

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, CENTRAL MUMBAI**  
**Puravatha Bhavan, 2nd Floor, General Nagesh Marg, Near Mahatma Gandhi Hospital**  
**Parel, Mumbai-400 012 Phone No. 022-2417 1360**  
**Email- confo-mc-mh@nic.in Website- www.confonet.nic.in**

**C. Complaint No.12/2019**

**Date of Filing— 30/01/2019**

**Date of Order- 14/09/2023**

**Mr.Jitendra Prafull Ladhani**

R/o.2, Bhupat Bhuvan  
D.S.Babrekar Marg  
Gokhale Road North  
Dadar (West)  
**MUMBAI-400 028**

**.....Complainant**

**-Versus-**

**1.Dean**

**Shushrusha Citizens Co-operative Hospital Ltd.**

698-B, Ranade Road  
Dadar (West)  
**MUMBAI-400 028**

**2.M/s.Star Health & Allied Insurance Co.Ltd.**

203/205, 349, Business Point  
Near Sai Service  
Western Express Highway  
Andheri (E),  
**Mumbai 400 069**

**.....Opp.Parties**

**BEFORE:**

**HON'BLE MR.V.C.PREMCHANDANI, PRESIDENT**  
**HON'BLE MR.M.P.KASAR MEMBER**

**For the**

**Complainant:**

**In person**

**Opp. Party(s):**

**Adv.Anand Patwardhan for OP no.1**

**Adv.Balaji Umate for OP no.2.**

## **JUDGMENT**

**PER : MR. M.P.KASAR, MEMBER**

1. The complainant's case in short is as under:-

It is stated by the complainant that his father Mr.Prafullchandra Kantilal Ladhani was admitted in the OP no.1 hospital on 19/11/2017 and further

complainant states that his father had obtained Group Insurance Policy from the OP no.2 and he is covered below that insurance policy issued by the OP no.2. Further, complainant states that his father did not survive the hospitalization and expired on 26/11/2017. The complainant alleged that the hospital bill included a sum of Rs.24,000/- as mark-up charges towards providing the facility of cashless hospitalization, which is incorrect. Hence, complaint filed according to the complainant there is deficiency in service and unfair trade practice on the part of OP no.1. Hence, the complainant has filed this consumer complaint against the OP no.1 as well as the OP no.2 with a prayer that the opponents shall refund a sum of Rs.24,000/- collected from his as mark-up charges along with the deposit balance of Rs.29,286/- with the hospital and for legal expenses as well as punitive damages mentioned in prayer clauses of the complaint.

2. The complainant relied upon the documents annexed with the list of documents with the complaint (i) Communication with hospital (ii) Hospital response (iii) Patient's Statement of Account for 19/11/2017 (iv) Patient's Statement of Account for 20/11/2017 (v) Bill Summary (vi) Final Bill (vii) Star Health Revision of Authorized amount (viii) Star Health Calculation Sheet.

3. The OP no.1 appeared and filed its written statement through Varsha Kulkarni, Authorized Signatory of OP no.1 stating therein that the OP no.1 is duly registered as General Society under the M.C.S.Act, 1960 and the management of the opposite party is being looked after by the duly elected Board of Directors as per bye-laws. Further, it is stated that the complaint filed by the complainant against this opponent is not correct and frivolous one. It is because what has been the transaction done with complainant's father during his admission on ailment from the date 19/11/2017 to 26/11/2017 in OP no.1 hospital is as per the terms and conditions and as per the cashless facility provided by the OP no.2 to the complainant. Further, the OP no.1 states that the complainant's father was admitted initially as non-institutional patient

(credit patient) and the complainant is conversant about the subject 15% mark-up fee and the same has been reflected on each wall of the hospital and mark-up fee has been charged in view of the rules and regulations of the OP no.1. So there is no cause of action to file this consumer complaint and hence, the present consumer complaint may be dismissed against the OP no.1.

