

**IN THE CONSUMER DISPUTES REDRESSAL COMMISSION,  
THRISSUR**

Present : Sri. C.T. Sabu, President  
Smt. Sreeja. S., Member  
Sri. Ram Mohan R., Member

29<sup>th</sup> day of June 2026  
CC 210/12 filed on 17/04/2012

Complainant : Sarojini, W/o Late Jayaprakash,  
Karattuparambil House, E. Peringottukara P.O.,  
Kizhakkumuri Village – Desom, Thrissur – 680 571.  
(By Advs. T.B. Mini, Thrissur)

Opposite Parties : 1) Director, Mother Hospital, Thrissur.  
2) Medical Superintendent, Mother Hospital,  
Thrissur, P.O. Pullazhi, Pin – 680 012.  
3) Dr. Kuruvila, Mother Hospital, Olari, Thrissur.  
4) Dr. Viswanathan, Mother Hospital, Thrissur.  
5) Dr. Prasanth, Mother Hospital, Thrissur.  
(OP 1 By Advs. K. Madhavan & Rajeev O.V.,  
Thrissur  
OP 2 Ex-parte  
OP 3 By Adv. T.C. Krishnan Narayanan, Thrissur  
OP 4 By Adv. K.N. Somakumar, Thrissur  
OP 5 By Adv. A.R. Krishna Moorthy, Thrissur)

**FINAL ORDER**

**By Sri. Ram Mohan R, Member :**

1) Complaint in brief, as averred :

The complaint is filed under Section 12(1) of the Consumer Protection Act, 1986. The complainant who had a history of abdominal discomfort and loose stool for two months, on 26/02/2011 consulted the 4<sup>th</sup> opposite party Doctor who is working in a hospital at Pullazhy, Thrissur of which the 1<sup>st</sup> opposite party is the Director and the 2<sup>nd</sup> opposite party its Medical Superintendent. The 3<sup>rd</sup> and the 5<sup>th</sup> opposite parties are other doctors working in the said hospital. The reports of the stool and blood investigations which were

conducted as suggested by the 4<sup>th</sup> opposite party were stated to be within the normal limits. Without adopting any non-invasive procedure, the 4<sup>th</sup> opposite party advised colonoscopy and accordingly the complainant reached the hospital in the morning of 09/03/2011. Allegedly without getting proper informed consent, the 3<sup>rd</sup> and the 5<sup>th</sup> opposite parties subjected the complainant to colonoscopy. The complainant also alleges that the procedure was done by the 3<sup>rd</sup> opposite party, whereas the 4<sup>th</sup> opposite party was doing other works. After a few hours, the 4<sup>th</sup> opposite party contacted the daughter of the complainant, namely Mrs. Preji Bhasi and informed her that the procedure could not be completed owing to block. Even after elapse of several hours the complainant was not allowed to go out or talk to her daughter. The complainant's daughter thereafter called her brother Dr. Prince who is a Dentist by profession. The hospital authorities informed Dr. Prince that the patient was under sedation and was retained in the Gastro observation room. In the evening hours the complainant was brought to the room, while she was crying with pain and her abdomen distended like a balloon. On 10/03/2011, the 4<sup>th</sup> opposite party visited the room and suggested chest x-ray of the patient. He also informed that a perforation had happened during Colonoscopy and suggested laparotomy for the closure of perforation, seeking bystanders to sign certain papers. The 3<sup>rd</sup> opposite party thereafter conducted laparotomy. At that point of time the complainant's ECG showed variations due to compression of heart by a large collection of air, fluid, and blood. The complainant's condition at that time was very critical. The complainant alleges that the perforation occurred due to the careless and negligent conduct of the colonoscopy by the opposite parties. The complainant became very weak post-surgery and was retained in the hospital for treatment for nine days. The complainant alleges that the opposite parties suppressed the occurrence of perforation and informed them that the procedure could not be completed owing to the block only. When the bystanders of the complainant including her son enquired about the progress of treatment, the

opposite parties rendered a hostile behaviour. The complainant alleges deficiency in service and adoption of unfair trade practice on the part of the opposite parties and prays for an order directing the opposite parties refund the medical expenses borne by her, apart from other reliefs of compensation and costs.

2) NOTICE :

Commission issued notice to all the opposite parties. The 2<sup>nd</sup> opposite party failed to file his written version, despite receipt of Commission's Notice to that effect. Hence proceedings against the 2<sup>nd</sup> opposite party were set ex-parte. The other opposite parties filed their written versions.

