

**BEFORE THE BENGALURU RURAL AND URBAN I ADDITIONAL
DISTRICT CONSUMER DISPUTES REDRESSAL FORUM, I FLOOR, BMTC, B BLOCK, TTMC
BUILDING, K.H.ROAD, SHANTHI NAGAR, BENGALURU-27**

**Complaint Case No. CC/52/2021
(Date of Filing : 16 Jan 2021)**

1. Mrs. Rohini

W/o Mr. Kowshik R, Aged about 31 years, R/at 1t Floor,
#39/A,2nd A Main, 2nd A Cross, Lake View Layout, Venkatala,
Bengaluru-560064.

.....Complainant(s)

Versus

1. 1. TMA Pai Hospitals

Represented by its Managing Director, Opposite Old Taluk
Office, Udupi, Karnataka-576101.

.....Opp.Party(s)

2. 2. Dr. Rajeshwari G Bhat

TMA Pai Hospitals, Opposite Old Taluk Office, Udupi,
Karnataka-576101.

3. 3. Dr. Parvathi Bhat

TMA Pai Hospitals, Opposite Old Taluk Office, Udupi,
Karnataka-576101.

4. 4. Dr. Ashwini

TMA Pai Hospitals, Opposite Old Taluk Office, Udupi,
Karnataka-576101.

5. 5. Dr. Nida Zahoor

TMA Pai Hospitals, Opposite Old Taluk Office, Udupi,
Karnataka-576101.

6. 6. Dr. Sheika

Resident Doctor, TMA Pai Hospitals, Opposite Old Taluk Office,
Udupi, Karnataka-576101.

7. 7. Dr. Roshan

TMA Pai Hospitals, Opposite Old Taluk Office, Udupi,
Karnataka-576101.

8. 8. Sister Shalini

TMA Pai Hospitals, Opposite Old Taluk Office, Udupi,
Karnataka-576101.

9. 9. Dr. Rema

TMA Pai Hospitals, Opposite Old Taluk Office, Udupi,
Karnataka-576101.

10. 10. Dr. Sangamitra

TMA Pai Hospitals, Opposite Old Taluk Office,
Udupi, Karnataka-576101.

11. 11. Dr. Ramachandra

Kasturba Medical College, Tiger Circle Road, Madhav nagar,
Manipal, Karnataka-576104.

12. 12. Dr. Aravind

TMA Pai Hospitals, Opposite Old Taluk Office, Udupi,

Karnataka-576101.

BEFORE:

HON'BLE MR. H.R.SRINIVAS, B.Sc. LL.B., PRESIDENT
HON'BLE MR. Y.S. Thammanna, B.Sc. LLB. MEMBER
HON'BLE MRS. Sharavathi S.M.,B.A. L.L.B MEMBER

PRESENT:**Dated : 01 Oct 2022****Final Order / Judgement****Date of Filing:16.01.2021****Date of Order:01.10.2022**

BEFORE THE BANGALORE I ADDITIONAL DISTRICT CONSUMER DISPUTES
REDRESSAL COMMISSION SHANTHINAGAR BANGALORE - 27.

Dated:01ST DAY OF OCTOBER 2022**PRESENT****SRI.H.R. SRINIVAS, B.Sc., LL.B. Rtd. Prl. District & Sessions Judge And PRESIDENT****SRI. Y.S. THAMMANNA, B.Sc, LL.B., MEMBER****SMT.SHARAVATHI S.M, B.A, LL.B., MEMBER****COMPLAINT NO.52/2021****MRS.ROHINI**

W/o Mr.Kowshik Raged about 31 years,

R/at 1st Floor, #39/A,2nd A Main, 2nd A Cross

Lake View Layout, Venkatala,

Bengaluru 560 064.

Ph:9844130188, 9845468248

*(Smt Aruna Shyam.M. Adv. for complainant)***COMPLAINANT :****Vs****OPPOSITE PARTIES:****1 TMA PAI HOSPITALS,**

Represented by its Managing Director

Opposite Old Taluk Office,

Udupi, Karnataka 576 101.

DR. RAJESHWARI G BHAT,

TMA PAI HOSPITALS,

2

Opposite Old Taluk Office,

Udupi, Karnataka 576 101.

DR.PARVATHI BHAT,

TMA PAI HOSPITALS,

3

Opposite Old Taluk Office,

Udupi, Karnataka 576 101.

DR.ASHWINI,

TMA PAI HOSPITALS,

4

Opposite Old Taluk Office,

Udupi, Karnataka 576 101.

DR.NIDA ZAHOOR,

TMA PAI HOSPITALS,

5

Opposite Old Taluk Office,

Udupi, Karnataka 576 101.

DR.SHEIKA, Resident doctor,

TMA PAI HOSPITALS,

6

Opposite Old Taluk Office,

Udupi, Karnataka 576 101.

DR.ROSHAN,

TMA PAI HOSPITALS,

7

Opposite Old Taluk Office,

Udupi, Karnataka 576 101.

SISTER SHALINI,

TMA PAI HOSPITALS,

8

Opposite Old Taluk Office,

Udupi, Karnataka 576 101.

