

Date of filing: 04.12.2020
Date of Disposal: 14.09.2023

**BEFORE THE III ADDITIONAL BANGALORE URBAN
DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
BENGALURU – 560 027.**

DATED THIS THE 14th DAY OF SEPTEMBER, 2023

CONSUMER COMPLAINT NO.1050/2020

PRESENT:

**SRI. SHIVARAMA, K : PRESIDENT
SRI. CHANDRASHEKAR S NOOLA : MEMBER
SMT. Rekha Sayannvar : MEMBER**

Sri. Vaseemuddin. A,
S/o. Ameerjan,
Aged about 34 years,
R/at No. 16, 4th Cross,
Someshwaranagar,
Jayanagar 1st Block,
Bengaluru-560011.
(Sri. Jameer Pasha, Advocate)

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COMPLAINANT

V/s



1. M/s Motherhood Hospital,
Office at No. 04, 30th Main Road,
Banagirinagara, Banashankari
3rd Stage, Opp. Kempegowda
Institute of Medical Science,
Bengaluru-560085.
Rep. by its Chairman,
Mohammed Rehan Sayeed.
(Sri. K.V. Girish, Advocate,
for opposite party No. 1 to 4)
2. Sri. Vijayarathna Venkatraman
Chief Executive Officer,
M/s Motherhood Hospital
Aged about Major.
3. Dr. Santosh Kumar K,
Pediatrics,
M/s Motherhood Hospital.
4. Smt. Gayathri MP,
Relationship Manager,
M/s Motherhood Hospital.

All Opposite Parties are at
Office at No. 04, 30th Main Road,
Banagirinagara, Banashankari
3rd Stage, Opp. Kempegowda
Institute of Medical Science,
Bengaluru-560085.

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OPPOSITE PARTIES



// JUDGEMENT //**BY SRI.SHIVARAMA K, PRESIDENT**

The complainant has filed this complaint u/sec. 35 of the Consumer Protection Act-2019 seeking for a direction to the opposite party to pay the compensation of Rs.25,00,000/- to the complainant.

2. It is not in dispute that complainant No. 2 is the wife of complainant No. 1. Further, it is not in dispute that opposite party had found a birthing Package Tariff – single room - C-section (3 days) for a sum of Rs.85,000 (Mother Care + Baby Care) included room rent for 3 days. Further, it is not in dispute that the complainant No. 2 got admitted at opposite party hospital on 03.09.2020 and a baby was born on the same date. Further, it is not in dispute that the complainant had paid the hospital bill of a sum of Rs.82,971/-. Further, it is not in dispute that as assured in the Package Tariff, Tubectomy has not been performed on complainant No. 2. Further, it is not in dispute that the complainant got issued the legal notice to the opponent dated: 23.10.2022 calling the opponent to pay the compensation for the deficiency of service rendered.

3. It is the further case of the complainants that opposite party did not provide the services assured in the Package Tariff



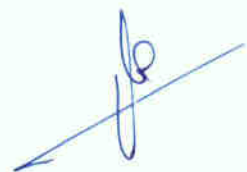
and the Tubectomy operation as assured has not been performed. Hence, the complaint came to be filed for the compensation in respect of the deficiency of service.

4. It is the further case of the opponent that the facilities as assured was given and since the baby had distress after birth the treating doctors in consultation with the complainants had decided not to perform Tubectomy. Further, the opponent had taken only a sum of Rs.82,971/- even though direct package was for Rs.85,000/-. Hence, it is sought to dismiss the complaint.

5. To prove the case, the complainant No. 1 (PW1) has filed affidavit in the form of his evidence in chief and got marked EX.P1 to P20 documents. The authorised representative of opposite party No. 1 (RW-1) has filed affidavit in the form of his evidence in chief and got marked Ex.R1 and R2 documents. The consulting doctor at opposite party No. 1 hospital (RW-2) has filed affidavit in the form of his evidence in chief and got marked Ex.R3 to R5 documents. Counsels for both the parties have filed their respective written arguments.

6. Heard the complainant.

7. The points that would arise for consideration are as under:



i) Whether the complainant proves the deficiency of service on the part of the opposite party No. 1 to 4?

ii) Whether the complainant is entitled for the relief sought ?

iii) What order?

8. Our findings on the aforesaid points are as follows:

Point No.1: In affirmative

Point No.2: partly in affirmative

Point No.3: As per the final order for the following;

REASONS

9. POINT NO.1:- PW-1 and RW-1 have reiterated the fact stated in their respective pleadings, in the affidavits filed in the form of their evidence in chief. Complainant No. 1 is an Advocate by profession. It is the contention of the learned counsel for the complainant that in the package it was assured to provide single room, Ex.P11 is the Package Tariff in which it is stated that single room would be provided in the package. It is the contention of the learned counsel for the opposite party



that the hospital has only 2 types of rooms namely single room and twin sharing room. Further, the facilities provided in both categories are identical and the only distinction was single room for one person and twin sharing room for individuals. Further, due to the non-availability of single rooms in question, opposite party had allocated room No. 311/312 to the complainant No. 1 wife and new baby further no body was allowed to enter the room allotted and it was reserved for complainants family stay. Hence, there was exclusive stay for complainant No. 2. Further complainants did not express dis-satisfaction regarding twin room during the entire stay in the hospital. Hence, the contentions raised in the complaint with regard to twin room were raised only as an afterthought.

