

**THANE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION**

Room No.214, 2<sup>nd</sup> Floor, Collector Office Building, Thane-400 601

**C. Complaint No.272/2011**

**Date of Filing— 10/05/2011**

**Date of Order- 09/03/2023**

1.Mr.Yogesh Ramkumar Pal  
2.Mr.Ramkumar Sundar Pal  
R/at.Shri Ram Nagar, Lahan Mhasoba  
Maidan Chawl No.1, Room no.7  
In front of Ganesh Niwas  
Kalyan (West)  
District Thane

.....Complainant  
(Adv.G.D.Tiwari)

V/s

1.Shree Hospital (Godbole Hospital)  
Through Dr.Sanjay Godbole  
owner/Proprietor  
Shree (Godbole) Hospital

2.Dr.Vivek Malvi  
Consulting Incharge  
Shree (Godbole) Hospital  
Both nos.1 & 2  
Shree (Godbole) Hospital  
Shree Ganesh Baug  
Murbad Road, Kalyan (W)  
District Thane 421 301

3. The Oriental India Insurance Co.Ltd.  
Address-Apex Insurance, Andheri Branch  
Mumbai

....Opponents  
(Adv.G.N.Shenoy for OP nos.1 & 2)

**BEFORE :** **Hon'ble President, Mr.V.C.Premchandani**

**Hon'ble Member, Smt. Poonam V.Maharshi**

**(Per- Hon'blePresident, Mr.V.C.Premchandani )**

**J U D G M E N T**

**(9<sup>th</sup> March 2023)**

The complainant has filed the present complaint under section 12 of the Consumer Protection Act, 1986. The gist of the complaint is that as on 22/10/2010, the complainant met with an accident as he fell down from the bike and due to the fall, in sustained the injury on his right leg (knee) and, thereby, he was unable to walk. He was taken to the Shree Hospital immediately and got admitted as an indoor patient. The opponent no.2 was Consulting In-charge in the hospital and he had given all the initial treatment to the complainant. The plaster was applied on the right leg of the complainant by the opponent no.2 with the assistance of Dr.Bansode on the same day. The complainant was asked to pay Rs.15,000/- towards the treatment and, accordingly, the bill was paid. The complainant was discharged from the hospital on the next day i.e. 23/10/2010. The complainant further submitted in the complaint that as on 25/10/2010 the complainant felt that there was absolutely no sensation in his right leg. Hence, he once again went to Shree Hospital immediately and got admitted at about 10 a.m. One Dr.Prafulla was specially called by the Hospital, who examined the complainant at about 5.00 p.m. After examination he opined that due to tight application of plaster blood circulation was obstructed and advised the complainant to approach K.E.M. Hospital, Mumbai immediately for further treatment. The complainant immediately rushed to the K.E.M. Hospital, Mumbai, where he was admitted at about 7.30 p.m. on 25/10/2010. After intensive check up, the Doctors of K.E.M. Hospital opined that due to wrong and negligent application of plaster at Shree Hospital, the blood circulation to the right leg was obstructed and stopped. Hence, advised amputation of right leg. Further, it was submitted in the complaint that ultimately, right leg of the complainant was amputated by the operation as on 29/10/2010. Thus, the complainant lost his right leg due to the wrong, negligent and faulty treatment at Shree Hospital. The complainant incurred permanent disability. The complainant was operated again as he had developed gangrene. The entire lower leg from the

right thigh of the complainant was amputated by operation. Thereby the complainant could not appear for the examination of 12<sup>th</sup> standard and lost his valuable education year. Still the complainant is not in a fit mental condition due to shock. It has affected livelihood of the complainant. At present the complainant affixed the artificial leg, whereby the complainant spent more than Rs.3,50,000/- for the artificial leg, due to the negligent treatment taken at Shree Hospital, Kalyan by the complainant. The complainant has lost his leg. Therefore, the present complaint has been filed by the complainant. The complainant has prayed in the complaint that the opponent may be directed to pay compensation of Rs.18,00,000/- and the cost of litigation to the complainant.

2. The complainant's complaint was admitted and the notice was issued to the opponents. The opponent nos.1 & 2 appeared and filed their written version. The opponent no.1-Dr.Sanjay Godbole, Proprietor of Shree Hospital submitted in the written statement that he is aware about the facts of the expenses of the complainant. The complaint is not filed with respect to any deficiency in service or unfair trade practice adopted by the hospital but purely filed to tarnish the clean image and to disrepute to his good name. The opponent no.1 further submitted that there is no cause of action to file the present consumer complaint. There is complicated issue of facts and law. Therefore, the Civil Court is having the jurisdiction and this Commission/Forum does not have the jurisdiction to entertain the present consumer complaint. It is further submitted that the complainant has deliberately not disclosed all the relevant facts and information and suppressed the material facts. The complainant has deliberately withheld the fact that amputation of the leg was done because of gas gangrene infection and not because of the consequences of the plaster. The complainant has deliberately withheld the fact that the gas gangrene was caused by CI Welchi infection which is known in cases of road accidents. The present complaint has been deliberately