9

DR.REMA,

TMA PAI HOSPITALS,

- Opposite Old Taluk Office,
Udupi, Karnataka 576 101.
DR. SANGAMITRA,
- 10** TMA PAI HOSPITALS,
Opposite Old Taluk Office,
Udupi, Karnataka 576 101.
DR.RAMACHANDRA,
KASTURBA MEDICAL COLLEGE,
- 11** Tiger Circle Road,
Madhav Nagar
Manipal, Karnataka 576 104.
DR.ARAVIND
TMA PAI HOSPITALS,
Opposite Old Taluk Office,
Udupi, Karnataka 576 101.
- 12** (OP-3,5,6,9,10,11 & 12: Exparte)
(Sri Manmohan PN Adv. for
OP-1, 2, 4, 7 and 8)

ORDER

SRI.H.R. SRINIVAS, PRESIDENT

1. This is the complaint filed by the complainant U/S Section 35 of the Consumer Protection Act 2019, against the opposite parties (herein referred in short as OPs) alleging medical negligence while performing surgery by leaving cotton swab in the body thereby causing health issues to the complainant and for damages of Rs.1,46,84,000/- on different counts and for other reliefs as the commission deems fit.

2. The brief facts of the complaint are that; the complainant is a MSC graduate from a prestigious university and doing job in Bangalore. She got married with Mr.Koushik R, on 2.05.2013. OP.1 is an hospital wherein OP.2 and 3 are the doctors working in the said hospital. She conceived due to the marriage and obtained the services of OPs 1, 2 and 3 during the gestation period and acted in accordance with their suggestions, prescriptions and directions. Necessary tests were conducted intermittently and on 28.07.2019 she got the labour pain. When she visited the

OP-1's hospital on that day OP.5 doctor Nida Zahoor was in the hospital and he examined her and at 11 pm as she was experiencing severe labour pain she was advised to get admitted to the hospital and at around 3 am necessary enema was given. OP-7 doctor Shalini Anesthetic Doctor, gave anesthesia to withstand the pain of surgery and OP-5 with the help of OP-6, Dr. Sheka a resident doctor in the learning process conducted caesarian on 29.07.2018 which was a Sunday wherein OP-2 and 3 who were examining all the while the complainant, were not available. On 02.08.2018 after the caesarean, the complainant was discharged from the hospital.

3. After delivery she suffered lower abdominal pain at the sight of incision along with vaginal discharge with foul smell. Complainant visited OP-1 on 20.08.2018, wherein she was examined by OP-3 and informed that the discharge was "Lochia" and the pain was a natural one consequent to the delivery and that the pain would subside once the discharge stops. Even after a month, there was no relief from the pain and not able to bear the pain with great difficulty, she again visited OP-1's hospital on 22.09.2018. On that day, the doctors with whom the complainant was getting examined, were not available and she was asked to come the next day. Afterwards, complainant was examined by OP-10 Dr. Sangamithra a postgraduate doctor. She sought irrelevant questions which were offensive. She also prescribed medication which is for menstrual disorder and for acute pain during the said period. She was directed to get the Ultrasound Sonography and the same was conducted by OP-9 Dr. Rema and in the reports she has put a question mark in the report itself regarding the left ovary not visible. OP never put any effort to further investigate as to why the left ovary is not visible. OP-2 again put her finger to her vagina to know the problem for the pain. Another Ultrasound Sonography was done by OP-3 but the report was never shown to her nor to her husband. OP-1 hospital has not maintained the checklist for verification of the sponge count, gauze count and instrument count which were to be used while conducting the surgery. On 22.09.2018 and 23.09.2018 antibiotic was given to her without proper investigation and 40 Mg FUPAN was injected for seven days to reduce peptic ulcer and to reduce upper abdominal pain, but the same was injected to cure the lower abdominal pain.

4. In spite of it, she was experiencing excruciating lower abdominal pain and foul vaginal discharge, OP failed to diagnosis properly as to the cause, though there was very high levels of WBC in comparison to normal Haematology report. Doctor failed to conduct further investigation and test. She was operated for lower abdominal pain and for the vaginal discharge on 24.09.2018 by OP-3 and OP-12. After surgery she was discharged on 06.10.2018. She again visited the hospital from 08.10.2018 to 24.10.2018 on alternate days to get the incision wound dressed. On 12.10.2018 she was given Augmentin and Pan for vaginal discharge and abdominal pain. Even vaginal swab was collected skin allergy caused due to the prolonged use of sanitary pad was also examined. There was no relief to her lower abdominal pain. During the visit on 15.10.2018 she complained the nipple pain in her breast and the difficulty in feeding the baby.

5. She was also informed that the test for (MRSA) Methicillin Resistant Staphylococcus Aureus. Without going to the cause, OP asked her to breast feed the baby during her medication. Again on 22.10.2018, she visited the OP-1 hospital for dressing the suture and also complaint of pain in the nipple area, abdominal pain, vaginal discharge and foul smell. The Operation done on 24.09.2018

for the same was a failure. During her visit between 08.10.2018 to 24.10.2018 OP-1 doctor used to remove the pus, clean and dress the suture after taking bath. Even at the time visiting the hospital, they used to dress the wound. Medicines were given for pain in the nipple which did not give any relief.

6. Loosing all hopes, she contacted one Dr. Archana an Ayurvedic Doctor and she after studying the case of the complainant extensively and seriously suggested her to go for MRI. On 01.12.2018 the MRI was conducted and it was found that there is the presence of "Gossypiboma" (cotton swab) in her body, which was identified as a foreign object inside the body. Immediately she recommended for a surgery. Dr Prasad conducted surgery i.e. 3rd surgery after the caesarean and for the absces and in the 3rd surgery, the mop left over was removed from her body at Kasturb Hospital Manipal. There is utter negligence on the part of the doctors of OP-1 at the time of conducting caesarian operation and also at the time of removing the abscess and treating for abdominal pain and vaginal discharge.

