

**IN THE CIRCUIT BENCH OF THE TAMILNADU STATE CONSUMER DISPUTES
REDRESSAL COMMISSION, MADURAI.**

Present: THIRU.S. KARUPPIAH, PRESIDING JUDICIAL MEMBER

C.C.No.44/2012

**(C.C.No.84/2012 on the file of then Principal Bench of the Tamil Nadu State
Consumer Disputes Redressal Commission, at Chennai).**

THURSDAY, THE 09th DAY OF NOVEMBER 2023

Date of complaint filed on: - 22.06.2012

Date of order pronounced on: - 09.11.2023

V. Mythili,
D/o. Late. Y. Veeraragavan,
North Street,
Kizha Ambur,
Tirunelveli District.
Represented by her Power Agent,
Shri. R. Balasubramanian,
S/o. Late. Ramayya Iyer,
Door No.38, Vamalai Street, Erode.
.Vs.

Complainant

1. Joseph Hospital,
25, Chatram Street,
Murugan Kurichi,
Palayamkottai,
Tirunelveli District.
2. Dr. Agnes,
Joseph Hospital,
Murugan Kuruchi,
Palayamkottai,
Tirunelveli District.

Opposite Parties

Counsel for the complainant : M/s. R. Ganesh, Advocate.

Counsel for the opposite parties 1 & 2: M/s. K. Prabhu, Advocate.

This complaint is coming up before me for final hearing on 03.10.2023 and on hearing the arguments of both sides and upon perusing the material records, this Commission made the following;-

ORDER

(Dictated and pronounced in the Open Court)

THIRU.S. KARUPPIAH, PRESIDING JUDICIAL MEMBER.

1. This complaint is filed by the complainant under section 17 of the Consumer Protection Act, 1986 (Replaced with section 47(1) (a) of the Consumer Protection Act, 2019)

2. **The gist of the complaint averments is as follows;-** The complainant, one Mrs. Mythili filed this complaint through her sister's husband, power of attorney, one Mr. Balasubramaniam. The main averment in the complaint are as follows;- The complainant approached the 1st opposite party hospital and she got admitted on 10.04.20120 for undergoing hysterectomy procedures and the complainant was operated on 12.04.20120 and the operation went on uneventful and she took treatment as inpatient till 22.04.2010. The wife of the power of attorney, one Mrs. Kalyani is also having the same blood group of the complainant. This fact was though informed to the opposite parties, they forced the attender, Kalyani to purchase blood bottle for Rs.1100/- from blood bank. During the transmission of blood and after the blood transmission the complainant developed some complications and she was immediately brought to Intensive Care Unit and treated with medicines. CTC scan was also taken. The complainant and her attender were forced to purchase medicines only from the hospital's pharmacy and they were not allowed to purchase medicines from outside pharmacy. The complainant's attender was ill-treated when she purchased and brought some medicines from outside. The opposite parties directed the complainant and her

attender to purchase the medicines in large quantity than necessary. Further, they charged for medicines more than Maximum Retail Price. So, by forcing the complainant to buy unnecessary quantity of medicines and to pay more than Maximum Retail Price amounted to deficiency as well as unfair trade practice. The tabular column stated in the complaint is clearly proved the same. Hence, the complainant filed this complaint for a direction to the opposite parties to refund the value of the medicines and also to furnish the medical records such as history of treatment, discharge summary etc. besides for a direction to pay a compensation of Rs.3,00,000/- for mental agony and pain suffered by the complainant and another sum of Rs.18,00,000/-as compensation payable to the Tamil Nadu State Consumer Welfare Fund for financial loss or injury suffered by the large number of patients.

3. The opposite parties 1 & 2 filed a joint written version wherein they have contended inter alia that they have not committed any deficiency in service and not indulged in any unfair trade practice. In fact, the complainant suffered from very huge fibroids and as other doctors are not willing to treat her, she was referred to this hospital and because of the efficiency of the doctors herein the problem has been rectified and surgery was done successfully. The medicines were purchased and kept by the hospital only for the patient's welfare and for keeping those medicines it costs more and as such they have not committed any deficiency in service and not indulged in any unfair trade practice and therefore, the complaint is to be dismissed.

4. In this case, both sides have filed their proof affidavits independently and on the side of the complainant, documents Exhibits A1 to A19 were marked. No document was marked on the side of the opposite parties.

