

**IN THE TAMILNADU STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
CHENNAI.**

BEFORE: HON'BLE THIRU JUSTICE R.REGUPATHI	PRESIDENT
THIRU.J.JAYARAM,	JUDICIAL MEMBER
TMT.P.BAKIAVATHY	MEMBER

C.C.No.2/2008

DATED THIS THE 26th DAY OF MAY 2015

1. R.Mohanam,

L-376, 18th Cross Street,

Thiruvalluvar Nagar,

Thiruvannamipur,

Chennai 600 047.

2. Mrs.K.R.Parimala Mohanam,

L-376, 18th Cross Street,

Thiruvalluvar Nagar,

Thiruvannamipur,

Chennai 600 047.

Complainants

Vs

Chairman & Managing Director,

M/s.Malar Hospitals,

52, First Main Road,

Gandhi Nagar, Adyar,

Chennai 600 020.

Opposite party

Counsel for the Complainant

: M/s.Perumbulavil Radhakrishnan

Counsel for Opposite Party

: M/s.Satish Parasaran

This complaint coming before us for final hearing on 18-03-2015 and on hearing the arguments of both sides and upon perusing the material records, this Commission made the following:

THIRU.J.JAYARAM, JUDICIAL MEMBER

The case of the complaint is as follows:

The 2nd complainant is the wife of the 1st complainant. The 1st complainant was provisionally selected for a job with Algeria Road Project of the Japanese and he was subjected to pre-employment medical checkup for which he was sent to the Malar Hospital / opposite party Hospital at Adyar.

After undergoing the medical checkup, the 1st complainant was declared HIV positive and the opposite party recorded "NOT FIT" in the medical report in bold letters quite conspicuously which resulted in instant cancellation of the 1st complainant's provisional selection for the job by his employer. In view of the adverse report, lot of problems arose in their family and so, the complainant and his wife (second complainant) went to another hospital (Voluntary Health Service), Chennai for checkup where both the complainants were declared HIV negative. In view of the conflicting results, the 1st complainant approached the opposite party hospital and got tested for Western Blot and the result was HIV negative, for both HIV I and II and because of the negligence and deficiency in service on the part of the opposite party his selection for appointment was cancelled and he lost his job opportunity and he and his family members suffered severe mental agony. Hence the complaint praying for direction to the opposite party to pay a sum of Rs.30,00,000/- as compensation for negligence and damage and mental agony caused due to the deficiency in service on the part of the opposite party.

2. The opposite party filed version stating as follows:

In respect of HIV test, the arrangements and payments were made only for conducting the rapid ELISA test and in terms of the said arrangement, the 1st complainant was referred to the opposite party Hospital and reports were furnished to the employer M/s.Haneda Consultants and Agencies Private Ltd. The reports showed that the 1st complainant tested HIV Positive and that in the report itself there is an advice to the individual regarding Western Blot Test and it is a case of false HIV positive which may occur in ELISA test and had the 1st complainant undergone Western Blot test he would have been declared HIV negative and so the fault is on the part of the 1st complainant and that there is no negligence or deficiency in service on the part of the opposite party.

3. Both parties filed their proof affidavits reiterating there averments and on the side of the complainant Ex.A1 to A7 were filed and marked and on the side of the opposite party Ex.B1 and B2 were filed and marked.

4. The points for consideration are :

1. Whether there is negligence or deficiency in service on the part of the opposite party as alleged in the complaint ?

2. Whether the complainants are entitled to claim compensation from the opposite party ?

3. To what relief the complainants are entitled?

5. **POINT NO.1 :** The allegation of the 1st complainant against the opposite party is that he was selected for a job with his employer Algeria Road Project of the Japanese for which he had to undergo medical checkup with the opposite party as per the instructions of his employer. Accordingly he went

for medical checkup to the

Opposite party on 23.2.2007 and after the medical checkup he was declared HIV positive in the report and it was recorded in the medical report that he was "NOT FIT" and consequently his provisional selection by the employer was cancelled and he lost his employment prospects. He voluntarily underwent medical checkup in another reputed hospital by name VHS Hospital, Chennai where he was tested and declared HIV negative. Therefore, in view of the inconsistent reports he again went to the opposite party's hospital for a further checkup and this time he was declared HIV negative. All these amount to gross negligence and deficiency in service on the part of the opposite party.

6. The first contention of the opposite party is that there is no privity of contract between the 1st complainant and the opposite party. It is pertinent to note that though no fee was collected for the test from the 1st complainant, the fee for the medical checkup was paid by the employer on behalf of the 1st complainant and the opposite party has not rendered free service and so it will come under the purview of the Consumer Protection Act and therefore the contention that the 1st complainant did not pay any fee for the medical checkup and so he is not a consumer of the opposite party, is untenable.