7. After removing the said cotton swab, it was found that the sigmoid colon of the complainant was fully infected due to the presence of the foreign body inside the body. The said sigmoid colon was also to be surgically removed and the same was removed by Laparotomy Surgery. The descending colon and rectum were stitched together. Till it got recuperated, an alternative opening was created in the small intestine and colostomy pouch was fixed for artificial excretion. After the laparotomy surgery, the complainant was free from abdominal pain and breast pain and also from the vaginal discharge. She was again underwent another surgery at Kasturba Hospital, Manipal to get removed the colostomy pouch. OP-3 doing her free period when she was off the duty, visited Kasturba Hospital Manipal and contacted Dr. Prasad only to feed wrong information and misguided him and she also made offensive statement about the personal life of the complainant.

8. In a gleeful manner, the Kasturba Hospital at Manipal had waived the cost of the surgery while removing the foreign body from the body from the complainant only in order to rectify their mistake committed during the 1st and 2nd operation. The act of OP is an attempt to lure the complainant with money which proves their guilt in the profession and also negligence while conducting the operation.

9. Earlier, they had approached the State Commission, Bangalore by filing this complaint whereas the same was returned to be presented before the concerned District Commission on the point of pecuniary jurisdiction and same was presented to this Commission and according to the complainant it is within time.

10. It is contended that doctors of OP-1 have no skill or knowledge and have been negligent in their duties and left the cotton swab in the operative portion which caused the problems to the complainant. Due to the negligent act of the doctors of OP-1, she could not spend her time with the baby and could not properly breast feed and the baby also suffered from yeast infection. The complainant was struggling for life and also suffering from physical and mental pain. The baby was deprived off motherly love and affection which caused mental agony to the complainant. Due to the frequent visit to the hospital, they could not perform the rituals which ought to have been done.

Further, the left fallopian tube and left ovary of the complainant having become weak and nonfunctional, the prospectus of the complainant conceiving again is remote. Herself and her husband are not able to enjoy the matrimonial life due to the post-delivery complications. She cannot use the Indian style of commode for which they had to change western type of commode. Her digestive system was also affected due to the usage of colostomy bag. It also increased her financial expenses besides she was traumatized and mentally upset. Due to the multiple operation her body is not the anymore and cannot withstand the strain of the life.

11. The sigmoid colon removed completely. Due to the negligence on the part of OPs and also wrong diagnosis, the complainant cannot take any employment and her career has come to an end. She lost an opportunity of her lifetime in her professional career. She had to visit hospital oftenly due to the complications that had taken place due to the negligent act of the doctors of the OP-1. They could not perform the birthday of the baby. Herself residing in Bangalore had to travel to Udupi on every weekend which causes her physical and mental strain. Due to the negligent act on the part of doctors of OP-1, and on the failure of their duty, to take proper care, complainant is suffering from hyper active, bowel sounds which is audible, unbearable severe pain in the left and right lower abdominal region during bodily movement, abdominal discomfort especially while sneezing and coughing, she cannot carryout her daily routine work in the house due to the weak body. She lost her joy full life. For all these, she prayed the commission to allow the complaint and provide her a pecuniary damages regarding loss of present and future earning a sum of Rs.42,84,000/-, loss of earning of her husband, Rs.1,00,000/- Hospital charges Rs.1,00,000/-, future medical expenses Rs.6,00,000/- travel and accommodation expenses incurred Rs.1,00,000/-, legal expenses Rs.1,00,000/-, non-pecuniary damages such as loss consortium Rs.10,00,000/-, for pain continued suffering, by the complainant and loss of motherhood Rs.10,00,000/- emotional distress and suffering endured by the family Rs.4,00,000/-, and Rs.70,00,000/- towards exemplary damages and special damages and prayed the commission to allow the complaint.

12. It is further contended that, as per Section 69 of the Consumer Protection Act, and also in view of the order of Hon'ble Supreme Court of India in Writ Petition No. Civil 3/2020 dated 27.11.2020 and also the directions given by High Court of Karnataka, the complaint filed is within time and not barred by law of limitation and prayed the commission to allow the complaint.

13. Upon the service of notice OP-1, 2, 4, 7 and 8 appeared before the commission and filed their version, whereas the remaining OPs remained absent and hence placed exparte.

14. In the joint version filed by OP-1, 2, 4,7 and 8 it is contended that the complaint is not maintainable either in law or on facts and that there is no relationship of service provider and the consumer between the OP and the complainant as per the Section 2(42) of the Consumer Protection Act 2019 and hence this complaint liable to be dismissed on that ground.

15. It is contended that, OP -1 is a hospital wherein, the complainant on 09.05.2018 when she was on 28 + weeks pregnancy came for the first time for first Antinatal Checkup. For about 7 times, on different dates, she got her health checked up in the said hospital. Two growth scans were conducted on 23.05.2018 and 04.07.2018 and also amniotic fluid index by USG was also done. The complainant got admitted on 28.07.2018 at about 22.59 hrs for delivery as the normal delivery could not take place, as she had reached 2nd stage of labour and as there was fetal distress and baby's heart rate going down, and if baby's head goes down to the pelvis, it would become very difficult for normal delivery of the baby. Hence under these peculiar circumstances with a view to save the baby and the mother, they decided and shifted the complainant to the Operation theatre and conducted caesarean section and accordingly LSCS was done and afterwards both the complainant and the female baby were doing fine. There were no major complications whatsoever except fever.