3) Version of the 1<sup>st</sup> opposite party :

The 1<sup>st</sup> opposite party admits the treatment provided to the complainant. They deny any suppression of facts from their part, pertaining to the treatment provided to the complainant. They claim to have made the complainant as well as her bystanders aware of the treatment provided. They aver that the complainant is not entitled to any compensation. They also aver that the District Medical Officer whom the complainant previously approached on the same matter, conducted enquiry and found the allegations baseless.

4) Version of the 3<sup>rd</sup> to the 5<sup>th</sup> opposite parties :

These opposite parties aver that the complainant had consulted the 4<sup>th</sup> opposite party as out-patient on 15/02/2011 with a two-week history of Diarrhoea, with increased mucus. The complainant also had allegedly complained of weight loss. The 4<sup>th</sup> opposite party advised blood and stool investigation which showed normal values except for positive occult blood in one of the stool samples. The 4<sup>th</sup> opposite party advised Colonoscopy to rule out any major colonic disease particularly Neoplasm. The 4<sup>th</sup> opposite party

claims to have explained the pros and cons of the Colonoscopy procedure, its potential complications like bleeding, colonic perforation, and the possible need for laparotomy, etc., to the complainant and her bystanders. The complainant was admitted to the hospital for colonoscopy on 09/03/11 after complying with all necessary pre-colonoscopy procedures including bowel preparation. Consent for Colonoscopy was given by the complainant's daughter and Colonoscopy was conducted after giving the complainant mild sedation with Inj Midazolam 3mg and Pentazocine 15 mg. The opposite parties aver that the scope cannot traverse beyond the recto-sigmoid area owing to tight angulation at that area and consequently the procedure was abandoned at the level of sigmoid colon. The complainant was thereafter shifted to Gastro ICU for observation and the patient got out of sedation by 5.30 p.m. At that time, the patient complained of abdominal distension and mild pain. The 5<sup>th</sup> opposite party had seen the complainant in the night and decided to keep her under observation, as elderly patients take more time to pass air instilled during Colonoscopy. The patient was kept with Ryle's tube for nasogastric suction. The 4<sup>th</sup> opposite party suspected intestinal perforation as the complainant continued to complain abdominal distention and the X-ray-abdomen revealed its occurrence. Hence the 4<sup>th</sup> opposite party contacted the complainant's son Dr. Prince and informed him of the need for laparotomy. After completing pre-operative investigation and check-ups, the 3<sup>rd</sup> opposite party conducted exploratory laparotomy on 10/03/11. A Perforation of 2 cm size seen in the antimesenteric border of sigmoid was closed in two layers using oo vicryl & 0000 prolene. Hemostasis was achieved, peritoneal cavity was thoroughly cleaned with warm saline and abdomen was closed in layers. The intra-operative period was uneventful and the complainant was shifted to post-operative ICU where her ECG showed some variations and she was shifted to Cardiac ICU. On 11/03/11 the complainant was shifted to room and her post-operative recovery was also uneventful. On 13/03/11 she was started on oral fluids and on 14/03/11 she was

started on soft solid feeds and the USG taken on 17/03/11 showed normal findings. The complainant started normal diet on 18/03/11, her wound healed well and she was discharged. The opposite parties aver that intestinal perforation during Colonoscopy is an expected medical complication at the rate of 1-9 %. They claimed to have treated the patient with utmost care and caution as expected from qualified and experienced medical practitioners. The 4<sup>th</sup> opposite party's suggestion for Colonoscopy was based on specific indications given by clinical history and investigation reports. The complainant was fully prepared for Colonoscopy on 09/03/11 after discussing with relatives and taking second opinion. They also affirmed that it was the 4<sup>th</sup> opposite party who had conducted Colonoscopy and also that the 3<sup>rd</sup> opposite party did not take part in the said procedure. The allegation to the contrary is ill-motivated. The complainant's son and daughter gave their consent in writing for laparotomy after making themselves fully conversant with the need for the same. They also aver that the perforation was not caused by the negligence on their part. The Colonoscopy was abandoned at the level of Recto Sigmoid area due tight angulation. There is no suppression of facts from the complainant and her bystanders. They also aver that there was no delay in conducting laparotomy. There was no deficiency in service or adoption of unfair trade practice on the part of the opposite parties. Hence they aver that the complainant is not entitled to get any relief from them.

