

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
KOLKATA UNIT - II (CENTRAL)
8-B, NELLIE SENGUPTA SARANI, 7TH FLOOR,
KOLKATA-700087.**

**Complaint Case No. CC/358/2016
(Date of Filing : 15 Jul 2016)**

1. Jasbir Kaur Bala

71, Rajshree, 6, Hastings Park Road, Alipore, Kolkata-700027.Complainant(s)

Versus

1. Dr.Kaushik Lahiri, Dermatologist, Kolkata

5/1, A.J.C Bose Road, Kolkata-700020, P.S. Shakespeare Sarani.

2. CEO/Director/Chairman of Purnam Medicare Polyclinic

5/1, A.J.C Bose Road, Kolkata-700020, P.S. Shakespeare Sarani.Opp.Party(s)

BEFORE:

**HON'BLE MR. Swapan Kumar Mahanty PRESIDENT
HON'BLE MRS. Sahana Ahmed Basu MEMBER
HON'BLE MR. Ashoke Kumar Ganguly MEMBER**

PRESENT:

Dated : 18 Oct 2022

**Final Order / Judgement
FINAL ORDER/JUDGEMENT**

SHRI ASHOKE KUMAR GANGULY, MEMBER.

This is a complaint case u/s 12 of the CP Act, 1986. The fact of the case, in brief is that the Complainant Smt. Jasbir Kaur Bala visited the OP2 Poly Clinic on 29.02.2016 for consultation with OP1 doctor for her skin problem. Accordingly the OP1 issued prescription dated 29.02.2016 for the treatment. The complainant used the medicines prescribed but no fruitful result was achieved rather other problems like nausea, vomiting, headache and other problems cropped up. She then visited the OP1 on 24.03.2016 for her problems. Some more medicines were prescribed but on use of those medicines her health condition was profusely deteriorated for which she fixed up an appointment with the OP-1 on 07.04.2016 and the complainant was assured of her recovery soon. But after taking newly prescribed medicines the infection kept spreading to the entire upper body of the complainant along with deteriorated of her general health condition. On 13.04.2016 the complainant tried to contact the OP-1 and also sent some picture of the spreading infection through whatsapp but there was no response till 15.04.2016 from the OP-1. OP-1 respondent only after getting a cautionary from the complainant but suggesting no medicine and asked her to wait again but in the mean time, the problems got aggravated and finding no other way, the complainant visited another dermatologist who after going through the patient treatment history only prescribed anti allergic medicine and the complainant got cure within a day. From the above facts it is proved

that the OP-1 Doctor has harassed the complainant maliciously by dealing her negligently and depriving her bonafide rights leading to deficiency in service and unfair trade practice. Complainant has visited the OP-2 clinic and OP-1 doctor repeatedly and contacted them over phone on several times but every time the complainant was illeterated and emphatically OP-1 has never respondent to her calls or messages through whatsapp. By negligent, reluctant and arrogant activities of the OPs 1 and 2 the complainant has suffered severe physical as well as metnal stress and for the misdiagnostics her health conditions deteriorated with time leading to depression and no proper treatment was suggest by the OPs 1 and 2. Even after informing them about the deteriorating condition of health of the complainant for which the complainants rights and interest was highly jeopardized and she has suffered unbearable pain for one and half month and as well and irreparable loss and harassments as she had to cancelled vital business trip for illtreatment leading to huge monetary loss. As a consequence, the complainant sent one legal notice dated 02.05.2016 to the OP-1 and 2 for compensation against the wrogn treatment. But they had refused to pay any compensation. Finding no other alterantive the complainant has approached the commission for justice with the prayer for relief as detailed in the complaint petition.

The OP-2 has contested the case by filing their WV contending interalia that the case is not maintainable either in facts or in law. The OP-2 submits that to malign the reputation the OP-2 the complainant has brought the allegation which are absolutely baseless. The complainant visited the OP-1 upon appointment over phone and the instant OP -2 acted as mediator between the complainant and the OP-1. **It is not the job of OP-2 to recommend, refer or suggest any name of any doctor rather the complainant made an appointment preferring the name of Dr. Kaushik Lahiri. So, the allegation raised by the complainant in her petition is out and out false and harassing. All the visits of the complainant with the OP-1 was all on her desire and wish and the answering OP herein has no business to interfere in such reason. It is emphatically stated that the issue whether the complainant was relieved or not from the disease is not the look out of the OP-2 and thus, the liability of the answering OP is very limited. Being a Poly Clinic by nature the answering OP has nothing to do or to interfere with the non recovery of the disease of the complainant in any manner whatsoever.** The OP-2 replied back the legal notice sent on behalf of the complainant vide letter dated 09.05.2016 where it was distinctly stated that whatever dispute arose was strictly between the doctor and the complainant herself and the answering OP is no where in the scene. There is no cause of action against the OP2 since the OP2 has not performed any deficient service or practiced any unfair trade with the complainant.