16. On 20.08.2018 the complainant came to the hospital with the complaint of abdominal pain for which she was given medication and asked her to come after two days. She did not come for follow up from 20.08.2018 till 22.09.2018. As such OPs were not aware if the complainant had taken treatment from any other doctor /hospital for these 34 days. On 22.09.2018, she came with the complaint of pain in the operated site and was admitted to the hospital and USG scan was done on 22.09.2018 and review scan was done on 24.09.2018 which showed haemotomo i.e. blood clot at the operation site and scan report did not suggest deep intra-abdominal pathology, and no foreign body was visible. As such, the complainant was operated on 24.09.2018 for incision and drainage of abscess in the abdominal wall and was discharged on 08.10.2018. Complainant was attending the hospital as outpatient on alternate days. As the healing wound was not satisfactory she was asked to contact one Dr. Ramachandra of Kasturba Hospital, Manipal with letter date 24.10.2018. Though complainant paid the fee, but could not meet the said doctor on 25.10.2018.

17. It is contended that they have taken all precaution while performing the caesarian and there is no negligence of any kind whatsoever on their part. The surgical safety checklist is regularly maintained in the OP'1's hospital and OPs have followed meticulously while conducting the C section on the complainant. The check list in respect of the same is maintained and produced. Starting from the surgery and before induction of anesthesia, all the details set out in the checklist were verified. After and before closing the stitching, they verified the instruments, cotton etc. twice and again after closing the list was verified . Hence there is no basis for the complainant to contend that there is negligence on the part of OP. OP's have taken all precautions required to be taken as a prudent doctor and hospital and the allegation of the complainant that there is medical negligence, deficiency in service are absolutely false and baseless.

18. If at all there was any foreign particle in the body of the complainant, it would have been reflected in the scan conducted by OPs on 22.09.2018 and 24.09.2018. But no such foreign body was found in the scan report. OP-4 was not on duty, whereas, she was called by OP-5 for help during the caesarian operation. Seen by (s/b)in the operation theatre note, do not indicate that OP-4 has conducted the surgery. There was no necessity for starting glucose to the complainant as it was

not required. OP-1 is the hospital and unit of Manipal Academy of Higher Education which is a teaching institution. Patient visiting OP-1 were informed regarding the functioning of the hospital and not to insist for a particular consultant doctor. In an emergency situation, OP-5 conducted the caesarian section. The doctor who conduct the caesarian will go through the records of the patient before conducting the surgery.

19. It is contended that, when the complainant reported pain to OP-3, she was advised to undergo scan on 22.09.2018. In the report it is mentioned that the impression "heamotomo in the operated site and no abnormality was found. Further review scan was also conducted which did not disclose the existence of any foreign particle in the body of the complainant. Complainant did not contact Dr.Ramachandra though she paid the fee for consultation. Afterwards, till 09.12.2018 nearly almost 45 days, complainant did not turn up to OP-1 and to the doctors to consult regarding her pain in the abdomen.

20. No prudent women would stop following if she was having severe pain. It is quite possible that when she was suffering with pain, there is every possibility that she would have consulted some other doctor and undergone treatment. Since OP-1 hospital did not have MRI facility, hence she was referred to Dr. Ramachandra for further examination but complainant did not take their advise and also follow up. Which negligence is alone attributable to the complainant for which OPs cannot be blamed. In order to avoid birth Asphyxia caesarean section was conducted in order to save the baby in distress by providing spinal anesthesia, wherein the patient will be conscious but do not perceive the pain during the surgery.

21. Further on 29.07.2018 being the Sunday, OP-2 and 3 were not working on that day and as per the protocol and practice of the hospital, the doctor on work attends the patients. They maintain very high standard and are competent. The condition of the complainant and the baby was informed immediately to the persons in the said hospitals. For the post delivery pain of abdomen, and vaginal discharge, they have provided proper and regular treatment. Even after the complainant came to the hospital after one month after discharge, she was admitted and provided all treatment with medicines which has given for menstrual disorder as it was other benefits for several other conditions also when used according to clinical requirements. In an ultrasound imaging the ovaries is often obscured by bowel (Intestanal) shadows which are not worrying abnormally. Hospital maintains the account and record of the operation instruments sponge count, gaze count which has been maintained. The complainant was administered panto presol used to reduce gastritis caused by antimicrobial medications. When the patient do not show any significant improvement, the microbial agent would be escalated. They have conducted the scan test to verify the cause of the pain. However the scan report did not reflect any foreign particles in the body.

22. They have taken utmost care to monitor the complainant. They repeated a small procedure by making incision and drainage based on the ultra sound report dated 22.09.2018 and 24.09.2018 and the pus was removed. The procedure of laparotomy was not conducted as there was no clinical indication for this procedure, and conducting surgeries were unnecessary and can be dangerous. The complainant was informed that she was tested positive for MRSA and the source could be anywhere including the skin and was administered linezolid an effective antibiotic for MRSA. OP-1 has a trained experience doctor in this respect. They have not treated the complainant on the knowledge obtained by Google. They did informed the complainant to come alternate days to get

the wound cleaned and the pus removed. Despite going out of the way to do the best to the complainant, she has filed their false complaint alleging negligence on them, which are all false.

23. Doctor of OP-1 had referred the complainant to Kasturba Medical College hospital, Manipal. Their count at the time of surgery in respect of the mop was correct. There was no reason for them to misguide Doctor Prathap. The letter written by OP-5 to OP-04 was to bring the true facts. OP.4 was not the doctor who conducted the surgery whereas she assisted in the operation theatre. The charges for the operation at Kasturba Hospital was waived only due to humanitarian consideration and not to cover their alleged negligence.