4. The OP no.1 relied upon the documents annexed with the written statement, i) Board resolution authority to file reply, ii) admission form submitted by the complainant/patient, iii) entire billing records and process, iv) policy details available and provided by the complainant, v) communication with policy company by the hospital, amount paid by the patient from 19/11/2017 to 26/11/2017.

5. The OP no.2 appeared and filed the written statement through Dr.Anita Pitale, Sr.General Manager, Claims stating in that the claim made by the complainant is settled as per the terms and conditions of the Group Insurance Policy issued by the OP no.2 vide Policy No.P/900000/01/2017/000007 from 31/03/2017 to 30/03/2018 for the sum insured of Rs.5,00,000/-. By maximum limit of Liability's Clause and co pay conditions, as per the exclusion clause no.5, 50% of the cost will be borne by the insured. However, it is stated by the OP no.2 that complainant's claim has been settled fully after filing the present complaint by the complainant. So according to the OP no.2, the complaint may be dismissed with costs against the OP no.2.

6. The OP no.2 relied upon copy of the i) billing sheet, ii) copy of consent by complainant for settlement through mail and iii) copy of roznama till the date 14/12/2020.

7. Heard complainant in person, Advocate Anand Patwardhan for OP no.1 and Advocate Balaji Umate for OP no.2. Perused the complaint, affidavit of evidence of complainant and all the documentary evidence filed by the

complainant. Perused the written statement and affidavit of evidence and documentary evidences filed by the OP nos.1 & 2. This Commission has come to the conclusion that following points arise out of this dispute arising between the parties. The same are answered as per the reasons given below:-

Sr.no	Points/Issues	Findings
1	Whether the complainant is 'consumer' of the opponents as per the section 2(1)(d) of the Consumer Protection Act, 1986?	In affirmative
2	Whether the opponent nos.1 & 2 have committed deficiency of service and unfair trade practice towards the complainant while providing services?	Yes- against OP no.1 No-against OP no.2
3	Whether the complainant is entitled for the relief sought?	Partly Yes
4	What order?	As per the final order

### **REASONS**

#### **9. As to Point No.1:**

Mr.Prafullchandra Kantilal Ladhani, father of complainant was hospitalized in the OP no.1 hospital from 19/11/2017 to 26/11/2017 and at the time of admission, the complainant has deposited a sum of Rs.40,000/- with OP no.1 hospital and availed the medical services for his father and the complainant is the son of deceased Mr.Prafullchandra Kantilal Ladhani. Being the son and legal heir of the deceased and paid consideration to the OP no.1 for availing services for father, the complainant can be treated as 'consumer' of the OP no.1 below section 2(1)(d) of the Consumer Protection Act, 1986. It is also admitted fact that the OP no.2 has issued the insurance policy, below which the complainant's father was one of the beneficiaries. Hence, the complainant can also be treated as 'consumer' of the OP no.2 and it is pertinent, that there is no dispute in this regard. Hence, the answer to point no.1 is yes and we held that the complainant is 'consumer' of both the opponents.

**10. As to Point No.2:**

From perusal of the record, it has been observed and undisputed that the OP no.1 has received the medical bill amount from the complainant as well as from the Insurance company. Admittedly, the OP no.1 has recovered 15% mark-up charges on the total bill amount from the complainant i.e. Rs.24,000/-. From perusal of the written statement and affidavit of evidence filed by the OP no.1, appearing that 15% mark-up charges to which the complainant was agreed and accordingly, the documents while admission of the patient were executed. It is further noted that according to OP no.1, if complainant was not agreeable to the additional charges of 15% mark-up charges, he ought to have taken objection instantly, but he did not take the objection. Hence, it can be presumed that he was very much conversant about the fact that the OP no.1 used to take 15% mark-up charges. The question before us is that whether the OP no.1 is competent to recover 15% mark-up charges for the institutional patient having cashless insurance services. Hence, we perused the documents filed by the OP no.1 along with their affidavit of evidence and it is observed therein that the OP no.1 relied upon the Memorandum of Understanding draft which is annexed as Annexure-C along with the affidavit of evidence of the OP no.1. To determine the issue whether the OP no.1 is entitled to recover the mark-up charges from the complainant on the basis of any written MOU between the OP no.1 and OP no.2, we find that there is no mention in regard to the mark-up charges to be recovered by the OP no.1 while admitting the patient in the hospital and those who availed the cashless facility. It is pertinent to note that after two days from the date of admission of the complainant's father in the hospital of OP no.1, the OP no.1 had applied to OP no.2 for getting the cashless authorization and the OP no.2 had authorized a sum of Rs.10,000/- for first cashless treatment. So it is observing that the OP no.1 is very much conversant about that the complainant is entitled for the cashless medical facilities from the opponent as per the insurance policy issued by the OP no.2. Considering this factual ground, we are