#### 5) Evidence :

The complainant produced documental evidence that had been marked as Exts. P1 to P20, apart from affidavit and notes of argument. The complainant's witness – Doctor deposed and was cross examined as PW1. The complainant underwent cross examination as PW2. The 1<sup>st</sup> opposite party produced documental evidence that had been marked Ext. R1. Exts. R2 to R5 were marked from the side of the 3<sup>rd</sup> opposite party. The opposite parties except

the 2<sup>nd</sup> opposite party filed proof affidavit, apart from notes of argument. The 3<sup>rd</sup> opposite party underwent cross examination as RW1, whereas the 3<sup>rd</sup> opposite party's witness as RW2, the 4<sup>th</sup> opposite party as RW3 and the 5<sup>th</sup> opposite party as RW4.

6) Deliberation of evidence and facts of the case :

The Commission has very carefully examined the facts and evidence of the case. Ext. P1 is certified copy of order dtd. 02/02/2013 of Judicial First Class Magistrate – II, Thrissur. Ext. P2 is attested copy of prescription issued by the 4<sup>th</sup> opposite party. Ext. P3 is attested copy of Endoscopy report issued by the 1<sup>st</sup> opposite party in respect of the complainant. Ext. P4 is copy of case report issued by the 3<sup>rd</sup> opposite party pertaining to closure of perforation and peritoneal lavage. Ext. P5 (SP) is a part of doctor's record. Ext. P6 (SP) is a part of doctor's record. Ext. P7 is true copy of a part of Nurses daily record. Ext. P8 is X-ray image issued by the opposite party hospital. Ext. P9 is ECG print-out. Ext. P10 is attested copy of operation record. Ext. P11 is attested copy of Anaesthesia Chart. Ext. P12 is copy of an application under RTI Act dtd.26/05/2012. Ext. P13 is reply letter dtd. 29/06/12. Ext. P14 is a part of news paper dtd.01/02/2013. Ext. P15 is a part of newspaper dtd. 25/10/2013. Ext. P16 is discharge bill No.019680 dtd. 19/03/2011 issued by the opposite party hospital in favour of the complainant amounting to Rs.28,790/-. Ext. P17 is true copy of common order dtd. 10/04/15 in CrI. MC. Nos. 3968/2013 & 4059/2013 of the Hon'ble High Court of Kerala. Ext. P18 comprises copies of Hospital record. Ext. P19 is photo graph. Ext. P20 is another photo graph.

Ext. R1 is Expert Medical Panel Report attested by the District Medical Officer of Health, Thrissur. Ext. R2 is a copy of an Extract of Gastro Enterology Surgery Register. Ext. R3 is copy of Medical records in respect of a third party patient of the opposite party hospital. Ext. R4 is copy of Medical records in

respect of another third party patient of the opposite party hospital. Ext. R5 is copy of Anaesthesia Chart.

7) Points of deliberation :

- i) Whether the opposite parties obtained valid informed consent in accordance with law for performing Colonoscopy ?
- ii) Whether there is any deficiency in service or adoption of unfair trade practice on the part of all or any of the opposite parties ?
- iii) Whether the complainant is entitled to refund of the pertinent medical expenses ?
- iv) Whether the complainant is entitled to receive any compensation from the part of the opposite parties ? If so, its quantum ?
- v) Costs ?

8) Point No.(i)

Admittedly, the informed consent of the patient is not taken for performing the impugned Colonoscopy procedure. Instead, a consent from the patient's daughter was taken for the same. It is also an admitted fact that the complainant had on 15/02/11 consulted the 4<sup>th</sup> opposite party as an out-patient with two week history of a few episodes of Diarrhoea, with increased mucus. The complainant again visited the 4<sup>th</sup> opposite party for review on 26/02/11 after undergoing the blood and stool investigations suggested by the latter. It was on that day after going through the investigation results that the 4<sup>th</sup> opposite party advised Colonoscopy for the complainant. The complainant alleged that it was the 3<sup>rd</sup> opposite party – doctor who had performed the Colonoscopy procedure, although it was the 4<sup>th</sup> opposite party doctor who had examined the complainant in the out-patient department and advised her to undergo the Colonoscopy. The 4<sup>th</sup> opposite party doctor has stated on affidavit as well as by oral testimony that it was he who had performed the impugned Colonoscopy

procedure. We find no reason to disbelieve this assertion. At the same time, the evidence placed before us does not indicate otherwise, as well. It is therefore evident that the Colonoscopy was conducted on 09/03/11 after due planning and not as a matter of emergency. The 4<sup>th</sup> opposite party doctor who had advised and performed the Colonoscopy was duty bound to obtain the patient's informed consent. The opposite parties have no contention that the patient lacked decision making capacity due to conditions such as severe dementia, delirium, unconsciousness or certain neurological disorders.