filed for fraudulently obtaining an order from this Commission. Dr.Prafulla never told to the complainant that due to the tight plaster there was an obstruction in the blood circulation. It is further submitted that the hospital is a well known hospital and well equipped with modern medical facilities. The Hospital has also resident doctors who are available round the clock along with the honorary doctors. These doctors are assisted by full-fledged team of nursing and domiciliary employees engaged in carrying out the day-to-day activities of the hospital. The hospital is also equipped with a Boyle's machine for the purpose of giving anesthesia and there is an ample oxygen supply for the use of the patients. The opponent no.1 is the partner of Shree Hospital where the patient was managed and the opponent no.2 is the Orthopedic Surgeon who managed the patient orthopedic problem and both functions independent of each other.

3. They have further submitted in the written statement regarding the factual matrix of the hospital related to the complainant and also denied the parawise allegations made by the complainant in the complaint and prayed that the complaint may be dismissed with costs since there is no negligence or rashness in the services rendered on the part of the opponent no.1. It is further submitted by the opponent no.1 that they had followed health care industry protocol and there is nothing violation of any treatment protocol. Hence, the present complaint may be dismissed with costs.

4. The opponent no.2 appeared and filed their written statement. The opponent no.2 submitted in the written statement that the false complaint has been filed by the complainant to extract the money from the opponent no.2 and also to harass unnecessarily to him. It is further submitted by the opponent no.2 that there were suppression of material facts. Therefore, the present complaint is liable to be dismissed with costs. The complainant has deliberately withheld the fact that the patient had absolutely no problem with respect to any neurological deficits in the fractured leg. The complainant has deliberately withheld the fact that the

amputation of leg was done because of the gas gangrene and not because of the consequences of the plaster. The opponent no.2 further submitted that the opponent no.2 was 'Consulting Incharge Doctor' in the hospital. The truth is that the opponent no.2 was only the Orthopedic Surgeon who was called and asked to manage the complainant's case. They denied that due to the negligence of the opponent no.2, there was an amputation of the leg but the amputation was undertaken for the gas gangrene suffered by the patient. The complainant's complaint is false, fabricated and is based totally on the presumptions without having any cogent and valid documents or opinion. Therefore, the present complaint may be dismissed under Section 26 of the Consumer Protection Act, 1986.

5. The opponent no.2 also submitted that the functions of the opponent nos.1 & 2 are independent from each other. There is road accident and the infection i.e. gas gangrene occurred. Further the opponent no.2 submitted the factual matrix of the complainant and denied each contents of the complainant made in the complaint and lastly submitted that the complaint may be dismissed with costs.

6. The complainant has filed rejoinder affidavit. Both the parties have filed their expert opinion from the different doctors and also relied upon the medical texts pertaining to the gas gangrene and also filed the written notes of arguments.

7. During the pendency of the complaint, the opponent no.2 had preferred an application to add the name of the opponent no.3-Oriental India Insurance Co. Ltd. as party since they are insured about the compensation for the negligence. The said application was allowed and the opponent no.3 was added as a party in the present complaint. The opponent no.3 was served with the notice but failed to appear. Hence, the matter was proceeded ex-parte against the opponent no.3.

8. Perused the complaint, affidavit, List of documents, written version of the opponent nos.1&2, Evidence of the Complainant and opponent nos.1 & 2, affidavit of the expert on behalf of both the sides, written notes of arguments of

both the parties and heard oral arguments of both the parties. We find the following points arise for our consideration and answers to the said points are as under:-

Sr.no	Points	Findings
1	Whether complainant is the 'consumer' of the opponent nos.1, 2 & 3 as per section 2(1)(d) of the Consumer Protection Act, 1986?	In affirmative
2	Whether the opponent no.1 has provided deficiency in service towards the complainants?	In affirmative
3	Whether the opponent no.2 has committed medical negligence while treating the complainant?	In negative
4	What order?	As per final order.

### **REASONS**

9. **As to point No. 1:-**

The complainant met with an accident as on 22/10/2010 and he sustained injury on his right leg and was immediately admitted in the opponent no.1 hospital and the opponent no.2 has given the treatment to the complainant on the same day. The complainant was discharged after paying the due bills of the treatment to the opponent no.1 as on 23/10/2010. The said fact is admitted by both the parties. The opponent no.3 is the Insurance Company and the opponent no.2 is insured at the relevant time with the opponent no.3 and obtained the policy, and submitted if the case has been proved against the opponent no.2, then the complainant will be beneficiary of the sum assured. Therefore, complainant is also the 'consumer' of opponent no.3 as per the Consumer Protection Act, 1986. Hence, the complainant is the 'consumer' of the opponent no.1, 2 & 3 as per section 2(1)(d) of Consumer Protection Act, 1986. Hence, we answer point no.1 in affirmative.