5. In this case, it is the admitted fact that the complainant was admitted in the opposite parties hospital for hysterectomy and she was operated and treated as inpatient from 10.04.2010 and she was finally discharged on 22.04.20210. It is also an admitted fact that the surgery was uneventful. But, it is the contention of the complainant that even though, the attender, who is the sister of the complainant one Kalyani had the same blood group as that of the complainant, they were forced to buy blood from blood bank as per Ex A1. It is further alleged by the complainant that during blood transmission, complications were experienced by the complainant and so she was treated for above 10 days. The complainant further alleged that they were forced to buy medicines in large quantity than necessary. Further, the hospital charged extra price than Maximum Retail Price of the medicines for which he produced medical bills given by the hospital as Exhibit A5.

6. The point for consideration is;-

(1) Whether the opposite parties have committed any deficiency in service and indulged in any Unfair Trade Practice?

7. **Point:-** On seeing the entire version of the opposite parties, this Commission finds that the opposite parties denial is not specific with regard to each allegations rather it is very general in nature. For example, the complainant alleged that her sister is having same blood group of the complainant but they were forced to buy blood from

other blood bank for that only an evasive reply was given as if the complainant failed to disclose what her blood group was. The point for consideration is whether any representation was made to the hospital with regard to the attender is also having same blood group of the patient. If it is so, then why they were forced to buy blood from other blood bank. The opposite parties did not reply to the above allegation in the written version. Even, the opposite parties did not mention the necessity for purchasing such blood from outside, in particular, no medical history and treatment particulars were not produced by the opposite parties. Operation theatre notes were also not produced by them. When the complainant alleged that she was forced to buy a large quantity of medicines than required, is it not the duty of the opposite parties to produce the treatment particulars to prove the fact that the medicines are very much necessary for treatment and all the purchased medicines were administered only to the patients?. But, there is no proper and specific denial in the pleadings filed by the opposite parties. Though the complainant has given elaborate tabular column with regard to the quantity of medicines purchased by her, there is no whisper about those particulars. For example, Venflon injection has been purchased for each day. Similarly, disposable syringes were purchased more than 50 in numbers. The purpose of Venflon is to fix for administering liquid medicines. When a Venflon once fixed and utilized, it can be used for days together. There is no necessity to fix Venflon for every day. As rightly argued if Venflon is fixed for every day, the very purpose of using the same became ridiculous. By marking the purchase receipt, the complainant is able to prove that she was forced to purchase more quantity of medicines than required and as there is contra proof in not

producing the medical records, the above allegation is accepted by this Commission as proved.

8. Similarly, the complainant alleged that they were charged more than Maximum Retail Price and the opposite parties did not deny the same. The complainant gave very elaborate particulars what was the price bought by her and what was the MRP for the above medicines and they were not at all disputed by the other side. But, in the written version they impleadly admitted the sale of medicines for higher rate than MRP by stating that the medicines were kept for the use of inpatients and hence it costs more. Therefore, all these complaint's allegations are proved.

9. Apart from that, the complainant, the power of attorney sent a complaint to Drug Inspector and Revenue Inspector. Consequently, the hospital was inspected by them and they found irregularities in keeping and selling the medicines which is against the provisions of Drugs and Cosmetics Act, 1940. So, the complainant has proved his case and this Commission found that the Doctors and the hospital have committed deficiency in service as well as indulged in unfair trade practice.

10. A feeble attempt was made by the opposite parties by filing an additional written argument contending that the power of attorney is not a competent person to depose the complainant's facts which is exclusive knowledge of the complainant alone. They also relied on some Apex Court's judgments in this respect. But, those judgments are not relevant to the facts of the present case because in this case, the complainant in the preamble portion of the complaint has clearly stated that the power of attorney is her brother-in-law and he is also a person personally aware the facts very well. Further

the complainant's facts are supported only by the documentary evidence. The power of attorney himself made several complaints against the hospital even at the time of treatment. They are all proving that the power of attorney is a competent person as far as this case is concerned to conduct and give evidence. So, this Commission is of the considered view that in all respects, the complainant has proved her allegations.

