainant that the particle is harmless and the same is a statement of fact.

9. The Complainant's CT Scan abdomen report says there is no calculus, no pus or no swelling and is functioning normally. Even though a small piece of guide wire is there in the kidney, it cannot be attributed to pain. If it is really the cause, the kidney would have been damaged or formed stones again within these two years.

The Complainant, who was informed about the detachment of a small particle inside the kidney area, is trying to take advantage of the said professional disclosure which cannot be permitted and pray dismissal of the complaint with costs.

10. The Opposite Party No.3 filed their written version stating that the truth of the case is that the Complainant initially visited Opposite Party No.1 hospital and had all the investigations done and subsequently got herself admitted at NIMS, Hyderabad. As is evidenced by the documents placed before the Commission, it clearly indicated immediate PCNL and at the request of the Complainant, discharged her, clearly indicating immediate surgery.

11. After the surgery, the patient came for follow up once and did not raise any complaints. After that she never consulted Opposite Party No.2 doctor or Opposite Party No.3 doctor. If she thought the pain was unbearable or intense, then she should have consulted the Urologist/Opposite Party No.2 immediately, but this is not stated anywhere in her complaint. The amount claimed by the Complainant is untenable and as mentioned earlier there is no need for removal of the foreign body and her problem is already cured. Hence, this Opposite Party No.3 seeks dismissal of the complaint as there is no cause of action for the present complaint.

12. During the course of enquiry the Complainant filed evidence affidavit and got marked Ex.A1 to A30. The Opposite Parties 1 to 3 filed their evidence affidavit and Ex.B1 is marked on their behalf.

13. The District Commission after hearing arguments on both sides and after examining the material borne by the record, *partly allowed the complaint directing the Opposite Parties No.1,2 & 3 jointly and severally to pay in equal shares to the Complainant a sum of Rs.1,00,000/- towards medical expenditure and Rs.50,000/- towards compensation and Rs.5,000/- towards costs within one month from the date of receipt of the order.*

14. Aggrieved by the order of the District Commission, the Appellant/Complainant preferred this appeal with the following grounds:

- The District Commission ought to have awarded the entire compensation as claimed as there was negligence on the part of the doctor, but instead allowed the claim in part.
- The District Commission having observed that after post operation the foreign body remained in the patient's body which is apparent negligent operation performed by the Respondent No.2 while discharging his duties.
- The District Commission ought to have allowed the entire claim without assigning any reasons.
- The District Commission after finding that in Ex.A26-X-ray, the foreign body i.e., thread is lying and pain was recurring and the pain did not dissolve despite medication, ought to have awarded the entire claim to the Complainant.

15. The point that arises for consideration is whether the impugned order as passed by the District Forum suffers from any error or irregularity or whether it is liable to be set aside, modified or interfered with, in any manner? To what relief?

16. We have heard the arguments of the learned counsel and carefully examined the material borne by record.

17. The issue that needs our careful consideration is – whether the Appellant/Complainant is entitled to the claim as prayed for in her complaint?

18. The present case is of medical negligence and the following facts are revealed on perusal of the record:

The Appellant/Complainant, aged 38 years was admitted in NIMS on 21.08.2006 and final diagnosis as per Ex.A8-discharge summary is:

(L) Renal Pelvic Calculus

She was discharged on the same day advised as follows:

- Advise :*
- 1) *T. Spasmo Proxyvon SOS*
 - 2) *Plenty oral fluids*
 - 3) *To get surgery done immediately*

19 The Appellant/Complainant then consulted at Opposite Party No.1 hospital on 24.08.2006 vide Ex.A9. She paid a consultation fee of Rs.10/- and provisional diagnosis was recorded as follows:

For PCNL on Saturday

A keen perusal of the exhibits filed by the Appellant/Complainant reveals that before going to NIMS, Hyderabad she had consulted at Opposite Party No.1 hospital on 24.07.2006 and the outpatient card filed vide Ex.A10 evidences this aspect. She was diagnosed even then as suffering from “*Left Renal Calculi*” and “*Radio Opaque Shadow, seen on left renal area*”. After this, she went to NIMS, Hyderabad on 26.07.2006 and underwent more investigations, got admitted for one day on 21.08.2006 with the advice to undergo PCNL (L) immediately. She then voluntarily chose to have her surgery at Opposite Party No.1 hospital on 24.08.2006 i.e., three days after her discharge from NIMS, Hyderabad.