10. **As to point No. 2:-**

The opponent no.1 has submitted in the written version that the opponent no.1 is the hospital and he is proprietor of the said hospital. The opponent no.1 hospital

is providing the Diagnostic Center with latest investigatory facility, radiology center, 24 hours Casualty Department and out Patients department, amongst other facilities. The Hospital renders services in General Medicine, Gen. Surgery, Gynecology and Obstetrics. Pediatrics, Ophthalmology, ENT, Cardiology, Diagnostic and Therapeutic Endoscopy, Physiotherapy, Ultrasonography, Orthopedic, etc. A large number of prominent doctors offer their services at the Hospital. The Hospital has also resident doctors who are available round the clock along with the honorary doctors. These doctors are assisted by full-fledged team of nursing and domiciliary employees engaged in carrying out the day-to-day activities of the hospital. In the present case, after discharge of the complainant as on 23/10/2010, the complainant felt that there was absolutely no sensation in the right leg. Hence, his father took him to the opponent no.1 hospital immediately and admitted at around 10.00 a.m. and thereafter at about 5.00 p.m. he was referred to the KEM hospital immediately for further treatment. The said fact has been admitted by the opponent no.1. It is also admitted that the patient was having emergency and it has been seen and observed by Dr.Prafulla, who advised the patient to take to KEM Hospital for further investigation and treatment, if any. Since the opponent nos.1 & 2 in their written statement admitted that they are having the resident doctors available round the clock, then why the complainant was kept as on 25/10/2010 from 10.00 a.m. till 5.00 p.m. and thereafter, they advised without attending the patient or without providing medical services, keeping the patient in the hospital in spite of having the resident doctors, which amounts to deficiency of service from the concerned hospital i.e. opponent no.1 for which the patient/complainant has unnecessarily suffered. For that hours it is quite possible that the resident doctors on the same time looking to the condition of the patient/complainant, referred to the KEM Hospital, the scenario might be different. Hence, it is proved from the fact and evidence produced on record that the

hospital has provided deficiency in service by keeping the patient from 10.00 a.m. till 5.00 p.m. as on 25/10/2010. Therefore, we answer point no.2 in affirmative.

11. **As to point No. 3:-**

The opponent no.2 has filed the written statement. In that he has contended that the complainant was admitted in the hospital as on 22/10/2010 at 5.00 p.m. The opponent no.2 attended the patient. The patient had a fracture of the tibial condyle with fracture of the upper 3<sup>rd</sup> tibia with haemarthrosis. His distal pulsation was present and there were no neurological deficits. The opponent no.2 planned a knee aspiration of the haemarthrosis and plaster of the leg. As on 22/10/2010 at about 9.00 p.m. the opponent no.2 gave a plaster cast. As on 23/10/2010 at about 9.00 a.m. the opponent no.2 examined the patient. There was no swelling and there were no neurological deficits. As all was well, the opponent no.2 discharged the patient and instructions were given that if there was any swelling or any other complaint, the patient should immediately come to Shree Hospital otherwise the patient should follow up with the opponent no.2 on 01/11/2010 at 12.30 p.m. There was no complaint at the time of discharge of the patient about swelling or any other complaint. We perused the complaint. The complainant has filed the medical report issued by the KEM Hospital dated 04/12/2010. In that it was mentioned as under:-

*“On 25/10/2010 patient came to the emergency in the KEM Hospital, as a referral from Private Hospital in view of absent pulses and swelling at Right Lower Limb. On admission Doppler ultrasonography was done, suggestive of complete block of anterior tibial artery. The lower limb was cold on examination with absent sensations below the level of lower 1/3<sup>rd</sup> limb with no movement at ankle joints-CVTS (plastic surgery opinion was taken and as advised fasciotomy was done for compartment syndrome and*



*decompression of vessels was attempted by plastic surgery registrar. Daily dressing was done in the ward subsequently.*

*On day 3 post operative the patient developed high grade fever with altered unconsciousness, the swab from wound shows presence of clostridium species (gas gangrene). In view of deteriorating condition of the patient knee disarticulation was done on 09/10/2010.*

*Subsequently sent swab from the stump also showed present of clostridium specie hence stump was revised at a higher level on 01/11/10. After this daily dressing has been done in the ward. Hyper baric oxygen therapy was also done at Kasturba Hospital.*