The OP1 has also contested the case by filing his WV contending inter alia that the case is not maintainable either in Law or in facts.

The OP1 submits that the complainant suffered from the disease known as '**Seborrheic dermatitis**'. The disease is a papulosquamous disorder patterned on the sebum- rich areas of the scalp, face and trunk. In addition to sebum, this dermatitis is linked to Malassezia which is a fungus. The complainant came to the OP1 with the usual symptoms of the disease and the treatment was based on current medical and scientific evidence, ethics and experience and medicines were prescribed accordingly as follows.

On 29.02.2016

1. Tab Syntran / Sporanox (Itraconazole 200 mg).
2. Tab Teczine (Levocetirizine 10 mg).
3. Cream Ebertnet (Eberconazole).

On 24.03.2016

1. Tab Syntran for 8 days
2. Tab Onecan / Syscan (Fluconazole 200 mg) after the dose of syntran is finished.
3. Tab Teczine (Levocetirizine 10 mg)
4. Cream Onabet (antifungal cream).

On 07.04.2016

1. Tab Teczine (Levocetirizine 10 mg).
2. Tab Spectra 10 mg (Tab Doxepin)
3. NMF- E lotion was added to the antifungal cream Onabet.
4. Oral Syscan (Fluconazole, an antifungal).

Active phases of seborrheic dermatitis manifest with burning, scaling and itching.

Activity is increased in winter and early spring with remissions commonly occurring in summer – precisely this had happened in this particular case. Early treatment is encouraged. This could not be done as the patient reported after a period of 04 weeks of its occurrence.

Medicines prescribed by the other doctor whom the complainant consulted on 15.04.2016 is as follows.

1. Romilast L (Levocetirizine 5 mg Montelukast 10mg).
2. Flutivate cream (Fluticasone Propionate).
3. Primosa Soap.
4. Picon cream (Primecolimus).

As such from the prescribed medicines it is apparent that the other doctor has treated the complainant in almost in the same way by prescribing almost same kind of medicines.

The OP1 further submits that the complainant approached the OP1 after nurturing the disease for more 28 days for which the healing was not done immediately rather it took time.

The complainant has admitted that there was a delay of four weeks between the onset of the disease and time of her consultation. As per standard scientific evidence “ **Early treatment helps, delayed therapy may jeopardize the outcome.** It is further submitted that any medicine can induce common side effects like nausea, vomiting and headache for which the doctor/doctors cannot be held responsible. It is denied by the OP1 that after taking the medicines prescribed by the OP1 the health condition of the OP1 deteriorated as it was never established that these were direct result of the medicines taken and not due to any co-

morbidity of the complainant. Moreover, if the symptoms were serious then the complainant would not wait for a full three weeks rather might report immediately.

The complainant was treated free of cost on 07.04.2016 as a good will gesture which has not been mentioned by the complainant. Regarding Whatsapp Message on 14.04.2016 the OP1 submits that he was on the way to Tehran by air on 14.04.2016 and there was a follow up reminder on 15.04.2016. The OP1 is one of the oldest subscriber of Vodafone service since 1999. Iran is not listed as a country in which Vodafone UK supports roaming, therefore there are no partnership there..Naturally the doctor was not connected to the net to access Whatsapp. Moreover, while travelling in an aeroplane the net work connection stops working and none can receive any message /call or send any message/call. Immediately on 15.04.2016 the OP1 replied back to the complainant and asked her to send all documents by e mail since the images sent through whatsapp were unable to be downloaded and viewed. The complainant did not mention the response of the OP1 in her petition. The complainant did not send anything to the e mail of the OP1 provided to her. The OP1 is fully aware and empathetic about the suffering of all his patients.

“The patient got cured within a day by using the anti allergic medicine of another dermatologist” is a gross distortion of fact which is not based on scientific observation. For information, she was on the same anti allergic medication (Tab Levocetirize) since 29.02.2016. Her conditions actually improved by the treatment of the OP1 and the advent of summer. It is logically, scientifically impossible to get cured within a day by the same medicines prescribed by another doctor. The medicines prescribed by the OP1 doctor and another doctor were almost the same.

