

Complaint presented on : 29.10.2010

Date of disposal : 22.11.2023

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
CHENNAI (NORTH)

@ 2ND Floor, T.N.P.S.C. Road, V.O.C. Nagar, Park Town, Chennai – 600 003.

PRESENT: THIRU. G. VINOBA, M.A., B.L. : PRESIDENT

TMT. KAVITHA KANNAN, M.E., : MEMBER-I

THIRU.V.RAMAMURTHY,B.A.,B.L.,PGDLA., :MEMBER-II

C.C. No.270/2018

DATED THIS WEDNESDAY THE 22nd DAY OF NOVEMBER 2023

T.Saravanan

S/o Thayumanavar

No.20 Gaffer Sahib Street,

Royapettah, Chennai-600 014

.....Complainant

..Vs..

1.St.Isabel Hospital

No.49, Musiri Subramaniyam Saalai,

Oliver Road,

Mylapore Chennai-600 004

rep by its Administrator

2.Dr.George Thomas,

o

St.Isabel Hospital,
No.49,Musiri Subramaniam Saalai
Oliver Road,Mylapore
Chennai-600 004.....Opposite Parties

Counsel for Complainant :
M/s.T.Srinivasaraghavan and others

Counsel for 1st opposite party : M/s.S.Muthuvenkataraman and other

Counsel for 2nd opposite party :M/s.A.S.Kailasam & Associates

ORDER

THIRU. G. VINOBA, M.A., B.L., PRESIDENT

This complaint has been filed by the complainant against the opposite party under section 12 of the Consumer Protection Act, 1986 as amended by act 62/2002 prays to pay a sum of Rs.4,87,362.50 together with interest at 18%p.a from the date of the complaint till date of realization.

This complaint filed before DCDRC Chennai South and numbered of CC 457/2010 was transferred to this commission as per the proceedings of the Registrar SCDRC in RC.NoA1/2282/2018 dated 11.09.2018 and renumbered as CC 270/2018.

1.THE COMPLAINT IN BRIEF:

The Complainant herein sustained an injury on his left knee on 09.05.2009 while he was riding a vehicle which skidded and got toppled. The complainant was admitted on 22.05.2009 in the 1st opposite party's hospital for treatment. The complainant was diagnosed of comminuted intera articular supra condylar fracture of left distil femur with pain and swelling on his left knee. The complainant was admitted in the hospital as an in patient with I.P.No.W.5925 and was admitted in G.III Ward on 22.05.2009. The 2nd opposite party who is the head of the department of Orthopaedics in the hospital advised the complainant for surgery. Accordingly the 2nd opposite party conducted a surgery on 27.05.2009 and the complainant was discharged on 12.06.2009. Even after discharge the complainant had continued pain and therefore he consulted the 2nd opposite party. Therefore the complainant consulted prof.Dr.P.V.A Mohandas at MIOT Hospitals Manappakkam, Chennai-600 089 and sought a second opinion. To the shock of the complainant the said doctor who studied X-ray was of the opinion as indicated in his letter dated 20.06.2009 that the review of the X-ray showed poor reduction of the fracture and advised the complainant to have a corrective surgery for realignment and knee spanning fixation. Dr.L.Subramaniam prescribed the following plan of procedure plan I is removal of entire implants assembling refixation after proper alignment of the supra condylar fracture and bone grafting. Plan II is incase of deep infection , implant removal wound debridement and external fixation. Plan III is after control of infection to plan for a definitive internal fixation and bone grafting. The complainant was admitted in Balaji Hospitals chennai for undergoing corrective surgery on 22.06.2009. The said doctor L.Subramaniam conducted the corrective surgery on 23.06.2009. Under the corrective surgery after administering to the complainant spinal anaesthesia, the implant was removed and the madiel femur