24. OPs have denied all the allegation made in the complaint that she lost her professional career, of becoming mother again due to the left fallopian tube and left ovary becoming non-functional, that her husband not able to enjoy the marital life due to negligence and wrong diagnosis by the OPs. They have followed strictly and necessary protocols required by a prudent medial practitioner. On the other hand, they have gone extra mile to help the complainant and were empathetic towards the complainant. Hence the complainant is not entitle for the damages prayed in the complaint and prayed the commission to dismiss the same.

25. In order to prove the case, both parties have filed their affidavit evidence and produced documents. Arguments Heard. The following points arise for our consideration:-

1. *Whether the complainant has proved negligence in their service on the part of the opposite parties?*
2. *Whether the complainant is entitled to the relief prayed for in the complaint?*

26. Our answers to the above points are:-

POINT NO 1 : IN THE AFFIRMATIVE

POINT NO 2 : PARTLY IN THE AFFIRMATIVE.

For the following:

REASONS

POINT NO.1:-

27. It is not in dispute that, OP-1 is the hospital at Udupi wherein OP-2 to 10 are working doctors. It is also not in dispute that the complainant after conceiving was visiting OP.2 and 3 frequently for consultation suggestions, prescriptions and guidance and the same has been admitted by OP-2 and 3. It is also a fact that, on 28.07.2019 she developed labour pain and went to OP-1 hospital and got admitted after examined by the doctors. As it happens to be the Sunday i.e on 29.07.2019, the doctor OP-5 took the case of the complainant and as normal delivery was not possible as it has reached 2nd stage of labour, and there was fetal distress, and the baby's heart had gone down, and if the baby's head goes down to the pelvis, it would become very difficult to deliver the baby, and under the said circumstances, with an object of saving the baby and the mother they shifted the complainant to the OT for caesarean and emergency LSCS was conducted for secondary arrest of

decent of fetal distress. The complainant delivered a female baby and was discharged on 02.08.2018.

28. As she was having abdominal pain, complainant visited the hospital of OP-1 on 20.08.2018 and she was examined and medicines prescribed and she was to report and till 22.09.2018 according to OP -1 the complainant did not visit the hospital i.e. for a period of 34 days from the date of discharge. On 22.09.2018, she visited the hospital and as per the directions she underwent Ultrasound Sonography (USG) as she was having abdominal pain in the operated area by admitting her to the hospital and afterwards again on 24.09.2018 as there was some haemotoma (blood clot) in the operation site, another scan was taken.

29. It is the contention of the complainant that during the said scan on 24.09.2018, in the scan report, it is mentioned as the left ovary was not visible. Whereas, it is the case of the OPs that the said scan report did not suggest deep intra-abdominal pathology and no foreign particle was visible and hence she was operated on 24.09.2018 for incision and drainage of abscess on the abdominal wall was carried out and discharged on 18.10.2018. According to the complainant, the left ovary was not visible in the scan and it is a case that it is due to leaving a mop at the time of carrying out the caesarian, whereas it is the contention of the OP that there was no foreign body left in the complainant's abdomen and that in case there was any foreign body left over, the scan would have detected the same.

30. It is the contention of the OP that they carried out and operated the complainant for incision and drainage of the abscess in the abdominal wall and that the complainant followed-up in the Outpatient every alternate day.

31. It is the contention of the complainant that she visited the hospital every alternate day as suggested and directed by OPs and even than after the drainage of abscess in the abdominal wall her pain in the abdomen did not subside for which OP suggested her to approach Dr. Ramachandra OP-11 of this case at Kasturba Hospital, Manipal. She went there but could not meet the said doctor.

32. It is the specific case of the complainant that due to subsisting abdominal pain and as her husband contacted doctor at Bangalore, she consulted Doctor Archana Kalluraya an Ayurvedic Doctor practicing at Udupi who is a Bachelor of Ayurvedic Medicine and surgery and she suggested an MRI scan which was conducted on 01.12.2018 and it was confirmed by the MRI that there is the presence of "Gossypiboma" (Gossypim – A Latin word meaning "textile or cotton" and swahil word "Boma" place of concealment). Cotton swab in the abdomen of the complainant and Dr. Archana recommended to contact doctor Prathap of Kasturba Hospital Manipal and also advised her to undergo surgery. On 07.12.2018 Dr.Prathap after examining the complainant

thoroughly, advised her and referred her to Dr. Prasad who conducted the surgery (3rd Operation) and removed the surgical mop from her body and afterwards her pain in the abdomen got reduced.

33. It is the specific case of the complainant that due to the negligence on the part of the doctors of OP-1 who conducted the caesarean were responsible of leaving the mop /cotton swab in the abdomen which resulted in abscess and afterwards complicated the issue. Since due to the presence of the foreign body in the complainant's body, the sigmoid colon (Terminal portion of the large intestine before reaching the rectum and it connects the descending colon to the rectum) was infected and it had to be removed surgically, which is known as laparotomy (a type of open surgery of the abdomen to examine the abdominal organs) and in the said laparotomy, the sigmoid colon was removed and the descending colon to the rectum were stitched together, and to get it healed an alternative opening was created in the small intestine and colostomy pouch was fixed for removing the excreta. After the laparotomy surgery her abdominal pain, breast pain, vaginal discharge, stopped and she was again operated by way of surgery in the Kasturb Hospital which is the fourth surgery to remove the colostomy pouch.