In the present case, the sequence of events assumes more importance.

- 1) The Colonoscopy was an elective and planned invasive procedure. Admittedly, the complainant had already undergone out-patient consultations, reviewed investigation results and there was time for discussion and informed decision making.
- 2) It is also an admitted fact that consent for Colonoscopy was obtained from the complainant's daughter and not from the patient.
- 3) The surgery became necessary because of a perforation caused during the Colonoscopy. This was an emergency for urgent necessity arising from a serious complication.
- 4) Despite the patient's more stressful situation following the perforation, another Doctor i.e. the 3<sup>rd</sup> opposite party, obtained the patient's own consent (along with that of her son and daughter as witnesses), before surgery.

The very sequence itself makes one thing evident. The hospital's own conduct in obtaining the patient's consent for the later surgery may undermine any suggestion that the patient could not even be asked for consent before the earlier planned Colonoscopy. Therefore, the fact that the complainant possessed decision making capacity during the relevant period of admission is fully

supported by the hospital's own record and conduct. The Colonoscopy was not an emergency procedure, but a planned and elective investigation undertaken after out-patient consultation, evaluation of investigation results, and adequate opportunity for informed decision making. If the complainant had been incapable of providing informed consent, the opposite parties, concerned, ought to have documented the absence of such capacity or the circumstances justifying the reliance solely on her daughter's consent. No such evidence does exist before us. On the contrary, after the Colonoscopy resulted in a perforation necessitating emergency surgery - a situation inherently involving greater pain, anxiety, and stress – that treating surgeon i.e. the 3<sup>rd</sup> opposite party obtained the complainant's own written consent along with that of her son and daughter as witnesses. If the complainant was considered competent to understand, deliberate upon, and consent to a major surgical procedure in these more adverse circumstances, there is no logical basis in not obtaining her consent at the earlier stage when the planned Colonoscopy was performed. Thus the opposite parties own conduct demonstrated that the complainant was competent to make informed decisions during the relevant period. The omission to obtain the complainant's consent for the elective Colonoscopy cannot therefore be justified.

It is common knowledge that the patient's consent is not merely a formality. The patient should be informed about the nature of the procedure, its purpose, significant reasons, alternatives and potential complications so that he/she can make informed decision. The consent shall be real and informed. A doctor is not expected to perform a procedure for which consent has not been obtained, except in emergencies or other circumstances pertaining to lack of decision making capacity as detailed above. The Hon'ble Supreme Court held the same view by its judgment in *Samira Kohli Vs Dr. Prabha Manchanda*. We are therefore inclined to hold that the 4<sup>th</sup> opposite party doctor failed to meet

the required standard of care, in so far as obtaining the patient's informed consent, is concerned.

The hospital represented by the 1<sup>st</sup> and the 2<sup>nd</sup> opposite parties, had an equal duty and responsibility to put in place an effective system to ensure that valid informed consent, as mandated by law, was obtained in all cases where such consent was required. Moreover, if there is any flaw or imperfection on the part of any Doctor engaged by the hospital, the hospital is vicariously liable for such acts of negligence committed by the Doctor engaged by it. The Hon'ble Apex court held the same view by its judgment dtd. 16/12/2019 in *Maharaja Agrasen Hospital Vs Master Rishabh Sharma and Others*. Hence we are of the view that there is deficiency in service on the part of the 1<sup>st</sup> and the 2<sup>nd</sup> opposite parties also, in so far as obtaining the patient's informed consent, is concerned.

Point No.(i) is thus proved against the 1<sup>st</sup>, the 2<sup>nd</sup> and the 4<sup>th</sup> opposite parties.

9) Point No. (ii) :

It is an admitted fact that Colonoscopy was abandoned in the midst of it. A focused perusal of Ext. P18 copy of Hospital Records would divulge the following facts.

- 1) The same does not mention anywhere, at what time on 09/03/2011 the Colonoscopy procedure in question was started and when it was abandoned or stopped.
- 2) There is no endorsement or mention that Carbon Dioxide or air was pumped into the intestine during Colonoscopy. Ordinarily, some quantity of Carbon Dioxide or air will be pumped into the intestine during Colonoscopy to ease the procedure and make it safer.