condyle was displaced and refixed. Then a vascular edge of shift of femur nibbled and fractured aligned and fixed with a contoured locking plate with screw. Post operative period was uneventful and the complainant was discharged from the hospital on 08.07.2009. The complainant respectfully submits he had been made to pay substantial money for the 1st surgery and also for the corrective surgery latter which was necessitated because of the gross negligence of the 2nd opposite party. The 2nd opposite party had not exercised even the reasonable care and diligence that is required while conducting such surgery. The 2nd opposite party is guilty of gross medical negligence. The complainant had spent money of total Rs.3,05,070.50 According to sum of Rs.48,000 paid by the insurance company to the complainant is deducted from the above mentioned claim of Rs.3,05,070.00 and the complainant confines his claim for medical expenses at Rs.2,57,070.50 in additional to the medical expenses mentioned above, the complainant had undergone paid and sufferings and mental agony and the opposite parties are liable to compensate the complainant for such mental agony paid and sufferings. Even a modest estimation of such compensation would be Rs.2,00,000.00. The legal expenses involved in this case is Rs.20,000.00 Thus the over all compensation which the opposite parties are liable to pay Rs.4,87,362.50 The opposite parties are liable under law to compensate the complainant to the extent indicated above. The complainant caused through his lawyer a notice dated 21.07.2009 to be issued to the opposite parties. The hospital did not choose to respond. The 2nd opposite party sent through his counsel a reply notice dated 20.08.2009 containing false and untenable averments. After the corrective surgery the Orthopaedician reviewed the complainant was discharged from the hospital. The complainant respectfully submits that the hospital were the 1st surgery was conducted by the 2nd opposite party is jointly and severally liable with the 2nd opposite party to pay the compensation to the complainant. Hence this complaint.

2.WRITTEN VERSION FILED BY THE 1st OPPOSITE PARTY IN BRIEF:

The complainant sustained an injury on 09.05.2009 is as such not disputed and the cause of injury, which the complainant is put to strict proof of is purely within the knowledge of the complainant since he did not seek the services of the 2nd opposite party herein immediately. The 1st Opposite Party does not suggest any doctors to attend patients. The 1st Opposite Party is a Charitable institution governed by num sisters on a non-profitable basis. It is relevant to mention that the complainant is a known case of post polio residual paralysis that has affected both his lower limbs even before the above mentioned incident. It is further submitted that on examination it was found that the left knee suffered a fixed flexion deformity of 90 along with swelling tenderness over distal femur, Quadriceps wasting and power in both limbs as 3/5. These facts are mentioned here are the same are not deliberately mentioned in the complaint since the same would justify the mode of treatment adopted by the doctor. The 1st opposite party did not decide on the surgery the very same day of his admission but the same was opted only on 27.05.2009 which only goes to show that the surgery was a last resort attempted by the 1st opposite party herein to extend the flexed knee. It is further submitted that the nature and probable consequence of the surgery was explained to the complainant who was convinced that it was only an attempt to provide relief to the complainant from not only what he had sustained as a result of the alleged injury but also from what he had been suffering from prior to the fall it is only on this reason the patient was advice non weight bearing knee brace and a review after 6 weeks. It is not out of way to mention that the discharge summary issued by the first OP states that a further review is required after 6 weeks which has not been complied with and it is further submitted that it is an admitted case of the complainant that the alleged pain arose only after discharge from the 1st opposite party and not during his stay in the hospital. the complainant for the reasons best known to him instead of approaching the opposite parties has chosen to approach other two doctors and further contended even the method adopted in Balaji hospital by Dr.L.Subramaniyan on 26.03.2009 is the same which was adopted by the 2nd opposite party herein and further stated that no where the doctors have stated that alleged pain is due to the implant fixed on the complainant by the 1st opposite party and further contended that the complainant failed to prove that the pain arose due to negligence of the opposite parties.