34. It is not in dispute that OP-2 to 10 and 12 are the doctors working with OP-1's hospital whereas OP-11 is the doctor working with Kasturb Medical College Hospital Manipal to whom Op.2 and 3 referred the complainant after she was operated for the second time to get consultation with Dr. Ramachandra, since the pain in the abdomen of the complainant did not subside and discharge from the vagina with foul smell did not be cured and that the pain in the nipple in the breast of the complainant did not stop. It is also clear from the evidence that though the complainant paid the consultation charges for the consultation with Dr. Ramachandra, the same did not materialize for the reasons best known to the complainant and the doctor.

35. It is clear from the evidence adduced by the both parties, that the complainant got admitted to OP-1's hospital for delivery and earlier to it, she was being looked after/examined oftenly whenever she visited the hospital of OP-1 by OP-2 and 3. As contended by OP-2 and 3, as per the procedure, protocol and the rules of the hospital, since 29.07.2018 happened to be the Sunday, which was not a working day for them. OP.5 Dr. Nida Zahoor with the help of other doctors like OP-4, 6 and 7 conducted caesarean operation on the complainant as the case was an emergent one in order to save the baby and the mother, under spinal anesthesia and a female baby was delivered. Afterwards, the required procedure was followed and complainant was shifted to her ward, from the labour room or operation room.

36. It has become clear from the documents and evidence produced that the complainant visited OP-1 wherein OP.2 with the assistance of other doctors carried out the drainage of the pus in the abdomen/operated site and cleaned the wound. On 22.09.2018 when the scanning of the pelvis was taken, it is clearly mentioned in the said report that left ovary is not visible. It is contended by the complainant that some more investigation ought to have been done in that respect. Whereas, it is the contention of the OPs that merely not seeing the left ovary in the scan report, cannot be inferred

that some extraneous matter has been left which comes in the way of seeing the left ovary. Even the second scan was done on 24.09.2018 in that respect but there is nothing made out regarding the presence of the foreign body.

37. From this it becomes clear that the complainant was operated first for caesarean and second time for drainage of the incision sight. This is called by the complainant as a second operation. When no foreign body was detected in the scan taken on 22.09.2018 and 24.09.2018, the only possibility of presence of the foreign body or leaving the foreign body inside the body of the complainant is only when the complainant was subjected to caesarean operation on 29.07.2018.

38. It is only when the pain and discharge from the vagina still persisting and pain in the nipple of the complainant's breast her husband made an attempt to get the matter clarified with an hospital in Bangalore (OVAM Birthing and Women Health Centre) narrating the incident to them and according to their suggestion, and also on the advice of Dr. Archana Kalluraya, BA MS in Ayurvedic, subjected herself to MRI scan on 02.12.2018 and found that there is a foreign body termed as "Gossypiboma" (presence of cotton swab in the operated region) . The same was removed by the 3rd operation carried out by Dr. Prasad at Kasturba Medical college hospital, Manipal wherein laparotomy surgery was conducted and the surgical mop left from the previous surgery was retrieved within the abscess cavity.

39. It is also to be noted here from the discharge summary that the sigmoid colon was infected severely and it was removed surgically and the decending colon and the rectum were stitched together and till got recuperated, an alternate opening was created in the small intestine and the colostomy pouch was fixed for artificial excretion and it is the case of the complainant that after the 3rd surgery/operation, she was free from abdominal pain, breast pain and from vaginal discharge. On 24.04.2019 she was again operated i.e. 4th surgery wherein ileostomy reversal was conducted whereby, colostomy pouch was removed. From this that too in particular the discharge summary after the 3rd operation which is marked as Ex.21:

"OPERATION REPORT

"Inflammatory mass with foul smelling pus within in the region of left iliac fossa. This mass was formed by a surgical mop within, omentum and ileal loops and sigmoid colon. The wall of sigmoid colon was sloughed off with fecal contamination of the mass/abscess.

Omentum contributing to the abscess/mass was divided among harmonic small bowel (ileum) was carefully dissected off the mass/abscess. One regional breach of ileum was repaired by interrupted prolene outer. The surgical mop within the abscess was retrieved and handed over to scrub nurse. Left ovary and fallopian tube

was dissected off. The abscess (inflammatory mass). Sigmoid colon with the mass was mobilized.....etc.”

and further discharge summary of 4th operation clearly supports the case of the complainant that the doctors of OP-1 have negligently, carelessly left the cotton mop in the abdominal cavity/in the area where they conducted caesarean, and stitched the wound with the mop, which caused pain in the abdomen, vaginal discharge with foul smell, and subsequently pain in the nipple of the breast of the complainant.

40. The doctors of the OP-1 have taken up the contention that before the commencement of the surgery, and after the surgery before closing the surgical area /operated area with stiches, they used to take the counts of the instruments cotton swab, wire gauze and all the materials used in the operation theatre, and clarify themselves that nothing is left in the body. They have produced the checklist in that respect. On perusing the same, it do not mention the number of instruments used the number of cotton swab that were earlier in the operating room and the number of the instruments and the cotton swab that were available after the surgery and after the closure of the wound . It is simply a list of the materials and there is a tick mark and X mark made in the said document which do not specify as to how many instruments, how much of cotton swabs, how much of wife gauze were kept ready for the use of the surgery, and how much used and what is the count after the finishing of the surgery and before closing of the wound by stich. Hence the said document will not come to the help of the OPs.

41. From the discharge summary for the period 17.12.2018 to 19.12.2018 wherein complainant was admitted to the Kasturba Hospital at Manipal, it is mentioned as:

“HISTORY OF PRESENT ILLNESS:

The patient has chief complaints of discharge from previous surgical scar with vaginal discharge since 2 months. Patient underwent emergency LSCS on 29/7/18. Following which she developed an abscess at the surgical site 2 months later and underwent incision and drainage on 24/9/18. After one month of the incision and drainage, patient has h/o purulent discharge from the previous surgical scar. The discharge was whititsh in color, scanty in amount, non foul smelling associated with pain abdomen in the lower abdomen, associated with fever – low grade, with chills, h/o weight loss+no h/o vomiting. No h/o change in bowel habits.”