There has been no Expert Opinion for authenticating the allegations of the complainant. Simply to malign the reputation of the OP1 doctor the consumer complaint has been filed for which the OP1 prays for dismissal of the complaint

Points for Determination

On the pleading of parties the following points have necessarily come up for determination.

1. Whether the OPs have got deficiency in service.
2. Whether the OP are indulging unfair trade practice.
3. Whether the Complainant is entitled for the relief/reliefs as prayed for.

Decision with Reasons

Points Nos. 1 to 3 :-

All the points are taken up together for the sake of convenience and brevity in discussion.

Complainant and the OP1 & OP2 have tendered their Evidence on Affidavit. Replies to the questionnaire set forth by their adversaries have not been filed. Both parties have submitted their BNA also.

We have travelled over the documents placed on record. In fact, the case was dismissed for default vide order dated 17.11.2016 of this Commission which was however set aside by the Hon'ble SCDRC vide order dated 04.01.2018 with the direction to appear again before the Trial Commission. Accordingly the case is further adjudicated.

The admitted fact of the case is that the complainant Mrs. Jasbir Kaut Bala for her skin infection visited the OP1 doctor on 29.02.2016 at the Poly Clinic run by the OP2. The complainant visited the OP1 doctor again on 24.03.2016 since the medicines prescribed on the previous visit did not yield any positive result. Medicines were again prescribed. Again no result. Again visited on 07.04.2016 to the OP1 and the complainant got assurance from the OP1 that she would be cured soon. But this time as per submission of the complainant the infection spreaded to the upper part of the body with deterioration of general health condition of the complainant. She tried to contact the OP1 through Whatsaspp but could not connect him till 15.04.2016. On 15.04.2016 the OP1 responded her and advised her to wait by prescribing no medicine. The OP1 doctor was out of station for which she went to another dermatologist who after going through the treatment papers prescribed one medicine and she was cured within a day. The complaint is that the OP1 doctor did not prescribe correct medicine due to misdiagnosis & the method of treatment was wrong for which the complainant had suffered. As per the complainant it is a case of medical negligence. Moreover, the complainant was ill treated by the OP1 & OP2.

Now let us concentrate first over the questions and replies of the persons involved herein. The OP1 doctor put 40(forty) questions to the complainant and the complainant did not reply a single question rather reiterated the same fact as told in the complaint petition as well as in the Evidence. There was no specific reply by the complainant against any of the questions. The complainant as per her submission is cured by the medicines prescribed by Dr. Sachin Verma, another dermatologist. The relevant question by the OP1 to the complainant under Question No. 40 is

Did you Make Dr. Sachin Verma a necessary party in this proceeding ? Say yes or no.

No answer by the complainant.

Question No.23 : Did Dr. Verma opine that my method of treatment was wrong ? Say yes or no.

No answer by the complainant.

Question No.26 : Did you prefer any expertise opinion regarding the mode and method of my treatment.

No answer by the complainant.

Question No. 34 : I suggest that you had come to me for your treatment after the disease spread after 28 days from the attack and I further suggested you to have to give time for healing/cure. What do you say ?

No answer by the complainant.

The whatsapp chat dated 15.04.2016 as annexed by the complainant may also be referred for assessing the ill treatment by the OP1 to the complainant.

Sir, it is over 40 days I have been taking your medicine but the state of my armpit has gone worse. You didn't even bother to write after seeing my pics.

It is very unprofessional on your part. It such a shame that doctors like you have made this profession into money making venture.

Reply of Doctor Lahiri : I am extremely sorry. I apologise for the inconvenience. Kindly send me a mail. I am not in India and have intermittent connectivity. Will be back after 24th April. I cannot download the images. Please think twice before passing such a sweeping comment.

Anyway, shuvo Nabobarsho.

The reply of Dr. Lahiri is found very much submissive and indicates his concern to his patients.

Now let us come to the main problem. The subject matter of the complaint in respect of wrong treatment / medical negligence committed by the OP1 is not supported by any report of Expert Authority/ Authorities wherefrom it could be concluded that the doctor concerned is proved guilty of medical negligence. Even there is no submission in the form of affidavit by the doctor Dr. Sachin Verma who treated her last that the treatment rendered by the OP1 doctor was wrong and the medicines prescribed by him was improper and harmful. Mere allegation of medical negligence without supportive evidence will be of no help to the complainant. A doctor cannot be accused of medical negligence unless it is substantiated with the opinion of medical experts.