*Swelling after applying a cast is known event which requires timely intervention and removal of plaster and cast and further management to prevent development of compartment syndrome. If compartment syndrome does develop, it requires fasciotomy (i.e. operation to salvage the leg). The initial management of this management was according to the standard guidelines of management.*

*After the surgery, infection in a fasciotomy, is a known occurrence which can be treated with the antibiotics and daily dressing and debridement which was carried out in this patient.*

*The type of infection and the organism involved is not under the doctor's control. In this case, the infection was gas gangrene. Hence, amputation had to be carried out in the best interest of the patient as a life saving surgery.*

*At present daily dressings are carried out to improve the wound condition and once wound heals, the patient will be rehabilitated*

*with a state of the art and above knee prosthesis. General condition of the patient is absolutely stable.*

*The sequence of events in this case suggest that the right treatment was given to patient according to the standard guidelines supported by the literature.”*

12. Hence, it is proved that at the time of admission of the complainant to KEM Hospital, the pulse was absent and swelling was there at the right lower limb. After observation and routine test, it was found that there was a gas gangrene. We perused the text finding and case report of gas gangrene. One of the basic principles of Orthopedic surgery is that the gas gangrene does not develop in closed fractures. That there are exceptions to this rule is demonstrated by the following report of an extremely rare case.

13. Clostridium septicum is a Gram-positive, sportulating, spindle-shaped rod, more acrotolerant than Clostridium perfringens, and motile in young cultures, exhibiting spreading growth on blood agar. Biochemically it can be differentiated from other Clostridia by a negative sucrose fermentation, reaction and animal toxin neutralization tests.

14. It is not art of the normal flora of the human gastro-intestinal tract. In one study of 175 patient stools examined for Clostridial species, not one isolate of Clostridium septicum was found.

15. Clostridium septicum surgery infection in surgery is associated with underlying malignancies, hematological and gastrointestinal solid tumors primarily. There is also an association with diabetes mellitus and atherosclerotic disease.

16. Almost all cases of Clostridium septicum gangrene after orthopedic surgery develop in open wounds close primarily or puncture wounds not adequately debrided, in association with peripheral vascular disease and after

implant surgery in elderly immunocompromized patients. Even after closed fracture treatment Clostridium gas gangrene has been found.

17. Werry and Meek (7) in 1986 reported a case of Clostridial gas gangrene following a closed reduction of a Colles fracture performed in hospital.

18. Clostridia are ubiquitous, opportunistic organisms. Gas gangrene due to Clostridium septicum can complicate surgical treatment of closed fractures, despite treatment with prophylactic antibiotics.

19. The complainant has failed to prove the fact that the two layer plaster has to be adopted, one is kuccha and another is pucca. The gas gangrene can be happened due to the infection in a fasciotomy. It is a known occurrence and can be treated with antibiotics and daily dressing. The type of infection in organ involved is not under the control of the doctor in this case infection was gas gangrene. Hence amputation has to be carried out in the best interest of the patient as a life saving surgery. The opponent no.2 has succeeded to prove that the gas gangrene is occurred to the patient due to the infection in fasciotomy not because of the negligence of the doctor. The opinion given by both the doctors submitted that there was a gas gangrene to the patient. The opponent no.2 submitted the evidence of expert. The same was disputed by the complainant on the ground of forgery of the document or affidavit. However, both the sides expert opinion cannot be discarded but from the text record it shows that the infection can be happened to anyone after the surgery or that does not develop in a close fracture. When the complainant has alleged that due to the close fracture plaster the gas gangrene occurred. No such case has been proved by the complainant. Therefore, there is no negligence on the part of opponent no.2 to treat the complainant. Hence, point no.3 is answered in negative.

20. **As to point No. 4:-**

After considering the reasons given in point nos.1, 2 & 3, we proceed to pass the following order:-

**ORDER**

1. The Consumer complaint No.272/2011 is partly allowed.
2. The Opponent no.1 is directed to pay an amount of Rs.10,00,000/- (Rupees Ten lakhs Only) as compensation to the complainant for not treating or advising as on 25/10/2010 from 10.00 a.m. till 5.00 p.m.
3. The complaint against the opponent nos.2 & 3 is dismissed.
4. The Opponent no.1 is directed to pay Rs.30,000/- (Rupees Thirty Thousand Only) as to cost of the complaint to the Complainant.
5. The Opponent no.1 is directed to comply with the order within 30 days from the receipt of this order.
6. The member sets shall be returned to the complainant. In case, complainant fails to collect the said sets within 30 days from the receipt of copy of judgment, the same may be destroyed.
7. The Copies of the judgment be furnished to both the parties free of cost.

**Place: Thane**

**Date 09/03/2023**

**(Vijay C. Premchandani)**  
**President**

**(PoonamV.Maharshi)**  
**Member**