- 3) The reason for abandoning the Colonoscopy midway is stated differently by the two Doctors viz by the 3<sup>rd</sup> opposite party and the 4<sup>th</sup> opposite party. The reason stated by the 4<sup>th</sup> opposite party is that as there was a tight angulation at the Recto-Sigmoid / Sigmoid Area, scope could not be traversed beyond it. But the reason stated by the 3<sup>rd</sup> opposite party is that the procedure could not be completed as the patient was complaining of abdominal discomfort and distension.
- 4) There is no description anywhere, what exactly transpired during the procedure. Even the 4<sup>th</sup> opposite party Doctor who performed the Colonoscopy in question merely notes : “tight angulation at the Recto Sigmoid / Sigmoid area and scope could not be traversed beyond it”. This comment is too cryptic to explain what exactly transpired during the procedure. The 4<sup>th</sup> opposite party Doctor ought to have described in his procedure notes the nature of angulation, the difficulty encountered by the Endoscopist, the maneuvers adopted, whether the patient experienced pain or distress during the procedure, the stage at which perforation was suspected, and the specific circumstances in which the procedure was terminated.
- 5) The complainant was not discharged after the Colonoscopy was abandoned, but she was taken to an observation room. Ordinarily a patient on whom Colonoscopy is performed is treated as an out-patient. Evidently, the sole reason can be that she had developed some problems. It is evident from Ext. P18 that at 8.45 p.m. on the date on which Colonoscopy was performed, distension of the abdomen aggravated. The complainant had a high blood pressure of 160/100 mm Hg at 9.30 p.m. on the said day. Perforation was noticed only at 8.30 a.m. the next day i.e. on 10/03/2011. During this period, the 4<sup>th</sup> opposite party – the Doctor whom the complainant had consulted and who performed the

Colonoscopy in question, did not visit or examine the complainant even once.

In a Colonoscopy perforation case, the central issue is whether the perforation was a recognized complication occurred despite reasonable care, or was the result of negligent manipulation of the Colonoscope. The perforation rate of 1 to 9% stated by the 3<sup>rd</sup> to the 5<sup>th</sup> opposite parties in their version is incorrect and substantially overestimates the actual risk. It is common knowledge that the accepted incidence of perforation during diagnostic Colonoscopy is 0.03 to 0.8%. During cross examination, PW1 testified that the actual perforation rate is 0.08 to 0.1%. In such cases of colonic perforation, the medical record is the primary contemporaneous evidence and the doctor who performed the Colonoscopy has the specific and special knowledge of what was observed during the procedure. The notation “there was a tight angulation at the Recto-Sigmoid / Sigmoid Area and scope could not be traversed beyond it”, is a conclusion not really a sufficient description of the underlying anatomical or pathological finding. From a medicolegal perspective, the medical records would have to explain what exactly was seen at the point of resistance, whether angulation appeared congenital, due to a redundant sigmoid colon, adhesions from previous surgery, diverticular disease, inflammatory stricture, tumor or any other cause, whether repeated attempts were made to negotiate the bend, whether excessive looping occurred, whether the patient experienced pain or other signs suggesting difficulty, whether the procedure was abandoned immediately upon encountering resistance or after multiple maneuvers. A mere statement of “tight angulation” warrants the doctor, concerned, to answer whether the angulation was due to the patient’s anatomy or pathology, how he determined that there was tight angulation, what specific endoscopic findings supported his conclusion, what maneuvers were attempted before stopping, could the perforation have occurred because force was applied while trying to

negotiate the bend, etc.. All such technical facts are largely within the knowledge of the treating doctor only. As the medical records are prepared by the treating doctor himself, and are the primary contemporaneous evidence, the lack of specificity would weigh against the doctor himself. If the congestion was due to a pre-existing pathological condition, inflammation, ulcerations, adhesions, or anatomically difficult angulation, such specific findings may be indicative of an inherently vulnerable bowel that can justify the perforation as a known risk. But if the congestion was muscular spasm or transient mucosal redness, it cannot explain the perforation at all. Similar is the case, if the congestion suggested difficult anatomy requiring forceful advancement of the scope. The 4<sup>th</sup> opposite party doctor who, performed the Colonoscopy procedure in question, failed to provide an adequate description of the findings observed during the procedure. But the 3<sup>rd</sup> opposite party who performed laparotomy, had unambiguously recorded in the case report, concerned, that the Colonoscopy procedure could not be completed on 09/03/2011 as the complainant was complaining of abdominal discomfort and distention. The 3<sup>rd</sup> opposite party cannot be expected to write the same randomly or without any basis, or from speculations. The 3<sup>rd</sup> opposite party doctor would certainly record or express such a statement only on the basis of the contemporaneous medical records. But this reason is not seen mentioned in the procedure notes prepared by the 4<sup>th</sup> opposite party who performed the Colonoscopy in question and its absence stakes the very genuineness of his procedure notes itself.