3.WRITTEN VERSION FILED BY THE 2nd OPPOSITE PARTY IN BRIEF:

The 2nd opposite party contended that the complainant suffers from post polio residual paralysis of both legs with approximately 90 degree fixed flexion of the knees due to which he will not be able to straighten his legs at all and when the 2nd opposite party first saw the complainant it was realized that the complainant

normal mode of movement was crawling since both his legs could not be used for walking and even prior to his admission in the 1st opposite party hospital the complainant leg was in a plaster cast and he was complaining was severe pain and further contended that the 2nd opposite party as a reputed orthopedic surgeon and he was of the opinion that surgery should be done to correct the flexion deformity in the knee on the left leg to the maximum extent possible and due to pre existing polio the affected bone in his left leg does not have normal shape or strength and consequences of surgery were informed to the complainant prior to surgery and post operative pain is a common one and it takes time to for the fracture to heal and further contended the opinion given by other two doctors may not be the same and the 2nd opposite party cannot be blamed for different opinions among professionals and further contended that Dr.L.Subramaniyam in no manner decry the earlier surgery or find fault with the same and similarly Dr.P.VA.Mohandass opinion based on X-ray showing poor reduction of fracture is again misplaced since the complainant at no point of time had normal anatomy and the 2nd opposite party made an attempt to achieve flexibility in the complainants lower limb in the left leg so as to make the complainant to stand up and the surgery done by him has been of the highest order and comparable with the services offered anywhere in the world and denied the deficiency in service and medical negligence alleged against him.

3. POINTS FOR CONSIDERATION:

1. Whether there is Deficiency of service on the opposite parties?
2. Whether the complainant is entitled for the reliefs claimed in the complaint and if so, to what extent?

Proof Affidavit of Complainant and Ex.A1 to Ex.A22 marked on the complainant side. The Opposite party 1&2 has filed written version and filed proof affidavit, written arguments and Ex.B1 to B7 marked by the 1st opposite party. No documents marked by 2nd opposite party.

Point No: 1

The Complainant herein sustained an injury on his left knee on 09.05.2009 while he was riding a vehicle which skidded and got toppled. The complainant was admitted on 22.05.2009 in the 1st opposite party's hospital for treatment. The complainant was diagnosed of comminuted intera articular supra condylar fracture of left distal femur with pain and swelling on his left knee. The complainant was admitted in the hospital as an in patient with I.P.No.W.5925 and was admitted in G.III Ward on 22.05.2009. The 2nd opposite party who is the head of the department of Orthopaedics in the hospital advised the complainant for surgery. Accordingly the 2nd opposite party conducted a surgery on 27.05.2009 and the complainant was discharged on 12.06.2009. Even after discharge the complainant had continued pain and therefore he consulted the 2nd opposite party. Therefore the complainant consulted prof.Dr.P.V.A Mohandas at MIOT Hospitals Manappakkam, Chennai-600 089 and sought a second opinion. The said doctor who studied X-ray was of the opinion as indicated in his letter dated 20.06.2009 that the review of the X-ray showed poor reduction of the fracture and advised the complainant to have a corrective surgery for realignment and knee spanning fixation. Further according to the complainant the 1st opposite party is a multi specialty hospital and the 2nd opposite party is the head of the department of orthopedics in the said hospital to conducted surgery and further the complainant contended that he again consulted Dr.L.Subramaniyan who advised for another corrective surgery for plan I is removal of entire implants assembling refixation after proper alignment of the supra condylar fracture and bone grafting. Plan II is incase of deep infection , implant removal wound debridement and external fixation. Plan III is after control of infection to plan for a definitive internal fixation and bone grafting and hence contended that as per the two opinions of two doctors referred above it is clear that the 2nd opposite party conducted a faulty surgery which required a corrective surgery since there was no improvement in the condition of the complainant and due to increase in pain the complainant has no other go except to undergo a corrective surgery at Balaji hospital on 23.06.2009 and discharged on 08.07.2009 and therefore contended that he had incurred total expenses of Rs.487362.50/- towards 1st surgery, corrective surgery and towards post operative medical expenses by alleging deficiency in service on the part of opposite parties.