11. As far as the award is concerned, the complainant has requested this Commission that she may be awarded with a reasonable compensation and the opposite parties may be directed to pay a heavy compensation to the Tamil Nadu State Consumer Welfare Fund. His oral representation through his counsel was also taken into consideration. In this case, after all, the patient was cured by the opposite parties. There is no proof for ill-treatment. But, they were charged extra amount than the actual expenses. So, considering the above extra payments made by the complainant this Commission deeply saddened by the facts that once the hospitals are felt Equivalent to Temples . But now-a-days it has become a commercial business market. Absolutely, there is no necessity for the hospital and the doctor to direct the patient to purchase the medicines only from them. They may even directly use medicines and charged for the same. But, forcing the patient to buy medicines than required and charging more amount than MRP certainly amounted to unfair trade practice. So, to disallow the above such practice, this Commission directed the opposite parties jointly and severally to pay Rs.1,00,000/- to the Tamil Nadu State Consumer Welfare Fund and also to pay another sum of Rs.1,00,000/- to the complainant as compensation for extra amount charged and for mental agony suffered by her within one month from the date of

receipt of copy of this order failing which the above amounts shall carry interest at the rate of 9% per annum from the date filing the complaint till its realization. The opposite parties 1 & 2 are also directed jointly and severally to pay the complainant a sum of Rs.10,000/- as costs. The point is answered accordingly.

11. In the result,

(1) The complaint is partly allowed.

(2) The opposite parties 1 & 2 are directed jointly and severally to pay complainant a sum of Rs.1,00,000/- (Rupees One Lakh only) towards extra amount charged from the complainant and compensation for mental agony suffered by the complainant.

(3) The opposite parties 1 & 2 are further directed to pay a sum of Rs.1,00,000/- (Rupees One Lakh only) to the Tamil Nadu State Consumer Welfare Fund towards compensation for unfair trade practice committed by the opposite parties 1 & 2.

(4) The opposite parties 1 & 2 are also directed jointly and severally to pay the complainant a sum of Rs.10,000/- towards costs of the proceedings.

Time for compliance :- One month from the date of receipt of copy of this order, failing which the amounts mentioned in column (2) & (3) shall carry interest at the rate of 9% per annum from the date of filing the complaint till its realization.

**Sd/-xxxxxxxxx
S. KARUPPIAH,
PRESIDING JUDICIAL MEMBER.**

LIST OF DOCUMENTS MARKED ON THE SIDE OF THE COMPLAINANT

- Ex A1 27.03.2012 Special Power of Attorney executed by the complainant
- Ex A2 12.04.2010 Receipt issued for purchasing blood
- Ex A3 13.04.2010 Receipt for taking Scan in Aarthi Scan Private Limited
- Ex A4 10.04.2010 to 19.04.2010 Bills issued by OPs for purchasing medicines
- Ex A5 10.04.2010 to 19.04.2010 Bills issued by OPs for purchasing medicines
- Ex A6 17.04.2010 Email sent by R. Balasubramaniam to Commissioner of Civil Supplies, Chennai.
- Ex A7 19.04.2010 Reply given by R. Balasubramaniam to Commissioner of Civil Supplies, Chennai.
- Ex A8 19.04.2010 Reply given by R. Balasubramaniam to Commissioner of Civil Supplies, Chennai.
- Ex A9 20.04.2010 Complaint of R. Balasubramaniam to the DSO, Tirunelveli.
- Ex A10 20.04.2010 Complaint of R. Balasubramaniam to the Assistant Director of Drug Control, Tirunelveli.
- Ex A11 Demand Slip issued by the opposite party
- Ex A12 21.04.2010 Break up particulars issued by the opposite party
- Ex A13 21.04.2010 Discharge receipt for Rs.21,000/- issued by the opposite party Hospital.
- Ex A14 Receipts issued by the opposite parties
- Ex A15 04.05.2010 Complaint to DSO, Tirunelveli.
- Ex A16 14.05.2010 Notice of District Consumer Office, Tirunelveli.

Ex A17 24.05.2010 Reply by the opposite parties

Ex A18 04.06.2010 News published in the " Thina Thanthi"

Ex A19 04.06.2010 News published in the " Kalai Kadir".

List of documents marked on the side of the opposite parties

NIL

**Sd/-xxxxxxxxx
S. KARUPPIAH,
PRESIDING JUDICIAL MEMBER.**

Index: Yes/No
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