It also merits special consideration that the 4<sup>th</sup> opposite party by argument note alleges that the complainant had previous history of a pelvic surgery, which was not disclosed to the Doctor (the 4<sup>th</sup> opposite party ). The previous pelvic surgery could have resulted in adhesions of colon which would in turn leave the complainant with a higher risk of perforation during Colonoscopy. Had it been so, the question that arises for deliberation is whether the 4<sup>th</sup>

opposite party doctor had specifically asked about this and recorded the complainant's denial of it. The opposite parties adduced no evidence to substantiate the same. Nor any such endorsement in Ext. P18 hospital records was brought to our notice. Before performing a Colonoscopy, a reasonably careful Doctor would ordinarily obtain and document relevant history including previous abdominal surgery, previous pelvic surgery, hysterectomy, bowel surgery, inflammatory bowel disease, diverticular disease, prior radiation treatment, or other conditions that may increase procedure difficulty. This is more particularly so, while the patient is an elderly woman. As the records contain no question about prior surgery and no note of the complainant's answer, we have no hesitation to hold that the history of the patient was not adequately taken and that the 4<sup>th</sup> opposite party doctor had not done an informed risk assessment of performing the Colonoscopy procedure, and consequently that the 4<sup>th</sup> opposite party had not exercised the reasonable duty of care expected of him. PW 1 Doctor Balakrishnan had expressly and briefly emphasized almost all these facts in his deposition. He had also categorically deposed that accumulation of pelvic abscess could have been avoided if a more timely attempt for the identification and closure of perforation were taken.

The 1<sup>st</sup> opposite party hospital's contention that the medical panel report had found no merit in the complaint, is unacceptable, given that the Hon'ble High Court of Kerala had already found by Ext. P17 judgment that the said medical report needs no consideration. The pertinent portion of Ext. P17 judgment reads as :

*“The board found that there was nothing to suggest negligence on the part of the doctors concerned. A perusal of the report indicates that the Board, which comprised 8 doctors, reached the conclusion only on the basis of the statements of accused 3 and 4. This was not what was*

*expected of the expert panel. I have no doubt that the opinion of the Board only deserves to be ignored “.*

Hence it is imperative that Ext. R1 Medical Board Report is not sustainable in the eyes of law.

Likewise, the 3<sup>rd</sup> to the 5<sup>th</sup> opposite parties contend that the complainant's Witness (PW1), who deposed on behalf of the complainant, is a Neurosurgeon and not a Gastroenterologist. During cross examination, PW1 stated that he had successfully performed several Colonoscopy procedures in the past. However, the objection raised by the contesting opposite parties regarding PW1's expertise is devoid of merit for the following reasons.

- 1) For the proper adjudication of the present case, only the fundamental aspects of the Colonoscopy procedure such as whether the procedure was performed with reasonable care, recognition of complication, adherence to basic procedural standards, management of the patient following the procedure, etc. were relevant. Accordingly, PW1 confined his testimony to the fundamental aspects of the procedure and did not express any opinion or make any observation regarding recent advancement in its techniques or methodology.
- 2) The negligence and lack of due care on the part of the doctors, concerned, are evident from the documents, facts and evidence on record. The testimony of the complainant's witness merely corroborates the conclusions that can independently be drawn from the evidence available on record.

Besides, in accordance with the dictum laid down by the Hon'ble Apex Court by its judgment in *Maharana Agrasen (Supra)*, if there is negligence or deficiency on the part of any doctor engaged by a Hospital, the Hospital is

vicariously liable for such acts of negligence or deficiency committed by the Doctor engaged by it.

The deliberations made above make the following facts evident :

- i) Before advising Colonoscopy, the 4<sup>th</sup> opposite party doctor failed to obtain an adequate medical history and did not perform an informed assessment of the patient's individual risk factors. This omission falls below the expected standard of care.
- ii) The patient/complainant was not informed of the potential risks associated with the Colonoscopy, including the risk of bowel perforation and any patient - specific risk factors.
- iii) The Colonoscopy procedure notes were cryptic and lacked essential details. In medical jurisprudence, proper documentation is an integral part of standard care. Inadequate records justify an adverse inference that either proper care was not exercised or proper justification is not available.
- iv) The 4<sup>th</sup> opposite party doctor did not visit or examine the complainant even once on the day when a Colonoscopic perforation was suspected. We consider this a serious omission, inflicting a lack of appropriate post-operative care and monitoring.