10. The other point urged by the learned counsel for the complainants that even though it was assured in the package as per Ex.P11, Tubectomy would be conducted, that has not been performed. It is the contention of opposite party that since new born baby exhibited distress, after consultation with the complainants did not do the Tubectomy. In Ex.P9 discharge summary it is stated that female baby was delivered by LSCS. Ex.P9 and R4 are one and same. In Ex.R3 discharge summary it is stated that there was spontaneous abortion in first trimester on G1 and G2. According to RW-2 Gynaecologist complainant No. 2 gave birth to her 3rd child via LSCS



procedure and for the safe of the complainant No. 2 option was given and had consulted the complainants and decided not to perform Tubectomy. Further, non-performance of Tubectomy was not an emergency medical decision. We feel there is merit in the contention of the learned counsel for the opposite party in not performing the Tubectomy.

11. The other contention urged by the learned counsel for the complainant is that opposite party had raised the bill exceeding the Package Tariff. It is the contention of the learned counsel for the opposite party that opposite party had reduced the medical bill to Rs.82,971/- from 85,000/-. Hence, the same was within the Package Tariff. We feel since single room was not provided and even though Tubectomy was not performed the medical bill raised is excessive. Further, with regard to the facility the twin room cannot be equated with single room and there cannot be privacy. Hence, there is deficiency of service on the part of opposite party.

12. Point No. 2:- The complainants claim a sum of Rs.25,00,000/- as compensation. Admittedly opposite party had charged only a sum of Rs.82,971/- rather the package assured was Rs.85,000/-. Hence, the amount of Rs.2,029/- was deducted from the assured Package Tariff. It is the



contention of the learned counsel for the complainants that can a Tubectomy operation could be performed for a sum of Rs.2,029/- at opposite party hospital. We feel the deduction of the said extension amount is very meagre one. Further, admittedly single room was not provided. Hence, it caused inconvenience to the complainants. Hence, over all for the deficiency of service rendered, the complainants are entitle for a sum of Rs.15,000/-. Further, the complainants are entitle for a sum of Rs.5,000/- towards litigation cost. Further, the complainants are entitle for interest at the rate of 9% per annum. Since, opposite party No. 2 to 4 are the employees of opposite party No. 1 hospital, they cannot be made liable for compensation. Hence, opposite party No. 1 shall discharge the compensation. Accordingly, we answer this point partly in affirmative.

13. POINT No.3:- In view of the discussions made above and findings given on point No. 1 & 2, we proceed to pass the following order;



ORDER

Complaint is allowed in part. The Opposite Party No. 1 is directed to pay a sum of Rs.15,000/- as compensation to the complainant and a sum of Rs.5,000/- towards litigation cost.

2. The opposite party No. 1 shall comply the order within 45 days. In case the opponent fails to comply the same within the above said period, the above said amount of Rs.20,000/- carries interest at the rate of 9% per annum from the date of order till realization.

3. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.

4. Supply free copy of this order to both the parties and return extra copies of the pleading and evidence to the parties.

(Dictated to the Typist to online computer and typed by him and corrected and then pronounced in the open Commission on **14th day of September, 2023**)

-14/9/2023
(Rekha Sayannvar) (Chandrashekhar S Noola) (SHIVARAMA, K)
MEMBER MEMBER PRESIDENT

//ANNEXURE//**Witness examined from the side of complainant:**

Sri. Vaseemuddin A, the complainant (PW-1).

Documents marked from the side complainant:

1. Original copy of city bank credit card statement dated: 25.08.2020.
2. Copy of the statement of the account of the complainant (standard chartered bank).
3. Copy of the deposit receipts dated: 31.08.2020, 03.09.2020, 06.09.2020 and 06.09.2020.
4. Copy of the discharge summary of motherhood hospital dated: 06.09.2020.
5. Copy of medical bills dated: 06.09.2020.
6. Discharge summary of child dated: 06.09.2020.
7. Medical bill dated: 06.09.2020.
8. Copy of the cash-birthing package tariff plan.
9. Adhar card of complainant.
10. Adhar card of complainant's wife
11. Original birth certificate of complainant's child.
12. Legal notice dated: 23.10.2020.
13. Original postal receipt.

14. Original postal acknowledgment.
15. Application u/sec. 65(B) of Indian Evidence Act (3 Pages).
16. Copy of the WhatsApp chat (3 Pages).
17. Copy of the endorsement 28.06.2021 issued by PA channammanakere achukattu police station.

Witness examined from the side of opposite party:

1. Sri. Sathish Kumar, the opposite party (RW-1)
2. Smt. Dr. Aarthi Bharath, the opposite party (RW-2)

Documents marked from the side of Opposite Party:

1. Authorization letter dated: 28.12.2020 executed by opposite party No. 1.
2. Progress notes.
3. Copy of the discharge summary of complainant NO. 2.
4. Copy of the discharge summary of baby of complainants.
5. Now I see the Xerox copy of progress notes. The same is already marked as Ex.R2. The original progress notes of baby of complainant produced now.

 14/9/2023.
 
 16/09/23

(Rekha Sayannvar) (Chandrashekhhar S Noola) (SHIVARAMA, K)
MEMBER MEMBER PRESIDENT