But on the other hand The 1st Opposite Party does not suggest any doctors to attend patients. The 1st Opposite Party is a Charitable institution governed by num sisters on a non-profitable basis. It is relevant to mention that the complainant is a known case of post polio residual paralysis that has affected both his lower limbs even before the above mentioned incident. It is further submitted that on examination it was found that the left knee suffered a fixed flexion deformity of 90 along with swelling tenderness over distal femur, Quadriceps wasting and power in both limbs as 3/5. These facts are mentioned here are the same are not deliberately mentioned in the complaint since the same would justify the mode of treatment adopted by the doctor. It is further alleged that the surgery on 27.05.2009 was a last resort attempted by the 1st opposite party to extend the flexed knee and further stated that the consequences of the surgery was explained to the complainant and he was advised to come for review after six weeks which has not been complied by him and the alleged pain occur in the normal course after operation and further contended that the complainant for the reasons best known to him instead of approaching the opposite parties has chosen to approach other two doctors and further contended even the method adopted in Balaji hospital by Dr.L.Subramanian on 26.03.2009 is the same which was adopted by the 2nd opposite party herein and further stated that no where the doctors have stated that alleged pain is due to the implant fixed on the complainant by the 1st opposite party and further contended that the complainant failed to prove that the pain arose due to negligence of the opposite parties.

The 2nd opposite party contended that the complainant suffers from post polio residual paralysis of both legs with approximately 90 degree fixed flexion of the knees due to which he will not be able to straighten his legs at all and when the 2nd opposite party first saw the complainant it was realized that the complainant normal mode of movement was crawling since both his legs could not be used for walking and even prior to his admission in the 1st opposite party hospital the complainant leg was in a plaster cast and he was complaining was severe pain and further contended that the 2nd opposite party as a reputed orthopedic surgeon and he was of the opinion that surgery should be done to correct the flexion deformity in the knee on the left leg to the maximum extent possible and due to pre existing polio the affected bone in his left leg does not have normal shape or strength and consequences of surgery were informed to the complainant prior to surgery and post operative pain is a common one and it takes time to for the fracture to heal and further contended the opinion given by other two doctors may not be the same and the 2nd opposite party cannot be blamed for different opinions among professionals and further contended that Dr.L.Subramaniyam in no manner decry the earlier surgery or find fault with the same and similarly Dr.P.VA.Mohandass opinion based on X-ray showing poor reduction of fracture is again misplaced since the complainant at no point of time had normal anatomy and the 2nd opposite party made an attempt to achieve flexibility in the complainants lower limb in the left leg so as to make the complainant to stand up and the surgery done by him has been of the highest order and comparable with the services offered anywhere in the world and denied the deficiency in service and medical negligence alleged against him.

It is found from Ex.A2 that the complainant sustained injury in his left knee while riding a vehicle on 09.05.2009 due to which there was pain and swelling in his left knee and no external injury was found it is further found that he has approached the 1st opposite party hospital and admitted on 22.05.2009 as inpatient and he was advised to have a surgery by the 2nd opposite party who is a qualified orthopedic surgeon of the 1st opposite party hospital and he underwent surgery on 27.05.2009 for partial ilio tibial band release and (synthes) ORIF with LCP Fracture distal fumer and discharged of 12.06.2009 with an advice to review to come for review after six weeks and was also advised non weight baring and knee brace it is further found from Ex.A2 that the complainant was a known case of post polio residual paralysis affected both the lower limbs and hence before injury he was walking over both knees. But this fact was suppressed by the complainant in the complaint. It is found from Ex.B3 that during his stay as inpatient in the 1st opposite party hospital he was given proper medicines regularly on various dates as found in Ex.B3 till his date of discharge but it appears that without following the advice given in the discharge summary without weighting for six 6 weeks and without approaching to 1st opposite party hospital for a review the complainant approached another doctor namely P.V.A mohandass MIOT hospitals since his pain increased and the said doctor who studied the X-ray by his letter dated 20.06.2009 which is marked as a Ex.A3 as given a opinion that his X-ray shows poor reduction of the fracture which requires admission and realignment for which a surgery is necessary and thereafter the complainant has approached another Dr.L.Subramaniyan of Balaji