Based on these facts, we are inclined to hold that the 4<sup>th</sup> opposite party doctor had failed to exercise the degree of care and skill expected of a reasonable competent medical practitioner. It is settled that a medical practitioner owes a threefold duty of care namely (i) a duty in deciding whether to undertake the case (ii) a duty in deciding what treatment is to be given, and (iii) a duty in the administration of such treatment. Axiomatically, the failure to exercise a reasonable degree of skill and care in any of these stages would amount to negligence. This principle is affirmed by the Hon'ble Apex court in a catena of its judgments including that in *Indian Medical Association Vs V P*

*Shantha*, which brought medical services within the ambit of the Consumer Protection Act, *Jacob Mathew Vs State of Punjab*, which reiterated the requirement of reasonable care and distinguished civil negligence from criminal negligence, and *Kusum Sharma Vs Batra Hospital*, which emphasized that the standard of care is that expected of a reasonably competent medical practitioner acting in accordance with accepted medical practice. A Colonoscopic perforation alone does not establish negligence. However, in the present case, negligence is established from cumulative failure in consent, risk assessment, documentation and post procedure care, which falls below the standard expected of a reasonably competent medical practitioner.

All considered, we are of the contemplated view that there is deficiency in service as well as negligence on the part of the 1<sup>st</sup>, the 2<sup>nd</sup> and the 4<sup>th</sup> opposite parties.

The allegations against the 3<sup>rd</sup> and the 5<sup>th</sup> opposite party - doctors have not been established. The principal allegation against the 3<sup>rd</sup> opposite party doctor was that it was he who had negligently performed the impugned Colonoscopy procedure. The complainant further contended that, having examined her, advised the requisite investigations and recommended the Colonoscopy, the 4<sup>th</sup> opposite party doctor ought to have personally performed the procedure instead of entrusting it to the 3<sup>rd</sup> opposite party doctor.

However, as discussed earlier, the evidence on record does not substantiate the complainant's contention. On the contrary, we find no reason to disbelieve the 4<sup>th</sup> opposite party doctor's affidavit and oral testimony that he himself performed the Colonoscopy procedure in question. Consequently, the allegation against the 3<sup>rd</sup> opposite party doctor remains unproved.

The 5<sup>th</sup> opposite party was only a member of the 4<sup>th</sup> opposite party doctor's team, and the evidence on record does not disclose any act of

negligence or omission attributable to the 5<sup>th</sup> opposite party doctor. Accordingly, we have no hesitation in holding that the allegations against the 3<sup>rd</sup> and the 5<sup>th</sup> opposite party doctors have not been established.

As a result, Point No.(ii) is proved against the 1<sup>st</sup>, the 2<sup>nd</sup> and the 4<sup>th</sup> opposite parties.

10) Point No.(iii) :

As elaborated under the foregoing points, the Colonoscopy having been performed without obtaining the informed consent of the complainant, without adequate pre-procedure assessment and in a breach of the duty of care, the amount collected towards the said procedure cannot be permitted to be retained by the opposite parties, concerned. The complainant is therefore entitled to refund of the amount paid towards the Colonoscopy.

The evidence further establishes that the emergency Laparotomy became necessary only on account of the Colonoscopic Perforation sustained during the Colonoscopy. The expenditure incurred by the complainant for the said corrective surgery is a direct consequence of the negligence committed by the 4<sup>th</sup>, the 1<sup>st</sup> and the 2<sup>nd</sup> opposite parties. Consequently, the complainant is also entitled to reimbursement of the amount paid towards the Laparotomy as well. Resultantly, the complainant is entitled to refund of the total sum of Rs.28,790/- (Rupees Twenty-eight thousand seven hundred and ninety only) that she paid the opposite party hospital vide Ext. P16 discharge bill.

11) Point No.(iv) :

The complainant was constrained to undergo an emergency Laparotomy, prolonged treatment and hospitalization solely on account of the negligence of the 4<sup>th</sup>, the 1<sup>st</sup> and the 2<sup>nd</sup> opposite parties. She has undoubtedly suffered physical pain, mental agony, emotional distress and considerable hardship.

Such injury is a direct consequence of the deficiency in service established in this case. The complainant prays for a compensation worth Rs.50,000/- (Rupees Fifty thousand only). We are satisfied that she is entitled to the asked compensation of Rs.50,000/- (Rupees Fifty thousand only), for the pain, suffering, mental agony and hardship undergone by her.