of the opinion that there is no evidence or document filed by the OP no.1 regarding whether OP no.1 were entitled to recover the 15% mark-up charges from the complainant on their institutional level and opposite party no.1 failed to substantiate that, whether OP no.1 were entitled to recover mark-up and they had made conversant to complainant, also it is noted that OP no.1 failed to prove that they have kept transference in administration and these policy of Mark-up 15% on bill and failed to prove that said policy was made available to the complainant from the day one. Regarding OP no.2, admittedly, the complainant's claim has been settled between the complainant and the OP no.2 on 21/08/2020 as per the Claim Review Committee of the OP no.2 and as per the terms and conditions, the OP no.2 has paid the amount of Rs.26,220/- to the complainant. So considering prayer 16(b) of the complainant in the complaint has been settled and there is no concern of the OP no.1 to this settlement and as there is no dispute remains between the complainant and the OP no.2 in regard claim amount disbursed and no dispute is there, so we do not find any error in the services provided by the OP no.2 to the complainant. Therefore, the answer to point no.2 against the OP no.2 is negative. Hence, considering the above discussion regarding deficiency in service and unfair trade practice on the part of the OP nos.1 & 2 towards the complainant, we hold that the OP no.1 has committed deficiency in service and unfair trade practice towards the complainant while accepting the mark-up charges from the complainant. Hence, we answer point no.2 as partly yes and held OP no.1 only liable for deficiency in services and unfair trade practice on the part of complainant.

12. **As to Point No.3 & 4:**

In view of the reasoning given herein above as to point nos.1 & 2, as complaint proved deficient on part of OP no.1 it will be justifiable to hold OP no.1 liable to pay a sum of Rs.24,000/- along with interest @ 6% p.a. from the date of filing of this consumer complaint i.e.30/01/2019 till realization of the said

amount to the complainant along with compensation of Rs.5000/- towards mental agony suffered and litigation costs of Rs.3000/- and the complaint against the OP no.2 stands dismissed. Hence, we proceed to pass the following order:-

### ORDER

1. The Consumer complaint no.12/2019 is hereby partly allowed against the OP no.1 only and stands dismissed against the OP no.2.
2. It is hereby directed to OP no.1 to pay a sum of Rs.24,000/- (Rupees twenty four thousand only) along with interest @ 6% p.a. from the date of filing of this consumer complaint i.e.30/01/2019 till realization of the said amount to the complainant.
3. It is hereby directed to OP no.1 to pay a sum of Rs.5,000/- (Rupees five thousand only) towards compensation and a sum of Rs.3000/- (Rupees three thousand only) towards the litigation costs.
4. It is hereby directed to OP no.1 to comply the above mentioned order within a period of thirty days from receipt of copy of this order.
5. The member sets shall be returned to the complainant. In case, complainant fails to collect the said sets within 30 days from the receipt of copy of judgment, the same may be destroyed.
6. Copies of the order be furnished to both the parties free of cost.

**Pronounced on 14<sup>th</sup> September, 2023**

**[HON'BLE V.C.PREMCHANDANI]  
PRESIDENT**

**[HON'BLE MR.M.P.KASAR]  
MEMBER**