20. Ex.A13 is the discharge summary from Opposite Party No.1 hospital.

<i>Date of admission</i>	-	<i>24.08.2006</i>
<i>Date of discharge</i>	-	<i>02.09.2006</i>
<i>Date of surgery</i>	-	<i>26.08.2006</i>

The principal diagnosis was renal calculi and operative procedure done was Lt. PCNL.

21. Renal Calculi are also known as kidney stones and are a solid mass of crystals that block the urinary tract. Symptoms can vary from severe pain on the lower back, blood in urine, nausea or vomiting. The discharge record vide Ex.A8 has summarized the Appellant/Complainant’s clinical summary and it is important to emphasize the said summary:

k/c/o stone disease – 20 years
L/o (L) Flank pain – 20 days, non-radiating
L/o hematuria xxx not before. Continuous, not has é clots.
L/o dysuria
L/o OCC fever low grade. No other complaints.
L/o enquiry for ECTOPIC PREGNANCY 4 yrs before.
L/o Caesarean section 8 yrs before
L/o APD
Family L/o stone disease.

22. Given this medical background, the consulting doctor at NIMS, Hyderabad planned for PCNL(L) and vide Ex.A1 she was advised to deposit Rs.5,000/- as advance on 21.08.2006 and to be admitted in 7 block ↓ 625 ↓ urology. However, she was unwilling and discharged at request and within a few days underwent the same procedure at Opposite Party No.1 hospital.

23. PCNL – Percutaneous Nephrolithotomy surgery consists of the Urologist making a small incision and a tube is inserted through the incision and a small telescope is passed through the tube to visualize the stone and break it up and remove it.

24. In the instant case, after the PCNL procedure was done, investigation revealed that small remnant/thread/guide wire outside the pelvis. In the PCNL procedure the guide wires are indispensable in Urology and fragmentation is there. However, in this case, it is admitted that it broke and complete removal is imperative, as foreign bodies calcify and obstruct the urinary tract.

25. We have carefully considered the medical literature provided by the Respondents/Opposite Parties vide Ex.B2 and we reproduce the relevant lines from the abstract:

“We suggest that the manufacturer mark the tip of the wire with a colored stripe. This will enable the physician to assess whether an intact wire was retrieved or not. Immediate action may then be initiated for removal of the foreign body.”

“In conclusion, careful history-taking is necessary to identify patients who have undergone a previous intervention of their urinary system, rendering them at risk of harbouring a forgotten foreign body. Ureteroscopy serves as an appropriate procedure both for diagnostic and therapeutic purposes. Direct visualization of the object is achieved, followed by its prompt removal using appropriate extraction devices. Careful attention should be paid during any invasive procedure of the GUT in order to avoid such cases.”

26. In his chief examination, Opposite Party No.2 doctor has deposed as RW1 and stated:

“I myself revealed about the remainder of piece of guide wire to the Complainant. I did not record the same in any of my medical file but orally informed to the Complainant. After discharge of Complainant I again never saw her or examined her.”

27. The primary duty of the doctor who conducted the PCNL procedure must certainly be aware of the perils of guide wire fracture. An understanding of the mechanisms of wire failure would have prevented the unsuspected retained foreign body. An alternate method of removal should have been considered by the Respondents/Opposite Parties when resistance is encountered to have prevented this complication. Although the Respondents/Opposite Parties knew about this fractured fragment of guide wire, in their discharge summary they failed to advise the Appellant/Complainant as to what needs to be done to remove the fragment/foreign body.