12) Point No.(v) :

The complainant has claimed a litigation cost of Rs.2,500/- (Rupees Two thousand five hundred only) only. However, this complaint has remained pending for more than 14 years before its final adjudication. The complainant has been compelled to pursue the proceedings throughout these prolonged period to vindicate her legitimate grievance. The power to award cost is discretionary and is intended to compensate the successful litigant for the expenses necessarily incurred in prosecuting the proceedings. Having regard to the nature of the litigation, the prolonged pendency of the proceedings and the overall facts and circumstances of the case, we are of the view that an award of Rs.25,000/- (Rupees Twenty-five thousand only) towards cost of litigation would be just, reasonable and proper. Accordingly, notwithstanding the lesser amount claimed, we award litigation costs of Rs.25,000/- (Rupees Twenty five thousand only) to the complainant.

In the result, the 3<sup>rd</sup> and the 5<sup>th</sup> opposite parties are exonerated from the liability arising out of the complaint and the complaint is allowed against the 1<sup>st</sup>, the 2<sup>nd</sup> and the 4<sup>th</sup> opposite parties and the 1<sup>st</sup>, the 2<sup>nd</sup> and the 4<sup>th</sup> opposite parties are directed to jointly and severally pay the complainant :

- i) a sum of Rs. 28,790/- (Rupees Twenty-eight thousand seven hundred and ninety only) towards refund of the amount collected

for the Colonoscopy procedure and that for the Laparotomy performed for repair of the Colonoscopic Perforation.

- ii) a sum of Rs.50,000/- (Rupees Fifty thousand only) towards compensation for the pain, suffering, mental agony and hardship caused to her on account of the medical negligence established in this case and
- iii) a sum of Rs. 25,000/- (Rupees Twenty-five thousand only) towards costs,

all with 9% interest p.a. from the date of filing of the complaint till the date of realization. The opposite parties, concerned, shall comply with the above direction within 30 days of receipt of a copy of this order.

Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in the open Commission this the 29<sup>th</sup> day of June 2026.

Sd/-  
Sreeja S.  
Member

Sd/-  
Ram Mohan R  
Member

Sd/-  
C. T. Sabu  
President

#### Appendix

##### Complainant's Exhibits :

Ext. P1 certified copy of order dtd. 02/02/2013 of Judicial First Class Magistrate – II, Thrissur.

Ext. P2 attested copy of prescription issued by the 4<sup>th</sup> opposite party.

Ext. P3 attested copy of Endoscopy report issued by the 1<sup>st</sup> opposite party in respect of the complainant.

Ext. P4 copy of case report issued by the 3<sup>rd</sup> opposite party pertaining to closure of perforation and peritoneal lavage Ext. P5 (SP) a part of doctor's record.

Ext. P6 (SP) a part of doctor's record.

Ext. P7 true copy of a part of Nurses daily record.

Ext. P8 X-ray image issued by the opposite party hospital.

Ext. P9 ECG print-out.

Ext. P10 attested copy of operation record.

Ext. P11 attested copy of Anaesthesia Chart.

- Ext. P12 copy of an application under RTI Act dtd.26/05/2012.  
Ext. P13 reply letter dtd. 29/06/12.  
Ext. P14 a part of news paper dtd.01/02/2013.  
Ext. P15 a part of newspaper dtd. 25/10/2013.  
Ext. P16 discharge bill No.019680 dtd. 19/03/2011 issued by the opposite party hospital in favour of the complainant amounting to Rs.28,790/-.  
Ext. P17 true copy of common order dtd. 10/04/15 in CrI. MC. Nos. 3968/2013 & 4059/2013 of the Hon'ble High Court of Kerala.Ext. P18 comprises copies of Hospital record.  
Ext. P19 photo graph.  
Ext. P20 another photo graph.

Complainant's Witnesses :

PW 1 Dr. P.K. Balakrishnan

PW 2 Sarojini

1<sup>st</sup> Opposite party's Exhibits :

Ext. R1 Expert Medical Panel Report attested by the District Medical Officer of Health, Thrissur.

2<sup>nd</sup> Opposite party's Exhibits :

Ext. R2 copy of an Extract of Gastro Enterology Surgery Register.

Ext. R3 copy of Medical records in respect of a third party patient of the opposite party hospital.

Ext. R4 copy of Medical records in respect of another third party patient of the opposite party hospital

Ext. R5 copy of Anaesthesia Chart.

Opposite Parties' Witnesses :

RW 1 Dr. Kuruvila

RW 2 Dr. Sutheedran

RW 3 Dr. Vishwanathan

RW 4 Dr. Prashant M

Id/-  
Ram Mohan R  
Member

//True copy//

Assistant Registrar