hospitals Chennai on 22.06.2009 who under Ex.A4 as suggested 3 plan of procedure for removing the entire implants assembly and refixation after proper alignment and bone grafting for which another surgery is required which was done by him as found in Ex.A6 on 23.06.2009 and the complainant was discharged on 08.07.2009 after implant removal and refixation of Communated Supra Condylar Fracture left femur. It is pertinent to note that both in the discharge summary issued by the 1st opposite party hospital as well as Sri Balaji hospital the patient was known polio myelitis residual lesion in both lower limbs which fact was suppressed by him in the complaint. Though it is alleged in the complaint that the two doctors gave opinion for another corrective surgery to minimize the pain in the report given by Dr.P.V.A mohandass which is marked as Ex.A3 and in the investigation report Ex.A4 given by balaji hospital nothing was stated that the earlier surgery done by the 2nd opposite party was a faulty one and in the above said two reports they only suggested for a another surgery for realignment and knee spanning fixation and there is no word corrective surgery as termed by the complainant in the complaint. It is found from Ex.B4 that before surgery the complainant consent was obtain by informing the consequences of the surgery and it is found from the Ex.B5 to Ex.B7 that the complainant was physically examined with regard to his body fitness before proceeding with the surgery and he was prescribed with certain post operative medicines which will go to show that the surgery on 27.05.2009 was done by the 2nd opposite party in the 1st opposite party hospital by following the necessary procedures and merely because there was increase in pain during post operation period it cannot be contended that the 2nd opposite party committed negligence in doing operation 27.05.2009 and further there is no force in the condensation of the complainant that only because of the negligence of the 2nd opposite party it nescciated another surgery for which he was made to spent additional amount of Rs.487362.50/- The complainant failed to establish that the surgery done by the 2nd opposite party was not in accordance with the acceptable medical code. It is found that within 8 days from the date of discharge from the 1st opposite party hospital the complainant approached that the Dr.Mohandass and there is no explanation on the complainant side for not approaching the 1st opposite party hospital for the alleged increase in pain and normally it will take atleast 2 weeks time after any surgery for the pain to reduce but the complainant within that period seems to have hastily approached the another doctor. The complainant filed the Ex.A1 series which were receipts issued by the 1st opposite party and Ex.A5 series were issued by Balaji hospital.

On perusal of the entire records and averments of both parties it is found that the 2nd opposite party has done surgery aiming at union of the fracture and to achieve strengthening of the lower limb in the left leg so that the complainant may try to stand since he was previously crawling with his knees and further it is found from the operation notes and discharge summary that the 2nd opposite party has followed and adopted the recognized medical procedure in respect of the surgery undergone by the complainant and no fault and defectiveness in the surgery is established by the complainant or by the two other doctors who subsequently gave opinion by examining the complainant and therefore the question of negligence will not arise since the complainant fail to prove that the surgery has not be done in accordance with the normal and acceptable practice in the medical field and it is further found that the increase in pain and the 2nd surgery by Dr.L.Subramaniyan were due to the fact that the complainant does not have normal shape or strength in his left leg due to pre existing polio and for which the opposite parties cannot be blame by the complainant and hence the opposite parties or not liable to pay the alleged medical expenses of Rs.487362.50/- as claimed in the complaint. As per the decision in civil appeal number 1385/2001 Kusum Sharma and others Versus Batra hospital and medical research centre and others by the supreme court of India it was held that in the landmark judgement in Jacob Mathew versus state of Punjab and another it was observed that a medical practioner would be liable only where is contact fell below that of the standards of a reasonably competent practioner in his field and in the realm of diagnosis and treatment there is scope for difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of other professional doctors and it was further held that negligence cannot be attributed to a doctor so long as he perform his duties with reasonable skill and competence. In the present complaint also the 2nd opposite party has done surgery with reasonable skill and competence and hence he cannot be held liable for medical negligence. The 2nd opposite party relied upon a decision reported in (2009) 9 Supreme Court Cases 709 and contended that without examining the expert as a witness in court no reliance can be placed on an opinion alone and hence contended without examining the two doctors who gave opinion it is not possible to come to a conclusion that the 2nd opposite party as committed medical negligence in performing surgery. The above said case is applicable to the present complaint and hence it is found after careful scrutiny of documents that

the complainant failed to prove the alleged medical negligence on the part of opposite parties and hence there is no deficiency in service on the part of opposite parties. Point no.1 answered accordingly.