INVESTIGATIVE PROCEDURES:

CECT abdomen and pelvis (8/12/18): a well-defined, hypodense area measuring 6.0X7.1X10.4 cm (APXTRxCC) with thick enhancing walls, having spongiform pattern with gas bubbles and curvilinear metallic density (-900 HU) material within, is noted in the left iliac fossa region-s/o gossypiboma. A linear track is noted in tracing from the lower part of the collection to the anterior abdominal wall, and opening externally on the skin surface in the hypogastric region- S/o sinus track formation.

COURSES OF TREATMENT IN THE HOSPITAL:

The patient presented with complaints of discharge from previous surgical scar and pain abdomen. History and examination finding were s/o an anterior abdominal wall sinus. CECT abdomen and pelvis done on 8/12/18 was s/o a collection in left, iliac fossa s/o gossypiboma with a sinus tract to the anterior abdominal wall. After informed consent and pre anaesthetic check up, the patient underwent exploratory laparotomy on 9/12/18. Drainage of the abscess was done along with retrieval of the surgical mop. Resection of the sigmoid colon and diversion loop ileostomy was done. The patient was shifted to L1 HDU post operatively for monitoring and shifted to the ward after a few days. The patient was kept NPO initially and started on total parenteral nutrition and IV fluids. The ileostomy was found healthy and functioning on POD2. The patient was started on liquids and then soft diet. She tolerated oral diet well. The pus from the intra abdominal abscess showed growth of 3 organisms proteus mirabilis, Klebsiella pneumonia, enterococcus faecalis. Antibiotics were changed according to the sensitivity. IV AMIKACIN was given for 7 days and T Ciprox given for 5 days. Pediatrics 2 consultation was sought for continuing breastfeeding of the baby while on antibiotics and was advised to initiate regular blood investigations including complete blood picture and serum CRP levels were monitored. The patient has improved and is being discharged with the following advice.

42. It becomes clear that, a surgical mop was retrieved and the drainage abscess was done with retrieval of the surgical mop. In view of this, we hold that there is negligence on the part of the doctor OP-5 and his teammates conducted caesarean section on the complainant on 29.07.2018 and he is a route cause for all the suffering which the complainant undergone. Hence we answer ***POINT NO.1 IN THE AFFIRMATIVE.***

POINT NO.2

43. The complainant has sought a total compensation cost of Rs.1,46,84,000/- on different heads as mentioned in the earlier portion of this order. Under the head of loss of present and future earning has claimed Rs.42,84,000/- as compensation whereas no documentary evidence to show her education qualification, earning prior to the operation/caesarean and afterwards failure to get the appointment is produced. So also in respect of her husband's earning whereas she has claimed loss of earning of her husband at Rs.1,00,000/-. Even no sufficient documents are produced to show that she has incurred an expenses of Rs.1,00,000/- as hospital charges and further requirement of Rs.6,00,000/- for future medical expenses and Rs.1,00,000/- for travel and accommodation and Rs.1,00,000/- towards legal expenses.

44. It is further claimed under non-pecuniary damages Rs.10,00,000/- for loss of consortium and Rs.10,00,000/- for suffering of pain and continued suffering and loss of motherhood and Rs.4,00,000/- as damages for emotional distress and Rs.70,00,000/- and exemplary damages. In the body of the complainant, it is mentioned that due to the negligence on the part of the OP, she lost an opportunity to feed the young born baby as she was engaged in visiting the hospital every now and then for her abdominal pain, discharge and further it is also mentioned that she could not breast feed her baby due to the pain in the nipple which is due to negligence on the part of the OP

and further as she was put on colostomy pouch as an alternate for excretion she had to suffer ignominy and could not move out of the house and further since there is a damage to left ovary and fallopian tubes, her chances of getting conceived again is remote and thereby, she lost the opportunity of becoming mother for the 2nd time, and also these displeasure in her matrimonial life.

45. The say of the complainant regarding not caring the baby from the very beginning, not able to breast feed the baby due to the pain in the Nipple area of her breast, and as she has to suffer the ignominy of colostomy pouch and for the sufferance that she has undergone all the while has to be accepted. In the discharge summary Ex P12, it is mentioned that left ovary and fallopian tube were desected from the mass. It do not mean that the left ovary, and fallopian tube have been cut and removed. Further there were two ovaries, right and left with right and left fallopian tubes which links to the uterus. The pregnancy i.e. meeting of the sperm and egg takes place in the fallopian tube and then after formation of the zygote, it descends to the womb and there after the embryo develops.

46. Even in the absence of one of the ovary and fallopian tube a women can conceive and delivery the baby. In view of this the contention of the complainant that the chances of getting conceived becoming mother for the 2nd time or remote, cannot be accepted.

47. Due to the pain and suffering which the complainant suffered due to the negligent act of the Ops, particularly doctors attached to OP.1's hospital, it becomes clear that the complainant might have lost marital life and co-habitation with her husband during the said time and also some time after for recouping, can be considered as a temporary inconvenience or disruption in her matrimonial life.

48. There is no concrete evidence adduced in respect of the exemplary damages which the complainant is seeking and also in respect of emotional distress, expenses towards travel accommodation and also legal and medical expenses. It is also stated by the OPs that they have not charged and collected money from the complainant towards the 2nd, 3rd and 4th operation which complainant has also admitted.