7. The next contention of the opposite party is that he has not followed the advice of the opposite party hospital for Western Blot confirmatory test. We have to note that, in the medical report Ex.A1 the final impression is given as "NOT FIT" quite prominently in Bold letters by (HIV positive) and below in the separate column it is simply mentioned advice –Western blot in an insignificant manner. We have to take serious note of the fact that without the individual undergoing Western Blot test, final opinion is given as HIV positive and that he is not fit for the job and that "advice" "Western Blot" are mentioned in the column below the final impression and it is not even mentioned that the individual should undergo Western Blot test for the conclusive result. The opposite party is a reputed hospital and the hospital ought not to have declared final impression as HIV positive without conducting the Western Blot test which is a conclusive test for confirming HIV. At any cost the opposite party cannot plead that the employer did not make arrangements for western blot test and no payment was paid for the test and that is why western blot test was not done. In that case the opposite party ought not to have recorded the final impression as HIV positive and in a case where ELISA test alone is done and the result is HIV positive, the opposite party is not supposed to declare the final impression. Therefore the contention of the opposite party in this regard is unsustainable.

8. The further submission of the opposite party is that the opposite party has acted as per the guidelines stipulated by WHO and NACO. There is no substance in the submission.

9. The further contention of the opposite party is that there is mis-joinder of the party who is the 2nd complainant herein and we find that the 2nd complainant who is the wife of the 1st complainant, is an unnecessary party in the complaint and she cannot make any claim against the opposite party and she has no locus-standi to implead herself as a second complainant. Accordingly the claim of the 2nd complainant against the opposite party warrants rejection.

10. It is further contended by the opposite party is that the employer of the 1st complainant, M/s.Haneadea Consultants P Ltd is a necessary party in the complaint and the complaint is bad for non-joinder of the necessary party. We find no necessity to implead the employer in the complaint and we hold that the complaint is maintainable without impleading the employer and there is no force in the contention.

11. It is further argued by the opposite party that the complainants have themselves admitted that the said ELISA test is reliable and that there are possibilities that an uninfected person may also be diagnosed as HIV positive and that the delay by the complainant in testing for Western Blot Methods does not amount to deficiency in service on the part of the opposite party and that the medical report cannot be read in isolation but has to be read with the other observations which include their

recommendation / advice for a western Blot test and that the opposite party's test report shows 'NOT FIT' and the same was done in accordance with the format laid by M/s.Haneadea Consultancy and that the complainants have filed the frivolous complaint in order to tarnish the image of the reputed opposite party's hospital. There is no merit in the argument.

12. For the aforesaid reasons we hold that the 1st complainant has established his case of negligence and deficiency in service on the part of the opposite party and that there is negligence and deficiency in service on the part of the opposite party as alleged by the 1st complainant and this point is answered accordingly.

13. **POINT NO.2 :** In view of the above finding on Point No.1, we hold that the 1st complainant is entitled to the claim of compensation from the opposite party and that the 2nd complainant is not entitled to claim any compensation from the opposite party and this point is answered accordingly.

14. **POINT NO.3 :** In the complaint the complainants have claimed a total sum of Rs.30,00,000/- as compensation for negligence, damages and deficiency in service, on the part of the opposite party. As already stated above, the 2nd complainant is not entitled to any relief in the complaint and so her claim has to be rejected. Having regard to the facts and circumstances of the case and considering the impact and the serious consequences thereof in pursuance of the erroneous medical report declaring the 1st complainant to be HIV positive and all other relevant factors we feel that an award of Rs.50,000/- would be the appropriate and reasonable compensation for the negligence and deficiency in service on the part of the opposite party and for the mental agony and sufferings and this point is answered accordingly.

15. **In the result, the complaint is allowed in part, directing the opposite party to pay a sum of Rs.50,000/- (Rupees Fifty Thousand only) to the 1st complainant as compensation for negligence, deficiency in service, mental agony and sufferings and to pay costs of Rs.10,000/- (Rupees Ten thousand only).**

Time for compliance :- Two months from the date of receipt of copy of this order. In case of default to comply with the order, the amount of Rs.50,000/- shall carry interest at the rate of 12% p.a. from the date of default till compliance.

In respect of the 2nd complainant, her claim is rejected without costs.

P.BAKIYAVATHI

J.JAYARAM

R.REGUPATHI

MEMBER

(J) MEMBER

PRESIDENT

LIST OF DOCUMENTS FILED BY THE COMPLAINANT :

Sl.No	Date	Description
Ex.A1	21.02.2007	Copy of HIV Status test report
Ex.A2	28.02.2007	Copy of Cancellation of Job-offer
Ex.A3	03.03.2007	HIV Status Test Report
Ex.A4	05.03.2007	Copy of HIV status Test report
Ex.A5	10.03.2007	Copy of HIV status Test report
Ex.A6	19.04.2007	Copy of Legal notice issued by the complainant to the opposite party
		Copy of Reply notice issued by the opposite party to

Ex.A7 10.06.2007 the complainant

LIST OF DOCUMENTS FILED BY THE OPPOSITE PARTY :

<u>Sl.No</u>	<u>Date</u>	<u>Description</u>	
Ex.B1	23.02.2007	Copy of Report of Laboratory	
Ex.B2		Copy of General Guidelines on HIV testing	

P.BAKIYAVATHI

J.JAYARAM

R.REGUPATHI

MEMBER

(J) MEMBER

PRESIDENT

INDEX; YES/ NO

VL/D;/PJM/ Hospital