Point No. 2

Based on findings given to point.no.1 since there is no deficiency in service or medical negligence on the part of opposite parties hence the complainant is not entitled for sum of Rs.487362.50/- with interest as claimed in the complaint. Point no.2 is answered accordingly.

In the result the complaint is dismissed. No cost

Dictated by the president to the Steno-Typist taken down, transcribed and computerized by her, corrected by the President and pronounced by us in the open Commission on this the 22nd day of November 2023

MEMBER – I

MEMBER-II

PRESIDENT

LIST OF DOCUMENTS FILED BY THE COMPLAINANT:

Ex.A1 Series	20.05.2009	Receipt issued by 1 st Opposite party (40 Nos)
Ex.A2	27.05.2009	Operation Notes with Discharge Summary
Ex.A3	20.06.2009	Report given by MIOT Hospital
Ex.A4	22.06.2009	Receipt issued by Balaji Hospitals investigation report
Ex.A5 Series	22.06.2009	Receipt issued by Sri Balaji Pharmacy 109 Nos
Ex.A6	08.07.2009	Discharge summary given by Balaji Hospital
Ex.A7	21.07.2009	Legal notice issued to the opposite parties
Ex.A8	20.08.2009	Reply notice given by the counsel for the 2 nd opposite party
Ex.A9	20.05.2009	X-ray by St.Isabel's Hospital
Ex.A10	20.05.2009	X-ray by St.Isabel's Hospital
Ex.A11	29.05.2009	X-ray by St.Isabel's Hospital
Ex.A12	08.06.2009	X-ray by St.Isabel's Hospital
Ex.A13	22.06.2009	X-ray by Sri Balaji Hospital
Ex.A14	23.06.2009	X-ray by Sri Balaji Hospital
Ex.A15	21.07.2009	X-ray by Sri Balaji Hospital
Ex.A16	01.08.2009	X-ray by Sri Balaji Hospital
Ex.A17	08.08.2009	X-ray by Sri Balaji Hospital
Ex.A18	31.08.2009	X-ray by Sri Balaji Hospital
Ex.A19	07.09.2009	X-ray by Sri Balaji Hospital
Ex.A20	16.09.2009	X-ray by Sri Balaji Hospital
Ex.A21	29.09.2001	X-ray by Sri Balaji Hospital
Ex.A22	03.11.2009	X-ray by Sri Balaji Hospital

LIST OF DOCUMENTS FILED BY THE 1st OPPOSITE PARTY:

Ex.B1	22.05.2009	Admission Sheet
Ex.B2	12.06.2009	Discharge Summary
Ex.B3		Doctors Orders
Ex.B4	27.05.2009	Consent for Surgical procedures
Ex.B5	27.05.2009	Anaesthetic Record
Ex.B6		Post Operative Orders
Ex.B7	27.05.2009	Operation Report

MEMBER – I**MEMBER-II****PRESIDENT****CC.NO.270/2018,****Dated:22.11.2023**

Order Pronounced,

**In the result the complaint is dismissed.
No Cost**

Member-I

Member-II President

In the result the complaint is partly allowed, The opposite party is directed to pay a sum of Rs.1 lakh to the complainant with interest 6% p.a from 20.07.2011 till date of payment in respect of claim no.1 and directed to pay Rs.25000/- towards compensation for mental agony suffered by complainant due to deficiency in service of the opposite party and directed to pay Rs.5000/- towards cost of the complaint. The above amount shall be paid to the complainant within two months from the date of receipt of the copy of this order failing which the above said amount shall carry 9% interest from the date of this order to till the date of payment. The relief prayed in respect of claim no.2 and 3 is dismissed.