49. Keeping in mind, the principles of granting the damages/ compensation on different counts, and that it should not be a bonanza or a lottery or a windfall to the complainant and at the same time, it shall not be a pittance and giving for gratis, and that it should be just, proper, reasonable and adequate.

50. Under the circumstances, in the absence of concrete evidence as discussed above, we deem it proper to award a sum of Rs.15,00,000/- as global compensation towards pain and suffering, emotional distress and loss of consortium and further a sum of Rs.5,00,000/- towards damages for mental suffering, physical suffering, emotional suffering loss of earnings (though not specifically evidenced), but have suffered for herself and her husband and towards legal expenses.

51. The complainant has not sought compensation from any particular doctor or institution. She has claimed the above compensation from all the above OPs. On perusing the evidence and documents and for the reasons stated above, it is OP-5 Dr. Nida Zhoor has conducted the caesarean with the help of the OP-4 and 6 along with the nurses attached to the said hospital who were posted in the operation theatre on that day. In the interrogatories issued by the complainant to OP-2, it is very well stated by Op2 that taking the counts of the instruments , cotton swab the wire gauze is on the doctors who performs the operation and also the nurses who are posted for the particular surgery. In view of this, we are of the opinion that OP-4, 5 and 6 are to be held responsible for the said negligence and also liable to pay the compensation. Since these persons and the nurses who were deputed or entrusted with the surgery in the operation theatre on that day are the employees of OP-1 and by applying the principles of “vicarious liability”, OP-1 has to pay the compensation on behalf of the said doctors and the nursing staff. In case OP-1 feels to recover the same from the said persons it is at liberty to do so. ***The complaint against other OPs i.e. OP-2, 3, 7, 8, 9, 10, 11 and 12 are hereby dismissed as there is no evidence against them to prove their negligence.*** Hence we answer ***POINT NO.2 PARTLY IN THE AFFIRMATIVE*** and pass the following:

ORDER

1. The complaint is allowed in part with cost.
2. OP-1, 4, 5, and 6 are jointly and severally hereby directed to pay Rs.15,00,000/- towards pain and suffering, emotional distress and loss of consortium to the complainant along with interest at 12% per annum from 29.07.2018 till payment of the entire amount.
3. Further OP-1, 4, 5 and 6 are directed further to pay a sum of Rs.5,00,000/- towards damages for mental suffering, physical suffering, emotional suffering loss of earnings for herself(complainant) and also her husband and towards legal expenses.
4. ***Complaint against OP-2, 3, 7, 8, 9, 10, 11 and 12 are hereby dismissed.***
5. OP-1, 4, 5 and 6 are directed comply the above order within 30 days from the date of receipt of this order and submit the compliance report to this forum within 15 days thereafter.
6. Send a copy of this order to all the parties free of cost.

Note: You are hereby directed to take back the extra copies of the Complaints/version, documents and records filed by you within one month from the date of receipt of this order.

(Dictated to the Stenographer over the computer, typed by him, corrected and then pronounced by us in the Open Forum on this day the 1st day of OCTOBER 2022)

MEMBER

MEMBER

PRESIDENT

ANNEXURES

1. Witness examined on behalf of the Complainant/s by way of affidavit:

CW-1 Smt. Rohini - Complainant.

Copies of Documents produced on behalf of Complainant/s:

- Ex P1: Copy of the Drug Prescription slip.
- Ex P2: Copy of the 3rd Party doctor report
- Ex P3: Copy of the USG and MRI scan reports.
- Ex P4: Copy of the reference letter by Dr. Archana Kalluraya.
- Ex P5: Copy of the Discharge summary of the 3rd Operation.
- Ex P6: Copy of the Discharge summary of the 4th Operation.
- Ex P7: Copy of the scan report dt:23.05.2018.
- Ex P8: Copy of the scan report dt:04.07.2018.
- Ex P9: Copy of the discharge summary of the C section.
- Ex P10: Copy of the operation report.
- Ex P11: Copy of the KUB and pelvis scan report dt:31.07.2018.
- Ex P12: Copy of the discharge summary of the 2nd operation.
- Ex P13: Copy of the Pelvis report dt:22.09.2018.
- Ex P14: Copy of the Hematology report of the complainant.
- Ex P15: Copy of the original drug prescription slip dt:22.09.2018.
- Ex P16: Copy of the drug prescription.
- Ex P17: copy of the receipt
- Ex P18: Copy of the letter dt:11.03.2019.
- Ex P19: Copy of the discharge summary dt.29.04.2019
- Ex P20: Copy of the Patient visit slip.
- Ex P21: Copy of the Operation Report dated 09.12.2018.

2. Witness examined on behalf of the Opposite party/s by way of affidavit:

RW-1: Dr. Rajeshwari G.Bhat, Department of OBG TMA Pai Hospital Udupi.

Copies of Documents produced on behalf of Opposite Party/s

Ex R1: Copy of the surgical safety checklist

Ex R2: Copy of Pelvis report.

Ex R3: Copy of referral letter .

Ex R4: Copy of the Out patient record.

MEMBER

MEMBER

PRESIDENT

RAK*

**[HON'BLE MR. H.R.SRINIVAS, B.Sc. LL.B.,]
PRESIDENT**

**[HON'BLE MR. Y.S. Thammanna, B.Sc. LLB.]
MEMBER**

**[HON'BLE MRS. Sharavathi S.M.,B.A. L.L.B]
MEMBER**