28. A broken guide wire can lead to many complications and can be rebellious to antibiotic treatment. It is always necessary for the Urologist to check the endoscopic equipment at the end of the procedure. Broken guide wires and laser fibres can cause problems for the patient and the surgeon/urologist must be aware of that. The Respondents/Opposite Parties must have been well aware of the implications but have chosen to escape their liability by stating that the guide wire fragment is bio-compatible.

29. The Appellant/Complainant continued to suffer from back ache and fever and consulted various doctors and the X-Ray KUB filed vide Ex.A15 revealed:

“A coiled radio opaque tubular structure noted in left renal area.”

The CT Scan dated 11.06.2008 vide Ex.A16 revealed:

“ ? FOREIGN BODY – LEFT KIDNEY”

30. We have perused the deposition of RW4 and the relevant portion is reproduced for emphasis:

“The particle of the guide wire now can be removed by another operation (open surgery). Opposite Party No.2 Dr.Nanda Kumar can perform that formal operation. Dr.Nanda Kumar knew and suggested to the Complainant for removal of the guide wire by conducting formal operation. The same is not found place in the medical records. The Opposite Party No.1 hospital will be having with them only original case sheet and discharge summary.”

31. This advice was never recorded on the discharge summary and the Appellant/Complainant/patient was under the impression that the fragmented remnants are bio-compatible and would not cause her further pain or suffering.

32. The Commission below has observed the negligence of the Respondents/Opposite Parties and also categorically stated that:

“When the Opposite Parties noticed presence of foreign body in the kidney at the place of operation which was mentioned in the Discharge Summary they could have removed the guide wire by doing another operation revealing the same to the patient.”

But only awarded a meagre compensation of Rs.50,000/- and Rs.5,000/- towards costs. When the Respondents/Opposite Parties had the knowledge of the foreign body, it is their duty to record the observation and should have advised the follow up in the discharge summary. Instead, they have failed miserably to take care of the patient who was forced to consult various other specialists and suffer great pain and pay a very high price for undergoing PCNL at their facility.

33. The Appellant/Complainant filed documents through receive documents petition vide FAIA.No.1039/2024 and perusal of these exhibits reveal that she consulted Dr.Mallikarjuna.C and underwent treatment for h/o retained guide wire fragment and spent a considerable amount towards the emergency admission. This has happened subsequent to filing of appeal evidencing the fact that she is still suffering from the problem. Depending upon the circumstances, the subsequent developments and documents

are essential to consider to arrive at the just compensation, hence Ex.A31 to A34 are marked on behalf of the Appellant/Complainant.

34. The grounds urged are valid and we consider it a fit case to enhance the compensation to Rs.2,00,000/- along with costs of Rs.20,000/-.

35. In the result, the appeal is disposed of by modifying the order of the District Commission, Karimnagar passed in CC.No.113/2008 dated 26.04.2019, with the following direction:

- (1) The Respondents/Opposite Parties are directed jointly and severally to pay the Appellant/Complainant a sum of Rs.1,00,000/- towards medical expenditure;
- (2) The Respondents/Opposite Parties are directed jointly and severally to pay the Appellant/Complainant a sum of Rs.2,00,000/- towards compensation;
- (3) The Respondents/Opposite Parties are directed jointly and severally to pay the Appellant/Complainant a sum of Rs.20,000/- towards costs.

Time for compliance is six weeks from the date of this order, failing which the amount awarded in point (1) and (2) will attract interest @ 7% p.a.

Sd/- I/C PRESIDENT DT: 23.07.2024 UC*	Sd/- MEMBER-J
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**EXHIBITS MARKED AS PER IA.NO.1039/2024 FOR
COMPLAINANT:**

For Complainant:

Ex.A31 – is the copy of Emergency Certificate dated 27.05.2019
Ex.A32 – is the copy of Essentiality Certificate date 27.05.2019
Ex.A33 – is the copy of Discharge Summary
Ex.A34 – are the copies of prescriptions (2 Nos.)

Sd/- I/C PRESIDENT DT: 23.07.2024 UC*	Sd/- MEMBER-J
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