The learned Advocate for the OP1 has cited several judgements out of which one Judgement vide reference Dr. Amit Upadhyay vs State of U.P., 2017 0 Supreme (All) 753 2017 8 ADJ 705; 2017 100AllCriC 791. Allahabad High Court

In the said Judgement the Hon'ble Court has opined that **in Medical Negligence cases, it is for the patient/complainant to establish his case against the medical professional and not for the medical professional to prove that he acted with sufficient care and skill as has been held in the case of Madhya Pradesh High Court in the case of Smt. Sudha Gupta and others v. State of M.P. and others, 1999(2) MPLJ259.**

It is also opined that

The Courts and Consumer Fora are not experts in medical science, and must not substitute their own views over that of specialists. It is true that medical profession has to an extent become commercialized and there are many doctors who depart from their Hippocratic oath for their selfish ends of making money. However, the entire medical fraternity cannot be blamed or branded as lacking in integrity or competence just because of some bad fishes.

The Ld. Advocate for the OP1 has cited another judgement in the High Court of Gujrat at Ahmedabad ; Chimanhai Bhikhabhai Chauhan vs Ahmedabad Municipal Corporation FA No. 944 of 2017; 2018 0 Supreme(Guj) 826 2019 0AIR (Guj) 7

The Hon'ble Court has observed in para 19 of the said Judgement that **it is the fundamental rule of evidence that one who asserts the existence of the facts and wishes the court to believe those facts has to prove it. When these facts were denied by defendents, it was incumbent upon the plaintiff to prove the existence of said facts beyond any reason of doubt.**

It is further observed by the Hon'ble Court that **a doctor cannot be held negligent simply because something went wrong. He cannot be held liable for mischance or misadventure or for an error of judgement. The liability can be fastened in case medical care provided is proved to fall below the standard of reasonable competent medical practitioner in his field so much so that his conduct might be deserving censor or is inexcusable**

The gist of the Judgement is **Negligence has to be established and cannot be presumed.**

The complainant has not produced any such evidence against the OP1 to substantiate her allegations

The Ld. Advocate for the complainant has cited one judgement of the Hon'ble Supreme Court of India vide Civil Appeal No. 2641 of 2010 arising out of SLP(C) No.15084/2009 ; V.Kishan Rao vs Nikhil Super Speciality Hospital & Another.

This judgement does not hold good herein this case because in the referred case the complainant 's wife died due to wrong treatment by the Hospital. The patient died due to Malaria which disease was not treated by the Hospital. The said fact was admitted by the Dr. V.Rao on evidence on behalf of the Hospital for which expert opinion was not needed. The evidence by Dr. V.Rao on behalf of the Hospital was sufficient enough to prove their negligence.

Now while travelling over the questionnaire set forth by the OP2 we find the same answer by the complainant as was made exactly the same against the OP1. There were 26 questions put forth by the OP2 which remained totally unanswered by the complainant for the reason best known to her.

Two relevant questions to the complainant by the OP2 which ought to be replied by the complainant are mentioned herein below for proper adjudication.

Question No. 10 : Can you tell to this Learned Forum that apart from visiting the concerned doctor what else service did we provide you ?

No answer by the complainant.

Question No. 11. : Can you tell apart from fixing an appointment for you as asked by you with the concerned doctor namely Dr. Kaushik Lahiri what else service you had expected from us. ?

No answer by the complainant.

In fact, the complainant could not establish any deficiency in service or adoption of any unfair trade practice against the OP2 also. Mere allegation against a doctor or an institution in respect of medical negligence without corroborative evidence is very much unfortunate and unexpected of.

The questions asked by the complainant to the OP1&OP2 are reasonably replied from which nothing wrong has been found.

Considering the facts and circumstances of the case and the documents placed on record we are of the opinion that the complainant has failed to establish her case against the OPs.

Thus all the points under determination are answered accordingly.

In the result, the Consumer Complaint fails.

Hence,

Ordered

That the Complaint case be and the same is dismissed on contest against the OPs without any costs.

Copies of the judgement be supplied to the parties free of cost as per the C.P. Act and the judgement be uploaded to the website of the Commission forthwith for perusal of the parties.

[HON'BLE MR. Swapan Kumar Mahanty]

PRESIDENT

**[HON'BLE MRS. Sahana Ahmed Basu]
MEMBER**

**[HON'BLE MR. Ashoke Kumar Ganguly]
MEMBER**